

THE TAKEOVER PANEL

COMBINED ENGLISH STORES GROUP LIMITED/

DAVID GREIG LIMITED

The Panel has considered an application by the board of Combined English Stores Group Limited (CES) to be allowed to withdraw an offer for the ordinary shares of David Greig Limited (Greig) and to substitute a lower offer. The application has the support of the board of Greig.

On 3rd January the boards of CES and Greig (advised respectively by Slater Walker and Wm. Brandt's) announced an agreed bid under which, for every ordinary share (25p) in Greig, CES would offer 95p in cash, 40p nominal of a new 6% cumulative convertible redeemable second preference stock of CES and 40p of a new 12% convertible unsecured loan stock of CES. If the preference stock and the 12% loan stock were taken at par, the offer placed a value of 175p on each Greig share. Under a scheme of arrangement, 8½% partly convertible guaranteed unsecured loan stock of Greig was to be cancelled and a smaller nominal amount of 12% CES loan stock issued instead.

The announcement stated that the offer for the Greig ordinary shares "will be subject to the usual conditions" (these include CES shareholders' approval of the creation of new capital and the granting of Stock Exchange listing) and went on to point out that there was the additional condition of "the holders of the Greig stock passing the necessary resolution for the cancellation of their stock within 14 days of the offer becoming otherwise unconditional". It was also a stated condition that there would be no reference to the Monopolies and Mergers Commission.

On 28th January the boards of CES and Greig indicated that they would seek the Panel's approval to substitute new terms for the ordinary shares of Greig, consisting of cash, convertible, redeemable preference stock and convertible loan stock of CES having a value of 136p.

In the negotiations that preceded the announcement of the agreed offer of 3rd January the board of Greig gave to the board of CES management accounts for the first twenty weeks of the year commencing 1st April 1973 which suggested a profit before taxation in the region of £200,000 for the first half-year. Unaudited interim accounts for the same period produced in the course of January 1974 indicated a loss of £330,000. The discrepancy was due to the omission from the management accounts of certain wage and salary costs, a general under-estimate of overhead expenses and an over-estimate of gross margins.

Rule 8 of the City Code states that before withdrawing an offer the Panel must "be consulted". This has always been understood, and will continue to be applied, as requiring the Panel's consent to any withdrawal or downward revision of an offer.

As the Panel has pointed out on previous occasions, the withdrawal of a public offer, once announced, is a matter of serious concern since such offers affect market values. This is particularly so when the offer is being withdrawn or revised on the ground that the offer was too high, since a false market will have been created. Thus shares in the offeree company may have been bought at a price above the previous market price in the belief that the offer would be proceeded with, and existing shareholders may have refrained from selling for the same reason.

In a statement issued on 15th January, the Panel indicated that an unforeseen change in general economic circumstances did not in itself justify the withdrawal or revision of an offer and that to justify unilateral withdrawal, the Panel would normally require some circumstance of an entirely exceptional nature and amounting to something of the kind which would frustrate a legal contract. This case does not arise out of a change in economic circumstances but turns on a mistake in the preparation of figures for a past period.

The Panel is satisfied that the board of CES entered into the agreed bid of 3rd January in the belief that the profits of Greig for the six months ended 30th September 1973 were of the order of £200,000, whereas the facts now point to a loss of £330,000. The board of Greig has explained that the errors arose because the amalgamation of the three undertakings that went to form the present company was far from complete by the autumn of 1973 and the preparation of accurate management accounts for the combined undertaking presented difficulties. They do not however, seem to have explained this clearly enough to the board of CES. It was agreed by the parties that it would have required a detailed audit to discover the inadequacies of the Greig management accounts. The Panel is satisfied that the board of CES entered into the bid on an understanding about the level of recent profits which proved to be wrong.

In reaching a decision in this case, it is material that there were no substantial purchases of shares at the original offer price from directors or substantial holders of shares. No question arises of the application of Rules 10, 34 or 35. At the same time there were purchases in the market after the announcement of 3rd January at prices in excess of that of the proposed revised offer. The Panel was informed that because of changes in market conditions the value of the 3rd January offer at the time of the announcement of the proposed revised offer was about 165p.

The Panel has decided that it will agree to the withdrawal of the offer announced on 3rd January and the substitution of the proposed revised offer. The Panel's agreement to the withdrawal of the offer is, however, conditional on the substitution of the revised offer.

The Panel must, however, emphasise the importance of care in the preparation and examination of figures used in bid negotiations and the need for a clear indication of any reason to doubt their value. The Panel must express its regret at the laxity shown in the present case which in the event resulted in a false market for some time after the announcement of the offer that has now been withdrawn.

The Panel takes this opportunity to re-affirm that only in the most exceptional circumstances will it allow the withdrawal of an announced offer.

6th February, 1974.