

# THE TAKEOVER PANEL

## TIMPSON PLC/AUTOMAGIC HOLDINGS PLC

The Panel Executive has examined the events surrounding the acquisition, over several weeks, by Timpson PLC ("Timpson") of shares representing 29.9% of the voting rights in Automagic Holdings PLC ("Automagic") and has found breaches of the Substantial Acquisition Rules ("SARs"). Timpson were advised by Henry Cooke Corporate Finance Limited ("Henry Cooke").

### 1 THE FACTS

In mid March 1990 Henry Cooke were instructed by Timpson to acquire up to 29.9% of Automagic.

The first purchase took place on 21 March and by 23 March Henry Cooke, on behalf of Timpson, had acquired, through a series of market purchases, a 9.9% shareholding which they increased to 11.5% on 26 March. The purchases were made through a nominee company and, although its name was disclosed to Automagic on 29 March, the identity of the beneficial owner of the holding was not disclosed at this stage.

Early in April a representative of Henry Cooke visited several Automagic shareholders, including a unit trust group which controlled a 13.3% holding in Automagic. On 11 April Henry Cooke purchased this holding, bringing the total shareholding acquired on behalf of Timpson to 24.8%. They assumed at the time that they were buying from a single shareholder.

On 12 April this purchase and the total holding of 24.8% were disclosed to The Stock Exchange although only the name of the nominee company was given. No SAR 3 dealing form was sent to The Stock Exchange or Automagic.

On 17 April Henry Cooke completed an SAR 3 form and sent it to Automagic although not to The Stock Exchange. They did however on that date send an announcement to The Stock Exchange referring to their earlier notification of the 24.8% holding and disclosing the beneficial owner to be Timpson.

On 19 April Henry Cooke, after previously selling 0.5%, purchased a further 5.6% bringing Timpson's total shareholding to 29.9%.

On 20 April an SAR 3 form was completed giving full disclosure of this purchase, but, as with the earlier SAR 3 form, it was only sent to Automagic and not to The Stock Exchange. An announcement was however sent to The Stock Exchange on that day giving full disclosure of this latest purchase and the fact that the beneficial holder of the resultant 29.9% holding was Timpson.

## 2 THE SUBSTANTIAL ACQUISITION RULES

SAR 1 provides as follows:

"Except as permitted by Rule 2, a person may not, in any period of 7 days, acquire shares carrying voting rights in a company, or rights over such shares, representing 10% or more of the voting rights if such acquisition, when aggregated with any shares or rights over shares which he already holds, would carry 15% or more, but less than 30%, of the voting rights of that company."

SAR 2 provides certain exceptions to the restrictions in SAR 1. In particular it states that they do not apply to an acquisition if it is made from a single shareholder and if it is the only acquisition within any period of seven days.

SAR 3 provides, inter alia, that a person must notify the company and The Stock Exchange, not later than 12 noon on the following business day, of an acquisition of shares if as a result of the acquisition he comes to hold, with any shares already held, shares representing 15% or more of the voting rights in a company.

The purpose of the SARs is two-fold. First, they are intended to enable small shareholders to participate in any premium which may be payable in connection with the establishment or consolidation of a substantial holding in a listed company. Secondly, they are designed to give the management of the company, whose shares are being acquired, time to consider the position in the interests of shareholders and to take any appropriate action before a large shareholder has established or consolidated its position.

The effect of the Rules in the circumstances of this case was that Timpson would only have been entitled to purchase the 13.3% holding on 11 April had it been a purchase from a single shareholder. Otherwise Timpson could only have bought less than 10% on that date. The purchase was in fact from two unit trusts within the group and the single shareholder exception allowed under SAR 2 was therefore inapplicable. Henry Cooke said that the first time they realised that the purchase was from two unit trusts was on 23 April. The Executive rejected Henry Cooke's argument that, because the two unit trusts were under the same management and were registered in the same nominee company in Automagic's register of shareholders, they should be regarded as a single shareholder. The nature of the holdings in this case was clearly outside the single shareholder exception. Henry Cooke did not ask the unit trust group the precise nature of its holding either at the time when they visited them or subsequently before the purchase was concluded.

With regard to SAR 3, Henry Cooke should have disclosed the identity of the beneficial owner of the 24.8% stake by 12 noon on 12 April. It was not so disclosed until five days later.

#### THE PANEL EXECUTIVE'S RULING

The Executive has ruled that:

- (a) SAR 1 and SAR 3 have been breached;
- (b) Timpson must sell 3.3% of the voting share capital of Automagic and that this sale should be made by 1 June 1990;
- (c) either (i) the sale must be into the market to parties independent of Timpson and such sale must be through a broker unconnected with Timpson; or (ii) Henry Cooke must place the shares with parties independent of Timpson. In either case the proposed arrangement must be agreed with the Executive in advance;
- (d) there must be no agreements or understandings relating to the re-purchase of the relevant shares or any other arrangements connected with them; and
- (e) Timpson must not purchase any Automagic shares until the expiry of seven days after completion of the sale of the 3.3%.

The Executive criticises Henry Cooke for the breaches of the Substantial Acquisition Rules with which they should be thoroughly familiar. Timpson and Henry Cooke have agreed to the terms of the Executive's ruling.

8 May 1990