THE TAKEOVER PANEL

APPLIED DISTRIBUTION GROUP PLC ("APPLIED DISTRIBUTION")

At 5.35pm on 31 January Applied Distribution announced that it had received a number of preliminary approaches which might or might not lead to an offer being made for the company. It was stated that the initial indicative offers received were below the then current market price of 62p per share. The Panel Executive only became aware of this situation shortly before the announcement was released. The Executive has examined the events in the period prior to this announcement, and in particular the substantial rise in Applied Distribution's share price. The Executive has concluded that an earlier announcement should have been made. In addition, Baring Brothers International Limited ("Barings"), the financial advisers to Applied Distribution, did not consult the Executive at any stage prior to the announcement, as required under Rule 2.2 of the Code. Barings was primarily responsible for these breaches of the Code.

Rule 2.2 states that an announcement is required, inter alia:

> "(c) when, following an approach to the offeree company, the offeree company is the subject of rumour and speculation or there is an untoward movement in its share price."

The Note on Rule 2.2 provides as follows:

> "Panel to be consulted
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> A movement of approximately 10% should be regarded as untoward for the purposes of Rule 2.2(c), (d) and (f). When there is such a movement or the offeree company is the subject of rumour and speculation, the Panel should be consulted if it is not proposed to make an immediate announcement."

Rule 2.3 addresses the responsibility for making an announcement and states that:

> "Following an approach to the board of the offeree company which may or may not lead to an offer, the primary responsibility for making an announcement will normally rest with the board of the offeree company which must, therefore, keep a close watch on its share price."

The Panel regards advisers as being responsible for ensuring compliance with Rule 2.

On 7 November 1996 Applied Distribution issued a profit warning and stated that it was "committed to maximising shareholder value" and was therefore "considering all options for the Group's future development". The share price fell in the following week from 62.5p to 32.5p. At the beginning of December, Applied Distribution received certain approaches from parties expressing interest in making an offer for the company. At that time, Applied Distribution shares were trading at around 30.5p. The share price fell to a low point of 21.5p on 18 December, at which price there was a significant volume of dealings, before rising significantly to 40p at the end of December. The share price increased further during January and closed on 30 January at 46.5p.

The Executive is naturally concerned that these price increases may have resulted from a leak in relation to the approaches received by Applied Distribution although there was no speculation about this in the media. Following the announcement on 31 January, Barings has drawn the Executive's attention to various market factors in relation to the share price by way of an alternative explanation for the price movements. The Executive considers that these factors might constitute a plausible explanation but it has not itself conducted an investigation into the dealings over this period.

The Code clearly states that, in the absence of an immediate announcement, the Panel must be consulted if, following an approach, there is a movement in the offeree company's share price of approximately 10%. Accordingly, the matter should have been discussed with the Executive at the end of December. In fact the Executive was never consulted.

On 31 January Applied Distribution's share price rose swiftly from the opening of the market and had risen by over 10% on the day by mid-morning. Barings concluded that an announcement in relation to the approaches received should be made and took steps to effect this, although again it failed to consult the Executive. As a result of the continuing upward movement in the share price to a level in excess of the indicative offers received and the perceived need to make consequential amendments, agreement of the text with Applied Distribution and its advisers was delayed and the announcement was not made until 5.35pm. By the market close Applied Distribution's share price had risen to 62p, an increase on the day of more than 30% (and since 18 December of nearly 190%). The Executive considers that an announcement should have been made during the morning.

The failure to consult the Executive in the period up to 30 January, and also during the morning of 31 January, and the delay in issuing the announcement on 31 January were breaches of the Code for which Barings is held primarily responsible.

The Executive wishes to emphasise the importance which the Panel attaches to Rule 2.2 and to the making of timely announcements. False markets are likely to result if the Rule is not properly complied with. It is crucial that the Executive is consulted if there is a significant movement in an offeree company's share price so that the need to make an announcement may be discussed and to enable the Executive to take any other action which it considers appropriate, such as requesting the Stock Exchange to impose a temporary trading halt in the shares concerned.

When a company is approached the company's advisers should put in place procedures to monitor the share price closely and take steps, such as preparing draft announcements and establishing arrangements for their immediate release, to ensure that the company is able to react swiftly if need be. If a significant share price movement occurs, the Executive must be consulted and for companies or their advisers to form their own view about whether an announcement is necessary is not an acceptable alternative.

19 February 1997