

THE TAKEOVER PANEL

STATEMENT OF THE APPEAL COMMITTEE OF THE PANEL ON TAKE-OVERS AND MERGERS

Potter Partners appealed to the Appeal Committee against the publication of the attached Statement.

The Appeal Committee, presided over by Lord Shawcross in the absence abroad of Sir Henry Fisher, gave careful consideration to the representations made, but concluded that the appeal should be dismissed and the Statement published in the form settled by the Panel.

26 March 1982

ASSOCIATED COMMUNICATIONS CORPORATION PLC ("ACC")

The Panel met on 15 and 19 March to consider a submission by the Panel executive that breaches of the City Code on Take-overs and Mergers had occurred in the course of dealings in the London market over the period 2-5 March. These transactions were made in the non-voting "A" Ordinary stock units in ACC by TVW Enterprises Limited ("TVW"), an Australian company dealing through Potter Partners who in turn dealt through T C Coombs & Co, at a time when a variety of bids for ACC were in existence. These bids included two made by the Bell Group Limited ("Bell"), another Australian company, the price of the higher of these two bids being 85p per stock unit. The transactions in question were the following:-

<u>Date</u>	<u>Number of Stock Units</u>		<u>Price</u>
Tuesday 2 March	100,000	purchase	88
"	100,000	purchase	88½
Wednesday 3 March	250,000	purchase	88
"	50,000	purchase	90
Thursday 4 March	25,000	purchase	91
"	100,000	purchase	92
"	50,000	sale	92
Friday 5 March	50,000	purchase	93
"	75,000	purchase	94
"	225,000	purchase	95

The Panel found that at all material times TVW and Bell were associates and were acting in concert in relation to ACC.

As regards TVW and Bell the Panel found that:

- 1 by instructing its broker to purchase on behalf of TVW the non-voting "A" Ordinary stock units in ACC in question on the four days 2-5 March 1982 TVW breached Rule 31 of the Code in failing to ensure the announcement of the details of the purchases by 12.00 noon on the day after the dealing date;
- 2 by not ensuring the immediate announcement of higher offers to all shareholders of ACC to match the prices paid in the market on 2-5 March 1982, Bell were in breach of Rule 32(1) of the Code;
- 3 by selling 50,000 non-voting "A" Ordinary stock units on 4 March 1982 without seeking the permission of the Panel executive, TVW were in breach of paragraph 3 of Practice Note 1.

The Panel found that these breaches were not in any sense deliberately made, but did reflect a culpable failure to ensure that the requirements of the Code were being met. A direct consequence of this failure was that a false market, in the sense of a market denied information which should properly have been made available to it, did exist for an extended period of time. The Panel concluded that the actions of TVW and Bell in committing these breaches of the Code are deserving of censure.

The Panel observe that at the relevant time neither TVW nor Bell were using the services of financial advisers in London. Had they had such advisers and made them aware of the actions they contemplated, the Panel have no doubt that the breaches of the Code would have been avoided. The Panel accordingly takes this opportunity of underlining strongly the importance which should be attached by a bidder to securing adequate professional advice in what is always liable to become a complex situation. The need is plainly the more compelling for bidders who, by reason for example of residence elsewhere, are unlikely to be familiar with the rules and practices of the London market.

The Panel went on to consider the position of Potter Partners and T C Coombs & Co in relation to these dealings. Potter Partners are a leading Australian stockbroking firm having their headquarters in Melbourne, but maintaining a branch office in London. The orders for the dealings under enquiry were passed through the London office and it was with the London office that the Panel were concerned. Because the firm was not a member of The Stock Exchange in London it placed the orders with T C Coombs & Co who are members of that Exchange. Potter Partners, act in Australia as brokers to TVW; however, the London office of Potter Partners dealt in their own name and did not disclose that they were acting as brokers, which was in accordance with their normal practice. T C Coombs & Co did not appreciate this.

The Panel were informed that all partners in the firm of Potter Partners are holders of a Principal's Licence, issued by the Department of Trade under the Prevention of Fraud (Investments) Act 1958. The Panel found that the London office is largely inexperienced in matters relating to transactions in United Kingdom securities, certainly where a take-over bid is involved. The function of the London office is to deal in Australian securities, their transactions in other securities being extremely rare. The partner in London responsible made enquiries of TVW as to disclosure requirements in London, and was assured that there were none. This partner has accepted that he was largely unaware of the contents of the Code and was not sufficiently informed as to his responsibilities and obligations as a licensed dealer in securities. The Panel holds that such a failure is indefensible and that Potter Partners are deserving of serious censure. Had there been a proper understanding of the situation in which they were invited to act on behalf of TVW, they would certainly have prevented their principals from committing the breaches of the Code which occurred.

In the case of T C Coombs & Co the attention of the Panel was focussed on paragraph 5 of Practice Note 12. This makes it clear that stockbrokers, bankers and others who deal on behalf of clients in the securities of companies involved in a take-over or merger in other than modest volume are required to establish whether their client is an associate and have a general duty to ensure, so far as they are able, that the client is aware of the

disclosure obligation attaching to associates. It was represented to the Panel that on two occasions T C Coombs & Co did specifically enquire of Potter Partners to whom the deal should be booked and on each occasion gained the understanding that the purchases in question were being made by Potter Partners for their own account. Whilst it was true in the narrow sense that Potter Partners regarded themselves as principals in their dealings in London in relation to T C Coombs & Co, plainly it was far from a fully informative answer. T C Coombs & Co represented to the Panel that they were entitled to rely upon and acted reasonably in relying upon the answer given by the branch of a responsible Australian stockbroking firm. The view of the Panel is that, given the widely publicised circumstances of the bid, the scale of the operations and their Australian source, merely to make enquiries on two occasions as to the name of the principal or the name in which the deal was to be booked did not match up to the requirements of paragraph 5 of Practice Note 12 and that accordingly T C Coombs & Co cannot escape some responsibility for the failure to prevent the breaches of the Code.

23 March 1982