

# THE TAKEOVER PANEL

## **Enquiry by the City Panel into the proposed offer by Leasco World Trade Company (U.K.) Limited for the share Capital of Pergamon Press Limited.**

The City Panel has taken into consideration the circumstances arising from an announcement by Leasco World Trade Company (U.K.) Limited, a subsidiary of a United States Corporation and hereafter referred to as Leasco, that it proposed to make a public offer for the whole of the issued share capital of Pergamon Press Limited hereafter referred to as Pergamon and the subsequent withdrawal by Leasco from that proposal. A public announcement of intention to offer was made on 18th June, 1969 and followed a written agreement between Leasco and Mr. Robert Maxwell, Chairman and Managing Director of Pergamon, which contained an undertaking by Mr. Maxwell to accept or procure the acceptance of the Leasco offer by the Maxwell family interests in Pergamon which constituted about 31% of the total equity.

A list of the Maxwell family interests in Pergamon as at 5th August is attached to this statement. Apart from the sale of 594, 935 shares by the De Pfyffer trustees it is right to state that there has been no change in these shareholdings during the currency of the proposed offer and indeed there appears to have been no significant change for some time prior thereto.

The withdrawal of a public offer once announced is a matter of serious concern since such offers affect market values and may result in injury to the interests of the shareholders of the company involved and indeed sometimes to the company itself. Rule 12 of the City Code expressly provides that if an offeror who has announced his intention to make an offer does not proceed with a formal offer within a reasonable time he must be prepared to justify the circumstances of the case to the Panel.

Some time passed from Leasco's announced intention to offer without any formal offer document appearing. Enquiries by the Panel administration elicited that Leasco and Pergamon were engaged in protracted negotiations as to the form of the offer document to be approved by both parties.

From time to time the Panel administration advised the parties as to the content of such a document but in the end Leasco withdrew from its proposed offer before any such document (of which by this time there had been 14 drafts) had been agreed.

The Panel accordingly called upon Leasco and their advisers to justify their withdrawal in the presence of Mr. Maxwell. Both Pergamon (on the 22nd August) and Leasco (on the 25th August) issued public statements and these were taken into consideration by the Panel along with oral explanations received by it from a director of Leasco and from representatives of N.M. Rothschild & Sons, their Merchant Bank advisers. These explanations were not accepted by Mr. Maxwell as valid ones for the withdrawal of the proposed Leasco offer. Mr. Maxwell indeed suggested two different and ulterior motives as having led to the Leasco withdrawal. The first was that Leasco did not have the money to complete the transaction. This serious allegation was made by Mr. Maxwell publicly to the Press and later to the Panel. It involved also the implication that Rothschilds had failed in their obligation under the City Code to assure themselves that resources would be available to Leasco to enable that company to satisfy full acceptance of their offer. The Panel is satisfied that there was no foundation whatever for this suggestion and indeed Mr. Maxwell expressly withdrew it. An alternative motive was, however, later suggested by Mr. Maxwell who, it appears, had also made this suggestion publicly, namely that Leasco having already with Pergamon's knowledge and consent acquired something of the order of 38% of the equity by purchases in the market at slightly under the intended offer price; and having thus acquired a dominant position wished, by then withdrawing their proposed offer, to secure a collapse in the market price which would have enabled them to come in and obtain the still outstanding shares much more cheaply. This suggestion assumed that Leasco would have been prepared to accept a substantial drop in the value of their own holding in Pergamon in which they had invested something of the order of £9,000,000 and that they counted on the acquiescence of the Exchange Control Authorities and of the City Panel as well as on the continuance of quotation on The Stock Exchange. Mr. Maxwell eventually also withdrew this suggestion. In any event, having heard all the evidence the Panel is satisfied that Leasco had no such motives in mind and it is a matter for regret that Mr. Maxwell thought right to suggest that either of them in fact existed.

The Panel is satisfied that Leasco's decision to withdraw from the proposed offer was the result not so much of any single factor as of the cumulative effect of a series of difficulties and doubts which eventually destroyed their confidence. The agreement between Mr. Maxwell and Leasco involved the former's employment by Leasco as Chief

Executive in charge of their foreign interests, including Pergamon, and his appointment as Vice-Chairman of the parent board in the United States. The arrangement contemplated was, therefore, one to the success of which personal confidence was essential. The Panel is satisfied that by 21st August, when Leasco withdrew from their proposed offer, this confidence had been wholly dissipated; that indeed this breakdown of confidence was mutual is shown by the fact that on or about 18th August Mr. Maxwell himself was proposing to terminate all negotiations and had prepared a press announcement to that effect.

In all the circumstances the Panel accepts Leasco's explanation for its withdrawal from the proposed offer. It has directed that Leasco should not make any further purchase of Pergamon shares without the Panels' sanction and this restriction has been accepted on behalf of Leasco. Nonetheless the Panel wishes to reiterate its view as to the seriousness of a withdrawal from an offer once announced because of the false market which may have been created.

#### The Position of Pergamon

In the course of its investigation of the circumstances leading to the withdrawal of the proposed Leasco offer, matters came to the notice of the Panel to which, even if the express provisions of the City Code were not attracted, the Panel would feel bound to call attention. These concerned the question whether the Board of Pergamon had properly discharged its obligation to inform its shareholders sufficiently in regard to the affairs of their company.

It must be made clear that the Panel possesses no general supervisory powers to ensure that directors of public companies make full disclosure to their shareholders of all relevant matters. This is indeed a most important duty of directors and that it should have been continuously discharged becomes a matter of especial importance as soon as any question arises of an offer for shares. It is for this reason that under its constitution the City Panel's interest in the matter of disclosure is attracted whenever a question arises of a prospective offer, as well as during the course of negotiations about an offer or in the aftermath of an offer which has been made. It may be suggested that the Panel is only concerned with disclosure in the offer document (if indeed one materializes) or in any reply made by the offeree company, but the Panel considers this too narrow a view.

When the intention to make an offer is publicly announced share prices are likely to be significantly affected and directors of companies should realise that in order that shareholders may protect their interests in the interim and be able to form a reasonable assessment of the value of their holdings in the event of an offer being made, or on the contrary of an expected offer not materialising, they should be kept continuously informed about the affairs of their company. It is not only in offer documents or replies that full disclosure is called for, although it is only in the context of an offer situation that the Panel can draw attention to any inadequacy of disclosure. Observance to the full of this obligation to disclose is essential if public confidence in the securities market is to be maintained.

In view of what follows it is right that the Panel should state at this point that nothing in the information before it casts doubt on the standing or future prospects of Pergamon, a company which under the energetic leadership of Mr. Maxwell has made notable progress. Nor is there any suggestion at all of personal misconduct on Mr. Maxwell's part.

In the opinion of the Panel, however, there are substantial grounds for questioning whether the shareholders of Pergamon were in fact given at the appropriate times all the information about the affairs of their company which, in the circumstances, they would reasonably be entitled to expect. The Panel emphasises that it is the information made available to Pergamon shareholders rather than to Leasco with which it is in the present context mainly concerned.

Two matters in particular have been considered by the Panel: both may have contributed to the confusion that Leasco eventually felt about the affairs of Pergamon and both appear at first sight to be matters on which there may have been a failure in proper disclosure to shareholders.

1. The first concerns the affairs of a company called International Learning Systems Corporation Limited (ILSC) and mainly occupied with selling encyclopaedias on hire purchase. This company is owned jointly by Pergamon and British Printing Corporation Limited (BPC) and Mr. Robert Maxwell was at all times its Chairman and latterly its Chief Executive. When the company was jointly set up by Pergamon and BPC, Pergamon gave BPC a warranty that should certain profits for the year ending 30th June, 1968 fall below £500,000 they would bear the shortfall.

The first trading period of ILSC was the 18 months ending December 31st, 1968. It is unfortunate that even today the accounts for this period remain incomplete. On 17th May, 1969 Mr. Robert Maxwell wrote a letter to Mr. Bernard Schwartz, the President of Leasco Data Processing Corporation, in the course of which he stated that if United Kingdom accountancy practice prevailed whereby development expenditure is written off in the year in which it occurs ILSC would end up making neither a profit nor a loss for the 18 months period. Mr. Maxwell also said in that letter that if American accountancy practice relating to development expenditure were followed the results would show a substantial profit. It must be observed, however, that the shareholders of Pergamon would expect the accounts of their company to be based upon United Kingdom practice. However that may be, the Annual Report of Pergamon for the year 1968 dated the 22nd May 1969 contained references to the warranty already referred to and stated that the directors were of the opinion that no liability would arise. It seems to the Panel that these statements might well have led shareholders to believe ILSC would make a profit in that year not less than £500,000 and, therefore, perhaps a proportionately larger amount over the 18 month period. It was made clear to the Panel that it is now known that in fact the profits would fall far short of this amount if indeed there are profits at all in ILSC.

Mr. Maxwell explained to the Panel that the profits calculated for the purpose of the warranty were calculated on a different basis from those in the accounts.

Mr. Maxwell stated that he couched his letter to Mr. Schwartz as President of the proposed acquiring company in the most cautious terms and that in fact when the Annual Report was published on 22nd May, 1969 he himself confidently expected that substantial profits would be shown.

In all the circumstances the Panel considers that it is a question for further enquiry whether the shareholders of Pergamon received all the information to which they were reasonably entitled about the affairs of ILSC.

2. The second matter which engaged the attention of the Panel was the relationship between Pergamon and certain companies owned by what Mr. Maxwell has described as "Maxwell family interests". A list of such companies is attached to this statement. Two in particular may be mentioned. The first is Maxwell Scientific International Inc. (MSI) a United States corporation owned through Isthmus Enterprises Inc. by a Maxwell family trust and bearing a name unfortunately similar to that of a wholly owned Pergamon subsidiary in the U.K. Another company to which attention

was drawn in this context is Robert Maxwell & Co. Ltd. Mr. Maxwell informed us that this company's dealings with Pergamon Limited represented only 2% of the latter's turnover. The latter's turnover, in fact, amounted in 1968 to almost £10,000,000.

MSI conducts business with Pergamon from whom it buys books and, in particular, back issues of journals, scientific abstracts and the like. MSI also deals with Pergamon Press Inc., a public company in the United States in which Pergamon holds 70% of the equity, the remainder being publicly held.

The business of selling back issues of scientific journals and their reprint rights are increasingly valuable. On 30th August, 1967 Pergamon confirmed MSI in a 20-year contract giving them what were expressed to be exclusive agency rights in the western hemisphere to sell back issues and journals listed in Pergamon catalogues and a non-exclusive right to sell them in the rest of the world as well as exclusive rights to reprint.

The Panel considers it of the utmost importance that there should be full and frank disclosure of all relevant circumstances in which transactions take place between a public company and other companies in which a director may have an indirect interest or over which he may be assumed to have some influence whether he has an interest in a technical legal sense or not. In fact MSI had been for some time under the general management of the same individual as managed Pergamon Press Inc. and it was owned by a family trust, certain of the beneficiaries of which were Mr. Maxwell's children, although he assured the Panel that in fact no pecuniary benefits had ever actually been received by them. In a circular to shareholders dated 15th May, 1968 over the signature of Mr. Maxwell, it was stated that no director had any interest in any asset acquired or disposed of by Pergamon since October, 1967. This statement was no doubt made in good faith but the Panel cannot accept that interest in this context should be given a narrow or legalistic interpretation. In the existing case the profit figures of Pergamon could have been significantly affected by the quantities and prices at which books or back issues were sold by them to MSI, by the credit terms allowed to MSI or by the sale or return arrangements which may have been operated between Pergamon and MSI, as well as by transactions between MSI and Pergamon Press Inc. It is, therefore, of the utmost importance that all such transactions should have been handled objectively and at arm's length.

The Panel has no means of satisfying itself that they were. Apart from a reference in a different context in the 1968 Report and Accounts of Pergamon, the Panel's attention has not been drawn to any information made available by the Pergamon Board to its shareholders as to the composition and control of MSI or as to the transactions conducted between Pergamon and MSI which, owing to the increasing value of back issues, had become of significant importance in recent years. It is true that in order to comply with the requirements of the United States Securities and Exchange Commission very full information was given in the prospectus for an offering of shares of Pergamon Press Inc. in that country but this information related to dealings between MSI and Pergamon Press Inc. and did not cover dealings between Pergamon and MSI nor was any similar information made available by Pergamon to its own shareholders.

In the view of the Panel it is certainly for consideration whether there was a proper disclosure of all relevant matters to the shareholders of Pergamon in regard to transactions with Maxwell family interest companies.

Mr. Maxwell drew the Panel's attention to newspaper comment and indeed the Panel, whilst uninfluenced by such comments, cannot completely ignore the considerable public concern which has arisen in regard to the dealings or alleged dealings with the Maxwell family interests.

The course of dealing in question extends over a considerable period of time, the transactions are numerous and, as Mr. Maxwell made clear, involved. If full analysis were to be undertaken a most detailed examination would be necessary. The Panel has neither the power nor the resources to conduct the kind of investigation required to reach any firm conclusion.

The Panel repeats that there is no suggestion of any personal misconduct and indeed it recognises that a full investigation may well show that all the transactions in question have been conducted with complete propriety and that Pergamon shareholders were informed about them as adequately as in the circumstances they could reasonably expect. But having regard to all the circumstances, and not only to the public concern already referred to, the Panel considers that the public interest does require that the true position should be established by an independent investigation. Nothing less will re-establish the position of Pergamon and in the long run protect the interests of its shareholders.

The Panel has, therefore, decided to call the attention of the Board of Trade to these matters with a view to that Department exercising its power to enquire whether in fact the members of Pergamon have been given all the information with respect to that company's affairs which they might reasonably expect to receive.

The question of restoring the quotation of Pergamon shares on the Stock Exchange is no doubt one which the Council of the Stock Exchange will consider in due course and in the light of the views expressed. When in the course of the enquiry the possibility of a Board of Trade investigation was mentioned, Mr. Maxwell expressed the view that such an enquiry would be most damaging to the prospects of the company and to him personally. The Panel does not share this opinion. On the contrary, having regard to the issues to which, in this case, such enquiry would be directed, its institution would provide the most effective way of establishing the facts and, therefore, be in the best interests of the company, its shareholders and indeed of Mr. Maxwell himself.

#### The General Position of Merchant Banks in Take-over Transactions

Whilst the Merchant Banks concerned in the present matter discussed with the Panel administration all relevant purchases or sales and received clearance in regard to them, the Panel contemplate studying the general principles which should apply in circumstances where possible conflicts of interest may be thought to arise in a take-over context.

27th August, 1969

Shares of Pergamon held by Maxwell Family Interests  
at 5th August, 1969

<u>Name</u>	<u>Registered Holder</u>	<u>No. of Shares</u>
Robert Maxwell	Robert Maxwell	291,460
”	Sinjul Nominees Ltd.	51,345
”	Down Nominees Ltd.	40,000
Maxwell Scientific International (Distribution Services) Limited	Maxwell Scientific International (Distribution Services) Limited	6,500
”	Rectory Nominees Limited	63,130
Mrs. E.J. Maxwell	Mrs. E.J. Maxwell	24,640
Robert Maxwell & Co. Ltd.	Robert Maxwell & Co. Ltd.	1,859,548
”	Down Nominees Ltd.	50,000
”	Sinjul Nominees Ltd.	323,882
Isthmus Enterprises Inc.	Isthmus Enterprises Inc.	1,100,000
Trustees of dePfyffer Settlement	Northgate Nominees Ltd.	410,335 *

\*After the sale of 197, 203 shares during the preceding month.

Maxwell Family Interest Companies

Maxwell Scientific International Inc.

Robert Maxwell & Co. (1969) Limited

Gauthier Villar (Paris)

Libreria Britanica S.A. (Mexico)

Robert Maxwell & Co. Limited