

THE TAKEOVER PANEL

GATEWAY PLC

STATEMENT BY PANEL ON TAKEOVERS AND MERGERS

A statement has been issued today by Isosceles Plc ("Isosceles") and Newgateway Plc ("Newgateway") describing the agreement which has been reached between them regarding the combining of their respective interests in Gateway Plc ("Gateway"). This will be achieved by arrangements under which, inter alia, Isosceles' offer for Gateway is to be accepted by Newgateway and Newgateway participates in arrangements which will provide it with additional shares in Isosceles.

On 8 July 1989, Newgateway stated "we intend to retain our investment in Gateway and have no intention of accepting Isosceles' offer regardless of its outcome". The Panel Executive emphasised to Newgateway at the time it made the relevant statement that it attaches considerable importance to parties not making statements during offers which are not subsequently adhered to. However, the Executive has decided that, in the particular circumstances of this case, it should not prevent the resolution of a situation which has become unsatisfactory in many ways. This statement describes the reasons for this decision.

On 8 July, when the statement was made, neither the Isosceles nor the Newgateway offer was unconditional as to acceptances. The Isosceles offer was declared unconditional as to acceptances on 13 July and the statement of 8 July remained on the record. The Newgateway offer lapsed on 7 August.

Isosceles and Newgateway have expressed to the Executive the view that circumstances have changed from those envisaged on 8 July in that Newgateway, consistent with the earlier

statements it made about retaining its investment in Gateway, is not simply accepting Isosceles' offer but that it has been given the opportunity, subject to the wishes of other Isosceles' shareholders, of effectively maintaining its Gateway investment by increasing its holding in Isosceles and of being involved in Isosceles' policy-making by virtue of its representation on the board. Further, the Executive accepts that the present impasse is causing uncertainties which have an adverse effect upon the business and employees of Gateway, which is a business of some public importance. The present uncertainty is also contrary to the interests of shareholders of Isosceles, including those former shareholders of Gateway who accepted Isosceles' "stub" equity as part of the consideration for their Gateway shares. Newgateway has told the Executive that it would be prepared to retain its investment in its present form, but both Isosceles and Newgateway believe their respective objectives can best be met by their combining their interests in this way and on a substantially pro-rata economic basis.

In agreeing to the proposals contained in today's statement, the Executive has been concerned to establish whether any actual or potential investors in Gateway, in relying on Newgateway's statement of 8 July, might have been materially disadvantaged.

It may be that the Newgateway statement raised fears of a stalemate in the minds of shareholders in Gateway and thus discouraged them from accepting Isosceles' offer and encouraged them to sell their shares in the market. Although such sellers are likely to have received prices in excess of the 230p cash per Gateway share offered by Isosceles (Newgateway were buying at between 235p and 242p per share) such sellers, in so doing, would nevertheless have missed the opportunity of obtaining an investment in Isosceles in the form of the "stub" equity. The financial consequences of a decision to sell in the market as opposed to accepting the "stub" are impossible to determine but it is reasonable to

assume that a shareholder, in deciding whether to sell in the market or accept the Isosceles offer, would need to take account of a number of risk factors. The statement by Newgateway was only one such factor at a time when it was also widely speculated that Isosceles and Newgateway would find some way to resolve a stalemate position if it arose.

The Executive has concluded that it is not possible to decide for certain whether any shareholders in Gateway could have been disadvantaged. On balance, the Executive has decided that it should allow the proposed resolution of the matter as announced by the parties. Having discussed the matter with the advisers to Isosceles and to Newgateway, the Executive concluded that no useful purpose would be served by refusing to allow this to happen; further, there would be no benefit to shareholders who had sold Gateway shares as a result of the statement of 8 July while there could be considerable disservice to the present shareholders in Isosceles and the remaining public shareholders in Gateway.

In reaching its conclusion, the Executive has also taken account of the fact that its views on the binding nature of the relevant statement had been emphasised to Newgateway by its advisers. It is regrettable that, notwithstanding this, the Executive was approached by Newgateway, *inter alia*, with the proposal outlined above within four weeks of the statement having been issued with a request for a dispensation from its effects. Nonetheless, for the reasons given above, the Executive has agreed to this request.

The Executive is very conscious of the obligations imposed by General Principle 6 of the Code which requires that parties involved in offers must take care that statements are not made which may mislead shareholders or the market. The Panel must ensure that the essence of statements made by parties to offers is adhered to. The present ruling does not imply any relaxation

of this policy. Parties to offers should therefore continue to take every possible precaution not to make statements from which they may later wish to withdraw.

Notes to Editors

General Principle 6 of the Code reads as follows:

"All parties to an offer must use every endeavour to prevent the creation of a false market in the securities of an offeror or the offeree company. Parties involved in offers must take care that statements are not made which may mislead shareholders or the market."

18 August 1989