

## Media Release

16 February 2021

### Takeovers Panel determination on the 2013 takeover of New Image Group Limited

In December 2020, the Takeovers Panel held a two-day meeting under section 32 of the Takeovers Act 1993 (the **Act**) to inquire into potential non-compliance with the Takeovers Code (the **Code**) by New Image Trustee Limited<sup>1</sup> (**NTL**) and New Image Group Limited<sup>2</sup> (**NEW**) during the 2013 takeover of NEW by NTL (the **Offer**).

As NEW was listed on the NZX at the relevant time, the Offer was regulated by the Code. The Offer was made at \$0.26 cash per share. NEW was privatised as result of the Offer and delisted from the NZX in May 2013.

The Panel received a complaint in June 2019, alleging breaches of the Code that took place during the Offer, including that NTL breached an enforceable undertaking given to the Panel not to undertake a selective offer offering certain NEW shareholders shares in NTL instead of cash. Notwithstanding the elapsed time between the alleged breaches and the complaint, the allegations were of a serious nature and the Panel decided to investigate. Following the investigation, the Panel called a meeting under section 32 of the Act.

Today, the Panel released its determination and statement of reasons. The Panel determined that:

- (a) it was not satisfied that NTL complied with the Code by making a selective offer, to certain NEW shareholders, of shares in NTL instead of cash;
- (b) it was not satisfied that NTL complied with the Code by offering different terms and/or providing different consideration to an individual NEW shareholder by not paying the shareholder on the same date as other shareholders, and by paying the shareholder in instalments, and in a different amount to other shareholders;
- (c) it was not satisfied that NTL complied with the Code by not providing required disclosures in respect of certain persons who were acting jointly or in concert with NTL at the time of the Offer; and
- (d) it was not satisfied that NEW complied with the Code by not providing required disclosures in respect of certain persons who were associated with a director of NEW at the time of the Offer.

The Panel's decision does not address the alleged breach of the undertaking given by NTL and is restricted to considering non-compliance with the Code.<sup>3</sup>

The Panel's determination and full statement of reasons is available [here](#).

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<sup>1</sup> Now named New Image Group Limited.

<sup>2</sup> Now named New Image Holdings Limited.

<sup>3</sup> This is because the Panel does not have jurisdiction to determine whether an undertaking has been breached. Any determination as to whether an undertaking has been breached falls under the Court's jurisdiction.

The Panel will exercise its discretion to make orders in relation to payment of costs in respect of the section 32 meeting in due course. The Panel has not decided on what further actions, if any, it will take at this stage. The Panel will consider the options and advise the market.

## Ends

### *About the Takeovers Panel*

The Takeovers Panel is an independent Crown entity established under the Takeovers Act 1993. The Panel's mandate is to strengthen investor confidence in New Zealand's capital markets by enforcing the Takeovers Code. The Code ensures that all shareholders have a fair opportunity to participate in control change transactions (such as takeovers, mergers, acquisitions and allotments) in Code companies.

Further information on the Takeovers Panel is available at [www.takeovers.govt.nz](http://www.takeovers.govt.nz)

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