

THE TAKEOVER PANEL

Edgar Allen, Balfour Limited ("Edgar Allen")

Bid by Aurora Holdings Limited ("Aurora")

The Panel has, in conjunction with The Stock Exchange, carried out an investigation into dealings which took place in Edgar Allen shares following the announcement of a bid by Aurora on 4th June 1979. The investigation arose from suggestions made on behalf of Edgar Allen that some of the shares totalling about 25% of Edgar Allen's ordinary capital which were purchased by or on behalf of Aurora in the two hours or so following the bid announcement, might have been held by people who had "warehoused" them. The Panel understands warehousing in this context to mean that certain people are actively encouraged by a bidder to go into the market to acquire shares in the expectation that this could facilitate an eventual bid. Such an activity would of course be quite improper and in breach of the secrecy and insider trading rules of the Code.

Aurora has strongly refuted any suggestion of impropriety on its part.

The suggestion of warehousing appeared to have three main foundations:

- 1) That for a bidder to persuade holders to part with shares in the immediate aftermath of a bid announcement to the extent achieved by Aurora must point to the existence of some pre-arrangement between Aurora and some of the sellers.
- 2) That in the six months or so leading up to the bid it was evident that clients of certain brokers were consistent buyers of shares, whereas a number of other brokers were recommending the shares as a "sell" on fundamental investment grounds.

- 3) That in the three months or so before the bid a number of people had talked to Edgar Allen or its advisers about the imminence of a bid.

Insofar as the first two points can be said to suggest any impropriety they are entirely circumstantial and, in isolation, fall well short of what could possibly be accepted as evidence by the Panel. In any event, the Panel cannot agree that the first point is a valid one. In recent months there have been other conspicuous examples of bidders launching successful market raids and a common feature, as in this case, has been the declaration by the bidder that the stated bid terms are its final price. The sellers in the market on 4th June included a large number of blue chip institutional names; an impartial firm of brokers, which specialises in this sector, has told the Panel that it advised its clients to sell to avoid the usual uncertainties and delays associated with a bid. A sale would of course deprive the holder of the benefit of a counter-bid but nonetheless in its view the balance of advantage lay in an immediate sale.

Before turning to the second point it is relevant to consider what advantage Aurora might expect to gain from encouraging the buying of Edgar Allen shares. So far as the Panel has been able to ascertain, no broker who might have been warehousing purchased shares in such a way as to conceal the scope of its or its clients' activities. The presence of buyers in this way undoubtedly supported the price at a level higher than would otherwise have been the case. Ordinarily an offeror would hope to demonstrate that his offer represented an attractive bid premium over the previous market price. It would not be to his advantage in that respect to cause the market price to be supported by heavy third party buying in the period before the announcement of his offer. In this case the offer price was in the event pitched close to the market price. It is also difficult to see how Aurora would gain any real advantage by arranging third party buying unless one assumes that willing sellers in the market at lower prices would tend to resist (if they had retained their shares) a full scale offer at a higher price.

It has been pointed out to the Panel that Edgar Allen had been the subject of bid rumour for some considerable time. Rumour and speculation seemed also to have been stimulated by the local character of the industry and the proximity of its principal members. Newspaper stories had linked Edgar Allen's name with other companies, including Aurora. As well as brokers recommending a sale of the shares, there were counter recommendations to purchase on recovery prospects with the added possibility of a bid. The Board of Edgar Allen has itself said that the Aurora bid should be rejected. It is difficult for the Panel to accept that the elements in the market which took cognizance of the rumours which abounded, followed newspaper and other recommendations and bought at below the level the Edgar Allen Board now says should be rejected, should be assumed to have acted in an eccentric let alone a sinister way. The firm of brokers which was a particularly active purchaser in the period before the bid has denied that it was in any way encouraged by Aurora.

On the third point concerning approaches by a number of people talking with varying degrees of authority (and, as it turns out, inaccuracy) about the timing and level of a bid, the Panel is unable to accept that this is evidence of more than what was acknowledged to exist, namely a highly speculative situation. None of the people identified in this way said that he was a direct recipient of information from an authoritative source within Aurora. It is of course impossible to state with total certainty that no leak occurred from within Aurora's ranks, but in all the circumstances the Panel could not reasonably arrive at a conclusion that there was any inadequacy on the part of Aurora's security arrangements.

The Panel therefore finds no evidence of any failure under the Code on the part of Aurora, and the Panel and The Stock Exchange have closed their enquiries.

22nd June 1979