

THE TAKEOVER PANEL

TI GROUP PLC ("TI") /DOWTY GROUP PLC ("DOWTY")

On 23 April 1992 TI announced an offer for Dowty. The offer was declared unconditional as to acceptances on 10 June.

The Panel Executive has investigated the source of various newspaper articles published during the course of the offer and of speculation regarding Dowty's profits which arose at that time. It appears that such articles and speculation were based partly upon comments made to certain journalists and investment analysts by Burson-Marsteller Limited ("Burson-Marsteller"), public relations advisers to Dowty. The Executive has concluded that such comments represented serious breaches of the Code.

Background

During the course of the offer, reports appeared in various newspapers which apparently reflected knowledge of material information regarding Dowty, including the company's estimated profits for the year ended 31 March 1992, prior to the publication of such information by Dowty. In addition there was speculation in the market and the press, particularly in the three weeks prior to 10 June, concerning Dowty's profits for the year ending 31 March 1993.

At the time the Executive was concerned about the possibility that such press articles and speculation might have been based, directly or indirectly, upon statements made by directors of Dowty or by any of the company's advisers. Accordingly the Executive discussed these matters with Lazard Brothers & Co., Limited ("Lazards"), financial advisers to

Dowty, drawing their attention to the relevant restrictions in the Code and emphasising the primary responsibility with which financial advisers are charged regarding information released during the course of offers. Lazards informed the Executive that at the beginning of the offer period, and during it, the attention of their client and all its advisers was specifically drawn to the rules of the Code and to the restrictions relating to the release of information during the course of an offer. However, speculation continued concerning Dowty's profits for the year ending 31 March 1993 and, following further discussions with Lazards, the Executive required Dowty to make a public statement disassociating the company from this speculation and making it clear that the speculation had no proper foundation. This statement was released on 5 June.

Subsequently, after the end of the offer period, the Executive investigated these matters further and it became clear that a number of conversations had taken place between Burson-Marsteller and certain journalists and investment analysts during which material new information, which either had not been made public or could not be made public, had been communicated or implied. In one conversation, which took place on 19 May with a specialist salesman at a securities firm unconnected with either TI or Dowty, a director of Burson-Marsteller said that Dowty was confident of achieving a certain level of profit for the year ending 31 March 1993 and that Dowty had found a buyer for the various properties which it had publicly stated that it intended to sell. This conversation gave the Executive particular concern since these statements covered material new information which could not be made public; the first, because Dowty and its advisers were unable to make a forecast of profits for the year in question to the standards required by the Code, and the second, because it was not correct.

Code issues

The Code requires that information released during an offer must satisfy the highest standards of accuracy and must be made equally available to all shareholders as nearly as possible at the same time and in the same manner. Particular areas of sensitivity include future profits and prospects.

The Panel attaches great importance to these principles, which are as relevant to private conversations as they are to public documents and statements and which apply equally to directors and officials of companies and to all their advisers. Accordingly, such parties must take the utmost care in any discussions, whether formal or informal, with shareholders and with others, such as journalists or investment analysts, whose views may influence shareholders. Concern in this area extends beyond simple statements of fact to include any impressions which are given. Further, comments made "off the record" may have the same effect as more formal statements and the Panel draws no distinction between them.

There are many ways of implying information and opinions during discussions without specifically stating such information or opinions. Prior to publication of material new information or opinions, or where the Code would prohibit such publication, conversations of this kind, designed to cause specific inferences to be drawn, are likely to represent breaches of the Code.

The Panel regards financial advisers as being responsible to the Panel for guiding their clients and any relevant public relations advisers with regard to any information released during the course of an offer.

The Executive's findings

The comments made by Burson-Marsteller to a specialist salesman on 19 May covered important new information which

could not be made public for the reasons given above. The making of these comments was a serious breach of the Code.

Additionally, further breaches of the Code took place during various conversations between Burson-Marsteller and certain journalists and investment analysts in the course of the offer. These breaches fell into two categories.

Firstly, during conversations in the week prior to 19 May, journalists were led to conclusions regarding information which was due to be published by Dowty on 19 May, and specifically regarding estimates of Dowty's profits for the year ended 31 March 1992 and of the sales value of future work on current aircraft programmes. These conversations resulted in the publication of a number of newspaper articles including informed comment on these estimates prior to their publication by Dowty on 19 May.

Secondly, during conversations with journalists and investment analysts on and after 19 May, Burson-Marsteller implied by various means that Dowty's profits for the year ending 31 March 1993 were expected to be above a certain level.

The Executive's conclusions

In this case, Burson-Marsteller were directly involved in several unauthorised conversations which represented serious breaches of the Code and are criticised accordingly.

Lazards were unable to control the release of information by their client's public relations advisers and are also criticised.

13 August 1992