



Australian Government

Takeovers Panel

MEDIA RELEASE

No: TP23/06

Tuesday, 24 January 2023

Nitro Software Limited – Panel Declines to Make Declaration

The Panel has declined to make a declaration of unacceptable circumstances in response to an application dated 4 January 2023 from Technology Growth Capital LLC, a special purpose vehicle managed by Potentia Capital Management Pty Ltd (**Potentia**), in relation to the affairs of Nitro Software Limited (**Nitro**).

Nitro is the subject of competing control proposals made by Potentia and Cascade Parent Limited¹ (**Alludo**) (see [TP23/02](#)).

The application concerned the offer by Alludo to acquire 100% of Nitro by way of a scheme of arrangement (**Alludo Scheme**) or, in the alternative, via an off-market takeover bid (**Alludo Takeover Offer**) (together the **Alludo Transaction**).

The Panel considered (among other things) that:

- the Nitro board's decision not to grant due diligence to Potentia was not unacceptable
- the concurrent scheme/bid structure under the Alludo Transaction, while complex, did not constitute unacceptable circumstances
- it was not minded to second guess the Nitro board's recommendation that it was in the best interests of Nitro shareholders to accept the Alludo Takeover Offer at the same time as voting in favour of the Alludo Scheme and
- the risks to retail shareholders of accepting the Alludo Takeover Offer early (which may preclude them from accepting a higher competing offer) had been disclosed and in the circumstances did not give rise to unacceptable circumstances.

¹ trading as Alludo and controlled by KKR Americas Fund XII L.P.

The Panel considered that it is not against the public interest to decline to make a declaration of unacceptable circumstances. Accordingly, the Panel decided not to make a declaration of unacceptable circumstances.

The sitting Panel was Yasmin Allen (sitting president), James Burchnall and John O'Sullivan. The Panel will publish its reasons for the decision in due course on its website www.takeovers.gov.au.

Allan Bulman
Chief Executive, Takeovers Panel
Level 16, 530 Collins Street
Melbourne VIC 3000
Ph: +61 3 9655 3500
takeovers@takeovers.gov.au