

THE TAKEOVER PANEL

Inspectors' Report on Ferguson & General Investments Limited and CST Investments Limited ("CST")

There are two immediate points on which the Panel would like to comment. One concerns the need that the Panel felt to preserve the confidentiality of its proceedings. The other concerns the different conclusions reached by the two enquiries.

Confidentiality of Panel Proceedings

The Panel is a voluntary body set up to supervise the observance of the City Code on Take-overs and Mergers by assisting those who ask for interpretation or advice as to the Code as well as by investigating alleged breaches. Much of this work depends upon the observance of a high degree of confidentiality. Many who make enquiries as to contemplated transactions, or who provide the Panel with information or documents, would be unwilling to do so, or to speak freely and frankly to the Panel, if they thought that, otherwise than under due process of law or with their agreement, what they had said or provided might be handed over to some outside body. If all who have given evidence to the Panel agree that their evidence should be made available to Inspectors, the Panel does so; but that was not true in this case. In these circumstances the Panel concluded, and it was supported in its view by leading counsel and by its solicitors, that to accede to the Inspectors' requests for assistance on the basis proposed by them would violate its duty of confidence and endanger its future standing and authority. At the same time, however, it remained entirely ready to comply with any request to provide information made by the Inspectors under their statutory powers, if indeed they considered they had any legal right to the information required. The Inspectors were assured that no merely technical objections would be taken on any application to the

court. In the event, the Inspectors did not attempt to make any such application.

Differing Conclusions

Where, as in the case of the Panel's enquiry into the offer for Grendon Trust Limited by CST, the Panel has held an enquiry and issued findings, the Panel would, of course, recognise the Inspectors' right, if the results of their investigation diverge from those of the Panel, to draw attention to evidence and material which was before them and not before the Panel, and to differences in the powers and procedures applicable to their investigation as compared with those applicable to the Panel's operations.

That the Inspectors have reached conclusions differing from those of the Panel is, of course, a matter about which the Panel has no possible complaint. It might be surprising if, after so long and detailed an enquiry, the Inspectors were not able to uncover some matters not disclosed to the Panel. Indeed, the difficulty of the case is illustrated by the various issues on which the Inspectors have not found any hard evidence and have had to reach conclusions on evidence admitting of more than one interpretation. It would seem unrealistic to imply, as Messrs. Jackson and Young sometimes appear to do, that the Panel with its limited sphere of interest, time and power is at fault for not unravelling what it took the Inspectors, with the full panoply of legal powers available to them, nearly four years to discover.

14th May 1979