

THE TAKEOVER PANEL

JOHN CROWTHER GROUP PLC ("CROWTHER")

The Panel executive has reviewed substantial documentary evidence from Crowther, on the background to, and rationale for the granting by Crowther of options to subscribe for new Crowther shares to two of its directors two days before an announcement that the company was in talks which might lead to an offer.

The Panel executive requested this information to enable it to establish whether the granting of these options had breached either Rule 4 or Rule 21 of The City Code on Take-overs and Mergers ("the Code").

Rule 4 of the Code concerns dealings before and during an offer and is designed to prevent dealings by those in possession of price sensitive information concerning offers.

Rule 21 of the Code is designed to stop the board of an offeree taking certain actions where these could be unfair to an offeror. In this regard Rule 21 states:-

"During the course of an offer, or even before the date of the offer if the board of the offeree company has reason to believe that a bona fide offer might be imminent, the board must not, except in pursuance of a contract entered into earlier, without the approval of the shareholders in general meeting:-

...

(b) issue or grant options in respect of any unissued shares;

..."

The evidence supplied indicates that, in the case of Mr David Suddens, a commitment to grant him options, to the value actually granted to him on 16 March 1988 was entered into by Crowther in September 1987 as part of his terms of recruitment. In the case of Mr Trevor Barker, the evidence supplied shows that he became entitled to the options he received on 16 March 1988 under the terms of his employment contract following the increase in his remuneration approved by the Board of Crowther in November 1987. Thus Crowther was committed to issue the options in both cases. To have done so prior to the announcement of Crowther's results on 2 March 1988 would have breached the provisions of the Stock Exchange's Directors Model Code; the first subsequent full board meeting was on 16 March 1988.

As cited above, Rule 21 expressly exempts action by offeree companies "in pursuance of contracts entered into earlier" than when the board had reason to believe that a bona fide offer might be imminent. The Panel executive accordingly believes the grant of options to Mr Suddens and Mr Barker should not be regarded as a breach of that Rule. For the same reason it does not believe that the grant can be said to be a breach of Rule 4.

In the case of Mr Suddens a formal contract, as described in Rule 21, existed, the existence of a "formal contract" in the case of Mr Barker is less clear. Because this area is one of obvious sensitivity the Panel executive believes that, in these circumstances, the proper course of action for the board of Crowther would have been for them, through their advisers, to consult the Panel in advance.

24 May 1988