

THE TAKEOVER PANEL

BS GROUP PLC ("BS")

SCOTT'S RESTAURANT PLC ("SCOTTS")

The Panel met on 23 November to hear an appeal by a number of shareholders in BS ("the appellants"), represented by The Abingdon Management Company Limited, against a ruling of the Executive that it would not require BS's financial advisers, Singer & Friedlander Limited ("Singer & Friedlander") to request the Royal Institution of Chartered Surveyors ("RICS") to arrange a further independent valuation of Scotts' properties.

The BS offer for Scotts, announced on 28 September, was recommended by the independent directors of Scotts and its financial advisers, Price Waterhouse. At the same time the independent directors of BS and Singer & Friedlander recommended the offer to BS shareholders. The offer was subject to the passing of resolutions to approve the offer at a BS Extraordinary General Meeting.

The offer document and the circular to BS shareholders each included the following statements:

"As part of the discussions that led to the announcement of the offers, the Boards of both BS and Scotts sought independent valuations of the properties of each group.

The terms of the offers were arrived at after taking account of these valuations and the value of the other assets of the Scotts Group. . ."

Appendix II (b) to the offer document contained the text of a report from Baker Lorenz, Chartered Surveyors, valuing the properties of Scotts at £6.425 million.

On 2 November the appellants informed the Executive that they had commissioned their own valuation of the Scotts properties from de Morgan & Co, Chartered Surveyors. This valuation dated 31 October 1990 valued the Scotts properties at £2.33 million.

The Executive was in touch with the RICS in order to confirm that Rule 29 of the Code had been complied with. The RICS carried out its own investigations including interviewing both valuers. It duly reported that it was satisfied with the basis of valuation used by both Baker Lorenz and de Morgan. It stated that "the difference between the amounts of the two valuations is wholly attributable to a difference in valuation opinion."

At the request of the Executive, BS sent a further circular to shareholders on 12 November confirming the basis of the Baker Lorenz valuation and giving a breakdown of that valuation by individual property. The independent directors of BS and Singer & Friedlander reiterated their recommendation of the

offer to BS shareholders in that circular.

At the same time Singer & Friedlander consulted with Davis & Coffey, Chartered Surveyors, as part of its own process of verification as the independent adviser to BS. Following press comment Singer & Friedlander, at the request of the Executive, wrote again to the shareholders in BS. In this circular Singer & Friedlander stated that it had consulted Davis & Coffey and reaffirmed its view that the offer for Scotts was fair and reasonable and in the best interests of BS and its shareholders.

The appellants asked the Executive to require Singer and Friedlander to join with them in requesting the RICS to arrange a further independent valuation of Scotts' properties on behalf of all BS shareholders. The appellants did not contend that there was any breach of Rule 29, and indeed the Executive was satisfied that Baker Lorenz was an 'independent valuer' for the purposes of Rule 29.1 and that the basis of its valuation complied with Rule 29.2. This was confirmed by the RICS.

The appellants nevertheless contended that there was a breach of General Principle 4, the relevant part of which states as follows:

"Shareholders must be given sufficient information and advice to enable them to reach a properly informed decision . . . No relevant information should be withheld from them."

The Executive's view was that the documents provided to BS shareholders, taken together, complied with General Principle 4 and the Panel concurs with this view.

The Panel accordingly dismisses this appeal.

23 November 1990