

THE TAKEOVER PANEL

CHILTERN RADIO PLC ("CHILTERN")

CAPITAL RADIO PLC ("CAPITAL")

DAILY MAIL AND GENERAL TRUST PLC ("DMGT")

GWR GROUP PLC ("GWR")

The Panel met today to hear an appeal by Chiltern against a ruling by the Executive that three shareholders in Chiltern, namely Capital, DMGT and GWR, were not acting in concert in relation to Chiltern.

Background

On 8 June 1994 CLT UK Radio Limited ("CLT") announced a recommended cash offer to acquire the whole of the issued share capital of Chiltern at a price of 242p per share. At the time of the announcement Capital held 19.9% of Chiltern. DMGT held 18.5%.

The formal offer document from CLT was posted to shareholders on 17 June.

On 1 July DMGT announced that it intended to purchase and purchased a 9.99% stake in Chiltern at 300p per share through a newly created joint venture vehicle European Media Associates Limited ("EMA"). Subsequently, on 8 July, DMGT through EMA purchased a further 1.5% of Chiltern, taking its holding when aggregated with that of EMA to 29.99%.

On 4 July GWR purchased 2.25% of Chiltern at 300p per share. This was announced the following day.

At the date of the hearing the aggregate holdings of Capital, DMGT and GWR taken together amounted to more than 50% of Chiltern.

On 22 July, the second closing date, CLT extended its offer for Chiltern, which will remain open for acceptance until 5 August. As at 22 July CLT, which holds no Chiltern shares itself, had received acceptances representing approximately 26.24% of Chiltern, including irrevocables from all Chiltern's directors (and their interests) in respect of 15.35%.

Executive Ruling

The appellant, advised by Baring Brothers & Co Limited, contended that Capital, DMGT and GWR had actively co-operated through the acquisition of shares, as described above, to obtain control of Chiltern. The Executive conducted a full investigation upon receipt of the appellant's complaint and formed the view that none of the three shareholders was acting in concert with another in relation to Chiltern.

Panel Decision

Neither Capital nor DMGT hold or have held 20% or more of the shares in GWR and, accordingly, no presumption of a concert party arises under the Code. But where, as in the present case, a company has a shareholding in another company which closely approaches 20%, and where there are other shareholdings which may be relevant, the Panel will scrutinise with particular care any suggestion that the companies concerned have been acting in concert. This has been the approach of the Panel to the evidence in the present case.

The principal submission made on behalf of Chiltern was that Capital, DMGT and GWR acted jointly in their retention or purchase of shares in Chiltern to frustrate CLT's bid, and so to gain control of Chiltern without making a full bid. In response, Capital maintained that it was, and had for some time been known to have been, a seller of its Chiltern shares, but only at what it considered to be the right price. DMGT contended that it bought its shares because it considered that

the CLT bid undervalued Chiltern, it wanted to prevent the bid succeeding and to give an appropriate signal to the market. GWR maintained that, given the geographical position of its own radio licences, it had a particular commercial interest in the future of Chiltern. Each of the three specifically denied any understanding or arrangement with the others with regard to Chiltern or that they had any prior knowledge of each other's purchases. The Panel took the view that, although each of the three wished the CLT bid to fail, each had their own separate reasons for wishing this and each had separate reasons for taking the action which it did.

The Panel's attention was also drawn to the fact that Capital and DMGT had representatives on the board of GWR; but, having regard to all the surrounding circumstances, the Panel took the view that this provided no support for the suggestion that the three companies were acting in concert.

Having considered all the evidence and submissions, the Panel was satisfied that none of the three companies was acting in concert with another in relation to Chiltern.

Accordingly the appeal was dismissed.

28 July 1994