



Australian Government

Takeovers Panel

# MEDIA RELEASE

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No: TP23/09

Thursday, 9 February 2023

## **Nitro Software Limited 02 – Potentia Makes Further Disclosure and the Panel Declines to Make Declaration**

The Panel has declined to make a declaration of unacceptable circumstances in response to an application dated 9 January 2023 from Rocket BidCo Pty Ltd (**Alludo**) in relation to the affairs of Nitro Software Limited (**Nitro**). The application concerned the competing takeover offer for Nitro by Technology Growth Capital LLC, a special purpose vehicle managed by Potentia Capital Management Pty Ltd (**Potentia**) (see [TP 23/03](#)).

Alludo sought a declaration of unacceptable circumstances (among other things) on the basis that Potentia's disclosure in its bidder's statement (as supplemented) in relation to bid funding arrangements, arrangements with co-investors and the redeemable preference shares offered as part of the scrip consideration was materially deficient in contravention of sections 636<sup>1</sup> and 643 and has had the effect of hindering the acquisition of control of Nitro taking place in an efficient, competitive and informed market.

On 8 February 2023, Potentia released (and will dispatch) a sixth supplementary bidder's statement providing further and clarifying disclosure in relation to its bid funding arrangements, arrangements with co-investors and redeemable preference shares in a form that the Panel did not object to. The Panel considered that the sixth supplementary bidder's statement sufficiently dealt with the issues raised in Alludo's application so as not to warrant making a declaration of unacceptable circumstances.

As the sixth supplementary bidder's statement makes clear, the further and clarifying disclosure (particularly concerning bid funding arrangements) only relates to Potentia's current offer price at \$2.00 per Nitro share. Accordingly, the Panel expects additional disclosure to be provided by Potentia in respect of its bid funding arrangements if Potentia increased the consideration offered under its takeover offer above \$2.00 per Nitro share.

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<sup>1</sup> all references are to the *Corporations Act 2001* (Cth) unless otherwise indicated

The Panel considered that it is not against the public interest to decline 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](http://www.takeovers.gov.au).

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