

# THE TAKEOVER PANEL

**Morgan-Grampian Limited ("MG")**

**Haymarket Publishing Group Limited ("Haymarket")**

**Daltons Weekly Limited ("Daltons")**

The City Panel met today to consider an appeal by Haymarket against a decision of the Director General of the Panel in permitting the controlling shareholders of Daltons to enter into irrevocable commitments to accept an offer from MG.

Lord Shawcross in giving the decision of the Panel stated that the problem of shut-out bids was now governed by Rules 9 and 11. Under the former, while directors holding a controlling interest in a company must, of course, act in good faith in the interests of the shareholders as a whole, the shareholders in such a company must accept that in the case of any offer the decision of their board, given in good faith, will be conclusive. Under Rule 11, one of the new Rules of the revised Code, the Panel had a wide discretion in deciding whether or not to sanction any acceptance of a shut-out bid, and the matter was really at large. Practice Note No. 7 had been expressly cancelled. While it remained in general the duty of the board of an offeree company in cases where more than one bid was in contemplation to do nothing which might frustrate a potentially higher offer than the one contained in the shut-out proposal, a duty which the Panel would where necessary enforce, there might be circumstances in which the offeree board would not be required to inform the other bidder of what was afoot. This appeared to the full Panel to be such a case.

In this case the Panel executive were first involved in the late afternoon of 17th April, when the representatives of Daltons stated that they had received a shut-out bid from MG but that there was already in the field an offer for their Company by Haymarket. The Panel executive was told by Daltons' advisers, Drayton Corporation, that Daltons had been discussing over a period with Haymarket the possibility of accepting an offer from that Company, Daltons had come away from their last meeting with Haymarket on the afternoon of 14th April with the clear understanding that the Haymarket offer would be at a price of 147½p and at the highest might be expected to go to

150p. Haymarket is a private company and consequently their offer was inevitably in cash. In the meantime Daltons had also been discussing with MG the possibility of an offer by that Company which would be mainly in shares and partly in cash but would have to be on a shut-out basis. On the afternoon of 17th April MG for the first time fixed a definite value to their offer, 75% in shares and 25% in cash, amounting at the then current MG share price to 156p. The Panel executive was told, however, that it was an explicit condition of this offer that it should be accepted irrevocably by holders of over 50% of the equity; if competitors came in Daltons feared that MG would withdraw. MG refused to be involved in an auction. The representatives of Daltons assured the Panel that they would be in grave danger of losing the MG offer if they disclosed either generally or to Haymarket the fact that it existed and thus enabled Haymarket to come in on a competitive basis and start an auction. In Daltons' view it was an important consideration that the MG offer was largely in shares. They stated that the majority of the shareholders wished to hold these shares so as to retain an interest in Daltons; in addition the fact that by so doing they would avoid any present liability to pay Capital Gains Tax on 75% of the value they received was a very material consideration. The Panel executive was convinced that the Daltons' board genuinely believed that the MG offer might be lost unless they agreed to the shut-out proposal and that no better offer was likely to be received.

The full Panel see no reason to disagree with the conclusion at executive level. On the face of it the MG offer was the more valuable of the two bids. Moreover, it contained the Capital Gains Tax advantage which the Panel considered was a factor the board was entitled to take into account. In order to achieve a bid of a value net of Capital Gains Tax equal to the MG offer, it was agreed by the parties before the Panel that Haymarket would have had to raise their bid to over 180p. Although a figure of 170p was mentioned before the Panel as a price to which Haymarket possibly might have been willing to go, the Panel does not think that a much higher figure had ever been, or was seriously likely to be, considered by Haymarket, who were at all times under the disadvantage of not being able to offer shares.

In matters of intention and good faith (for there was no great conflict between the parties on the actual facts) there is no way of ascertaining with scientific certainty what the truth may be. The Panel executive had as best they could to make up their own minds, and form a judgement on where the truth lay. The Director General assured the Panel that he was satisfied that

the Daltons' board had given a truthful account of their own motivation in the matter, and had acted in good faith in the belief that any other course might have imperilled the receipt of what they regarded as the best available offer for their shareholders. The Panel, having heard arguments and evidence of all parties, see no reason to disagree with the decision of the executive. The appeal is therefore dismissed.

21st April, 1972.