



Australian Government

Takeovers Panel

MEDIA RELEASE

No: TP23/20

Friday, 19 May 2023

The Market Herald Limited – Declaration of Unacceptable Circumstances

The Panel has made a declaration of unacceptable circumstances (Annexure A) in relation to an application dated 6 February 2023 by UIL Limited in relation to the affairs of The Market Herald Limited (see [TP23/08](#)).

Background

The Market Herald Limited (**TMH**) is an ASX listed company (ASX code: TMH) formerly known as HotCopper Holdings Limited.

Mr David Argyle has a relevant interest in 36.92% of TMH shares¹. Mr Gavin Argyle has a relevant interest in 6.47% of TMH shares². He was appointed as a non-executive director of TMH in 2016, following a request by Mr David Argyle to appoint a nominee to the board.

On 9 August 2022, in a text message which appears to relate to the acquisition by TMH of Gumtree, Carsguide and Autotrader (**GCA**), Mr Gavin Argyle texted Mr Jagdip Sanger (then Managing Director) saying “...Dad is pleased and happy with the deal, so that’s good...”. Mr Gavin Argyle subsequently noted in a GCA staff meeting that “my dad is the largest shareholder and it puts extra responsibility on me in order to...maintain corporate values and his values in the various business activities”.

On 26 August 2022, TMH announced to the market (among other things) the acquisition of GCA, funded by a pro rata renounceable entitlement offer (**2022 Entitlement Offer**) and a vendor loan of approximately \$60.1 million by Adevinta Oak Holdings B.V. (**Vendor Loan**).

The 2022 Entitlement Offer was partially underwritten by Capital Investment Partners Pty Ltd (**CIP**), a company controlled by Mr Gavin Argyle. CIP entered into sub-underwriting agreements with 6 sub-underwriters, including two CIP employees, being Ms Kasey Linney and Mr Eric Rosenal.

¹ directly and through Zero Nominees Pty Ltd

² through GAB Superannuation Fund Pty Ltd

On 6 October 2022, TMH placed 941,176 of the shortfall shares under the 2022 Entitlement offer to each of Ms Linney and Mr Rosenal. CIP paid the subscription amounts on behalf of the two employees. This arrangement was described as being loans made by CIP to the employees pursuant to their employment arrangements. Ms Linney and Mr Rosenal each disposed of 550,000 TMH shares on market days after the placement. The Panel has inferred from trading volumes at the relevant times that Mr David Argyle and Mr Gavin Argyle acquired most of the shares sold by the CIP employees.

In November 2022, Mr Gavin Argyle discussed with Mr David Argyle his options as a shareholder to requisition a meeting for the removal of a director.

On 29 November 2022, in response to a request from Mr David Argyle, Mr Alec Pismiris (Non-Executive Chairman) drafted a section 249D³ notice on behalf of Mr David Argyle calling for a general meeting at which a resolution be put for Mr Sanger to be removed as a director. Mr Pismiris sent the section 249D notice to a CIP representative (copied to Mr Gavin Argyle) for Mr David Argyle to sign.

On 30 November 2022, Mr Gavin Argyle and Mr Pismiris voted at a board meeting that Mr Sanger's "*appointment as managing director be revoked immediately*".

On 20 December 2022, TMH announced (among other things) that Mr Sanger had resigned as Managing Director and that as a result "*the requisitioned Section 249D meeting announced on 1 December 2022 will no longer proceed.*"

On 24 January 2023, TMH announced a pro rata renounceable entitlement offer to raise approximately \$15.52 million (**2023 Entitlement Offer**) to pay down debt associated with the purchase of GCA.

Findings

Considering the whole of the material, and drawing appropriate inferences, the Panel considered (among other things) that:

- from no later than 9 August 2022, Mr David Argyle and Mr Gavin Argyle became associated for the purpose of controlling or influencing the composition of TMH's board or the conduct of its affairs
- from no later than 6 October 2022, Mr Gavin Argyle became associated with each of Ms Linney and Mr Rosenal with respect to their respective holdings of TMH shares for the purpose of the conduct of TMH's affairs and
- from no later than 29 November 2022, Mr Pismiris became associated with each of Mr David Argyle and Mr Gavin Argyle in relation to the composition of TMH's board. The Panel considered that there is insufficient material to establish whether any of the associations detailed above have ended.

³ Unless otherwise indicated, all statutory references are to the *Corporations Act 2001* (Cth)

Declaration

The Panel considered that the circumstances were unacceptable because (among other things):

- shareholders in TMH, and the market, are not informed, and continue not to be informed, of the aggregate relevant interest in TMH shares held by the associated parties
- there have been numerous contraventions of the substantial holder provisions in section 671B in relation to TMH
- the 2022 Entitlement Offer booklet did not disclose the association between Mr David Argyle and Mr Gavin Argyle. In contrast, it stated that “*David Argyle and Gavin Argyle are not considered ‘associates’... and as such their shareholdings are not aggregated in accordance with section 606 of the Corporations Act*”. Further, the 2022 Entitlement Offer booklet did not disclose the aggregated control effect of the 2022 Entitlement Offer by reason of the association nor the sub-underwriting arrangements with employees of CIP and
- the 2023 Entitlement Offer booklet did not disclose (among other things) the associations⁴, the aggregated control effect of the 2023 Entitlement Offer by reason of the associations and material information in relation to the Vendor Loan.

The Panel did not consider it against the public interest to make the declaration, and in making it had regard to the matters in s657A(3).

The Panel is still considering the application in relation to orders.

The sitting Panel was Kelvin Barry, Kerry Morrow and Karen Phin (sitting President).

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

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⁴ The association of Mr David Argyle and Mr Gavin Argyle, the association of Mr Pismiris and each of Mr David Argyle and Mr Gavin Argyle and the association of Mr Gavin Argyle and each of Mr Rosenal and Ms Linney



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Takeovers Panel

ANNEXURE A

CORPORATIONS ACT

SECTION 657A

DECLARATION OF UNACCEPTABLE CIRCUMSTANCES

THE MARKET HERALD LIMITED

CIRCUMSTANCES

1. The Market Herald Limited (**TMH**) is an ASX listed company (ASX code: TMH). It listed on 13 September 2016 as HotCopper Holdings Limited (**HotCopper**).
2. Shareholders of TMH and their relevant interests in TMH voting shares¹ include:
 - (a) Mr David Brian Argyle (**Mr David Argyle**), directly and through Zero Nominees Pty Ltd - 36.92%
 - (b) UIL Limited - 23.11%
 - (c) Mr Gavin Argyle, through GAB Superannuation Fund Pty Ltd (**GAB**) - 6.47%
 - (d) Mr Jagdip Sanger - 4.92% and
 - (e) Mr Alec Pismiris, through ACP Investments Pty Ltd and Pismiris Holdings Pty Ltd - 0.98%.
3. On 26 August 2022, TMH announced to the market (among other things) the acquisition of Gumtree, Carsguide and Autotrader (**GCA**), funded by:
 - (a) a 2 for 5 pro rata renounceable entitlement offer of fully paid ordinary shares in TMH at an offer price of \$0.34 per new share to raise approximately \$26.6 million (**2022 Entitlement Offer**) and
 - (b) a vendor loan of approximately \$60.1 million to TMH by Adevinta Oak Holdings B.V. (**Vendor Loan**).
4. At this time, the directors of TMH were Mr Pismiris (Non-Executive Chairman), Mr Sanger (Managing Director), Mr Gavin Argyle (Non-Executive Director) and Mr Colin Chenu (Non-Executive Director).

¹ as at 27 February 2023

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5. The 2022 Entitlement Offer was partially underwritten to 80% by Capital Investment Partners Pty Ltd (CIP), a company controlled by Mr Gavin Argyle. CIP had entered into sub-underwriting agreements with 6 sub-underwriters for 43.41% of the underwritten amount, which included two CIP employees, being:
 - (a) Ms Kasey Linney, Executive Assistant to Mr Gavin Argyle at CIP and
 - (b) Mr Eric Rosenal, General and Investment Manager at CIP.
 6. On 5 September 2022, TMH issued the 2022 Entitlement Offer booklet which:
 - (a) did not disclose that the two CIP employees were sub-underwriting the offer and
 - (b) stated (among other things) that “*David Argyle and Gavin Argyle are not considered ‘associates’ as defined under the Corporations Act and as such their shareholdings are not aggregated in accordance with section 606 of the Corporations Act*”.
 7. On 19 September 2022, TMH announced that the 2022 Entitlement Offer had closed having received valid applications for approximately 81% of all new shares offered under the entitlement offer and that shortfall shares had also been taken up under the shortfall offer. The announcement further stated that remaining shortfall shares had been “*subscribed for by sub-underwriters in accordance with the Company Shortfall dispersion strategy and the Underwriting Agreement*”. In fact, the remaining shortfall shares were placed by TMH to clients and employees of CIP², with one exception³.
 8. On 6 October 2022, Ms Linney and Mr Rosenal each received a placement of 941,176 new TMH shares for \$320,000. CIP paid the subscription amounts on their behalf. This arrangement was described as being loans made by CIP to the employees pursuant to their employment arrangements. The loans were undocumented when they were made⁴ and were unsecured.
 9. Ms Linney disposed of 550,000 TMH shares on market 5 days after the placement. Mr David Argyle acquired approximately this number of shares at the same time.
 10. Mr Rosenal disposed of 550,000 TMH shares on market 12 days after the placement. Mr Gavin Argyle acquired exactly this number of shares at the same time.

² Noting that the two CIP employees, Ms Linney and Mr Rosenal, are unlikely to be “*institutional investors*”, contrary to the dispersion strategy disclosed in the 2022 Entitlement Offer booklet that stated that the underwriter must subscribe for any remaining shortfall shares or arrange for institutional investors who were not current shareholders or related parties of TMH to do so

³ 240,000 shortfall shares were allocated to an existing shareholder, contrary to the dispersion strategy disclosed in the 2022 Entitlement Offer booklet

⁴ For Ms Linney and Mr Rosenal, the Panel was provided with a copy of letters addressed to each of them dated 30 October 2022 and only signed by Mr Gavin Argyle on behalf of CIP, which referred to a loan of “\$320,000 for shares into The Market Herald Limited on the 30/09/2022”

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11. The Panel has inferred from trading volumes at the relevant times that Mr David Argyle and Mr Gavin Argyle acquired most of the shares sold by the CIP employees.
 12. Also on 6 October 2022, TMH announced the completion of its acquisition of GCA.
 13. During November 2022, Mr Gavin Argyle discussed with Mr David Argyle his options as a shareholder to requisition a meeting for the removal of a director. Following this discussion, Mr Gavin Argyle instructed a representative of CIP to draft and send Mr David Argyle an example of the type of letter that might be sent by a shareholder who wished to request that a director stand for election at a general meeting.
 14. On 27 November 2022, the representative of CIP sent Mr David Argyle drafts of two letters, each addressed to Mr Pismiris as Chairman of TMH, that requested an extraordinary general meeting of TMH be held for shareholders to consider the re-election of Mr Sanger and Mr Pismiris as directors. In her email, the CIP representative requested that the letters be signed and returned "*as soon as possible*". That evening, Mr David Argyle signed and returned the two letters to the CIP representative. He asked that the letters be given to Mr Gavin Argyle for him to give to Mr Pismiris "*as he knew they were meeting the day after*". In fact, Mr Pismiris only received the letters on 29 November 2022.
 15. On 28 November 2022, at a board meeting of TMH, the directors discussed (among other things) concerns raised by Mr Gavin Argyle in relation to Mr Sanger around an intra-group transfer of money. By the end of the board meeting, only Mr Gavin Argyle remained concerned about the matter. During the board meeting, the directors also discussed concerns around the status of re-financing the Vendor Loan.
 16. In the evening of 29 November 2022, Mr Pismiris contacted Mr David Argyle regarding his letters. During this discussion, Mr David Argyle "*realised the best path forward to achieve his objective was to issue the section 249D notice for the removal of Mr Sanger as a director*". Following this discussion, Mr Pismiris drafted, after Mr David Argyle requested assistance, a section 249D⁵ notice and sent it to the CIP representative (copied to Mr Gavin Argyle) for "*Brian to sign*"⁶ and requesting that it be returned that evening. The notice called for a general meeting at which a resolution was to be put for Mr Sanger to be removed as a director. On receiving the signed section 249D notice the next morning, Mr Pismiris recognised a typographical error in the notice, corrected it and then applied Mr David Argyle's electronic signature to the notice with his approval.
 17. Later on 30 November 2022, Mr Gavin Argyle and Mr Pismiris (Mr Chenu abstaining) voted at a board meeting of TMH that Mr Sanger's "*appointment as managing director be revoked immediately*". Mr Sanger submitted that he was not

⁵ Unless otherwise indicated, all statutory references are to the *Corporations Act 2001* (Cth)

⁶ Mr David Argyle's middle name is Brian and he is occasionally referred to by that name

informed of the meeting and he did not attend. At this meeting, each of Mr Gavin Argyle and Mr Pismiris were given some managerial responsibilities.

18. On 2 December 2022, TMH announced (among other things) that:
 - (a) Mr Sanger *"will no longer be Managing Director of the Company. Mr Sanger, however, remains a non-executive director of the Company"*
 - (b) Mr Sanger *"has been placed on leave"* and
 - (c) *"Non-Executive Chairman Mr Alec Pismiris and Non-Executive Director Mr Gavin Argyle will also increase their involvement to support [TMH] during this transition period."*
19. On 20 December 2022, TMH announced (among other things) that:
 - (a) *"Mr Jag Sanger has resigned as Managing Director with immediate effect"* and
 - (b) *"as a result of the resignation of Mr Sanger, the requisitioned Section 249D meeting announced on 1 December 2022 will no longer proceed."*
20. In January 2023:
 - (a) Ms Twila Jensen was appointed as an executive director of TMH
 - (b) Mr Chenu resigned as a non-executive director of TMH and
 - (c) Mr Tommy Logtenberg, CEO and CFO of Gumtree, was appointed as interim CEO of TMH (which appointment has subsequently been confirmed).
21. On 16 January 2023, TMH announced that it had reached an agreement with Adevinta Oak Holdings B.V. to extend the repayment of the Vendor Loan to 31 May 2023 *"on commercial terms"*. The announcement did not disclose that the extension was conditional on TMH completing an entitlement offer on or before 28 February 2023 and using the net proceeds towards repaying no less than \$15 million of the Vendor Loan.
22. On 24 January 2023, TMH announced a 1 for 6 pro rata renounceable entitlement offer of fully paid ordinary shares in TMH at an offer price of \$0.34 per new share to raise approximately \$15.52 million (**2023 Entitlement Offer**) to pay down debt associated with the purchase of GCA. The offer was fully underwritten by Canaccord Genuity (Australia) Limited (**Canaccord**). Canaccord had entered into sub-underwriting agreements with 13 sub-underwriters for 100% of the underwritten amount, including Mr David Argyle, Mr Gavin Argyle, CIP and the two CIP employees.
23. On 2 February 2023, TMH issued the 2023 Entitlement Offer booklet which:
 - (a) disclosed that Mr David Argyle, CIP and Mr Gavin Argyle were related party sub-underwriters of TMH but did not disclose that the CIP employees were sub-underwriters
 - (b) stated (on certain assumptions) that the increase in voting power of Mr David Argyle (37%) and Mr Gavin Argyle (6.4%) would be zero

- (c) unlike the 2022 Entitlement Offer booklet, did not include any statement regarding whether Mr David Argyle and Mr Gavin Argyle are associated and
- (d) disclosed a dispersion strategy whereby 'restricted persons', being shareholders with a relevant interest of 20% or more in TMH shares and related parties of TMH, were prohibited from applying for TMH shortfall shares in excess of their entitlements under the 2023 Entitlement Offer. In fact, the letters of sub-underwriting commitment dated 21 January 2023 signed by 'restricted' sub-underwriters, GAB and CIP, did not contain that prohibition.⁷
24. Mr David Argyle and Ms Rebecca Argyle⁸ each took up their full entitlement under the 2023 Entitlement Offer. Their aggregate subscription amounts, which were substantial, were paid to TMH by Mr Gavin Argyle. It was submitted by Mr Gavin Argyle that this payment was by way of set off in partial repayment of loan arrangements between Mr Gavin Argyle and Mr David Argyle.

Association between Mr David Argyle and Mr Gavin Argyle

25. Mr Gavin Argyle is Mr David Argyle's son. They share or have shared many connections, structural links and dealings.
26. Mr David Argyle and Mr Gavin Argyle have each owned shares in TMH since its IPO and have both increased their shareholdings over time. On 7 November 2016, following a request by Mr David Argyle, Mr Gavin Argyle was appointed as his nominee to the position of non-executive director of TMH (then HotCopper). They have discussions about the financial performance and management direction of TMH.
27. As Mr David Argyle's nominee, Mr Gavin Argyle was concerned to ensure that Mr David Argyle's core values and principles were reflected in the values and the direction of the TMH business, noting in a meeting of all GCA staff following the GCA acquisition that "*my dad is the largest shareholder and it puts extra responsibility on me in order to you know maintain corporate values and his values in the various business activities*".
28. Mr David Argyle appeared to have been briefed on the GCA acquisition before it was announced to the market. On 9 August 2022, in a text message which appears to relate to the GCA acquisition, Mr Gavin Argyle texted Mr Sanger saying "*...Dad is pleased and happy with the deal, so that's good...*".
29. Mr David Argyle was unhappy with the terms of the Vendor Loan when it was announced on 26 August 2022. In September 2022, Mr David Argyle expressed to Mr Gavin Argyle his concerns about the overall direction and management of TMH. During a similar discussion in November 2022, Mr David Argyle expressed his concern with the level of debt incurred by TMH and the progress

⁷ Canaccord submitted that, when preparing submissions in response to a brief issued by the Panel, it noticed the inconsistency and the letters of sub-underwriting commitment for GAB and CIP were re-issued on 17 February 2023 to reflect the dispersion strategy described in the 2023 Entitlement Offer booklet

⁸ Ms Rebecca Argyle is the daughter of Mr David Argyle and sister of Mr Gavin Argyle

of TMH in raising capital to repay the debt. During this discussion, Mr Gavin Argyle discussed with Mr David Argyle his options as a shareholder to requisition a meeting for the removal of a director.

30. The Panel considers that from no later than 9 August 2022 the conduct between Mr David Argyle and Mr Gavin Argyle in relation to TMH had a control purpose and effect that went beyond good corporate governance. The Panel considers that the following circumstances, among others, demonstrate actions taken in pursuit of a shared goal or purpose of Mr David Argyle and Mr Gavin Argyle to maintain the level of ownership control of Mr David Argyle, or the Argyle family in TMH:
- (a) the early briefing of Mr David Argyle on the GCA acquisition
 - (b) the ability of CIP as underwriter to influence the dispersion of new shares under the 2022 Entitlement Offer
 - (c) Mr David Argyle and Mr Gavin Argyle concurrently acquiring most of the TMH shares sold by the CIP employees shortly after those shares were placed to them in October 2022
 - (d) steps taken to remove Mr Sanger including proposals for Mr Gavin Argyle to take an executive role at GCA, restrictions placed on Mr Sanger's executive functions and an investigation undertaken by Mr Gavin Argyle and CIP personnel into the conduct of Mr Sanger with the view to his removal and
 - (e) Mr David Argyle's section 249D notice for the removal of Mr Sanger, the timing of the request and the assistance of CIP personnel and Mr Pismiris in the provision of the request.
31. Considering the whole of the material, and drawing appropriate inferences, the Panel considers that from no later than 9 August 2022:
- (a) Mr David Argyle and Mr Gavin Argyle have an agreement, arrangement or understanding for the purpose of controlling or influencing the composition of TMH's board or for the purpose of controlling or influencing the conduct of TMH's affairs, including financing, and are associated under section 12(2)(b) or
 - (b) alternatively, Mr Gavin Argyle is acting, or was proposing to act, in concert with Mr David Argyle in relation to TMH's affairs and are associated under section 12(2)(c).

Mr Pismiris and each of Mr David Argyle and Mr Gavin Argyle

32. Considering the whole of the material, and drawing appropriate inferences, the Panel considers that as a result of his involvement with Mr David Argyle's section 249D notice and his subsequent vote in favour of Mr Sanger no longer being managing director of TMH, from no later than 29 November 2022, Mr Pismiris acted in concert with each of Mr David Argyle and Mr Gavin Argyle in relation to TMH's affairs, namely the composition of its board, and became associated with each of them under section 12(2)(c).

Mr Gavin Argyle and each of Ms Linney and Mr Rosenal

33. Considering the whole of the material, and drawing appropriate inferences, the Panel considers that as a result of the share purchase arrangements with CIP employees of TMH shares and the subsequent partial sell-down of those shares, from no later than 6 October 2022:
- (a) Mr Gavin Argyle has an agreement, arrangement or understanding with each of Ms Linney and Mr Rosenal with respect to their respective holdings of TMH shares for the purpose of the conduct of TMH's affairs and is associated with each of them under section 12(2)(b) or
 - (b) alternatively, Mr Gavin Argyle is acting, or proposing to act, in concert with each of Ms Linney and Mr Rosenal with respect to their respective holdings of TMH shares for the purpose of the conduct of TMH's affairs and is associated with each of them under section 12(2)(c).

Conclusion on associations

34. There is insufficient material to establish whether any of the associations detailed above have ended.
35. Accordingly:
- (a) shareholders in TMH, and the market, are not informed, and continue not to be informed, of the aggregate relevant interest in TMH shares held by the associated parties and
 - (b) there have been numerous contraventions of the substantial holder provisions in section 671B in relation to TMH.

Disclosure

36. The 2022 Entitlement Offer booklet did not disclose:
- (a) the association between Mr David Argyle and Mr Gavin Argyle. However, it did include a statement that "*David Argyle and Gavin Argyle are not considered 'associates'... and as such their shareholdings are not aggregated in accordance with section 606 of the Corporations Act*", without TMH making appropriate inquiries to verify this statement
 - (b) the aggregated control effect of the 2022 Entitlement Offer by reason of the association and
 - (c) the sub-underwriting arrangements with employees of CIP.
37. The Panel considers that the market has not been adequately informed, or informed in a timely way, by TMH regarding the 2023 Entitlement Offer being a condition to the extension of the Vendor Loan.
38. The 2023 Entitlement Offer booklet did not disclose:
- (a) the association of Mr David Argyle and Mr Gavin Argyle
 - (b) the association of Mr Pismiris and each of Mr David Argyle and Mr Gavin Argyle

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- (c) the association of Mr Gavin Argyle and each of Mr Rosenal and Ms Linney (who were again sub-underwriters of the offer)
 - (d) the aggregated control effect of the 2023 Entitlement Offer by reason of the associations
 - (e) the possibility that the voting power of Mr David Argyle and Mr Gavin Argyle could be increased by acquiring rights on market (which Mr Gavin Argyle did)
 - (f) that raising no less than \$15 million by 28 February 2023 under the 2023 Entitlement Offer was a condition to the extension for the repayment of the Vendor Loan and
 - (g) information in relation to how TMH intended to fund the balance of the Vendor Loan.

EFFECT

39. It appears to the Panel that:

- (a) the acquisition of control over voting shares in TMH has not taken, and continues not to take, place in an efficient, competitive and informed market
- (b) the holders of TMH shares and the market in general has not known, and continues not to know, the identity of persons who may acquire a substantial interest in TMH.

CONCLUSION

40. It appears to the Panel that the circumstances are unacceptable circumstances:

- (a) having regard to the effect that the Panel is satisfied they have had and are having on:
 - (i) the control, or potential control, of TMH or
 - (ii) the acquisition, or proposed acquisition, by a person of a substantial interest in TMH
- (b) in the alternative, having regard to the purposes of Chapter 6 set out in section 602
- (c) in the further alternative, because they constituted and constitute a contravention of a provision of Chapter 6C.

41. 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 The Market Herald Limited.

Tania Mattei
General Counsel
with authority of Karen Phin
President of the sitting Panel
Dated 18 May 2023