

THE TAKEOVER PANEL

CATER ALLEN HOLDINGS PLC

The Panel met on 1 July 1997 to consider an appeal by Dresdner Kleinwort Benson Limited ("Kleinworts") against a ruling of the Executive that Kleinworts would not be an appropriate person under Note 1 to Rule 3.3 to give independent advice to Cater Allen Holdings PLC ("Cater Allen"), due to Kleinworts' advisory relationship with the offeror, Abbey National plc ("Abbey National"). The Panel upheld the ruling of the Executive.

BACKGROUND

On 26 June Abbey National announced a recommended cash offer for Cater Allen. The Executive had previously ruled that, despite the wish of the board of Cater Allen that Kleinworts be permitted to act, Kleinworts was not an appropriate person to provide the independent advice required by Rule 3.1 of the City Code due to its relationship with Abbey National.

The following facts were before the Executive. Kleinworts had acted and had continued to act as Abbey National's financial advisers since the 1980s, including in particular acting as sponsor to its flotation in 1989, although other banks had from time to time provided corporate finance advice to Abbey National in the years following. Furthermore, a person who was until recently a senior executive of Kleinworts, has been a non-executive director of Abbey National for a number of years. Finally, Dresdner Kleinwort Benson Securities Limited had acted until last year as brokers to Abbey National following its flotation.

CODE ISSUE

The Code issue was whether or not Kleinworts was an appropriate person to give independent advice to the Cater Allen board in relation to the bid by Abbey National.

Rule 3.1 states that:

"The board of the offeree company must obtain competent independent advice on any offer and the substance of such advice must be made known to its shareholders."

Rule 3.3 states that:

"The Panel will not regard as an appropriate person to give independent advice a person who is in the same group as the financial or other professional adviser (including a stockbroker) to an offeror or who has a significant interest in or financial connection with either an offeror or the offeree company of such a kind as to create a conflict of interest. . ."

Rule 3.3 is amplified in Note 1 to the Rule as follows:

"The Rule requires the offeree company's adviser to have a sufficient degree of independence from the offeror to ensure that advice given is properly objective. Accordingly, in certain circumstances it may not be appropriate for a person who has had a recent advisory relationship with an offeror to give advice to the offeree company. In such cases, the Panel should be consulted. The views of the board of the offeree company will be an important factor."

THE PANEL'S DECISION

In the view of the Panel it is important that the board of an offeree company should obtain advice from a person who is in fact, and who would widely be regarded as

being, independent of the offeror. That independence must be such that, viewed objectively, the advice given could not reasonably be thought to have been influenced by any corporate finance advisory relationship which the person may have had, or continues to have, with the offeror.

Each case must, however, be considered and determined on its own particular facts. In the present case, Kleinworts acknowledges that it has advised Abbey National widely on financial matters for a number of years. In the Panel's view, Kleinworts has a close, recent and continuing advisory relationship with the offeror. Kleinworts is not the offeror's only adviser and no member of the team engaged in this particular matter has advised Abbey National. Nevertheless, Kleinworts' relationship with the offeror is such that, viewed in the round, Kleinworts is an inappropriate person to provide independent advice under Rule 3.1. There is no reason, however, why Kleinworts should not continue to advise the Cater Allen, alongside the Rule 3.1 adviser, should this be the wish of the board.

The Panel would wish to make it plain that its decision is in no sense a criticism of Kleinworts. On the contrary, it was Kleinworts who very properly raised this issue for consideration by the Executive and did so as at the earliest practical opportunity.

The appeal is accordingly dismissed.

1 July 1997