

# THE TAKEOVER PANEL

## GUINNESS PLC ("GUINNESS")

## THE DISTILLERS COMPANY PLC ("DISTILLERS")

In the morning of 20 February Guinness announced a new recommended offer, including a cash alternative, for Distillers. Several statements appeared in the press on that day and the next day affirming that the terms of the new offer by Guinness for Distillers would not result, in the event of it being successful, in a dilution of the earnings of Guinness.

"Guinness today contended that the improved offer would not effect any dilution in its own earnings as critics have claimed".

The Standard, 20 February 1986

"Guinness yesterday maintained it will not suffer earnings dilution".

Daily Telegraph, 21 February 1986

"Guinness argues that if it wins on the present terms there will be no fall in the earnings per share of the Guinness capital. . . ."

Glasgow Herald, 21 February 1986

The Panel investigated the origins of these reports and has now established that on 20 February 1986, at a press conference given by Guinness and attended, among others, by Guinness' financial advisers Morgan Grenfell & Co Limited, the following statement was made by a senior executive of Guinness:

"Although we are not making a profit forecast, we anticipate, on the basis of public information, that the earnings per share of the merged entity in 1986 will be at least as great as the earnings per share of Guinness on its own would have been and that there will be no dilution."

The Panel considers that this statement, made by a senior executive of the offeror, is clearly a profit forecast for the purposes of Rule 28 of the Code notwithstanding the denial of this in the statement itself, and indeed this is reflected in the above newspaper quotations. Rule 28 requires that all profit forecasts made in connection with an offer are reported on by the relevant auditors or consultant accountants and financial adviser. The Panel therefore requested Guinness and Morgan Grenfell to arrange for this forecast to be reported on or formally withdraw it from the public record.

Guinness has undertaken to have this forecast reported on in respect of the financial period to 31 March 1986 in the manner required by the Code.

The Panel wishes to make the following comment. If a public statement is made which includes a profit forecast (unless it is immediately publicly withdrawn) the existence of this forecast should be acknowledged and the forecast reported on. The period of uncertainty between 20 February and today relating to the Guinness forecast was unfair to the other parties involved in the take-over.

It is worth repeating the relevant wording of the Code that relates to dealings with the press.

Extract from Note 2 on Rule 19

"Advisers should ensure at an early stage that directors and officials of companies are warned that they must consider carefully the Code implications of what they say when talking to journalists. It is very difficult after publication to

alter an impression given or a view or remark attributed to a particular person. Control of any possible abuse lies largely with the person being interviewed. In appropriate circumstances the Panel may require a statement of retraction. Particular areas of sensitivity on which comment should be avoided include future profits and prospects, asset values and the likelihood of the revision of an offer."

19 March 1986