

THE TAKEOVER PANEL

GUINNESS PEAT GROUP ("GPG")

The Panel executive has investigated recent suggestions, evidenced by a letter dated 2 May 1988 from Lord Kissin to Equiticorp Holdings Limited ("Equiticorp") that, during its offer in 1987 for GPG, Equiticorp had, in purchasing some 5.6% of GPG's share capital from ICG Chemie Handelsgesellschaft mbH ("ICG"), entered into an agreement or understanding with ICG that ICG would receive a "top-up" should Equiticorp increase its offer.

The Panel executive has interviewed Lord Kissin, Grant Adams of Equiticorp (twice) and the advisers who were involved in the transaction at the time on behalf of both ICG and Equiticorp. It has also had significant telephone conversations with Peter Hunt of Capitalcorp and Michael Freisberg of ICG. From these interviews and conversations the following account of events emerged.

Having purchased in April 1987 the 24.3% stake in GPG held by the UK Temperance and General Provident Institution, Equiticorp approached the board of GPG to obtain board representation. This approach was rejected and, having first increased its stake to 29.9%, Equiticorp decided it should make an offer for the whole of GPG. Representatives of Equiticorp visited the next largest holder, Lord Kissin, in France in August 1987. Lord Kissin informed both Adams and Hunt that he was not interested in selling his holding but that ICG might be.

Lord Kissin had been a close friend of ICG's late owner, Heinrich Freisberg who had died some eighteen months previously. Lord Kissin understood that Michael Freisberg, whom Lord Kissin did not know well, was wishing to liquidate his father's portfolio, and might therefore be a seller of the holding in GPG. Lord Kissin, who felt some obligation to his late friend's son, asked Adams and Hunt to ensure that ICG received "the full price". Adams and Hunt understood this to mean that the purchase price for the ICG Holding must not be less than the forthcoming bid. Thus Equiticorp entered into a contract to purchase the ICG holding at 110p and subsequently announced an offer at that price.

Adams has confirmed to the Panel executive that in buying the holding, Equiticorp was aware that a Rule 9 offer would be triggered. This was explained to Michael Freisberg. Equiticorp further maintained that at the time of acquiring the ICG stake it had no intention of increasing its offer. The offer was increased some three-and-a-half weeks later from 110p to 115p following the acquisition of the holdings in GPG held by certain of the former shareholders of Forstmann-Leff Associates Inc. Adams, Hunt and Freisberg have all confirmed that no "top-up" arrangement was entered into and the contract governing the sale contains no such provision. ICG was advised on this contract by their legal advisers, Farrer & Co, who have on their file a note of a conversation between a representative of their firm and an employee of Samuel Montagu & Co, advisers to Equiticorp, where it was acknowledged by both parties that a "top-up" would be contrary to the Code. ICG readily accepted the position and confirmed to their advisers that they were neither expecting nor seeking any "top-up" over the fixed price of 110p which they had agreed with Equiticorp. Samuel Montagu has also confirmed that it was careful to brief Equiticorp on the prohibition in the Code against "top-up" arrangements before representatives of Equiticorp commenced negotiations with ICG.

Lord Kissin did not participate in the negotiations with ICG and was not aware of, nor saw, the share purchase agreement between Equiticorp and ICG. However, after the offer, believing that "the full price" should mean the highest subsequent offer price, Lord Kissin raised the matter with Peter Hunt, who occupied an office, as did Lord Kissin, at GPG. Hunt informed Lord Kissin that no "top-up" had been paid nor was there any arrangement in place such that ICG would receive the additional 5p. Hunt suggested he contact Adams on the matter.

The Panel executive has received no evidence, apart from Lord Kissin's letter, to suggest a "top-up" and the parties directly involved in the share purchase agreement and their advisers have categorically stated that no such "top-up" or similar arrangement existed. In the absence of further evidence to the contrary the executive accepts the account of events as set out in this statement and therefore does not at present intend to pursue the matter any further.

1 July 1988