

# THE TAKEOVER PANEL

**RENTOKIL GROUP PLC ("RENTOKIL")**

**BET PUBLIC LIMITED COMPANY ("BET")**

At 12.36pm on 15 February, Rentokil announced that it had approached BET with a view to discussing a recommended offer and on 16 February it announced the terms of a unilateral offer for BET. The Panel Executive has examined the events prior to these announcements, including the rising BET share price, the significantly increased volume of dealing in the shares of BET during the early part of the afternoon of 14 and late morning of 15 February and the attendant speculation that an offer for BET was to be launched, with Rentokil's name mentioned as the possible bidder. The Executive has concluded that Lazard Brothers & Co Limited ("Lazards"), the advisers to Rentokil, in these circumstances, should have been more alert to the need to consult the Executive under Rule 2 of the Code.

Rule 2.3 of the Code provides:

"Before the board of the offeree company is approached, the responsibility for making an announcement can lie only with the offeror. The offeror should, therefore, keep a close watch on the offeree company's share price for any signs of untoward movement...".

Rule 2.2 of the Code provides that an announcement is required, inter alia:

"(d) when, before an approach has been made, the offeree company is the subject of rumour and speculation or there is an untoward movement in its share price and there are reasonable grounds for concluding that it is the potential offeror's actions (whether through inadequate security, purchasing of offeree company shares or otherwise) which have led to the situation".

The Note on Rule 2.2 provides:

"A movement of approximately 10% should be regarded as untoward for the purposes of Rule 2.2(c),(d) and (f). When there is such a movement or the offeree company is the subject of rumour and speculation, the Panel should be consulted if it is not proposed to make an immediate announcement".

On 14 February, the Executive noted that the share price of BET rose significantly from 141p per share at about 2.15pm to 152.5p per share by 4.13pm that day (a rise of 8.1%), although the share price did fall back to 150p by close of business. Volume of trading in BET shares was approximately six times greater that day than on the previous day. This was accompanied by market rumour linking Rentokil with BET during the afternoon. However, during the afternoon, there was only a relatively small movement in the Rentokil share price (from 366.5p to 362.5p) and the volume of trading was not significant (2.2 million shares for the day).

Rentokil had not previously discussed its intentions regarding BET with the Executive and the Executive was not consulted by Rentokil or any of its advisers during the afternoon of 14 February. However, at approximately 5.30pm that afternoon, in order to investigate the position, the Executive made contact with the finance director of Rentokil. He indicated that, in the circumstances, he wished to consult his colleagues and Lazards. The Executive, which was not given any further background information, indicated that Lazards did not need to speak to the Panel until the following morning. Lazards then arranged to meet the chief executive and finance director of Rentokil at 8.00am that morning.

At about 9.00am on 15 February, the Executive, not having heard from Lazards, contacted them and was informed that a board committee meeting of Rentokil was being held at 10.00am that morning to consider Rentokil's position in relation to BET. At the time of this conversation the share price of BET had only risen 1.5p from the closing price on the previous day and, accordingly, the Executive did not press for an immediate announcement. However, not long after 10.00am the share price rose sharply. The Executive tried to contact Lazards who were participating in the board

committee meeting. At about noon Lazards responded informing the Executive that Rentokil had decided to contact BET and to issue an announcement outlining its interest in BET. By this time the BET share price had reached a high of 163p, representing an increase of 8.6% on the day and an aggregate increase of 15.6% since early afternoon on the previous day.

In its conversations with Lazards and Rentokil on 14 and 15 February, although the Executive established Rentokil's interest in a possible bid for BET, it did not determine how advanced preparations were, or the number of parties involved in the process. However, the Executive now understands that Rentokil had been contemplating an offer for BET from time to time and, on 12 February, discussions commenced with Rentokil's brokers and its corporate bankers with a view to arranging funding for such an offer. Although Rentokil announced its interest in BET at 12.36pm on 15 February, the Executive believes that, in view of the market rumour and the fact that Rentokil was at an advanced stage of preparation for a possible offer, the Executive should have been consulted immediately such rumours commenced and before the Executive's contact at 5.30pm on 14 February. Furthermore, the Executive takes the view that as part of such consultation there is an obligation on the financial adviser to provide it with background information in order for the Executive to make a full assessment of the position. Accordingly the Executive believes Lazards did not satisfactorily fulfil its obligation to consult under Rule 2.

The Executive wishes to underline the importance of prior and full consultation with the Panel in respect of the announcement obligation under Rule 2 of the Code, particularly in the context of a possible unilateral offer. It is acknowledged that determining the time at which an announcement should be made by a potential offeror under Rule 2.2(d) is often difficult to assess. However, the Executive is not in a position to make a proper and fair judgement on such issues if it is not consulted immediately and informed of all relevant facts where circumstances arise which may result in such an announcement being required. Accordingly, the Executive considers that potential offerors and their advisers (including the stockbrokers) should not only keep a close watch on the offeree company's share price, as required by Rule 2.3, but

also monitor the available sources for any evidence of rumour and speculation. It is also incumbent on potential offerors to be prepared to make announcements of their intentions immediately should circumstances require this.

The Executive also wishes to emphasise that a requirement on a potential offeror to make an announcement of its interest under Rule 2.2(d) can, and often does, arise prior to any decision being made to proceed with such an offer, or prior to the funding needed for such an offer being finalised. The Executive takes the view that if there is rumour and speculation relating to a particular offeree company, or there is an untoward movement in its share price and there are reasonable grounds for concluding that this is as a result of the potential offeror's actions, then, even if the potential offeror has not yet decided to proceed with an offer, an announcement is required.

23 February 1996