

# KordaMentha

## Restructuring

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ASX Limited  
ASX Customer Services  
Exchange Centre  
Level 4, 20 Bridge Street  
Sydney NSW 2000

15 September 2017

Dear Sir/Madam

**Ten Network Holdings Ltd (Administrators Appointed) (Receivers and Managers Appointed)  
ACN 081 327 068 ('the Company') and Associated Entities (Collectively 'the Ten Group' –  
refer to Appendix 1)**

**ASX Code: TEN**

The Administrators of the Ten Group have received a letter from the advisors to Birketu Pty Limited and Illyria Nominees Television Pty Limited as trustee for the Illyria Investment Trust No 4, a copy of which is attached.

Ends.

## **Appendix 1**

- 1 Ten Network Holdings Limited (Administrators Appointed) (Receivers and Managers Appointed) ACN 081 327 068
- 2 The Ten Group Pty Limited (Administrators Appointed) (Receivers and Managers Appointed) ACN 057 564 708
- 3 Network Ten Pty Limited (Administrators Appointed) (Receivers and Managers Appointed) ACN 052 515 250
- 4 Network Ten (Sydney) Pty Limited (Administrators Appointed) (Receivers and Managers Appointed) ACN 008 664 962
- 5 Network Ten (Brisbane) Pty Limited (Administrators Appointed) (Receivers and Managers Appointed) ACN 050 148 537
- 6 Network Ten (Melbourne) Pty Limited (Administrators Appointed) (Receivers and Managers Appointed) ACN 008 664 953
- 7 Network Ten (Perth) Pty Limited (Administrators Appointed) (Receivers and Managers Appointed) ACN 009 108 614
- 8 Network Ten (Adelaide) Pty Limited (Administrators Appointed) (Receivers and Managers Appointed) ACN 007 577 666
- 9 Caprice Pty Limited (Administrators Appointed) (Receivers and Managers Appointed) ACN 008 655 847
- 10 Chartreuse Pty Limited (Administrators Appointed) (Receivers and Managers Appointed) ACN 008 655 874
- 11 Television & Telecasters (Properties) Pty Limited (Administrators Appointed) ACN 050 690 161
- 12 Ten Online Pty Limited (Administrators Appointed) ACN 089 829 667
- 13 Ten Ventures Pty Limited (Administrators Appointed) ACN 089 830 759
- 14 Ten Employee Share Plans Pty Limited (Administrators Appointed) ACN 082 736 150

**SUBJECT TO CONTRACT**

15 September 2017

Mark Korda  
Partner  
KordaMentha  
Level 5, 2 Chifley Square  
Sydney NSW 2000

Dear Mark

**DOCA proposal from Birketu and Illyria to recapitalise Ten Network Holdings Limited**

On behalf of our clients, Birketu Pty. Ltd. ACN 003 831 392 (**Birketu**) and Illyria Nominees Television Pty Limited ACN 147 289 647 as trustee for the Illyria Investment Trust No. 4 (**Illyria**) we are pleased to attach a further DOCA proposal to be put to creditors at the second meeting of creditors of Ten Network Holdings Limited (Administrators Appointed) (Receivers & Managers Appointed) (**Ten**).

Yours sincerely



Ben Keeble



Jim McKnight

## DOCA proposal from Birketu and Illyria to recapitalise Ten Network Holdings Limited

15 September 2017

Following the passage of the Broadcasting Reform Bill 2017 (**Media Reform Bill**) through the Senate yesterday evening, Birketu and Illyria (the **Proponents**) have revised the terms of their DOCA proposal dated 24 August 2017 as outlined in this letter (the **Revised B&I Proposal**).

The terms of the Revised B&I Proposal are compelling:

- An increase in the maximum payment to unsecured creditors from \$35.0m to \$55.0m (vs \$32.0m under the CBS Transaction), with all continuing trade or operational creditors being paid 100 cents in the dollar, and all other creditors being paid 5.75 cents in the dollar.
- In aggregate, Ten's unsecured creditors, excluding CBS, will receive \$35.0m (or 13.40 cents in the dollar) compared with \$32.0m (or 12.43 cents) under the CBS Transaction.
- The removal of the alternative structures in the proposal dated 24 August (**Original Proposal**), with a single implementation path, reflecting the proposed changes to the Broadcasting Services Act.
- Significantly lower transaction risk, given there is a clear commercial basis for the differential treatment of continuing business creditors and discontinued creditors, thereby not exposing an executed DOCA to the risk of challenge that currently exists with the unfair treatment under the CBS Transaction.
- Ten will no longer be burdened by a contract with CBS that:
  - KordaMentha's 439A Report describes as "onerous"<sup>1</sup>;
  - CBS claim is worth \$843 million over the residual life of the contract; and
  - the CBS Transaction does not address.
- Ten will remain listed on ASX. Whilst all current shareholders in Ten (including all employee shareholders) will be diluted through the issue of options or shares to the Proponents, or a transfer under 444GA, existing shareholders (other than the Proponents) will retain approximately 25% of their existing interest in Ten and share in Ten's recovery<sup>2</sup>.

### Transaction Structure and Financing

We will shortly forward you the relevant transaction documentation to give effect to the Revised B&I Proposal. The transaction will be effected via a Deed of Company Arrangement, with only two Pools in the Creditors Trust as outlined below.

From Completion, it is proposed that Ten will be funded by a new financing facility<sup>3</sup>, to be severally guaranteed by each of the Proponents (**New Debt Facilities**). Should the terms of the existing CBS financing currently require refinancing following execution of the DOCA, but prior to Completion, the Proponents will work with you to ensure that the New Debt Facilities are put in place from that date<sup>4</sup>.

The Proponents intend to work with Ten to negotiate with each of CBS and Fox to seek to reach agreement on the terms of revised programming contracts that support the future sustainability of the business.

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<sup>1</sup> KordaMentha Report to Creditors dated 4 September 2017, section 3.8.1.

<sup>2</sup> Existing Ten shareholders, other than Birketu and Illyria, currently own 77.9% of Ten and will hold approximately 20% under the Revised B&I Proposal either through dilution via the issue of new securities to the Proponents or through 75% of their existing shares being transferred to the Proponents under s444GA.

<sup>3</sup> Birketu and Illyria are highly confident that formal credit approval of the New Debt Facilities will be obtained prior to the second creditors meeting on terms substantially the same as the Original Proposal, with an increase in limit to reflect the repayment of the Guarantor Fees on 1 September 2017 and the increased payment to unsecured creditors.

<sup>4</sup> Disclosure of terms of CBS financing will be required, including drawn debt, costs etc, as these details are not disclosed in the section 439A report.

## Treatment of Creditors

The Revised B&I Proposal increases the maximum Trust Payment by almost 60%, from \$35.0m to a maximum of \$55.0m. This is 72% more than the proposed payment under the CBS Transaction.

In respect of the treatment of creditors, the key terms of the Proposal are summarised as follows and are shown in the table below:

- Obligations to the Secured Creditor (CBS) and Priority Creditors will be met in full;
- The DOCA does not propose any redundancies, and all existing employee entitlements are preserved in full;
- The Proponents will make available a cash contribution (the **Trust Payment**), drawn from the New Debt Facilities at Completion, to fund up to \$55.0m to all other Admitted Claims of Ten's unsecured creditors;
- These Admitted Claims (other than Employee claims and the Contracts which the Proponents retain) will be allocated to one of two pools, being:
  - Pool A (\$21.2 million)
    - Claims will comprise all Admitted Claims from the continuing trade and operational creditors
    - Any surplus in this Pool A will revert to Ten; and
  - Pool B (\$33.8 million)
    - Claims from all other creditors, paid (and capped) at what is estimated to be 5.75 cents in the dollar
    - Any surplus in this Pool B will revert to Ten and will be used to repay drawings under the New Debt Facilities

	CBS Transaction				B&I (Revised Proposal)			
	Pool	Claim \$m	Return \$m	Return c/\$	Pool	Claim \$m	Return \$m	Return c/\$
Secured				100.00				100.00
Priority				100.00				100.00
Critical program creditors	Pool A	5.7	5.7	100.00	Pool A	5.7	5.7	100.00
General trade creditors	Pool B	15.5	15.5	100.00	Pool A	15.5	15.5	100.00
Financial (ANZ / Westpac)	Pool C	1.4	0.5	34.10	Pool B	1.4	0.1	5.75
Statutory (ATO and OSR)	Pool C	11.9	4.1	34.10	Pool B	11.9	0.7	5.75
Formula One	Pool D	20.0	2.0	10.18	Pool B	20.0	1.1	5.75
Disclaimed Leases	n.a.	0.3	0.0	10.18	Pool B	9.2	0.5	5.75
Other discontinuing contracts	Pool D	7.7	0.8	10.18	Pool B	2.4	0.1	5.75
Fox	Pool D	195.0	3.4	1.75	Pool B	195.0	11.2	5.75
CBS	n.a.	348.0	-	0.00	Pool B	348.0	20.0	5.75
<b>Total</b>		<b>605.5</b>	<b>32.0</b>	<b>n.a.</b>		<b>609.2</b>	<b>55.0</b>	<b>9.03</b>
<b>Total (excluding CBS per KM p14)<sup>5</sup></b>		<b>257.5</b>	<b>32.0</b>	<b>12.43</b>		<b>261.2</b>	<b>35.0</b>	<b>13.40</b>

## CBS and Fox

The Proponents will, together with Ten management, work with each of CBS and Fox to seek to reach agreement on the commercial terms of new volume based programming contracts prior to Completion.

<sup>5</sup> KordaMentha Supplemental Report to Creditors dated 11 September 2017

To the extent that agreement is reached, then it may be that one or more of CBS and Fox will become excluded creditors pursuant to the DOCA as the relevant studio may, as part of that agreement, agree in writing not to participate in distributions from the Creditors Trust.

If Ten is unable to reach agreement with CBS and / or Fox on mutually acceptable terms, then CBS or Fox (as applicable) will be entitled to claim under Pool B.

### **Disclaimed Leases**

It is the Proponents' intention to negotiate with the landlords of the Disclaimed Leases in respect of the terms of those leases prior to termination of the DOCA. If these negotiations are successful, it may be that one or more of the Disclaimed Leases will become excluded creditors pursuant to the DOCA as the landlord may agree in writing not to pursue its claims under the DOCA.

### **Conditionality**

With the passage of the Media Reform Bill now assured, there are limited conditions to the Revised B&I Proposal and a single execution path:

- **(Execution of the DOCA)** The Revised B&I Proposal demonstrably returns more value to Ten's unsecured creditors than the CBS Proposal.
- **(Director Resignations)** From the later of the execution of the DOCA and Media Reform Bill becoming law, the Ten directors specified by the Proponents will resign and will be replaced by one additional nominee from Birketu and two nominees from Illyria, one of whom will be appointed chairperson for the 12 month period following completion.
- **(Issue or Transfer of Securities)** The Proponents will, at their election, either:
  - Seek shareholder approval for the issue of either (i) 1.07 billion options (with a zero exercise price); or (ii) to the extent the Media Reform Bill has become law, 1.07 billion shares to the Proponents (Purchaser Securities); or
  - Seek Court approval through the 444GA process for the compulsory transfer of 75% of the shares held by each non-Proponent shareholder to the Proponents.

When combined with each Proponent's existing shareholding, the Purchaser Securities will represent approximately 80% of the fully diluted equity capital in Ten, with the remaining Ten shares owned by the non-Proponent shareholders.

- **(Illyria FIRB Approval)** As is customary in a competitive process, we expect FIRB will consider Illyria's FIRB application in the same time frame as CBS's FIRB application which was not submitted until 28 August.

The Revised B&I Proposal assumes that there are no material break costs for the refinancing of the CBS funding; that Ten Group has carried on business consistent with (i) the disclosures prior to 25 August 2017; and (ii) the CBS Transaction Deed (without CBS consents); that ASX reinstates Ten's shares to trading and grants any necessary waivers for security for the New Debt Facilities (in the absence of which shareholder approval will be sought) and that Ten will enter into security and guarantee arrangements for the New Debt Facilities and take appropriate steps to obtain section 588FM and (if required) section 447A orders as per the CBS facility.

Below, we have replicated the table from page 15 of the Supplemental Report to Creditors issued on 11 September 2017 to illustrate the terms of the Revised B&I Proposal relative to CBS.

As noted in the table, the execution certainty of the Revised B&I Proposal is higher than the CBS transaction, particularly given no necessary requirement for 444GA approval.

Condition	CBS Transaction	Revised B&I Proposal	B&I terms vs CBS terms
ACMA	Not applicable	No longer applicable	Equal
444GA Application	Required	May be required, however only for 75% of each shareholder's holding	Better
Shareholder Approval	May be required if ASIC relief not granted	May be required, but strong grounds to believe that it is likely to be passed given only Revised B&I Proposal provides for Ten shareholders to retain equity	Better if ASIC relief not granted to CBS
Creditor Voting	Subject to the vote of creditors	Subject to the vote of creditors	Subject to the vote of creditors
Timing	Subject to date of Creditors Meeting	Subject to date of Creditors Meeting	Equal
Repudiation of Key Leases	Not applicable	As stated above, Proponents intention is to seek to negotiate terms of leases	Worse
ACCC clearance	Not a stated condition precedent	Not a stated condition precedent	Equal
FIRB approval	Required	Required	Equal
DOCA	Required	Required	Equal

## Conclusion

The Revised B&I Proposal provides greater execution certainty, through eliminating the very real prospect of one or more challenges to the CBS DOCA.

This Revised B&I Proposal provides Ten's creditors with a significantly improved return on both the Original Proposal and the terms of the CBS Transaction. If CBS is excluded from the analysis, the return to all other unsecured creditors is demonstrably higher (\$35m vs \$32m) and they are treated equitably and without unfair prejudice.

As such, in accordance with clause 3(a)(iii)(A) of the CBS Transaction Deed and applicable legal precedent<sup>6</sup>, it is incumbent on KordaMentha to put the Revised B&I Proposal to the second creditors meeting and to provide sufficient information and time to creditors to inform and consider their vote. A further report to creditors and an appropriate deferral of the second creditors meeting is therefore plainly required. The Proponents consent to disclosure of the Revised B&I Proposal in any supplementary disclosure you are required to make (and we would be happy to review any such disclosure for factual accuracy).

This proposal will remain open until withdrawn by the Proponents.

<sup>6</sup> In the *Le Meilleur Pty Ltd (subject to Deed of Company Arrangement) v. Jin Heung Mutual Savings Bank Co Ltd* [2011] NSWSC 1115 case, it was stated that "There is no doubt that administrators have an obligation to provide *correct* information to the creditors so that they are fully informed prior to voting at the second creditors' meeting. Depending on the gravity of a failure to do so, the resolution passed at the meeting may be invalid." Therefore, this proposal must be notified to creditors well before the second creditors' meeting so that they can digest it and adjust proxies, if necessary. This indicates that the creditors' meeting planned for Tuesday must be appropriately deferred.