

# THE TAKEOVER PANEL

## **SEVERN TRENT Plc ("SEVERN TRENT")**

### **CAIRD GROUP PLC ("CAIRD")**

The Panel met on 26 October 1990 to hear an appeal by Severn Trent, advised by Samuel Montagu & Co Limited, against a ruling of the Executive that Severn Trent, having lapsed its previous offer, should not be allowed to make a new unilateral offer for Caird at a lower price.

On 21 September Severn Trent announced a cash offer for Caird of 100p per Caird ordinary share and 60.3p per Caird convertible preference share. Caird appointed N M Rothschild & Sons Limited to act as Rule 3 advisers.

On 29 September Severn Trent posted its offer document to Caird shareholders. The offer was subject, inter alia, to the normal acceptance condition and a condition that the Board of Caird reconfirm its forecast "that net trading profits for the eighteen month period ending 31 December, 1990 will be of the order of £8.5 million" which was made in its second interim announcement of 4 September.

On 17 October Caird published its response to Severn Trent's offer. It did not reconfirm its earlier profit forecast, but instead forecast profits in the amount of £7.2 million together with a qualification by its auditors relating to a part of those profits. In the light of this information, Severn Trent made an application to the Executive that it should be permitted to launch a new offer at a lower price without waiting 12 months and without a Caird Board recommendation, on the basis that there had been a material change in Caird's circumstances which should have been disclosed to the market earlier. This application was opposed by Caird and by the Executive which ruled that this was no ground for granting a dispensation from Rule 35.

The provisions of the Code which are relevant for the purposes of this appeal are principally those set out in Rule 35. The effect of this Rule is to restrict the ability of an offeror, whose offer has failed, to return with a new offer within 12 months. The principle underlying Rule 35 is that shareholders' interests are best protected if, after an offer has failed, the target company's management is released from the inevitable dislocation of an offer period.

There are certain recognised situations in which a dispensation from the provisions of Rule 35 may be granted; but a material change in the perceived financial state of the target company, however this may have come about and whether or not this should have been disclosed earlier, is not among them.

In the present case, Severn Trent decided to make a unilateral offer for Caird. The price, the timing, the terms and conditions were all determined by Severn Trent unilaterally; and Severn Trent subsequently determined to exercise its right to lapse the offer.

In the period immediately preceding the posting of its offer document on 29 September, Severn Trent had purchased 29.9% of Caird's ordinary shares in the market, and had purchased most of them at the offer price. Those purchases were, nevertheless, made at a time when Caird's profit forecast had not yet been reported upon, as required under the Code; when it was unclear precisely what was meant by the expression "net trading profits"; and when, no doubt for good commercial reasons and as part of Severn Trent's strategy, Severn Trent declined Caird's offer of further relevant information. The very fact that Severn Trent included the profit forecast condition demonstrated its concern that it might not be met.

The Panel is clearly of the view that it would be inappropriate in these circumstances to grant the dispensation

sought by Severn Trent, so as to enable it now to make a fresh unilateral offer at a lower price.

The Panel concurs with the view of the Executive, and dismisses this appeal.

26 October 1990