

THE TAKEOVER PANEL

WILLIAMS HOLDINGS PLC ("WILLIAMS")

RACAL ELECTRONICS Plc ("RACAL")

The Panel met on 25 November 1991 to hear an appeal by Williams, advised by Morgan Grenfell & Co Limited, against a ruling by the Executive that, in view of the fact that the Secretary of State for Trade and Industry has announced that the offer by Williams for Racal would be referred to the Monopolies and Mergers Commission ("MMC") unless suitable undertakings were given by Williams, "day 39" of the offer should be extended until this matter had been resolved, with consequential extensions to "day 46" and "day 60", provided that if this resulted in an unreasonable delay the offer timetable would be reviewed again.

Background

On 17 September, Williams announced a unilateral securities exchange offer (the "Offer") for Racal. The offer document was posted on 20 September. The original timetable for the Offer, therefore, so far as relevant, was as follows:

"Day 39"	29 October
"Day 46"	5 November
"Day 60"	19 November

New provisions were introduced into the Fair Trading Act 1973 by section 147 of the Companies Act 1989 to enable the Secretary of State to accept undertakings from the parties to a merger to divest or separate part of the merged business as an alternative to referring the merger to the MMC for full investigation. In recognition of the competition issues raised by its proposed acquisition of Racal, Williams indicated in its offer announcement and in the offer document its preparedness to make certain disposals with a view to resolving these issues.

Rule 31.9 of the Code requires that all significant information should be published by an offeree company by the 39th day of an offer. In this case it was clear in the latter part of October that the decision whether the Offer would be referred to the MMC would not be announced by 29 October.

On 21 October, N M Rothschild & Sons Limited and Goldman Sachs International Limited, on behalf of Racal, approached the Executive and requested an extension to the timetable so as to ensure that "day 39" of the Offer would be deemed to occur after the MMC reference decision. The Executive ruled, following discussions with the advisers to both parties, that "day 39" would be deemed to be the second day after the announcement of a decision that the offer would not be referred to the MMC and the Executive released a statement to this effect on 25 October. In view of the statements made by Williams in the offer announcement and in the offer document it was recognised that the Offer might not be the subject of a straightforward referral to the MMC, or a clearance, and that the Secretary of State might decide not to refer the Offer if certain undertakings were given by Williams. Because of the potential complications which could arise through such a requirement to agree satisfactory undertakings and the unknown additional time delay which could result, the Executive agreed with the advisers to both parties, and stated in the announcement of 25 October, that if the Secretary of State

announced that the offer would be referred unless certain undertakings were given, the Panel would "review the matter of the offer timetable at that time".

On 20 November the Secretary of State announced that the Offer would be referred to the MMC unless suitable undertakings were offered by Williams. He made it clear that the adverse effects giving rise to concern related to the supply of locks in the United Kingdom and stated that he had asked the Director General of Fair Trading ("DGFT") to open negotiations immediately with Williams with a view to obtaining suitable undertakings.

The Secretary of State went on to express the hope that interested third parties would make their views known to the DGFT on what undertakings would be appropriate to remedy the adverse effects and indicated that such representations should be made in writing to the Office of Fair Trading ("OFT") by 29 November.

Immediately following the Secretary of State's announcement the Executive invited the advisers to Williams and Racal to submit their views to it on the matter of the offer timetable and also discussed the implications of the announcement with representatives of the OFT.

The Executive concluded that the offer timetable should be further extended until the matter of the undertakings had been resolved and it was clear that the Offer would not be referred to the MMC. This conclusion was reached with the proviso that if there was unreasonable delay the offer timetable would be reviewed again.

At the hearing it was contended on Williams' behalf that, in reality, it was now plain that undertakings would be offered by Williams which would be acceptable to the Secretary of State, that accordingly the Offer would not be referred to the MMC, and that there was therefore no justification for further

extending the offer timetable. It was further contended that any further extension of the timetable would bring the Offer into the Christmas period, and that Williams might be prejudiced in implementing the compulsory purchase provisions contained in sections 428 to 430 of the Companies Act 1985.

The Panel agrees with the conclusion of the Executive. The Secretary of state has invited interested third parties to make their views known to the DGFT on what undertakings would be appropriate, and to make them by 29 November. Until the Secretary of State has announced that he is satisfied, and that there will be no reference of the Offer to the MMC, there must be uncertainty; and until then it is unreasonable to expect Racal to disclose information which might not otherwise be disclosed.

It is anticipated that the Secretary of State will announce his decision soon after 29 November. On that basis, unless and until the Secretary of State announces that the Offer will not be referred to the MMC, the Panel is of the view that the offer timetable should continue to be suspended. If, however, an announcement is delayed, then the Executive will further review the offer timetable.

The Panel accordingly rules (1) that if, on or before 4 December, the Secretary of State announces that the offer will not be referred to the MMC, "day 39" will be deemed to be the second day after such announcement; but (2) that if no such announcement is made, the Executive will further review the offer timetable.

25 November 1991