



**1 September 2006**

**Tower Software Engineering Pty Ltd 01 - Application withdrawn**

The Takeovers Panel advises that it has consented to withdrawal of the application dated 25 May 2006 ([TP 06-56](#)) by Mr Berend Hoff i.e. the Tower 01 proceedings.

**Background**

The Application concerned a takeover offer by Pendant Software Pty Ltd for Tower pursuant to a bidder's statement dated 18 April 2006.

Primarily, the Application submitted that unacceptable circumstances arose as a result of the Tower board's decision on 18 April 2006 (the day that it received a copy of the bidder's statement) to consent to immediate dispatch of the bidder's statement. The consent enabled a 14.5% shareholder in tower, Equity Partners One Pty Ltd to sell its shares to Pendant Software immediately, without having to re-comply with the Pre-emptive Rights Regime in Tower's constitution.

**Initial Decision - ([TP 06-61](#))**

The Panel considered that the Tower board's decision to consent to immediate dispatch might give rise to unacceptable circumstances because it enabled Pendant Software to acquire a relevant interest in a substantial interest in Tower and enabled a substantial level of control to pass without any opportunity for a competing bid to be contemplated, let alone made.

On 9 June 2006, the Panel advised the parties that it considered that the circumstances justified a declaration of unacceptable circumstances, but indicated there was scope for parties to offer undertakings which may avoid the need for further proceedings and orders.

**Undertaking**

In response to the Panel's 9 June letter, Pendant Software offered an undertaking which was, in summary, to match, or accept the Equity Partners shares into, a rival Superior bid for Tower.

Subsequent to the Panel accepting the undertaking, Quadrant Private Equity No.1, L.P made a conditional takeover bid, at \$1.60 per share, for all Tower shares, which was sent to Tower shareholders on 14 July 2006.

On 21 July 2006, Pendant Software increased its bid consideration to \$1.60 per share. On the same day, Quadrant increased its bid consideration to \$1.80 per share. On 27 July 2006, Quadrant declared its bid free of all defeating conditions.

Pendant Software considered that it had complied with the Panel's undertaking by increasing its Offer to \$1.60. In the Panel's view, the undertaking required Pendant Software to match Quadrant's \$1.80 bid (i.e. at the time Quadrant's bid became a "Superior bid") or accept into that bid in respect of the Equity Partners shares.

The Panel applied to the Federal Court to enforce the undertaking, in accordance with its interpretation of the undertaking or, alternatively, to seek an extension of time to make a declaration of unacceptable circumstances. Justice Finkelstein held that Pendant Software had not breached its undertaking to the Panel. However, he granted an extension of time for the Panel to make a declaration of unacceptable circumstances in relation to the Application.

### **Resolution**

On 25 August 2006, Quadrant reached agreement with Pendant Software that Pendant Software and its associates would accept the Quadrant bid for all the Tower shares they held, subject to clearing those shares through Tower's Pre-emptive Rights Regime and Quadrant increasing the consideration offered under its bid to \$1.87. Quadrant has since advised Tower shareholders that it will increase its takeover offer consideration to \$1.87 if it acquires more than 50% of the shares in Tower.

### **Consent to withdraw**

Consequently, on 28 August 2006, Mr Hoff requested the Panel's consent to withdraw the Application, on the basis that no useful purpose would be served by continuing the proceedings. Mr Hoff's request was either supported, or not opposed, by each of Quadrant, Tower and Pendant Software.

The Panel considered that it would not be in the public interest to continue the proceedings. The Panel noted that its primary concern in relation to the unacceptable circumstances identified in its earlier decision ([TP 06-61](#)) was to ensure an equivalent opportunity for a potential rival bidder to make a takeover bid and acquire the Equity Partners' shares if Pendant Software did not match that rival bid. This was consistent with the Panel's interpretation of Pendant Software's undertaking. The Panel considers that the increased offer made by Quadrant, and Pendant Software's agreement to accept, have achieved this objective and resulted in the acquisition of control of Tower taking place in an efficient, competitive and informed market.

The sitting Panel in these proceedings was Kevin McCann (Sitting President), Norman O'Bryan (Deputy President) and Chris Photakis.

The Panel will publish its reasons for decision on its website in due course.

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