

THE TAKEOVER PANEL

Vantona Group Limited ("Vantona")

J. Compton, Sons & Webb (Holdings) Limited ("Compton")

Rule 16 of the City Code lays down certain detailed requirements for presenting and reporting on profit forecasts appearing in documents addressed to shareholders in connection with offers. Furthermore, Practice Note No. 3 says that where a forecast is already in existence "it may well be of material importance to repeat it in the document (having it examined and reported on in accordance with this Rule), since, even if it is not referred to in the document, it is likely to be mentioned by financial commentators and thus made an important factor in shareholders' decisions".

Vantona's interim statement for the six months ended 2nd June, 1978, published on 3rd August, 1978, contained remarks that constituted a profit forecast. When, on 10th October Vantona announced an offer for Compton, the Panel, following its normal practice, ascertained that a forecast had been made that appeared likely to be of material significance to Compton shareholders in assessing the share consideration offered by Vantona. Accordingly the Panel informed Vantona's advisers, N.M. Rothschild & Sons Limited, that the forecast should be repeated and reported on in the offer document. Although Vantona informed the Panel of the difficulties it would experience in complying timeously with these requirements, such difficulties are irrelevant in deciding whether offeree shareholders should be deprived of the protection afforded by Rule 16 of the Code. Had it not been for the intervention of the Board of Compton and its advisers, Hill Samuel & Co Limited ("Hill Samuel"), therefore, the Panel would have required Vantona to follow the normal procedures.

Having regard to a number of factors identified in the offer document, and in particular to the publication of Vantona's results for the ten months ended 1st October, 1978 as shown by its unaudited management accounts set out on page 15 of the document, Hill Samuel and the Board of Compton have represented to the Panel that the statement regarding Vantona's profits for the current year made in Vantona's interim report to shareholders published in August is no longer of material importance to the consideration by shareholders of Compton of the share offer. On this basis the Panel has accepted that the forecast need not be repeated and reported on in the offer document.

While the Panel does not wish to deter directors of public companies from giving their shareholders some indication of current and future trading, they must accept that these projections will almost certainly have to be exposed to the disciplines of the Code if their company should subsequently be subject to a take-over or merger proposal or should itself propose a take-over or merger transaction and the consideration includes an equity element. The circumstances in the Vantona case were unusual and the Panel will find it extremely difficult in future to accept that forecasts that are on the public record and have influenced the market have no material importance in relation to subsequently announced take-over transactions.

The Panel takes this opportunity to point out that there is no automatic right to "withdraw" a forecast previously made outside a bid context. The purported withdrawal of a forecast would not in fact achieve the desired effect unless it were replaced by an up to date commentary on the trading period in question, in which case the likelihood would be that this would itself be a forecast needing to be dealt with under the procedures laid down in the Code. Very occasionally the Panel may be faced with representations to the effect that because of the uncertainties involved it is not possible for a forecast previously made to be reported on by accountants and financial advisers as the Code requires, nor replaced by an up to date commentary. In these circumstances the Panel would insist on shareholders being given a full explanation as to why the requirements of the Code were not capable of being met. Such a situation might

seriously bring into question whether or not there was a sufficient basis for making the prediction in the first instance.

An adviser on commencing an assignment should invariably check whether or not his client has a forecast on the record so that the reporting procedures can be set in train with the minimum of delay.

1st November 1978