editorial

Dawn Raids

Until a few months ago the expression "dawn raid" would have suggested to most business people a Revenue search operation of the "Rossminster" kind. Now, however, the expression is more commonly used in its stock market sense of the purchase over a short period through dealings on the Stock Exchange of a substantial stake in a listed company at a price well over the current price.

The concern of the regulatory authorities has been focussed on this kind of operation since the purchase on February 12 by De Beers of 16.5 million shares in Consolidated Gold Fields through stock exchange dealings resulting in a total holding of around 25 per cent of its equity. As the recent Annual Report of the Takeover Panel points out, on the preceding day the shares of Consolidated Gold Fields closed at 525p. During the market operations on the 12th the price increased to 616p. When De Beers ceased buying at around 10 am on the 12th the price declined below its previous level to around 510p.

In more recent operations, "raids" have been preceded by an announcement by the buying brokers of the desired stake and the price offered, the Jobbers also being informed in advance.

The level of shareholding acquired through a "raid" is in practice limited to 29.9 per cent of the issued capital of the "target" company (including any existing shareholding) in order to avoid the need to make a general cash offer under rule 34 of the Takeover Code.

What are the motives behind dawn raids? De Beers announced that it was "not seeking to change the control or management of Consolidated Gold Fields" but gave no further clues to its intentions. In the case of other raids, reference has been made to defensive considerations and to existing trading relationships; though the possibility of a takeover bid in due course has not always been ruled out. If a bid were to be made later by the purchaser the bid would no doubt be at, at least, the "raid" price (bearing in mind rule 33 of the Takeover Code); what, however, would be the position if the bid price were to be higher than the "raid" price?

The retiring Chairman of the Takeover Panel, Lord Shawcross, stressed in his last annual report that he did not wish to suggest that these "raids" involved any breach of the self-regulatory system or the law. It does however seem that most of the shares acquired in "raids" come from institutional shareholders who receive inquiries before opening of business on the day of the "raid". The small private shareholder has no real chance of participating unless his portfolio is under discretionary management.

The Markets Committee of the CSI, which is currently revising the Takeover Code, will be considering how the Code should deal with these "raids". The Department of Trade has also appointed inspectors to investigate the Consolidated Gold Fields share acquisitions and policy recommendations can be expected from this source in due course. A Stock Exchange committee is also considering how small shareholders can best be protected.

Lord Shawcross has suggested that United States practice and proposals could be of interest here – the adoption of a "tender offer" approach would at least ensure that the offer was open for a reasonable period and could enable all interested shareholders to participate on a pro-rata basis.

The CSI and The Stock Exchange will no doubt wish to be seen to be taking decisive action here in the light of the imminent publication of the report of the Wilson Committee which will include consideration of the effectiveness of self-regulation in the City (though it is not thought that statutory regulation of the "SEC" type is likely to be recommended in the report). It is also to be hoped that The Stock Exchange will give due weight to its desire to encourage, or at least halt the decline of, small private investors.