

# THE TAKEOVER PANEL

## NORTHERN ELECTRIC PLC

The full Panel met on 18 December 1996 to consider an appeal by CE Electric UK PLC ("CE") against a ruling of the Executive to allow purchases of shares in Northern Electric Plc ("Northern") to be made as principals by Schroders and BZW who are both advisers to Northern. CE considered that these purchases amounted to a breach of General Principle 7 and Rule 21 of the Code. The Panel concluded that there had been no breach of the Code.

### BACKGROUND

On 28 October 1996 CE announced the terms of cash offers for the whole of the issued share capital of Northern. On 6 December 1996 CE announced increased and final cash offers of 650p per Northern ordinary share and 105p per Northern preference share. The final cash offers are open for acceptance until 1.00pm on Friday 20 December 1996 and Northern and its advisers continue to recommend rejection of these offers.

On 18 December 1996 the advisers to Northern, namely Schroders and BZW, after consulting the Executive, purchased 2,358,530 Northern shares (2.32%) as principals. Schroders and BZW sought and obtained permission from the Executive to make purchases of Northern shares on the basis that such purchases were conducted on an arm's length basis with no financial support, arrangement or understanding of any kind with Northern, that there would be no fee payable to them by Northern in respect of such purchases and that there would be no change in the flat fee basis of their remuneration under the offer: Schroders and BZW would bear the full economic risk of purchasing and holding such shares. Each of Schroders and BZW confirmed to the Executive that these conditions were complied with. The Executive also required that any such purchases should be the subject of immediate disclosure in terms of Rule 8.

CE's advisers appealed the decision of the Executive and argued that the purchases constituted frustrating action in the broadest sense and were offensive to the spirit of the Code as well as General Principle 7 and Rule 21. They argued that it was obvious that the motivation for these purchases was to frustrate the bid and that Northern's advisers had a financial incentive in trying to preserve the independence of their client in the expectation of future fee income, regardless of whether there were any actual financial inducements from Northern to encourage them to do so at the present time. They further cited as evidence the timing of these purchases on the ante-penultimate day of the bid, the fact that immediate settlement terms were requested and that the price paid of 645p was substantially in excess of the Northern share price only a few days previously.

At the Panel hearing, Schroders and BZW informed the Panel that the purchases were made without the prior knowledge of Northern and confirmed that they had followed the conditions laid down by the Executive. They accepted that there was no doubt about their intention - it was to defeat the bid. However, they denied that there had been any breach of the Code.

### **THE PANEL'S REASONS**

The Panel's reasons for reaching its conclusion are these:-

- (a) CE did not challenge the assertion by Schroders and BZW that there were no special arrangements between Schroders and BZW on the one hand and Northern on the other in relation to the purchases. The principal concern which underlies General Principle 7 and Rule 21 is that the board of the offeree company may take some action, whether by direct use of shareholders' funds or otherwise, which may adversely affect shareholders' interests and thereby frustrate an offer, which does not arise in this case.

- (b) It has long been accepted by those involved in takeovers that the Code permits purchases, such as those made by Schroders and BZW in this case, and guidance to this effect has been given by the Executive on various occasions. The Panel agrees that such purchases do not constitute a breach of the spirit of the Code, in particular General Principle 7, and are consistent with the philosophy of the Code not unduly to fetter the market in shares of companies involved in takeovers.

Accordingly, Schroders and BZW are free to retain or dispose of the Northern shares already purchased and are free to purchase further shares subject to the restrictions in the Substantial Acquisition Rules and the concert party provisions of Rule 9 and subject to the same conditions and disclosure requirements as the Executive applied to the original purchases.

18 December 1996