



ASX ANNOUNCEMENT 29 JUNE, 2023

## TAKEOVERS PANEL DECISION OVERVIEW OF DECLARATION AND ORDERS

The Market Herald Limited (ASX:TMH “**The Market Herald**” or “**Company**”) refers to the Media Releases by the Takeovers Panel (“**Panel**”) dated 19 May 2023 and 8 June 2023, which attach the Panel's Declaration of Unacceptable Circumstances dated 19 May 2023 (“**Declaration**”) and the Panel's Orders dated 8 June 2023 (“**Orders**”) respectively with respect to the application made to the Panel by UIL Limited (“**UIL**”) in relation to the affairs of the Company (“**Panel Application**”).

### **Purpose of this announcement**

The Company is making this announcement as it is required to do so by the Orders dated 8 June 2023. The Company provides the following information to shareholders in relation to the Declaration and Orders.

### **Summary**

In summary, the Panel made the following findings, Declarations and Orders on the dates specified above.

### Association

That, in relation to the Company:

- from no later than 9 August 2022, Mr David Argyle and Mr Gavin Argyle became associated;
- from no later than 29 November 2022, Mr Alec Pismiris became associated with Mr David Argyle and Mr Gavin Argyle; and
- from no later than 6 October 2022, Mr Gavin Argyle became associated with each of Ms Kasey Linney and Mr Eric Rosenal,

in each case for the purposes of section 12 of the Corporations Act 2001 (Cth) (“**Corporations Act**”).

There is insufficient material to establish that any of the associations detailed above have ended.

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Accordingly:

- the shareholders in the Company and the market are not informed, and continue not to be informed, of the aggregate relevant interest in Company shares held by the associated parties; and
- there have been numerous contraventions of the substantial holder provisions in section 671B of the Corporations Act in relation to the Company.

The Company notes that since the time that the Declaration and Orders were made, Ms Kasey Linney, Mr Eric Rosenal and Mr Alec Pismiris have each lodged a Form 603 (Notice of initial substantial holder) and Mr David Argyle and GAB Superannuation Fund Pty Ltd (“GAB”) have each lodged a Form 604 (Notice of change of interests of substantial holder) that were released on the Company's ASX announcements platform in accordance with Orders 8 and 10 and which provide the relevant information to the shareholders of the Company and the market. Please see below under the heading "Corrective Disclosure Orders" for further information.

## Disclosure

The offer booklet issued by the Company in relation to the 2022 Entitlement Offer (defined below) made by the Company to its shareholders did not disclose:

- the association between Mr David Argyle and Mr Gavin Argyle referred to above;
- the aggregate control effect of the 2022 Entitlement Offer by reason of the association; and
- the sub-underwriting arrangements with employees of Capital Investment Partners Pty Ltd (“CIP”), a company controlled by Mr Gavin Argyle.

The offer booklet issued by the Company in relation to the 2023 Entitlement Offer (defined below) made by the Company to its shareholders did not disclose:

- the associations referred to above;
- the aggregated control effect of the 2023 Entitlement Offer by reason of the associations;
- 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);



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- 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 of approximately \$60.1 million to the Company by Adevinta Oak Holdings B.V. (“Vendor Loan”); and
- information in relation to how the Company intended to fund the balance of the Vendor Loan.

The Panel considered that the circumstances described above are unacceptable circumstances within the meaning of the Corporations Act and accordingly made a Declaration to that effect.

### Orders

Following the Declaration, among others, the Panel made the following Orders, namely that:

- shares representing 0.64% of the Company's total issued shares held directly or indirectly by Mr Gavin Argyle and Mr David Argyle are to be vested in the Commonwealth and sold on market by ASIC as described below;
- corrective disclosure be made by each of Mr David Argyle, Mr Gavin Argyle, Mr Alec Pismiris, Ms Kasey Linney, Mr Eric Rosenal and the Company as described below;
- for 12 months from the date of the Orders, none of Mr David Argyle, Mr Gavin Argyle and their respective associates, may make an acquisition of a relevant interest in Company shares, except with the prior consent of the Panel or pursuant to a pro rata entitlement offer to all Company shareholders to maintain (but not increase) the percentage ownership interest in the Company;
- the Company must commence a process to identify and select suitably qualified candidates for directorship to the Board of the Company who are independent and who are identified in accordance with the process described below; and
- the Company and Mr Gavin Argyle must pay the fair and reasonable costs of certain parties to the proceedings as described below, as a consequence of which the Company is required to pay a total aggregate amount of \$87,500 (including GST) and Mr Gavin Argyle a total aggregate amount of \$65,000 (including GST) within 30 days of the Orders.

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## Background

As a party to the Panel proceedings, the Company participated in the Panel proceedings to respond to questions raised by the Panel and to provide information requested by the Panel. The Company brought to the attention of the Panel facts, matters and circumstances which it considered relevant to the Panel's consideration of the issues identified in the Panel's briefs and to provide context where appropriate, in addition to responding to the questions raised and information requested by the Panel.

## Panel's Declaration and Orders

On the basis of the Panel's findings, and to address the unacceptable circumstances, the Panel made the Declaration and Orders.

## Findings of association by the Panel

Having considered the whole of the material provided to it, and drawing appropriate inferences, the Panel considered (among other things) that:

- for the reasons outlined by the Panel in paragraphs 25 to 29 of the Declaration, 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 the Company's Board or the conduct of its affairs;
- for the reasons outlined by the Panel in paragraph 32 of the Declaration, from no later than 29 November 2022, Mr Alec Pismiris became associated with each of Mr David Argyle and Mr Gavin Argyle in relation to the composition of the Company's Board;
- for the reasons outlined by the Panel in paragraph 33 of the Declaration, from no later than 6 October 2022, Mr Gavin Argyle became associated with each of Ms Kasey Linney and Mr Eric Rosenal, who are employees of CIP, with respect to their respective holdings of shares in the Company for the purpose of the conduct of the Company's affairs; and
- there is insufficient material to establish whether any of the associations stated above have ended.

As a consequence of the Panel's findings of association, for the purposes of the Corporations Act, including Chapter 6 (Takeovers) and Chapter 6C (Information about ownership of listed companies, listed registered schemes and listed notified foreign passport funds):



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- Mr Gavin Argyle, Mr David Argyle and Mr Alec Pismiris each have voting power in each other's shares in the Company, and therefore, each of their shares in the Company and voting power are to be aggregated; and
- Ms Kasey Linney and Mr Eric Rosenal have voting power in the shares in the Company held by Mr Gavin Argyle, and therefore any shares held by each of them are to be aggregated.

## Corrective Disclosure Orders

As a result of the Panel's findings of association for the reasons noted above, the Panel made the following corrective disclosure Orders:

- Mr David Argyle, Mr Gavin Argyle, Mr Alec Pismiris, Ms Kasey Linney and Mr Eric Rosenal and any of their respective associates ("**Relevant Parties**") must disclose their association with each other Relevant Party in relation to the Company in the form of a substantial holder notice;
- if any of the Relevant Parties is of the view that they are no longer associated with any of the other Relevant Parties in relation to the Company, they must disclose this information in the form of a substantial holder notice, including how and when their association ceased;
- a Relevant Party must not exercise any voting rights in respect of the shares in the Company that Relevant Party acquired since the relevant association commenced ("**Relevant Shares**") or otherwise deal with its Relevant Shares until that date that is 21 days after the Relevant Party has complied with its disclosure obligations under the Orders; and
- the Company must disclose the Panel's decision, in an ASX announcement (being this announcement).

The corrective disclosure Orders were made by the Panel so that the Panel's findings of association can be made known to the market.

Following the Orders, disclosures were released on the Company's ASX announcements platform in accordance with Orders 8 and 10 as follows:

- a Form 603 (Notice of initial substantial holder) dated 8 June 2023 lodged by Ms Kasey Linney that disclosed voting power in the Company of 6.712% as a result of an association with Mr Gavin Argyle and Mr Eric Rosenal in relation to the Company;



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- a Form 603 (Notice of initial substantial holder) dated 8 June 2023 lodged by Mr Eric Rosenal that disclosed voting power in the Company of 6.712% as a result of an association with Mr Gavin Argyle and Ms Kasey Linney in relation to the Company;
- a Form 604 (Notice of change of interests of substantial holder) dated 8 June 2023 lodged by Mr David Argyle that disclosed voting power in the Company of 44.34% as a result of an association with each of Mr Gavin Argyle and Mr Alec Pismiris in relation to the Company;
- a Form 604 (Notice of change of interests of substantial holder) dated 8 June 2023 lodged by GAB that disclosed voting power in the Company of 44.586% as result of an association with each of Ms Kasey Linney, Mr Eric Rosenal, Mr David Argyle and Mr Alec Pismiris in relation to the Company; and
- a Form 603 (Notice of initial substantial holder) dated 16 June 2023 lodged by Mr Alec Pismiris that disclosed voting power in the Company of 44.342% as a result of an association with each of Mr David Argyle and Mr Gavin Argyle.

(together, the “**Corrective Disclosures**”).

The associations disclosed in the Corrective Disclosures remain until such time as the Relevant Parties are of the view that they are no longer associated with any of the other Relevant Parties in relation to the Company, at which point each Relevant Party would be required to lodge a notice in the form of an Australian Securities and Investments Commission (“**ASIC**”) Form 605 (Notice of ceasing to be a substantial shareholder) or an ASIC Form 604 (Notice of change of interests of substantial holder) as applicable.

### **Divestment Orders**

As a consequence of the finding of association between Mr Gavin Argyle and Mr David Argyle, the Panel made the following Orders for the divestment of certain shares in the Company held by them:

- Mr Gavin Argyle's 1,974,019 shares in the Company (held through GAB) are to be vested in the Commonwealth for ASIC to sell. These shares include those issued to Ms Kasey Linney and Mr Eric Rosenal following the 2022 Entitlement Offer (defined below), and the shares to which GAB became entitled (and was subsequently issued) under the 2023 Entitlement Offer (defined below), as a result of its acquisition of 550,000 shares on market in October 2022; and

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- Mr David Argyle's 87,324 shares in the Company (held directly or through Zero Nominees Pty Ltd) are to be vested in the Commonwealth for ASIC to sell. Mr David Argyle became entitled to (and was subsequently issued) these shares under the 2023 Entitlement Offer (defined below) as a result of his acquisition of 523,944 shares in the Company in October 2022, two days after Ms Kasey Linney's sale of 550,000 shares on market.

As a consequence of these Orders, 0.64% of the Company's total issued voting shares are to be vested in the Commonwealth and sold on-market by ASIC through either an investment bank or a stock broker retained by ASIC to sell those shares (“**Appointed Seller**”). The Company expects that ASIC will release a media release disclosing the appointment of such Appointed Seller in due course.

### Acquisition Restriction

As a result of the Panel's finding that Mr David Argyle and Mr Gavin Argyle are associates, the Panel made an Order that for 12 months from the date of the Orders, Mr David Argyle, Mr Gavin Argyle and their respective associates are prohibited from acquiring a relevant interest in shares in the Company, except with the prior consent of the Panel or pursuant to a pro-rata entitlement offer to all shareholders in order to maintain their respective percentage ownership interest in the Company.

As a consequence, Mr David Argyle and Mr Gavin Argyle will not be able to increase their interest and voting power in the Company for a period of 12 months from the date of the Orders, except in the circumstances specified in the preceding paragraph.

### Effect of Panel's Declaration and Orders on the entitlement offers

On 26 August 2022, the Company announced to the market (among other things) the acquisition of Gumtree, Carsguide and Autotrader (“**GCA**”), funded by:

- a 2 for 5 pro rata renounceable entitlement offer of fully paid ordinary shares in the Company at an offer price of \$0.34 per new share to raise approximately \$26.6 million (“**2022 Entitlement Offer**”); and
- the Vendor Loan.

On 24 January 2023, the Company announced a 1 for 6 pro rata renounceable entitlement offer of fully paid ordinary shares in the Company 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.

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The Company notes that despite the Panel's finding that the offer booklets for the 2022 Entitlement Offer and the 2023 Entitlement Offer failed to disclose the information noted in paragraphs 36 to 38 of the Declaration, these findings have no effect on the offers, and do not affect their successful completion. In addition, the Company notes that the non-disclosure of the information referred to in paragraphs 38(f) and (g) of the Declaration in the 2023 Entitlement Offer booklet have no effect given that the Company has completed the refinancing of the Vendor Loan as announced by the Company on 1 June 2023.

## Independent Directors Orders

The Panel made the following Orders for the Company to appoint two new independent directors to the Board of the Company:

- the Company must appoint at least two independent directors to its Board, one of which as the Chair, in consultation with an independent recruitment consultant. The Company must report to the Panel every month on the steps it and the independent recruitment consultant have taken to satisfy this Order until both independent directors are appointed to the Board;
- for a period of 12 months after the appointment of an independent director, Mr David Argyle, Mr Gavin Argyle and their respective associates must not exercise any voting rights in respect of their Relevant Shares regarding any resolution for the removal of a director the subject of such appointment; and
- if 6 months after the date of the Orders or such later date as the Panel may reasonably consent to, the Company has not appointed at least two independent directors in accordance with the Orders, then until the Company does so, Mr David Argyle, Mr Gavin Argyle and Mr Alec Pismiris and their respective associates must not exercise their voting rights in respect of their Relevant Shares for so long as they remain associated with any director of the Company and in the case of Mr Gavin Argyle and Mr Alec Pismiris, for so long as they are directors of the Company.

Other than the restrictions noted in the paragraphs immediately above, the Company notes there is no additional impact on the ability of Mr Gavin Argyle, Mr David Argyle and Mr Alec Pismiris to exercise their respective voting rights in the Company as they consider appropriate.

The Company acknowledges that the Orders for the requirement of the Company to appoint at least two independent directors to its Board are consistent with the Company's ongoing review of its Board composition, having regard to the ASX Corporate Governance Principles including the recommendation to have a majority of



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independent directors, as disclosed in the Company's ASX announcement dated 11 January 2023 which pre-dated the Panel Application.

The Company looks forward to engaging an independent recruitment consultant and commencing the process of identifying and selecting suitably qualified candidates to serve as independent directors in accordance with the Orders. The Company will update the market on any material developments relating to this process.

## Costs Orders

The Panel made costs orders requiring:

- the Company to pay the fair and reasonable costs, as determined by the Panel, incurred by UIL, Mr Jagdip Sanger and ASIC in connection with the conference conducted in the Panel proceedings; and
- the Company and Mr Gavin Argyle to pay a portion of the fair and reasonable costs, as determined by the Panel, otherwise incurred by UIL and Mr Jagdip Sanger in connection with the Panel proceedings.

As a consequence of these Orders, the Company is required to pay a total aggregate amount of \$87,500 (including GST), and Mr Gavin Argyle is required to pay a total aggregate amount of \$65,000 (including GST), within 30 days of the Orders.

Yours faithfully

Ben Donovan  
Company Secretary

Investor and media enquiries  
Alec Pismiris  
Non-Executive Chairman  
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This announcement has been authorised for release by the Board of Directors.