

THE TAKEOVER PANEL

Allied Breweries Limited/Trust Houses Forte Limited

The Panel has given very full consideration to this case. It is not an easy one but we think it is a very special one and we have reached a unanimous conclusion on it. The principles of the Code, as both parties emphasised, provide that the spirit of the Code as a whole must be applied and this in any particular case may sometimes involve either an apparent extension of a particular Rule or its restrictive application. It has always been the policy of the Panel, as expressed on many occasions, to administer the Code in a flexible way so as to meet the justice and commonsense of the case as it appeared to the Panel. In this case we have attached particular importance to the position of the Trustees. The Trustees made it very clear, both in the statement which they issued before this hearing and in what they said to us here themselves, that they would not exercise any voting rights attached to the Trust Shares in regard to this offer. They raised no objection to the offer being made and if it is made they say they will maintain a neutral position. Indeed it is not the normal practice of the Trustees to vote their Trust Shares at all. They, under the Trust, are not allowed to sell them, without Court approval, but they say expressly here that they do not wish to stand in the way of sales by ordinary shareholders. The circumstances are therefore as it seems to us very special, peculiar, indeed possibly unique. We are not dealing here with the ordinary case of a large block of equity capital held in a single hand. In effect, from a commonsense point of view, the Trust Shares should be considered as outside the take-over equation and the application and interpretation of Rule 20. We consider therefore that we cannot interpret and apply Rule 20 so as to prevent the proposed offer.

On the question of a condition to the offer, which was raised on behalf of Trust Houses Forte Limited, we think that all we can say at this time is that there must be a clear day on or before which it will be known by shareholders whether or not the offer has become unconditional in relation to the arrangements with the Trustees. This we think should be within 14 days of the offer becoming unconditional so far as acceptances are concerned.

15th December 1971.