

The Manager  
Company Announcements Office  
ASX Limited

23 December 2015  
Matter 82444782

Dear Sir

**Takeover bid by Nitro Corporation Pty Ltd for Asciano Limited  
Third Supplementary Bidder's Statement**

We act for Nitro Corporation Pty Ltd (**the Acquirer**) in relation to its off-market takeover bid for all the ordinary shares in Asciano Limited.

We attach, by way of service pursuant to paragraph 647(3)(b) of the *Corporations Act 2001* (Cth), the Acquirer's third supplementary bidder's statement dated 23 December 2015.

Yours sincerely



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## Nitro Corporation Pty Ltd

ACN 607 605 701

### Third Supplementary Bidder's Statement

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#### 1 Introduction

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This document is a supplementary bidder's statement under section 643 of the *Corporations Act 2001* (Cth). It is the third supplementary bidder's statement (**Third Supplementary Bidder's Statement**) issued by Nitro Corporation Pty Ltd ACN 607 605 701 (**Acquirer**) in relation to its off-market takeover bid for all the ordinary shares in Asciano Limited ABN 26 123 652 862. This Third Supplementary Bidder's Statement supplements, and should be read together with, the Acquirer's bidder's statement dated 23 November 2015 (**Original Bidder's Statement**), the Acquirer's replacement bidder's statement dated 10 December 2015 (**Replacement Bidder's Statement**) and first and second supplementary bidder's statements also dated 10 December 2015.

Terms defined in Section 13 of the Replacement Bidder's Statement have the same meaning when used in this Third Supplementary Bidder's Statement, unless otherwise defined.

#### 2 Update on proposed ACCC undertakings

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As indicated in the Replacement Bidder's Statement, Brookfield Infrastructure has been engaging proactively and constructively with the ACCC since July 2015.

On 14 December 2015, the ACCC suspended its timeline for making a final decision in relation to its concerns with the Offer at the request of Brookfield Infrastructure in order to allow a revised undertaking proposal to be considered. The revised undertaking proposal involves two undertakings:

- a commitment regarding divestment of Pacific National's intermodal business, including Pacific National's limited WA bulk operations, to an independent purchaser; and
- commitments to ensure independent operation and undertakings to protect confidential information and to ring fence Brookfield's Dalrymple Bay Coal Terminal business from the Pacific National bulk business, including in respect of decision making at Brookfield's Dalrymple Bay Coal Terminal business,

(together, the **Revised Undertaking Proposal**).

On 22 December 2015, the ACCC announced that it had commenced market consultation on the Revised Undertaking Proposal. Market participants have until 22 January 2016 to make submissions, with the proposed date for the ACCC's announcement of its final decision now 18 February 2016. The proposed final decision date in relation to the Offer is currently the same as the current proposed decision date in relation to the ACCC's review of the Qube Consortium's conditional, non-binding

indicative proposal (which, in the case of the Qube Consortium's proposal, may be a final decision or release of a statement of issues).

A copy of the ACCC's news release is attached and a copy of the market consultation letter and draft undertakings is available on the ACCC's website:

<http://registers.accc.gov.au/content/index.phtml/itemId/1188346/fromItemId/750991>.

### 3 Timetable and process

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The takeover offer by Acquirer is scheduled to close at 7:00pm (Sydney time) on 11 January 2016 (unless extended).

Asciano Shareholders who have any questions in relation to the Offer or who would like another acceptance form should call the Brookfield Offer Information Line on 1300 395 895 (for callers within Australia) or +61 3 9415 4079 (for callers outside Australia).

### 4 General

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A copy of this Third Supplementary Bidder's Statement has been lodged with ASIC. Neither ASIC nor any of its officers take any responsibility for its contents.

Signed for and on behalf of Nitro Corporation Pty Ltd following a unanimous resolution of the directors of Nitro Corporation Pty Ltd.

sign here ►

  
Name: Michael Ryan  
Director/Secretary

date

23 December 2015



HERBERT  
SMITH  
FREEHILLS

## Attachment

### ACCC News Release

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Australian  
Competition &  
Consumer  
Commission

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23 Marcus Clarke Street Canberra ACT  
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# NEWS RELEASE

## ACCC TO CONSULT MARKET ON PROPOSED UNDERTAKINGS FROM BROOKFIELD

The Australian Competition and Consumer Commission has commenced market consultation on proposed revised undertakings offered by a consortium assembled by Brookfield Asset Management Inc. that includes Brookfield Infrastructure Partners LP (Brookfield) in relation to the proposed acquisition of Asciano Limited (ASX: AIO) (Asciano).

The revised undertakings have been proposed to address the preliminary competition concerns identified by the ACCC in the Statement of Issues released on 15 October 2015.

While the ACCC has decided to publicly consult on whether the undertakings will be satisfactory to address the ACCC's preliminary competition concerns, this should not be interpreted to mean that these or any other form of undertakings will ultimately be accepted.

"Indeed, the Commission has not yet had the opportunity to consider these undertakings fully but considers that its views on the undertakings will benefit significantly from market feedback," ACCC Chairman Rod Sims said.

"Past experience has shown that the Commission needs to emphasise that the release of these undertakings for public comment should not be interpreted as a signal that the ACCC will ultimately accept these undertakings."

This is the second undertaking remedy proposed by Brookfield following the release of the ACCC's Statement of Issues. The initial undertakings offered to the ACCC relied solely on behavioural commitments by Brookfield not to engage in certain behaviour to address the vertical competition concerns. These were rejected by the ACCC on 26 November 2015 after careful consideration of the likely effectiveness and enforceability of the proposed undertakings.

On 14 December 2015, the ACCC suspended its timeline at the request of Brookfield in order to allow a revised undertaking proposal to be considered. In the absence of this, the ACCC would have made a final decision on the transaction on 17 December 2015 as scheduled. Each new undertaking proposal put forward by merger parties requires the ACCC to examine and consider the proposal and will therefore inevitably delay the ACCC's final decision.

The revised proposal involves two undertakings:

- A commitment to divest to an independent party, Pacific National's intermodal business, which operates the interstate freight service around Australia, and Pacific National's limited bulk rail operations in Western Australia; and
- Commitments to ensure independent operation and decision making at Brookfield's Dalrymple Bay Coal Terminal.

The ACCC now seeks views from market participants to assist the ACCC to determine whether the revised undertakings would be likely to alleviate the ACCC's competition concerns.

Parties wishing to make submissions should do so by 22 January 2016.

Following market consultation, the ACCC will decide whether to accept or reject the proposed undertakings. The ACCC anticipates making its final decision on the revised undertakings by 18 February 2016 in conjunction with the ACCC's final decision in relation to Brookfield's proposed acquisition. However, the ACCC notes that the timing of its final decision on the proposed undertakings and the proposed acquisition may vary depending on the nature and extent of any concerns raised during the market consultation process and the ability of Brookfield to respond to these concerns in a timely manner.

The indicative decision date for the ACCC's review of the Brookfield proposed acquisition is currently the same as the current published decision date for the Qube Consortium review. It should be noted that both the Brookfield and Qube decision dates are only indicative and may change.

**Media inquiries**

**ACCC Media 1300 138 917**

**MR 270/15**

**22 December 2015**