

# THE TAKEOVER PANEL

## GUINNESS PLC

### THE DISTILLERS COMPANY PLC

The DTI Inspectors' Final Report on Guinness Plc, published today, concludes that during the course of the offer for Distillers in 1986 prima facie breaches of the Code occurred.

The Panel has already considered the provision of financial redress by Guinness in respect of possible breaches of General Principle 1 and Rule 11 and of General Principle 6 and Rule 8 in relation to purchases of Distillers and Guinness shares respectively. In 1987 the Panel found Guinness to have been in breach of Rule 11 in relation to an undisclosed concert party purchase of Distillers shares. Following various appeals, in 1989 Guinness complied with the Panel's order to pay up to £85 million of additional consideration to disadvantaged Distillers shareholders by way of redress. The Panel Executive does not expect to initiate any further action against Guinness with a view to seeking additional financial redress for anyone.

The decision on whether any disciplinary action should be initiated by the Panel Executive against any of those involved with the offer was deferred, pending the outcome of any criminal or civil proceedings and publication of the Final Report, and is currently being reviewed.

The Panel Executive is also considering whether any further measures should be implemented to strengthen the Panel's ability to enforce the Code during the course of takeover bids, in addition to the significant steps already taken since 1986, the most important of which are set out in the Appendix to this statement.

27 November 1997

## APPENDIX

### **Developments in Takeover Regulation since the Guinness bid for Distillers in 1986**

Since 1986 various steps have been taken to strengthen the Panel's ability to enforce the Code during the course of takeover bids, the most significant of which are outlined below.

#### **1. Monitoring of Dealings**

Possibly the single most important development has been the formation since the late 1980s of a specialist team within the Panel Executive whose full-time rôle is to monitor market dealings day by day in the shares of companies involved in takeovers. This monitoring function has been facilitated by the introduction since 'Big Bang', which occurred in 1986 after the Distillers bid, of a computerised system of recording trades by The Stock Exchange, to which the Panel Executive has on-line access. It has greatly enhanced the Panel's ability to enforce compliance with the expanded disclosure requirements of Rule 8 of the Code (see below) and generally to identify, and no doubt deter, breaches of the General Principles and Rules concerning the buying and selling of shares by parties involved in a takeover.

Nowadays, in the course of bids, the Panel Executive makes frequent enquiries of securities houses, and others who deal in the market, as to why certain transactions have not been disclosed or why they have taken place. Wherever necessary, it will require a detailed account of, and investigate the reasons for, a particular transaction. In doing so, the Panel Executive will, where appropriate, liaise with the market supervision and enforcement departments

of The Stock Exchange which, inter alia, has developed sophisticated computerised techniques for detecting stock market abuses. The Panel Executive's investigations are also assisted by its ability to call for the tape recordings of telephone calls in dealing rooms which are now required to be made under the rules of The Stock Exchange.

## **2. Increased Disclosure**

The disclosure requirements relating to dealings in bid-affected stocks contained in Rule 8 of the Code have been expanded following the Distillers bid. In particular, the Panel required the threshold for disclosure of dealings under Rule 8.3 to be reduced from five per cent to one per cent or more of any class of relevant securities of a company involved in a takeover bid. This has resulted in a large volume of disclosures in the course of bids and a correspondingly higher degree of market transparency.

The giving of undisclosed indemnities having the purpose or effect of artificially manipulating the prices of relevant securities of companies involved in takeovers has always been offensive to the spirit of the Code and, in particular, to General Principle 6, which aims to prevent false markets, and Rule 8. For instance, in the Turner & Newall/AE case one purchaser duly disclosed the existence of an indemnity, but another did not, and the Panel commented that it was at a loss to understand how those who failed to do so concluded, without consulting the Panel as they should, that there was not a requirement to disclose the existence of such arrangements under Rule 8.1 given the breadth of the definition of "associates" under the Code. Nevertheless the Code now expressly requires the disclosure of indemnity and similar arrangements pursuant to Note 6 on Rule 8.

### **3. Legislative Developments**

The Panel operates on a non-statutory basis but has always enjoyed the support and collective strength of the investor, practitioner, company and regulatory organisations included in its membership. However, since the introduction of the Financial Services Act 1986 the Panel's authority has received statutory buttressing. Nowadays, in addition to criticising the offenders' conduct for breaching the Code, the Panel may report the matter to other regulatory bodies, with a recommendation that authorised persons be declared not "fit and proper" to carry on investment business or, in the case of clients, that they be "cold-shouldered" and not acted for by authorised persons. Thus, the Panel is able to operate in the course of a bid with the speed, flexibility and certainty which the market requires and its non-statutory status allows, but the Panel can also refer breaches of the Code to other bodies with a view to their imposing the sanctions referred to above.