

# THE TAKEOVER PANEL

## TRANSCOMM PLC ("TRANSCOMM")

This is a statement of criticism of Nabarro Wells & Co. Limited ("Nabarro Wells"), financial advisers to Transcomm, for its failure to consult the Panel Executive as required by Note 1 on Rule 2.2 of the Code.

In the early afternoon of Monday 15 December 2003, Transcomm announced that it was in talks that might lead to an offer for the company and that it was unlikely that such an offer would be in excess of 15.5p per share. Subsequently, on 23 January 2004, British Telecommunications plc ("BT") announced a recommended cash offer for Transcomm of 15.5p per share. The offer document was posted on 7 February.

The Executive first became aware of the fact that Transcomm was in offer discussions when the announcement was released on 15 December. At that time, the mid-market Transcomm share price was 14.5p. Transcomm had, however, been in discussions with BT since the middle of October. In the period between 15 October (when Nabarro Wells first became aware of the possibility of an offer) and 5 December, the Transcomm share price fluctuated between 11p and 13p per share. On 9 December, when BT made its first indicative offer of 14.5p per share, the Transcomm share price rose 1.25p, on a higher than usual volume of shares traded, to close at 12.25p (a rise of 11%). The price was unchanged over the next two days, but it rose a further 10% on 12 December to close at 13.5p. Over the weekend of 13 and 14 December, BT and Transcomm reached agreement on a recommended offer at 15.5p per share. In the 4½ trading days prior to the release of the offer talks announcement on 15 December, the Transcomm share price rose from 11p to 14.5p, a rise of approximately 32%.

Rule 2.2 states that an announcement is required, inter alia:

"(c) when, following an approach to the offeree company, the offeree company is the subject of rumour and speculation or there is an untoward movement in its share price;"

Note 1 on Rule 2.2 provides that:

"1. Panel to be consulted

Whether or not a movement in the share price of a potential offeree company is untoward for the purposes of Rule 2.2(c) ..... is a matter for the Panel to determine. The question will be considered in the light of all relevant facts and not solely by reference to the absolute percentage movement in the price. Facts which may be considered to be relevant in determining whether a price movement is untoward ..... include general market and sector movements, publicly available information relating to the company, trading activity in the company's securities and the time period over which the price movement has occurred. This list is purely illustrative and the Panel will take account of such other factors as it considers appropriate. The percentage thresholds specified below in respect of price movements relate solely to the latest point at which consultation with the Panel is required; consultation will not necessarily lead to a requirement to make an announcement.

In the case of Rule 2.2(c), unless an immediate announcement is to be made, the Panel should be consulted at the latest when the offeree company becomes the subject of any rumour and speculation or where there is a price movement of 10% or more above the lowest share price since the time of the approach. An abrupt rise of a smaller percentage (for example, a rise of 5% in the course of a single day) could also be regarded as untoward and accordingly the Panel should be consulted in such circumstances."

Rule 2.3 allocates the responsibility for making an announcement and states that:

"Following an approach to the board of the offeree company which may or may not lead to an offer, the primary responsibility for making an

announcement will normally rest with the board of the offeree company which must, therefore, keep a close watch on its share price."

The Panel regards financial advisers as being responsible for ensuring compliance with Rule 2 and, accordingly, the responsibility in this case rested with Nabarro Wells. As the Code makes clear, in the circumstances specified in Note 1 on Rule 2.2, it is not acceptable for advisers to determine that no announcement should be made without consulting the Executive.

Nabarro Wells has informed the Executive that it was aware of the movements in the Transcomm share price and that it concluded that no announcement was required before 15 December. Nabarro Wells reached this conclusion on the basis of a number of factors, including the past volatility of the Transcomm share price and the fact that there was no speculation about an offer for Transcomm in the media.

Nabarro Wells' failure to consult the Executive between 9 December and 15 December constitutes a serious breach of Note 1 on Rule 2.2. Nabarro Wells also failed to consult the Executive as it should have done about movements in the Transcomm share price at earlier stages following the commencement of offer talks with BT. The Executive recently warned Nabarro Wells about compliance with Note 1 on Rule 2.2 and the need to consult the Executive in connection with a separate matter. This failure to comply with Note 1 on Rule 2.2 is therefore particularly regrettable. Nabarro Wells is accordingly criticised for failing to consult the Executive in relation to this latest case.

The Executive wishes to emphasise the importance which the Panel attaches to Rule 2.2 and to the making of timely announcements. Failure to comply with Rule 2.2 and with the consultation obligation contained in Note 1 could lead to a false market developing in a company's shares. Accordingly, companies and their advisers should always consult the Executive in the circumstances set out in Note 1 on Rule 2.2 or if they are in any doubt as to the action they should take.

2 March 2004