THE TAKEOVER PANEL

ROBERT BOSCH GmbH ("BOSCH")

WORCESTER GROUP PLC ("WORCESTER")

The Panel met today to hear an appeal by a number of shareholders in Worcester against the Executive's ruling that arrangements entered into between Bosch and certain members of the Worcester executive senior management were not in breach of General Principle 1 and/or Rule 16 of the Code and, in particular, did not require to be approved at a general meeting of independent Worcester shareholders.

Background

On 16 April, Bosch announced a recommended cash offer at 225p per share for the ordinary and preference shares of Worcester. The offer document was posted on 30 April. The offer was made by RBI, a newly-formed subsidiary of Bosch.

As part of its acquisition of Worcester, Bosch wished to ensure that members of the current executive senior management of Worcester (the "Management Shareholders") continued to have an ongoing management role with the company and an equity participation in the business. Accordingly, the Executive having been consulted, a separate agreement was entered into with the Management Shareholders to sell to RBI substantially all of their holdings in Worcester ordinary shares (representing 32.3% of Worcester's share capital on a fully diluted basis) in exchange for shares in RBI. The opportunity to take shares in RBI rather than cash was not made available to any other Worcester shareholders. Bosch also received irrevocable undertakings to accept the offer in respect of a further 18.3% of Worcester's existing issued share capital on a fully diluted basis, comprising the balance of shares held by the Management Shareholders (3.5%), shares held by other members of management (1.8%) and shares held by three institutions (13.0%). These represented, when aggregated with the shares which it had agreed to acquire pursuant to the above arrangements, a total of 50.6% of Worcester's existing issued share capital on a fully diluted basis.

Subsequent to the press announcement, the Executive was approached by a number of Worcester shareholders expressing concern that the proposed arrangements with the Management Shareholders were in breach of General Principle 1 of the Code and that, in exercise of the Executive's discretion under Note 4 on Rule 16 of the Code, should have been subject to a vote of the independent Worcester shareholders.

Code issues

General Principle 1 provides that all shareholders of the same class of an offeree company must be treated similarly by an offeror. Note 4 on Rule 16 sets out the principle which the Panel will apply in circumstances where the offeror wishes to arrange for the management of the offeree company to remain financially involved in the business, through some type of equity participation, whilst at the same time only offering cash to the other shareholders in the offeree company. In such cases, the difference in treatment between management and other shareholders is permitted provided that certain criteria are met and, in particular, provided that the Panel is satisfied that the risks as well as the rewards associated with an equity shareholding will apply to the management's retained interest. However, in giving its consent to such an arrangement, the Panel has a discretion, under Note 4 on Rule 16, to require that, as a condition of its consent, the independent adviser to the offeree company publicly states that in his opinion the terms of the transaction are fair and reasonable and the transaction is approved at a general meeting of the offeree company's shareholders (at which the management shareholders are disenfranchised).

Decision

The Panel, on a consideration of the particular facts of the case, took the view that the arrangements with the Management Shareholders were not inconsistent with General Principle 1 and Note 4 on Rule 16. The Management Shareholders had plainly been treated differently from all other shareholders. However, the independent financial adviser to Worcester, Smith New Court, had confirmed that, in its view, the Management Shareholders were not being offered a greater value for their shares than that being offered to the other shareholders and that the arrangements with the Management Shareholders were fair and reasonable so far as the other Worcester shareholders were concerned. On the evidence provided to it, the Panel saw no reason to question these judgments and, in addition, the Panel was satisfied that appropriate risk as well as reward was present in relation to the Management Shareholders' retained equity interest. Accordingly, the Panel concluded that the Executive was justified in not requiring it to be made a condition of the offer that the proposed arrangements should be put to a vote of the independent shareholders.

The appeal was accordingly dismissed.

11 May 1992