



Australian Government

Takeovers Panel

MEDIA RELEASE

No: TP22/42

Wednesday, 18 May 2022

Virtus Health Limited 06R – Panel Declines to Conduct Proceedings

The Panel has declined to conduct proceedings on a review application dated 10 May 2022 from Virtus Health Limited (**Virtus**) in relation to its affairs. The application sought a review of the initial Panel’s decision in *Virtus Health Limited 05* (see [TP21/38](#)).

Virtus is the subject of competing control proposals for all its fully paid ordinary shares from both BGH Capital Pty Ltd (**BGH Bidders**) and CapVest Partners LLP (**CapVest**). The initial and review applications concerned BGH Bidders’ disclosure in its bidder’s statement lodged with ASIC on 6 April 2022 (**BGH BS**) and the adequacy of their supplementary bidder’s statement (**BGH Supplementary BS**) in response to a subsequent increase in CapVest’s proposal announced on 11 April 2022 (**Revised CapVest Proposal**).

In its review application, Virtus submitted (among other things) that:

- BGH Bidders dispatched the BGH BS 9 days after it became aware of the terms of the Revised CapVest Proposal, without making any changes to the disclosure in the BGH BS and which represented the BGH Bid as the superior proposal.
- The delay in making the initial application was explicable. While Virtus was concerned about BGH Bidders’ *“defective and insufficient disclosure”*, it *“did not see that there was any point in making an application to the Panel in respect of the misleading information, but was instead concerned to make sure its shareholders were properly informed as quickly as possible”*. However Virtus made the initial application after discovering that a Virtus shareholder *“had mistakenly accepted the BGH Bid not realising that it was not the superior offer that was recommended by the Virtus Board”* and was subsequently informed that another Virtus shareholder had done the same thing.
- The issues the subject of the review application have important ramifications for market practice.
- *“In the context of this transaction, providing shareholders who have been misled with withdrawal rights is important not just for those shareholders and the interests of*

market integrity – it may also determine whether all Virtus Shareholders have the opportunity to receive the benefits of the superior proposal which is currently recommended by the Virtus Board in the form of the CapVest Scheme.”

The review Panel considered that while BGH Bidders dispatching their bidders' statement without first lodging and sending with it a supplementary bidders' statement to disclose clearly the revised CapVest proposal was not an example of good disclosure, in light of the information already available to Virtus shareholders it was not unacceptable.¹ The review Panel considered it was not clear from the material that any Virtus shareholder was misled by any misleading or deficient disclosure on the part of BGH Bidders.

The review Panel concluded there was no reasonable prospect that it would make a declaration of unacceptable circumstances. Accordingly, the Panel declined to conduct proceedings.

The sitting Panel was Rory Moriarty, John O'Sullivan (the sitting President) and Karen Phin.

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

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¹ The review Panel also agreed with the initial Panel that Virtus delayed in making its application to the initial Panel on 29 April 2022, noting that on 14 April 2022 BGH Bidders responded to the concerns raised in Virtus's letter dated 11 April 2022