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Friday, 26 May 2006

### **Tower Software Engineering Pty Ltd - Panel Receives Application**

The Takeovers Panel advises that it has received an application (**Application**) from Berend John Philip Hoff (**Mr Hoff**) in relation to the affairs of Tower Software Engineering Pty Ltd (**Tower**).

The Application concerns a takeover offer by Pendant Software Pty Ltd (**Pendant Software**) for Tower, made on 18 April 2006 (**Offer**) pursuant to a bidder's statement dated 18 April 2006 and supplementary bidder's statement dated 19 April (together the **Bidder's Statement**).

The Application alleges that:

- prior to making the Offer, Pendant Software breached the 20% takeovers threshold by acquiring approximately 14.43% of Tower from a shareholder, Equity Partners One Pty Ltd (**Equity Partners**), resulting in its voting power increasing from approximately 30.54% to 44.97%;
- the Offer provided that all Tower shareholders must first comply with the provisions in Tower's constitution granting existing members a pre-emptive right to purchase shares offered for sale (**Pre-emptive Rights Regime**). Prior to the Offer, the Pre-emptive Rights Regime had already been satisfied by one member, Equity Partners. Under the terms of the Pre-emptive Rights Regime, Equity Partners had a specified time within which to sell its shares before having to re-comply with the Pre-emptive Rights Regime. If the Bidder's Statement had been despatched in accordance with timetable in the Act, Equity Partners' window within which it could accept the Offer would have expired. The Tower board's consent to early despatch of the Bidder's Statement enabled Equity Partners to accept the Offer without having to re-comply with the Pre-emptive Rights Regime and accordingly, the consent structured the Offer in such a way as to treat Tower shareholders unequally;
- the Bidder's Statement contained inadequate disclosure in relation to Pendant Software's voting power in Tower, its proposed method of funding the Offer consideration and the operation of the Pre-emptive Rights Regime; and
- Pendant Software's attempt to declare the Offer free from defeating conditions and register the acceptance from Equity Partners, prior to receipt by Tower shareholders of the target's statement and independent expert's report, was unacceptable.

Mr Hoff has sought a declaration of unacceptable circumstances in relation to:

- the Tower board's resolution to consent to early despatch of the Bidder's Statement;
- the early despatch of the Bidder's Statement in accordance with that consent; and
- Equity Partners' notice of acceptance and transfer in respect of the Offer.

Mr Hoff also seeks final orders that Equity Partners' notice of acceptance and transfer in respect of the Offer is void and that no Tower shareholder be able to accept the Offer prior to the Panel's decision in relation to this matter, or alternatively, prior to the date of Tower's target's statement.

The Panel has not decided whether to conduct proceedings and makes no comment on the merits of the Application.

The President of the Panel is appointing a sitting Panel to consider the Application.

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