



Australian Government

Takeovers Panel

MEDIA RELEASE

No: TP23/03

Monday, 9 January 2023

Nitro Software Limited 02 – Panel Receives Application

The Panel has received an application from Rocket BidCo Pty Ltd (**Alludo**) in relation to the affairs of Nitro Software Limited (**Nitro**). Nitro is the subject of competing control proposals made by Alludo¹ and Technology Growth Capital LLC, a special purpose vehicle managed by Potentia Capital Management Pty Ltd (**Potentia**).

Details of the application, as submitted by the applicant, are below.

A sitting Panel has not been appointed at this stage and no decision has been made whether to conduct proceedings. The Panel makes no comment on the merits of the application.

Details

For further background see [TP23/02](#) in relation to Nitro Software Limited 01.

On 28 October 2022, Potentia announced an unsolicited takeover offer for Nitro at \$1.80 cash per Nitro share (**Potentia Bid**), which was made pursuant to a bidder's statement dated 28 October 2022.

On 11 November 2022, Potentia issued its first supplementary bidder's statement providing further details about its funding arrangements for the Potentia Bid.

On 8 December 2022, Potentia released its second supplementary bidder's statement, in which it increased the consideration offered under the Potentia Bid to \$2.00 cash per Nitro share and disclosed an intention to vary its offer to include a scrip alternative.

On 23 December 2022, Potentia released its third supplementary bidder's statement providing details of alternative forms of consideration comprising all cash, all-scrip or a combination of cash and scrip consideration, and extending the offer period of

¹ through its parent company, Cascade Parent Limited. Alludo and its related entities are controlled by KKR Americas Fund XII L.P.

the Potentia Bid to 31 March 2023. The scrip consideration comprises a mix of ordinary shares (70%) and redeemable preference shares (30%).

Alludo submits that the original bidder's statement and supplementary bidder's statements issued by Potentia in respect of the Potentia Bid are deficient and misleading, in particular there is deficient disclosure in relation to:

- Potentia's funding arrangements
- Potentia's arrangements with co-investors
- the redeemable preference shares offered as part of the scrip consideration and misleading disclosure in relation to the success prospects of the Alludo transactions.

Alludo submits that the alleged deficient and misleading disclosure contravenes sections 636 and 643² and has the effect of hindering the acquisition of control of Nitro taking place in an efficient, competitive and informed market.

Alludo seeks an interim order restraining Potentia from processing acceptances under the Potentia Bid and from exercising any voting rights attached to Nitro shares accepted under the Potentia Bid, prior to the application being determined.

Alludo seeks final orders, including to require Potentia to make corrective disclosure to Nitro shareholders addressing the alleged deficient and misleading disclosure and offering Nitro shareholders the right to withdraw their acceptances under the Potentia Bid.

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² all references are to the *Corporations Act 2001* (Cth) unless otherwise indicated