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Tuesday, 28 February 2006

### **Volante Group Limited 02 - Decision**

The Takeovers Panel (**Panel**) advises that it has declined the application by Commander Corporation Pty Limited (**Commander**), a subsidiary of Commander Communications Limited, in relation to its takeover offer for all the shares in Volante Group Limited (**Volante**).

The Panel made its decision following Volante's undertaking to dispatch a supplementary target's statement to its shareholders containing additional information which the Panel considered was required by Volante shareholders to make an informed decision with respect to Commander's offer.

#### **Background**

Commander's application submitted that there were a number of deficiencies in the Volante target's statement. These largely related to Volante's disclosure relating to that part of the large managed services contract under negotiation for which Volante has been awarded "preferred supplier" status (**Preferred Supplier Contract**), and the acquisition of another small business which was being settled at the date of Volante's target's statement (**Acquisition**).

Commander also submitted that an article published in the Australian Financial Review (**AFR**) on Wednesday, 1 February 2006, which reported an interview with Mr Ian Penman, Volante's chief executive officer, contained information on the Acquisition which was not contained in the target's statement and Commander alleged was selective and misleading. These allegations were described in the Panel's media release [TP06/10](#).

#### **Decision**

The Panel declined to make a declaration of unacceptable circumstances in relation to the application as a result of:

- (a) Volante undertaking to the Panel to include in a supplementary target's statement the following additional information:
  - (i) a statement regarding the Volante directors' reasons for considering that adequate disclosure to Volante shareholders did not require inclusion of a FY 2007 forecast excluding revenue for that part of the Preferred Supplier Contract for which Volante had been awarded preferred supplier status.

Volante had disclosed to the Panel that the reason its directors were prepared to include preferred supplier contracts in the forecasts, and did not consider that it was appropriate to include a forecast excluding the revenue from that part of the Preferred Supplier Contract for which Volante had been awarded “preferred supplier” status, was Volante’s successful track record in securing contracts where it had been awarded preferred supplier status. Volante also considered it would be unreasonable to disclose the information which Commander had suggested because the disclosure would provide commercially sensitive information to Volante’s competitors.

These reasons were, however, not included in the target’s statement. The Panel believed that Volante’s track record, and a discussion of the other reasons for not including a forecast excluding the revenue from that part of the Preferred Supplier Contract for which Volante had been awarded “preferred supplier” status, was information required by a Volante shareholder to make the investment decision described in section 638(1). Without the directors’ reasons, a Volante shareholder would not be able to fully understand why Volante’s directors provided a forecast of revenue which included revenue from contracts where Volante has not yet entered into a firm contract but did not provide a forecast of revenue without such contracts;

- (ii) a statement of Volante’s knowledge of whether or not it is the only preferred supplier for that part of the South Australian Government’s Distributed Computing Support Services procurement contract for which it has been awarded “preferred supplier” status;
- (iii) a statement explaining, or reconciling, in a consistent fashion the different acquisition prices used in the AFR Article and the media release lodged with the ASX dated 3 February 2006 relating to the Acquisition.

In particular, the Panel noted that in the 1 February AFR article Mr Penman stated that Volante was “working towards an acquisition of its own, worth up to \$10 million” whereas the 3 February Media Release described the Acquisition as being \$5 million (payable in instalments over two financial years) plus additional deferred cash payments dependent on the achievement of various performance hurdles. The Panel believed that such varying statements would likely confuse shareholders;

- (iv) a statement explaining that Volante considers that it would not require any material increase in working capital as a result of the new contracts Volante had recently won or had been awarded “preferred supplier” status, or the Acquisition.

The Panel required this information to be disclosed to Volante shareholders after Volante included it in its submissions to the Panel in response to Commander’s application; and

- (b) Lonergan Edwards (which provided an expert's report to accompany the Volante target's statement as to the fairness and reasonableness of the Commander offer) undertaking to the Panel to include, or consent to the inclusion, in a supplementary target's statement:
- (i) Lonergan Edwards' basis for considering that a FY 2007 forecast excluding revenue for that part of the Preferred Supplier Contract for which Volante had been awarded "preferred supplier" status was not material information for a Volante shareholder considering Lonergan Edwards' report.  
The Panel was concerned that Lonergan Edwards had not made adequate disclosure in its independent expert report of the enquiries or examinations it had undertaken to establish reasonable grounds for believing the directors' revenue and earnings forecasts and whether these forecasts had been prepared on a reasonable basis; and
  - (ii) a clear explanation for Volante shareholders of the adjustments Lonergan Edwards made to the FY 2007 forecast to produce the normalised FY 2007 forecast.  
In the Panel's opinion, Lonergan Edwards' report did not clearly explain the adjustments which Lonergan Edwards made to the Volante directors' FY 2007 forecast in order to produce a normalised FY 2007 forecast. The normalised FY 2007 forecast underpinned the valuation conducted by Lonergan Edwards and that under these circumstances, the Panel considered that shareholders should have a clear understanding of the normalisation process.

As a result of Volante providing the Panel with a supplementary target's statement incorporating the above additional information that the Panel had requested from Volante and Lonergan Edwards, the Panel declined Commander's application.

The sitting Panel which considered the application was Nerolie Withnall (Sitting President), Louise McBride and Simon Withers.

The Panel will publish its reasons for this decision in due course on its website [www.takeovers.gov.au](http://www.takeovers.gov.au).

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