



Australian Government

Takeovers Panel

MEDIA RELEASE

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Friday, 29 January 2010

Powerlan Limited - Panel Accepts Undertaking

The Panel has accepted an undertaking from Powerlan Limited (see annexure) and declined to make a declaration of unacceptable circumstances in response to an application dated 19 January 2010 from Alpha Growth International (Australia) Pty Ltd in relation to the affairs of Powerlan (see [TP10/04](#)). With the undertaking, the Panel was not satisfied that the rights issue would have a material effect on the control or potential control of Powerlan such as to constitute unacceptable circumstances.

On 15 January 2010, Alpha announced a takeover bid for all of the shares in Powerlan. On the same day, Powerlan issued a prospectus in relation to a 4 for 1 renounceable rights issue. The rights issue includes a shortfall facility and is partly underwritten to \$8 million by Bizzell Capital Partners Pty Ltd. In addition, under the underwriting agreement, if there is a shortfall of less than 133,333,333 shares, Bizzell may request Powerlan to issue more shares such that it holds that number of shares, but subject to a cap referable to the maximum available without shareholder approval under the ASX Listing Rules. CPS Investments Pty Ltd, a major shareholder (40.25%) and controlled by Powerlan's chairman, has confirmed that it will take up its full entitlement under the rights issue.

Bizzell informed the Panel that it has entered into agreements with 9 unrelated sub-underwriters for approximately 85% of any shares taken up under the underwriting agreement, none of whom will be allocated more than 25 million shares. It also informed the Panel that the sub-underwriters are arm's length, professional and sophisticated investors.

The undertaking requires (among other things) Powerlan to disperse any shortfall to shareholders who applied for additional shares under the shortfall facility on a proportionate basis and disclose in a supplementary prospectus details about the shortfall allocation process and Bizzell's sub-underwriting arrangements. The Panel did not have any evidence on which it could form a view that there was or may be an association between any or all of CPS, Bizzell or any sub-underwriter outside the underwriting arrangement. Therefore the Panel considers that the undertaking

sufficiently addresses the circumstances and that it is not against the public interest to decline to make a declaration of unacceptable circumstances.

The sitting Panel is Mike Roche, Robert Sultan (sitting President) and Heather Zampatti. The Panel will publish its reasons for the decision in due course on its website www.takeovers.gov.au.

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Annexure

Section 201A Australian Securities and Investments Commission Act (Cth) Undertaking

POWERLAN LIMITED

Pursuant to section 201A of the *Australian Securities and Investments Commission Act 2001 (Cth)*, Powerlan Limited (**Powerlan**) undertakes to the Panel that, in respect of the renounceable rights issue announced by Powerlan on 15 January 2010, it will:

1. deal with any applications for additional shares under the shortfall facility offered under the prospectus dated 15 January 2010 in the following manner:
 - (a) to the extent there is a shortfall between applications received for shares under the rights issue and the total number of new shares to be issued under the rights issue (**First Shortfall**), each shareholder who has applied for additional shares will be allocated their proportionate share of the First Shortfall having regard to their shareholdings as at the record date. If a shareholder has made a shortfall application but has specified a maximum shortfall application amount which is less than the amount of new shares which that shareholder would otherwise be allocated under this process, that shareholder will be allocated the lesser amount and
 - (b) if, following allocation of the First Shortfall, there remains a shortfall between the allocated new shares and total number of new shares proposed to be issued under the rights issue (**Second Shortfall**), the above allocation process will be repeated in respect of the Second Shortfall and any subsequent shortfalls until either all the new shares proposed to be issued under the rights issue have been allocated or all shortfall applications have been satisfied in full.
2. issue a supplementary prospectus which discloses details of:
 - (a) the shortfall allocation process referred to in paragraph 1 above
 - (b) the sub-underwriting arrangements, identifying at least the following details:

- (i) Bizzell Capital Partners Pty Ltd (**Bizzell**) has engaged 9 unrelated sub-underwriters to assist in underwriting the rights issue (**Sub-Underwriters**). The Sub-Underwriters need not be named
 - (ii) the Sub-Underwriters are arm's length, professional and sophisticated investors
 - (iii) Bizzell will disperse not less than 85% of any shares to which it becomes entitled pursuant to the underwriting agreement to the Sub-Underwriters, none of which will be allocated more than 25 million Powerlan shares
 - (iv) there is no agreement, arrangement or understanding between any one or more of Bizzell, CPS Investments Pty Ltd, Dr Campbell and any Sub-Underwriter concerning Powerlan, other than as contained in the underwriting agreement and
 - (v) the potential control effects of the sub-underwriting arrangements on Powerlan
3. promptly clarify with ASX the maximum number of Further Shares that may be placed to Bizzell under ASX Listing Rules without shareholder approval, and if such number is different to the number disclosed in the prospectus, issue a supplementary prospectus which discloses the correct number and
4. confirm in writing to the Panel:
- (a) when it has satisfied its obligations under this undertaking and
 - (b) the final allocations of shares under the rights issue to CPS, Bizzell and the Sub-Underwriters.

Signed by Jon Newbery
with the authority, and on behalf, of
Powerlan Limited
Dated 29 January 2010