

Confidential

22 July 2020

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By email: sandeep.gupta@broadpeakinv.com
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Dear Sirs,

Virgin Australia Holdings Limited ACN 100 686 226 and certain of its subsidiaries (all Administrators Appointed) (Virgin Companies) Vaughan Strawbridge, Salvatore Algeri, John Greig and Richard Hughes (Administrators)

We refer to your letter dated 20 July 2020, attaching a proposed restructuring plan in the form of a draft deed of company arrangement and supporting creditors' trust deed, submitted on behalf of Broad Peak Investment Advisors (**Broad Peak**) and Tor Investment Management, L.P. (**Tor**) for the Virgin Companies (**Restructuring Proposal**).

Restructuring Proposal

As your letter observes, the Restructuring Proposal does not contain any substantive amendments to the initial backup recapitalisation offer provided by Broad Peak and Tor to the Administrators on 24 June 2020, which has already been considered and assessed.

Having made that assessment, and having entered into a final and binding transaction with another party on 26 June 2020, we do not intend to revisit the history of the Administrators' dealings with you in respect of your recapitalisation offer, aspects of which were addressed in my Confidential Affidavit dated 9 July 2020 (**Affidavit**), filed in respect of your interlocutory process dated 6 July 2020 (**Application**).

It is sufficient to note that you have been aware for some time now that the Administrators' opinion and commercial judgment is that your Restructuring Proposal is not in the best interests of the Virgin Companies' creditors as a whole, and that, having duly considered your offer and other offers received for the sale or recapitalisation of the Virgin Companies, the Administrators determined not to proceed with your offer. As confirmed by the Court on 10 July 2020, you are, of course, free to put forward whatever proposal you wish for a Deed of Company Arrangement (**DOCA**).

Broad Peak and Tor's requests for information

As you are aware, the Administrators have exercised their power of sale and have entered into a binding transaction with BC Hart Aggregator L.P and BC Hart Aggregator (Australia) Pty Ltd (**Bain**) on certain terms, which are confidential. We informed you, on a number of occasions prior to execution of the Bain

transaction, that "if a bid represents, in our view, to be in the best interests of all creditors, we reserve the right to move forward with that party".

The exercise of the power of sale by the Administrators was confirmed in Clayton Utz's letter to Corrs dated 26 June 2020, along with the ASX announcement of the same date, which stated that, having received various proposals, including your initial backup recapitalisation offer on 24 June 2020, the Administrators had "entered into a Sale and Implementation Deed with [Bain] which will result in the sale and recapitalisation of the businesses of [Virgin Australia Holdings Limited (Administrators Appointed)] and its subsidiaries".

In this context, the Administrators will not be in a position to pursue with you a Restructuring Proposal which could put the Bain transaction in jeopardy. Your letter requests that the Administrators provide you with "complete access to stakeholders and material required to allow [your] DOCA proposal to become unconditional" and with "unfettered cooperation". You have requested reasons in writing if we refuse to provide such access.

The confidential terms of the Sale and Implementation Deed with Bain prevent the Administrators from providing you with the level of access to information that you seek. This is a matter that was traversed in your Application argued before the Court on 10 July 2020.

On that occasion, having declined to press the relief sought in respect of s 588FM of the *Corporations Act 2001* (Cth) (the **Act**), you, through your Counsel, sought access to "a range of information necessary to develop [a] proposed DOCA" and contended that confidentiality orders previously made by the Court "significantly hindered" your "ability to develop [your] alternative proposed DOCA": [2020] FCA 986 at [6]-[7]. The Court declined to grant you such access.

In declining your request for access to such information, the Court relevantly observed at [25]-[26], [30] and [31]:

1. Broad Peak and Tor will be provided with the Administrators' report to creditors under section 75-225 of the *Insolvency Practice Schedule (Corporations)* (**Administrators' Report**) prior to the second meeting of creditors, which will contain certain material as to the Bain transaction and the likely or expected return to creditors. The proper vehicle for the provision of details of the Bain transaction, which will allow the Administrators to fully explain the implications and benefit of the transaction once the contemplated transaction steps have been undertaken, is the Administrators' Report.
2. There was no reason to prioritise the interests of Broad Peak and Tor above those of other creditors.
3. The disclosure of the terms of sale will cause disruption to and potentially jeopardise the orderly sale process.
4. Disclosure of the details of the Bain transaction may impair the parties' ability to implement the Bain transaction in the manner contemplated by the transaction documents which have been negotiated by the Administrators to deliver an outcome which is most beneficial to creditors as a whole.

To the extent that you now seek access, among other things, to some of the same information, for the same purpose, as was sought in the application on 10 July 2020, we consider that the matters referred to above continue to provide good reason for refusing such access. There has been no material change in circumstance in respect of the fact of execution of the Bain transaction, your Restructuring Proposal or the appropriateness of the means, recognised by the Court, by which we are to inform you and other creditors of the terms of the Bain transaction.

Further, and to dispel any doubt, we confirm that the terms of the Bain transaction prevent the Administrators from complying with the requests (including consenting to your engagement with key stakeholders and creditors of the business) set out in your letter. This is by no means unusual, or indeed unreasonable, in circumstances where the Administrators have completed a comprehensive sale process culminating in the transaction with Bain. As previously advised, the decision to enter into the Bain transaction was not made by the Administrators lightly and was made having regard to the terms and conditions of all offers received, including available evidence of each bidder's ability to execute and fund a transaction (amongst other factors).

We confirm that, in responding to your request, the Administrators have of course considered their duties under the Act, their contractual obligations, and the observations of Middleton J at [2020] FCA 986, [32].

Approval by Committee of Inspection

As you are aware, since the Administrators have exercised their power of sale, steps have been taken to progress the transaction with Bain to completion, including “confidential discussions with a range of stakeholders to facilitate the successful completion of the Bain transaction, to maximise the likelihood of the business of the Virgin Companies being successfully conducted in the future, and to maximise the return to creditors”: see, [2020] FCA 986 at [30]. Further, following your withdrawal of paragraph 4 of your Application, Bain has advanced, and the Administrators have drawn down, significant and necessary funding to enable the business of the Virgin Companies to keep operating.

Additionally, we have consulted on a confidential basis with the Committee of Inspection regarding the transaction with Bain. A resolution was passed without objection by the Committee approving “the Administrators’ actions of entering into binding agreements for the sale of the Virgin Australia business and to obtain interim funding enabling the business to continue to trade.” We note that attendees at that meeting included a wide representative body of creditors.

We **attach** a copy of the relevant non-confidential meeting minutes, which have been lodged with the Australian Securities and Investments Commission.

The second meeting of creditors

In addition to the above matters, we are progressing, as expeditiously as possible, the preparation of the Administrators’ Report. As noted above, this is the means by which it is proposed that you, in your capacities as unsecured creditors of the companies, will be informed of the Bain transaction and of its implications and effect on all creditors.

In your letter, you express a desire for the Administrators to include in the report to creditors “a statement setting out the details of [your Restructuring Proposal]” and suggest that setting such proposals out in the report “fully and fairly” is the only way to avoid any possibility of the adjournment of the meeting or challenge to the outcome of such a meeting.

At the hearing of 10 July 2020, you, through your Counsel, stated that you were “not asking the administrators to put [the Restructuring Proposal] forward or to analyse it in the report to creditors” and would “[your]selves propound that alternative DOCA” (T7:26-28).

We confirm that we intend to set out the Restructuring Proposal put by you in the Administrators’ Report. Consideration of the Restructuring Proposal by creditors will be informed by the fact that the Administrators have exercised their power of sale and entered into a binding transaction with Bain.

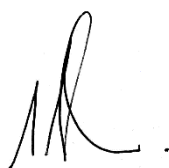
We also confirm that, consistent with the observations of Middleton J at [2020] FCA 986, [32], the Administrators will provide sufficient information about the Restructuring Proposal and the transaction with Bain to enable the creditors to make an informed decision with respect to those matters and the steps taken by the Administrators to date.

We trust that we have addressed the matters raised in your letter, and in the time frame requested.

Kind regards



Vaughan Strawbridge



Salvatore Algeri



John Greig



Richard Hughes

Joint and Several Voluntary Administrators of the Virgin Companies