

THE TAKEOVER PANEL

GRIMSHAWE-WINDSOR AND BLASKEYS

This matter comes to the Panel by way of Appeal from a ruling at the Panel's executive level and it arises in the following circumstances.

Grimshawe-Windsor Limited is a quoted Company based in Leeds whose Chairman, Mr. P.R. Grimshawe, also controls an associated merchant bank, P.R. Grimshawe and Co. Limited. Blaskeys (Wallpapers) Limited is also a quoted company based in Leeds and one in which over fifty per cent of the equity is held by Blaskey family interests, Mr. Lionel Blaskey being Chairman and Messrs. E. Blaskey and M. Blaskey joint Managing Directors. Mr. D. R. Humm, a partner in a firm of solicitors, is a director and trustee for some of the Blaskey family interests as well as being legal adviser both to the Company and the family.

After somewhat inconclusive discussions earlier in the summer Mr. Grimshawe wrote at length on 17th August to Mr. Lionel Blaskey suggesting that Grimshawe-Windsor might acquire Blaskeys on the terms of a paper plus cash offer which would value the Blaskey shares at 30p. Following the receipt of this letter it was arranged for Mr. Grimshawe to call on Mr. Julian Board of Cobden, Board & Co., Blaskeys' accountants and auditors. This meeting was held on 1st September and terms of a possible take-over were discussed in detail. Mr. Board informed Mr. Grimshawe that a cash alternative would be required and said that the sort of price he was looking for was 35p per share. Mr. Grimshawe said that he could meet this requirement.

In evidence before us Mr. Board stated that he regarded this meeting as exploratory but whilst he had no authority to commit the Blaskey family interests he thought that 35p would be acceptable to the family. Mr. Humm told us that later on the same day Mr. Board had reported to him the effect of his interview with Mr. Grimshawe and he accordingly advised the board to appoint J. Henry Schroder Wagg & Co. Limited to advise on the proposed transaction.

By contrast Mr. Grimshawe has consistently maintained that he regarded the meeting with Mr. Board as having resulted in an agreement to accept the offer of 35p per share which the Blaskey family would honour. Much of what followed stemmed from this fundamental disagreement as to the nature of this initial meeting between Mr. Board and Mr. Grimshawe.

On 3rd September Mr. Humm visited Schroder Wagg on behalf of Blaskeys and asked them to act; Mr. Humm is quite clear that he expected Schroder Wagg to advise on all aspects of the transaction and Mr. P. H. Robinson, the director concerned, said that they would only have agreed to act on such a basis. Mr. Grimshawe's understanding was that Schroder Wagg were brought in only to implement the terms of an agreement which had already been reached. A Minute of the discussions at Schroder Wagg that day (prepared by Schroder Wagg) states that Mr. Humm said that the price of "35p looked extremely attractive" and that there was "a degree of moral commitment on the part of Blaskeys' directors to Grimshawe at that price".

Mr. Grimshawe (like the Hon. J. A. Turner of Lazard Brothers & Co., Limited who subsequently appeared on the scene as advisers to a rival bidder, Leyland Paint & Wallpaper Limited) was anxious to avoid an auction and wrote to Schroder Wagg on Monday, 6th September, enclosing a draft of what was intended to be an irrevocable acceptance of the offer at 35p by named Blaskey family interests, constituting about 56% of the equity. The situation was complicated by the fact that Mr. Lionel Blaskey and Mr. Humm were both abroad on holiday. It was made clear to Mr. Grimshawe by Schroder Wagg that a requirement for an irrevocable commitment would inevitably delay proceedings but by this time Schroder Wagg had formed the view that if Mr. Grimshawe wanted a firm commitment he would have to pay more than 35p. There is a conflict of evidence as to whether this was put to Mr. Grimshawe in unmistakable terms.

On Tuesday, 7th September market movements in the shares of Blaskeys occurred which made it clear to all concerned that some form of announcement would have to be made. After discussion a statement (agreed by both advisers) was released to the press at 12 noon on Wednesday, 8th September and is annexed as Appendix A. The relevant points in this statement were that it was announced on behalf of the Boards of both Companies that "agreement has been reached on terms for an offer", and that "the Directors of Blaskeys, who have been advised by J. Henry Schroder Wagg & Co. Ltd., intend to accept the offer in respect of their own holdings and will recommend all other Ordinary shareholders to do likewise".

The Panel records indicate that wording to this effect has been widely used among those acting in transactions of this kind and that there have been many cases of directors subsequently revoking their intention to recommend if a fundamental change in the circumstances has occurred before formal acceptances have been given. The appearance of a further bidder on the scene would be such a change. Even between the members of the Panel there are divergent views as to the degree of commitment which such language might be thought by a wider

public to imply and it is quite clear that some shareholders could well be misled as to whether or not a binding agreement existed. Mr. Grimshawe told us that he had thought the language indicated a binding agreement. Mr. Robinson accepted that Mr. Grimshawe had been adamant that the price was agreed but this was not Mr. Robinson's opinion. We express no view on the legal effect of such language but we feel that to the lay mind it is at least equivocal.

In the light of this case we strongly recommend all those concerned to review the wording used and to avoid the word "agreement" which is inappropriate where no binding agreement exists.

Soon after the release of this announcement contact was made on behalf of Leyland, who indicated an interest provided there was no irrevocable commitment by the Blaskeys. Schroder Wagg were informed of this on 9th September and decided to explore the new possibility. Lazards were appointed to advise Leyland and a meeting was held on Monday, 13th September between Lazards and Schroder Wagg and representatives of both Companies at which Lazards stated that they would come back with "a decision either way" the following day. In the afternoon of Tuesday, 14th September Lazards informed Schroder Wagg that their client was prepared to make an offer of 40p (with an alternative of convertible loan stock on terms to be agreed between the advisers) but that their intervention at this stage was conditional on there being no auction. Mr. Turner of Lazards in evidence before us stated that discussion of the position of Mr. Grimshawe was carefully avoided, although naturally in the interests of his own client he hoped that Schroder Wagg would consider his offer sufficiently attractive for them to secure the irrevocable acceptances from the Blaskeys family interests amounting to at least 40% of the equity which were a condition precedent to the willingness of Leyland to appear publicly on the scene.

Mr. Turner confirmed that he could not have raised any objection had Schroder Wagg intimated that they considered themselves under an obligation to go back to Mr. Grimshawe before accepting the Leyland bid on a "shut out" basis. In fairness to Lazards it should be recorded that they had consulted the Panel executive (without names mentioned) before making this approach and had been informed that it was in order so to do, since the responsibility lay with the Board of the offeree company and its advisers to determine whether or not to accept an offer in terms which would amount to a "shut out" and preclude the play of market forces.

Having considered all the factors Schroder Wagg advised the Board of Blaskeys on the morning of 15th September that they should accept the Leyland

bid on "shut out" terms and Mr. Robinson thereupon telephoned Lazards and informed them accordingly. In so doing, Schroder Wagg believed that the risk of losing the higher conditional offer from Leyland outweighed the possibility of obtaining a still better offer from Grimshawe-Windsor. In that view they were no doubt influenced by a telephone conversation with Mr. Grimshawe on 7th September when Mr. Robinson said that if Mr. Grimshawe wanted irrevocable acceptances he would have to pay more than 35p. A contemporary record by Schroder Wagg confirms Mr. Robinson's recollection of the conversation but it equally confirms that Mr. Grimshawe was contending that there was no reason why he should offer more than 35p since the Board of Blaskeys had, he stated, already accepted that figure.

On 15th September, Mr. Grimshawe apparently heard rumours that there was to be another bid and telephoned Mr. Board. From what was said Mr. Board inferred that Mr. Grimshawe would bid higher and he immediately rang Mr. Robinson who, however, thought that the telephone conversation with Mr. Grimshawe did not alter the situation because he regarded himself as committed by his own telephone conversation with Lazards early that day.

At that time shareholders holding up to about 51% of the Blaskeys equity were in course of signing letters of acceptance and at 5.15 p.m. an announcement (annexed at Appendix B) was released, without further contact having been made with Mr. Grimshawe to advise him of the situation which had arisen.

There is no detailed Rule in the Code dealing with "shut out" bids though there are a number of provisions dealing with closely related matters. A Board and their advisers must, of course, take both longer and shorter term considerations into account; in such cases there can be wide differences of opinion as to where the balance of advantage to shareholders lies. In this case, however, (which distinguishes it completely from the earlier case of Ladbroke, Coral and Mark Lane) we were specifically assured that the only consideration was one of price.

It has always been a fundamental principle of the Code that it is for a shareholder to decide for himself when and how to dispose of his shares. Equally it is fundamental that Directors must at all times act in good faith in what they believe to be the best interests of the shareholders taken as a whole. There is therefore a very heavy responsibility on Boards and their advisers who contemplate the transfer of effective control in circumstances which amount to a "shut out" of possible rival bidders.

The Panel executive ruled that there had been no breach of the Code. In view of the fact that there is no specific Rule dealing with the question of "shut out" bids and since we accept that Schroder Wagg acted in what they believed to be the best interest of their client we support this view, even though in the light of subsequent events it seems possible that the shareholders of Blaskeys have been deprived of the opportunity of receiving a higher offer from Grimshawe-Windsor and Mr. Grimshawe was less than fairly dealt with. We believe, however, that, as in all cases of doubt, Schroder Wagg would have been wise to have consulted the Panel executive before advising that a "shut out" should be given. We do not feel that we can leave the matter there because of the desirability of avoiding in the future the kind of difficulties which have arisen in this case.

Apart from our recommendation that practitioners should be more explicit in the language they use in press statements, we intend to invite the attention of the City Working Party, which is currently, at our request, carrying out a periodic review of the provisions of the Code, to the problem of "shut out" bids. It is, however, by no means certain that the matter can be fully dealt with by a detailed Rule. In the meantime we would expect that:-

- (a) Where more than one party has made an approach which could be interpreted as falling within the definition of General Principle 4, (that it is "reasonably. . . within the contemplation of the Board of an offeree company that a bona fide offer is likely to be forthcoming") no "shut out" bid should be accepted without all parties being made aware that a potential competitive situation exists and being given an opportunity to make a statement to the shareholders of the offeree company, if they so wish, before the "shut out" is given.
- (b) No "shut out" bid would be accepted without first consulting the Panel executive. The normal right of appeal to the full Panel against an adverse ruling would of course be available.
- (c) The foregoing principles also apply to any transfer of control envisaged under Rule 10.

29th September, 1971.

PRESS ANNOUNCEMENT

(for release at 12 noon on Wednesday, 3th September 1971)

Grimshawe-Windsor offer for Blaskeys (Wallpapers)

The Boards of Grimshawe-Windsor Limited and of Blaskeys (Wallpapers) Limited announce that agreement has been reached on terms for an offer by Grimshawe-Windsor of 75p in cash and 1 Grimshawe-Windsor Ordinary share for every 3 Blaskeys issued Ordinary shares. The share offer will be underwritten so as to provide a total consideration equal to 35p cash in respect of each Blaskeys Ordinary share.

The Directors of Blaskeys, who have been advised by J. Henry Schroder Wagg & Co. Limited, intend to accept the offer in respect of their own holdings and will recommend all other Ordinary shareholders to do likewise.

Grimshawe-Windsor have provided satisfactory assurances that the interests of the staff and employees of Blaskeys (including their pension rights) will be safeguarded.

The formal Offer Document will be posted by P.R. Grimshawe & Co. Limited on behalf of Grimshawe-Windsor as soon as possible.

Enquiries to:

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Mr. Peter Grimshawe.

0532 38357

(Leeds)

J. Henry Schroder Wagg & Co. Limited.

Mr. Philip Robinson.

01-588 4000

APPENDIX D
LEYLAND PAINT & WALLPAPER LIMITED/
BLASKEYS (WALLPAPERS) LIMITED

The Boards of Leyland Paint & Wallpaper Limited ("Loyland") and of Blaskeys (Wallpapers) Limited ("Blaskeys") announce that agreement has been reached under which Leyland will offer to purchase all the issued Ordinary Share Capital of Blaskeys. The offer price will be 40p in cash for each Ordinary Share of 10p each of Blaskeys. An alternative Offer of Convertible Loan Stock will also be made the terms and conditions of which will be agreed with Blaskeys' financial advisers.

The Directors of Blaskeys and members of their families have irrevocably undertaken to accept the Offer in respect of Ordinary Shares amounting to some 51 per cent of the issued Ordinary Share Capital and will unanimously recommend all other Shareholders to accept.

Under these circumstances the Directors of Blaskeys do not now recommend the Offer by Grimshawe-Windsor Limited announced on 8th September, 1971.

The Offer will be subject to the usual conditions and the approval of Leyland Shareholders to an increase in the Company's borrowing powers.

Leyland have provided assurances that the interest of the staff and employees of Blaskeys, including pension rights, will be safeguarded.

Mr. Bryan Jones, Deputy Chairman of Leyland said today,

"The merger of Blaskeys retail outlets with those of Leyland will make a significant contribution to a further lowering of Leyland's unit cost of both distribution and manufacture.

We are delighted to welcome the excellent management and staff of Blaskeys to the Leyland Group and we look forward to benefiting with them from the commercial opportunities that the merger provides."

Formal Offer Documents will be despatched by Lazard Brothers & Co., Limited, who have advised Leyland in the negotiations, as soon as possible. Blaskeys have been advised by J. Henry Schroder Wagg & Co., Limited.

Enquiries: -

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