

# THE TAKEOVER PANEL

**Rockwell International Corporation ("Rockwell") /**  
**Wilmot Breeden (Holdings) Limited ("Wilmot Breeden")**

The Panel met on 5th April 1979 to consider whether the bid made by Rockwell for the ordinary shares of Wilmot Breeden had been conducted in a manner which involved a breach of the City Code and in particular a breach of General Principle 5 relating to the creation of a false market. This came before the Panel on a reference by the Director General. Rockwell have been advised by S.G. Warburg & Co. Limited ("Warburgs") and Lazard Brothers & Co. Limited ("Lazards") and Wilmot Breeden by Morgan Grenfell & Co. Limited ("Morgan Grenfell").

On 1st December 1978, a joint announcement was made on behalf of Rockwell and Wilmot Breeden that exploratory talks were taking place concerning areas of mutual interest and that it was too soon to say whether this would lead to some form of closer association. About the same time Rockwell indicated to Wilmot Breeden that, if they were to make a bid for Wilmot Breeden, the price would be 95p per Wilmot Breeden share. The market price on 30th November was about 65p: after the announcement on 1st December it rose to about 77p.

On 14th February 1979, dealings in Wilmot Breeden shares were temporarily suspended, pending an announcement indicating that Rockwell had invited Wilmot Breeden to enter into discussions which might result in Rockwell making an offer for the share capital of Wilmot Breeden recommended by the board of the latter company. The market price rose from about 81p to about 90p.

On 13th March, Rockwell informed Warburgs that, following meetings in the United States, Wilmot Breeden were prepared to make available certain financial information. On the following day, however, Morgan Grenfell told Warburgs that, before considering whether to give the information, Wilmot Breeden wished to have an indication of the price Rockwell were prepared to offer. On Friday, 16th March, Warburgs, after consulting Rockwell and Lazards, informed Morgan Grenfell that

the price which Rockwell had in mind, on the basis of the information then available to them, was 95p per ordinary share, i.e. the same figure as in December 1978. The market price on 16th March ranged between about 95p and 106p.

Rockwell have now told the Panel that they were anxious that discussions with Wilmot Breeden should continue and that they thought that these discussions might be prejudiced by an announcement of the figure of 95p. Warburgs and Lazards, however, advised Rockwell that in their view an announcement should be made, including an indication of price, and informed Morgan Grenfell that if Wilmot Breeden were not prepared to join in a statement, Warburgs and Lazards would make one on behalf of Rockwell.

Morgan Grenfell said that Wilmot Breeden were not prepared to be associated with an announcement containing a price unless it was at a level that could be recommended for acceptance by the board. The board was scheduled to meet on Tuesday, 20th March.

There were further discussions during the weekend of 17th and 18th March and at some stage Morgan Grenfell gave Warburgs the figure of £4.3 million as the profits before taxation of Wilmot Breeden for 1978. At one point during the weekend, Warburgs suggested that there should be a temporary suspension of dealings: Morgan Grenfell were not prepared to agree and insisted that there was no false market which necessitated either an announcement or a temporary suspension.

On Monday, 19th March, Warburgs and Lazards had a meeting with the Panel executive about their proposed press announcement. The Panel executive told them that the making of the announcement was a matter for their own judgement, that the Code did not require an offer price indicated to the offeree in the course of preliminary negotiations to be published, even if that price was below the current market price of the shares, and that it should not be represented that the publication of the price was at the request of the Panel. The executive went on to say, however, that, on the basis of what had been said at the meeting, it was difficult to see that Rockwell could be faulted for putting out the announcement.

Rockwell agreed to the publication of the statement, though they do not seem to have been told by their advisers of the Panel's views and indeed appear to have been under the impression that the publication of the price was a requirement of the Code.

The statement, issued on Monday 19th March, said that, on the basis of the information currently available to Rockwell and on the basis of Rockwell's own assumptions of Wilmot Breeden's trading results in 1978 and prospects for 1979, Rockwell would be prepared to make a cash offer of 95p per share for all the issued ordinary shares of Wilmot Breeden. The statement went on to say that Rockwell had requested additional information from Wilmot Breeden regarding profits for 1978, trading prospects for 1979, capital investment plans, redundancy plans and other relevant information on the basis of which Rockwell would decide whether or not they wished to proceed and on what basis. Rockwell would not intend to proceed with an offer unless it was indicated, in terms satisfactory to Rockwell, that the proposed acquisition would not be referred to the Monopolies and Mergers Commission.

The effect of the statement was that the market price of Wilmot Breeden shares fell on 19th March from over 100p to about 91p.

Warburgs and Lazards told the Panel that they considered themselves obliged to announce the price because in their view by Monday, 19th March there was a false market in Wilmot Breeden shares in the sense that prices had risen above 100p in anticipation of a bid by Rockwell, when in fact the indications were that the bid would not exceed 95p.

On Wednesday, 21st March, the board of Wilmot Breeden announced that they considered the Rockwell proposal wholly unsatisfactory, being at a level which they could not recommend to shareholders: they gave some figures relating to their 1978 results. On the same day Warburgs and Lazards were given a draft of Wilmot Breeden's 1978 accounts. The market price rose to about 95p at this time.

Between 20th and 22nd March, representatives of Rockwell visited Wilmot Breeden establishments in France, saw French Government representatives and had talks with representatives of Renault and Peugeot, as customers of Wilmot Breeden. These talks coupled with an analysis of the 1978 estimates encouraged Rockwell to continue with their efforts to seek control of Wilmot Breeden.

Late in the afternoon of 22nd March, representatives of Warburgs, Lazards and Cazenove & Co ("Cazenove") visited the Panel executive to enquire whether information received from Wilmot Breeden about the 1978 profit figures would be held to be confidential price-sensitive information which would make it improper for Rockwell to make market

purchases of Wilmot Breeden shares. The Panel executive ruled that the information in question was not price-sensitive. The executive later telephoned Warburgs to say that they could be vulnerable to criticism if the purchases were to be at a price substantially higher than 95p. There is some dispute about the course that the telephone conversation took, but at the least the effect was to put them on notice of the anxiety felt by the executive. Warburgs did not discuss this anxiety with Rockwell, Lazards or Cazenove.

On Friday, 23rd March, Rockwell, through Warburgs, instructed Cazenove to endeavour to purchase just short of 30 per cent of the ordinary share capital of Wilmot Breeden, at 115p per share and this operation was completed in about two hours. Rockwell then indicated that, subject to confirmation in terms satisfactory to Rockwell that the proposed acquisition would not be referred to the Monopolies and Mergers Commission, they would make a general offer for the remaining shares at the same price.

The contrast between the price of 95p indicated on Monday, 19th March, which led to a depression of the market price, and the price of 115p paid on Friday, 23rd March for substantial blocks of shares was the subject of critical press comment at the time and has been the subject of anxious consideration by the Panel.

General Principle 5 provides that it must be the object of all parties to a take-over or merger transaction to use every endeavour to prevent the creation of a false market in the shares of an offeror or offeree company. A false market is not defined but is often regarded as involving an element of contrivance by a buyer or seller or by both in collusion. The Panel does not, however, necessarily regard General Principle 5 as restricted in this way and would consider that parties to take-over transactions should have regard to the market consequences of their actions, if some step resulted in a market price which was manifestly unrealistic.

There are, however, other fundamental considerations that have to be given weight in this difficult area. Subject to limitations designed to meet special situations, a bidder should be free to fix his opening bid and to revise his offer upwards without having to justify his action at any stage. It is also the Panel's policy to encourage public announcements about the intentions of a potential offeror so as to lessen rumour and speculation. Parties tend to be too slow in making announcements and the Panel has repeatedly said so. At the same time, the need for early publicity should not be pushed to the

point where it puts in jeopardy useful confidential discussions between a potential offeror and a potential offeree. These discussions are often an essential feature of a bid and should not be discouraged by requirements involving a premature disclosure of information. In particular, if a figure for a possible offer is mentioned on a confidential basis, there is no requirement that this figure should be immediately disclosed publicly.

Applying these considerations to the present case, the Panel wishes in the first place to say that it has no fault to find in Rockwell's conduct and does not wish to take any action that would operate to the detriment of that company in its present offer for Wilmot Breeden. Rockwell were obviously entitled to open their discussions with Wilmot Breeden at the lower end of their negotiating stance on price and to continue with that figure. It is conceivable that if the market generally had turned down, an offer at 95p could have had some chance of success. Rockwell were also entitled, even at short notice, to raise their figure substantially in the light of a later appreciation of the value of Wilmot Breeden to them and of Cazenove's estimate of the price necessary to secure a substantial block of shares as a launching pad for a bid. For the following reasons and in the light of subsequent events, the Panel feels less happy about some aspects of Warburgs' and Lazards' share in the course of events. Warburgs told the Panel that it was the intention, in issuing the public statement of 19th March which mentioned the price of 95p, to depress the market price which was regarded as too high. No doubt, if the market generally had turned down and if Rockwell had not decided that they should make an offer at a higher figure, things would have looked different. Nevertheless, the announcement of the price was against the real wishes of Rockwell and there was every indication that it would sour relations with Wilmot Breeden; perhaps if Rockwell had appreciated that there was no Code requirement to make the announcement their wishes would have prevailed. The announcement was somewhat equivocal about the circumstances in which an offer at 95p might be made and otherwise added little of substance to what had already been publicly announced. The figure was likely to be below the figure of an eventual offer. There would have been some advantage in waiting to see what transpired at the Wilmot Breeden board meeting on 20th March and perhaps also in waiting for the outcome of the important meetings in France which were about to take place and which in the event contributed substantially to Rockwell's reappraisal of Wilmot Breeden's value.

Because so much depends on hindsight, the Panel hesitates to describe Warburgs' and Lazards' action on 19th March as an error of judgement, but in the light of what subsequently happened it certainly proved unfortunate. Great care is needed in operations designed to affect the market, and in a clearer case the Panel would not hesitate to invoke General Principle 5.

As regards the later events, culminating in the purchase of shares at 115p, the Panel considers that, having been warned over the telephone about the Panel executive's unease, Warburgs should have gone back to the executive to ask for a clearance once the operation as a whole had been decided upon.

11th April 1979