

# THE TAKEOVER PANEL

## ENTERPRISE OIL PLC ("ENTERPRISE") OFFER FOR LASMO PLC ("LASMO")

In a document issued on 25 May 1994, LASMO analysed the accounting treatment that it believed Enterprise had adopted in respect of two purchases. These were the acquisition of an interest in the Beryl Properties in 1988 and the acquisition of certain production and exploration interests of Texas Eastern Corporation in 1989. In presenting its analysis, which was fully supported by its advisers, LASMO made, inter alia, the following statements in its document:-

"Enterprise's accounting treatment for certain major acquisitions is, LASMO believes, in breach of UK Accounting Standards";

"Both UK and US Accounting Standards require asset purchases of this type to be recorded at the prices paid for them".

Finally, in its conclusion to this analysis, LASMO stated under the heading "Is this treatment permitted?" that it "believes Enterprise's accounting treatment for these purchases contravenes UK Accounting Standards".

In the view of the Panel Executive, neither the Executive nor the Panel itself is in a position to determine whether UK Accounting Standards have been complied with. That is properly a matter for other bodies. Accordingly, the Executive offers no opinion on the correctness or otherwise of Enterprise's accounting treatment of the acquisitions in question.

There is no dispute between the parties that it is permissible to raise questions about the accounting treatment of another party. LASMO and its advisers are therefore entitled to address this issue by raising pertinent questions which shareholders are invited to consider. However, Enterprise rejects the conclusion reached by LASMO and contends that LASMO has not complied with General Principles 5 and 6 of the Code.

General Principles 5 and 6, which are given more detailed effect in Rules 19.1, 19.2 and 19.3, in essence require that documents should be prepared with the highest standards of care and accuracy by the relevant companies and their advisers, and that care must be taken not to make statements which may mislead shareholders or the market. These General Principles and Rules are attached as an Appendix to this statement.

The Executive accepts that in a contested offer there is inevitably a debate between parties in which shareholders' attention is drawn to the implications of particular information or analysis. In general, the Executive will not seek to interfere in the dynamics of such a debate, considering that it is for the parties to state their case and to rebut arguments with which they disagree. Nevertheless, while it may be acceptable to express views in strong terms, the Executive also believes that tendentious and excessive claims and allegations should be avoided.

The Executive has discussed the precise points (relating to the acquisitions mentioned above), which are extremely complex, with both Enterprise and LASMO and their respective advisers.

The Executive, as stated above, cannot express an opinion in relation to the accounting treatment adopted by Enterprise and LASMO's view of such treatment. However, the Executive believes on the basis of its discussions with and information

provided by both parties that, given the seriousness of the allegation that Enterprise's accounts (which received unqualified audit opinions throughout the relevant period) contravened UK Accounting Standards, Lasmo should have noted the possibility of alternative views or its conclusion should have been expressed in less definitive terms. This means that the conclusion in question, coupled with the other statements quoted above, is stronger than the Executive considers acceptable in the circumstances. Consequently, the Executive has requested that LASMO refrain from repeating the conclusion in these terms.

The Executive accepts that LASMO believes it complied fully with the Code in the preparation of the document. Further, if the application of the General Principles is considered against this background of uncertainty, it is possible to argue that the conclusion may have been misleading but, in the context of the document as a whole, the Executive cannot be satisfied that this is the case.

In making this statement, the Executive's intention is to clarify its views on the limits which parties to takeovers should observe in making statements in documents. It is content that critical analyses may be made available to shareholders to enable them to assess the arguments but wishes to make it clear that excessive or emotive claims should normally be avoided in order to ensure a fair presentation to shareholders.

3 June 1994

## **APPENDIX**

### **GENERAL PRINCIPLES**

5. Any document or advertisement addressed to shareholders containing information or advice from an offeror or the board of the offeree company or their respective advisers must, as is the case with a prospectus, be prepared with the highest standards of care and accuracy.

6. All parties to an offer must use every endeavour to prevent the creation of a false market in the securities of an offeror or the offeree company. Parties involved in offers must take care that statements are not made which may mislead shareholders or the market.

## **SECTION I. CONDUCT DURING THE OFFER**

### **RULE 19. INFORMATION**

#### **19.1 STANDARDS OF CARE**

Each document or advertisement issued, or statement made, during the course of an offer must, as is the case with a prospectus, satisfy the highest standards of accuracy and the information given must be adequately and fairly presented. This applies whether it is issued by the company direct or by an adviser on its behalf.

#### **19.2 RESPONSIBILITY**

- (a) Each document issued to shareholders or advertisement published in connection with an offer must state that the directors of the offeror and/or, where appropriate, the offeree company accept responsibility for the information contained in the document or advertisement and that, to the best of their knowledge and belief (having taken all reasonable care to ensure that such is the case), the information contained in the document or advertisement is in accordance with the facts and, where appropriate, that it does not omit anything likely to affect the import of such information. This Rule does not apply to advertisements falling within paragraphs (i), (ii) or (viii) of Rule 19.4 and advertisements which only contain information already published in a circular which included the statement required by this Rule.
- (b) If it is proposed that any director should be excluded from such a statement, the Panel's consent is required. Such consent is given only in exceptional circumstances and in such cases the omission and the reasons for it must be stated in the document or advertisement.

#### **19.3 UNACCEPTABLE STATEMENTS**

Parties to an offer or potential offer and their advisers must take care not to issue statements which, while not factually inaccurate, may mislead shareholders and the market or may create uncertainty. In particular, an offeror must not make a statement to the effect that it may improve its offer without committing itself to doing so and specifying the improvement.