

**ANNUAL REPORT 2000**

**IRISH TAKEOVER PANEL**

**Report for the year ended June 30, 2000**

# **IRISH TAKEOVER PANEL**

**Report for the year ended June 30, 2000**

This third annual report of the Irish Takeover Panel is made to Mary Harney, T.D., Minister for Enterprise, Trade and Employment as required by section 19 of the Irish Takeover Panel Act, 1997

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## Members of the Panel

Irish Association of Investment Managers

Irish Clearing House Limited - Nominated by the Irish Bankers Federation

Irish Stock Exchange Limited

Law Society of Ireland

Brian Walsh - Nominated by the Consultative Committee  
of Accountancy Bodies - Ireland

## Directors of the Panel

|                    |   |  |
|--------------------|---|--|
| Chairperson        | Daniel O’Keeffe, S.C. }                             | } Appointed by the Governor of the Central<br>Bank of Ireland              |
|                    | } }   |  |
| Deputy Chairperson | William M. McCann, FCA }                            |  |
|                    | Leonard Abrahamson<br>(Alternate: Brendan O’Connor) | Appointed by the Irish Stock Exchange                                      |
|                    | Ann Fitzgerald                                      | Appointed by the Irish Association of<br>Investment Managers               |
|                    | Daniel J. Kitchen                                   | Appointed by the Consultative Committee<br>of Accountancy Bodies - Ireland |
|                    | Brian J. O’Connor<br>(Alternate: Laurence Shields)  | Appointed by the Law Society of Ireland                                    |
|                    | Roisin Brennan<br>(Alternate: John Butler)          | Appointed by the Irish Bankers Federation                                  |

## Director General (and Secretary of the Panel)

Miceal Ryan



## **Introduction**

The Irish Takeover Panel (“the Panel”) is the statutory body responsible for monitoring and supervising takeovers and other relevant transactions in Ireland. The Panel was established by the Irish Takeover Panel Act, 1997 (“the Act”); it is incorporated as a company limited by guarantee. The Panel is responsible for making Rules to ensure that takeovers and other relevant transactions comply with the General Principles set out in the Schedule to the Act. These General Principles are designed to ensure fair and equal treatment of all shareholders in relation to takeovers. The Rules also serve to provide an orderly framework within which takeovers can be conducted.

The Panel has extensive powers under the Act to make rulings and give directions, to hold hearings, to summon witnesses and to require production of documents and other information, where these are appropriate in the discharge of its statutory functions.



## **Chairperson's Statement**

The level of takeover activity in the year ended June 30, 2000, measured by the number of takeovers supervised, was at a similar level to the previous year and resulted in another busy year for the Panel.

On June 19, 2000 the Council of Ministers adopted a common position on the 13<sup>th</sup> Company Law Directive on Takeovers. The Directive was subsequently sent to the European Parliament for a second reading, which must be completed by the end of October 2000. Although it is uncertain when the Directive will be adopted, the current draft provides that Member States have four years from the date of adoption to implement the Directive into their domestic law. We do not anticipate that implementing the current draft of the Directive will necessitate major changes in Irish legislation. We continue to hold the view that the Directive, when adopted, will add little to the quality of regulation of offers for relevant Irish companies.

The Department of Enterprise, Trade and Employment, in consultation with the Panel, is in the final stages of preparing regulations pursuant to section 2(c) of the Act which would extend the definition of "relevant company" to include companies incorporated in Ireland but not quoted on the Irish Stock Exchange, if their securities are authorised for trading on other specified securities markets. We welcome this development and are hopeful that the regulations will come into effect shortly.

The Panel is currently undertaking a general review of the Rules, which were issued by the Panel in 1997, taking account of the experience of the Panel over the last three years. The review is nearing completion and I anticipate that an amended version of the Rules will be adopted before the end of the calendar year.

I would like to welcome Leonard Abrahamson and Roisin Brennan on their appointment as Directors of the Panel. Mr. Abrahamson replaced Kenneth Beaton as the nominee of the Irish Stock Exchange while Ms. Brennan replaced Philip Sykes as the nominee of the Irish



Bankers Federation. On behalf of the Board and myself, I would like to thank Ken and Phil for their contribution and support.

Leo Conway retired as Director General on April 14, 2000 and was replaced by Miceal Ryan. On behalf of the Board and myself, I would like to thank Leo for the significant contribution which he has made in the establishment of the Panel and in its operation over the last three years. He will continue to be involved with the Panel on a part-time basis.

**Daniel O’Keeffe**

Chairperson

September 25, 2000

## Director General's Report

### *Level of takeover activity*

The Panel supervised eight takeovers during the year ended 30 June, 2000 and these transactions resulted in a busy and eventful year for the Panel. The Board met on twenty occasions during the year to consider regulatory issues. The transactions before the Panel included the competitive bids for Esat Telecom Group plc and the management buy-out of Clondalkin Group plc, both of which generated a substantial level of regulatory activity.

### *Regulatory operations*

The eight takeovers, set out in Appendix 2, supervised by the Panel during the year were as follows:

#### Esat Telecom Group plc

The Panel supervised two takeover bids for Esat Telecom Group plc, a hostile offer by Newtel Ireland AB and a recommended offer by BT Hawthorn Limited.

#### Clondalkin Group plc

The offer for Clondalkin Group plc by Edgemoor Limited was a management buy-out backed by Candover Partners Limited.

#### Gaelic Resources plc

Gaelic Resources merged with Desire Petroleum plc. The merger was effected by way of a recommended share for share offer by Desire Petroleum plc for Gaelic Resources plc.

#### Navan Resources plc

The takeover of Navan Resources plc, which did not involve a change of beneficial control, was effected by way of a transfer to a new UK Company, Navan Mining plc.

Petroceltic plc

Dana Petroleum plc disposed of its wholly owned subsidiary, Petroceltic plc. Under section 2(b) of the Act, Petroceltic plc was a relevant company and consequently its disposal by Dana Petroleum plc constituted a takeover for the purposes of the Act.

Ardagh plc

The Panel granted Mercury Asset Management Limited, a funds manager, a waiver, subject to shareholder approval, of its obligation under Rule 37 to make a mandatory bid for Ardagh plc arising as a result of the acquisition of statutory control (the holding of securities that confer not less than 30% of the voting rights in a company) by Mercury Asset Management Limited in the course of a tender offer by Ardagh plc to purchase its own shares.

IFG Group plc

The Panel granted the directors of IFG Group plc a waiver, subject to shareholder approval, of their obligation under Rule 37 to make a mandatory bid for IFG Group plc arising as a result of the acquisition of statutory control by the directors in the course of a programme of purchases by IFG Group plc of its own shares.

In the course of its regulatory activities during the year, the Panel exercised certain of its powers under the Act as follows:

#### Rulings:

The Panel issued eleven rulings during the year, of which six related to the offers for Esat Telecom Group plc and three related to the takeover of Clondalkin Group plc. The remaining two rulings related to the proposed merger of First Active plc and Anglo Irish Bank Corporation plc, which did not lead to an offer being made to shareholders, and to the acquisition of statutory control by the directors of IFG Group plc.

#### Directions:

The Panel gave directions on four occasions. Two of the directions (one of which was published) were in relation to the offers for Esat Telecom Group plc, of which one related to breaches of the Rules and the other to the making of an announcement and the issue of a

circular by a specified date. The remaining two directions related to matters contravening the General Principles and to the content of information in a Rule 2.5 announcement (an announcement of a firm intention to make an offer) and a circular to shareholders.

Waivers:

Six waivers were granted, two of which were waivers of obligations to make mandatory bids under Rule 37 to the directors of IFG Group plc and to Mercury Asset Management Limited in connection with its shareholding in Ardagh plc. Two of the waivers related to the waiving of obligations to make mandatory bids under Rule 9, one of which was in relation to Navan Resources plc, having regard to the preservation of all shareholders' relative interests and rights under the terms of the reconstruction.

Derogations:

Twenty six derogations were granted, of which thirteen related to the takeover of Esat Telecom Group plc and four related to the takeover of Clondalkin Group plc.

Enquiries (section 9(5)):

Four enquiries were initiated by the Panel under section 9(5) of the Act to procure information required by the Panel in the exercise of its functions.

*Financial Statements*

The Financial Statements set out on pages 18 to 23 for the year ended June 30, 2000 continue to reflect a satisfactory position.

The higher level of income reflects an increase in revenues from document charges, principally as a result of the offers for Esat Telecom Group plc.

In the year to 30 June, 2000 operating expenditure increased to IR£501,577 from IR£335,540 in the previous year. There were three major reasons for this growth in expenditure: firstly, an increase in the number of employees; secondly, costs associated

with the recruitment of a new Director General; and thirdly, an increase in fees for professional advice in connection with the ongoing review of the Rules.

Euro denominated memoranda of the Income and Expenditure account for the year ended 30 June 2000 and the Balance Sheet as at 30 June 2000 are set out on pages 33 and 34.

**Miceal Ryan**

Director General

September 25, 2000

## **Directors' Report**

The directors present their third report and audited Financial Statements for the year ended 30 June 2000.

### *Principal activities, review of operations and future developments*

The Irish Takeover Panel is a public company limited by guarantee formed and registered under the Companies Acts 1963 to 1999. The company was incorporated on 29 April 1997 in accordance with the Irish Takeover Panel Act, 1997 ("the Act") to:

- a) monitor and supervise takeovers and other relevant transactions so as to ensure that the provisions of the Act and any rules thereunder are complied with; and
- b) make rules under the provisions of the Act in relation to takeovers and other relevant transactions.

A review of operations and future developments is contained in the Chairperson's Statement and the Director General's Report.

### *Results and transfers to reserves*

The results for the year are set out in the Income and Expenditure account on page 19. An amount of IR£300,000, (1999: IR£350,000) was transferred from the Income and Expenditure account to a Contingency reserve.

### *Health and safety of employees*

The wellbeing of the company's employees is safeguarded through the strict adherence to health and safety standards. The Safety, Health and Welfare at Work Act, 1989 imposes certain requirements on employees and the company has taken the necessary action to ensure compliance with this Act, including the adoption of a safety statement.

*Post balance sheet events*

There were no important events since the end of the financial year.

*Year 2000 issues and introduction of the euro*

The company's software was acquired recently and the suppliers have indicated that the systems are fully compliant with the year 2000. The company's systems continued to operate from 1 January 2000 without any disruption. No issues are foreseen in this matter. The company's systems are capable of dealing with the introduction of the euro.

*Auditors*

In accordance with section 160 (2) of the Companies Act, 1963, KPMG, Chartered Accountants, continue in office.

On behalf of the Board

D. O'Keeffe

*Chairperson*

W. M. McCann

*Deputy Chairperson*

September 25, 2000

## Statement of Directors' Responsibilities

Company law requires the directors to prepare financial statements for each financial period which give a true and fair view of the state of affairs of the company and of the income and expenditure for that period. In preparing these financial statements, the directors are required to;

- select suitable accounting policies and then apply them consistently
- make judgements and estimates that are reasonable and prudent
- prepare the financial statements on the going concern basis unless it is inappropriate to presume that the company will continue in business.

The directors are responsible for keeping proper books of account which disclose with reasonable accuracy at any time the financial position of the company and to enable them to ensure that the financial statements comply with the Companies Acts, 1963 to 1999 and all Regulations to be construed as one with those Acts. They have general responsibility for taking such steps as are reasonably open to them to safeguard the assets of the company and to prevent and detect fraud and other irregularities.

On behalf of the Board

D. O'Keeffe  
*Chairperson*

W. M. McCann  
*Deputy Chairperson*

September 25, 2000



## **Auditors' Report to the members of the Irish Takeover Panel (limited by guarantee)**

We have audited the financial statements on pages 18 to 23.

### *Respective responsibilities of directors and auditors in relation to the financial statements*

The directors are responsible for preparing the directors' report and, as described on page 15, the financial statements in accordance with applicable Irish law and accounting standards. Our responsibilities, as independent auditors, are established in Ireland by statute, the Auditing Practices Board and by our profession's ethical guidance.

We report to you our opinion as to whether the financial statements give a true and fair view and are properly prepared in accordance with the Companies Acts. As also required by the Acts, we state whether we have obtained all the information and explanations we require for our audit, whether the financial statements agree with the books of account and report to you our opinion as to whether:

- the company has kept proper books of account
- the directors' report is consistent with the financial statements;

We also report to you if, in our opinion, information specified by law regarding directors' remuneration and transactions with the company is not disclosed.

### *Basis of opinion*

We conducted our audit in accordance with Auditing Standards issued by the Auditing Practices Board. An audit includes examination, on a test basis, of evidence relevant to the amounts and disclosures in the financial statements. It also includes an assessment of the significant estimates and judgements made by the directors in the preparation of the financial statements, and of whether the accounting policies are appropriate to the company's circumstances, consistently applied and adequately disclosed.

We planned and performed our audit so as to obtain all the information and explanations which we considered necessary in order to provide us with sufficient evidence to give reasonable assurance that the financial statements are free from material misstatement, whether caused by fraud or other irregularity or error. In forming our opinion we also evaluated the overall adequacy of the presentation of information in the financial statements.

*Opinion*

In our opinion, the financial statements give a true and fair view of the state of the affairs of the company at 30 June 2000 and of its surplus for the year then ended and have been properly prepared in accordance with the Companies Acts, 1963 to 1999 and all Regulations to be construed as one with those Acts.

We have obtained all the information and explanations we considered necessary for the purpose of our audit. In our opinion, proper books of account have been kept by the company. The financial statements are in agreement with the books of account.

In our opinion, the information given in the Directors' Report on pages 13 and 14 is consistent with the financial statements.

*KPMG*  
*Chartered Accountants*  
*Registered Auditors*  
5 George's Dock  
IFSC  
Dublin 1

September 25, 2000

# Financial Statements

## Statement of accounting policies

### *Basis of preparation*

The financial statements are prepared in accordance with generally accepted accounting principles under the historical cost convention, and comply with the financial reporting standards of the Accounting Standards Board, as promulgated by the Institute of Chartered Accountants in Ireland.

### *Operating income*

This represents primarily the invoiced value of annual and document charges that the company is entitled to levy and Contract Note levies on dealings in quoted securities of relevant companies collected through brokers on an accruals basis.

### *Tangible fixed assets and depreciation*

Tangible fixed assets are carried at cost less accumulated depreciation.

Depreciation is calculated to write off the original cost of tangible fixed assets over their expected useful lives at the following annual rates:-

|                       |         |
|-----------------------|---------|
| Fixtures and fittings | 5 years |
| Computers             | 3 years |
| Motor vehicle         | 4 years |

### *Cash flow statement*

The company is exempted from the preparation of a cash flow statement as it qualifies as a small company under the Companies (Amendment) Act, 1986.

### *Pensions*

Pensions costs are charged to the income and expenditure account on an accruals basis.

## Financial Statements

### Income and Expenditure account

*for the year to 30 June 2000*

|   | <i>Note</i> | <b>Year ended<br/>30 June 2000</b><br>IR£ | Year ended<br>30 June 1999<br>IR£ |
|---|-------------|---|-----------------------------------|
| <b>Operating income</b>                   | <i>1</i>    | <b>787,056</b>                            | 662,737                           |
| <b>Operating expenditure</b>              | <i>2</i>    | <b>501,577</b>                            | 335,540                           |
|   |             | <hr/>                                     | <hr/>                             |
| <b>Operating surplus</b>                  |             | <b>285,479</b>                            | 327,197                           |
| Interest income                           |             | <b>24,678</b>                             | 13,272                            |
|   |             | <hr/>                                     | <hr/>                             |
| <b>Operating surplus after interest</b>   |             | <b>310,157</b>                            | 340,469                           |
|   |             | <hr/>                                     | <hr/>                             |
| Surplus for the financial year            |             | <b>310,157</b>                            | 340,469                           |
| Accumulated surplus at beginning of year  |             | <b>101,049</b>                            | 110,580                           |
| Transfer to Contingency reserve           |             | <b>(300,000)</b>                          | (350,000)                         |
|   |             | <hr/>                                     | <hr/>                             |
| <b>Accumulated surplus at end of year</b> |             | <b>111,206</b>                            | 101,049                           |
|   |             | <hr/>                                     | <hr/>                             |

The results derive from continuing operations.

There were no recognised gains or losses in the financial year or preceding financial year other than those included above in the Income and Expenditure account.

On behalf of the Board

D. O'Keeffe  
*Chairperson*

W. M. McCann  
*Deputy Chairperson*

## Financial Statements

### Balance Sheet

as at 30 June 2000

|  | <i>Note</i><br>30 June | <b>2000</b><br><b>IR£</b> | <b>30 June</b><br>1999<br>IR£ |
|--|------------------------|---------------------------|-------------------------------|
| <b>Fixed assets</b>                            |                        |                           |                               |
| Tangible fixed assets                          | 6                      | <b>29,470</b>             | 17,260                        |
|  |                        | -----                     | -----                         |
| <b>Current assets</b>                          |                        |                           |                               |
| Debtors  | 7                      | <b>37,109</b>             | 31,447                        |
| Investments                                    | 8                      | <b>794,906</b>            | 352,206                       |
| Cash at bank and in hand                       |                        | <b>8,222</b>              | 59,870                        |
|  |                        | -----                     | -----                         |
|  |                        | <b>840,237</b>            | 443,523                       |
|  |                        | -----                     | -----                         |
| <b>Current liabilities</b>                     |                        |                           |                               |
| Creditors: amounts falling due within one year | 9                      | <b>108,501</b>            | 9,734                         |
|  |                        | -----                     | -----                         |
| <b>Net current assets</b>                      |                        | <b>731,736</b>            | 433,789                       |
|  |                        | -----                     | -----                         |
| <b>Total assets less current liabilities</b>   |                        | <b>761,206</b>            | 451,049                       |
|  |                        | -----                     | -----                         |
| <b>Capital and reserves</b>                    |                        |                           |                               |
| Contingency reserve                            | 10                     | <b>650,000</b>            | 350,000                       |
| Income and expenditure account                 |                        | <b>111,206</b>            | 101,049                       |
|  |                        | -----                     | -----                         |
|  |                        | <b>761,206</b>            | 451,049                       |
|  |                        | =====                     | =====                         |

On behalf of the Board

D. O'Keeffe  
*Chairperson*

W. M. McCann  
*Deputy Chairperson*

## Financial Statements

### Notes

| <b>1 Operating income</b>       | <b>Year ended<br/>30 June 2000</b> | Year ended<br>30 June 1999 |
|---------------------------------|------------------------------------|----------------------------|
|                                 | <b>IR£</b>                         | IR£                        |
| Relevant company annual charges | 403,709                            | 412,000                    |
| Document charges                | 271,110                            | 146,500                    |
| Contract Note levies            | 112,209                            | 89,356                     |
| Other                           | 28                                 | 14,881                     |
|                                 | <hr/>                              | <hr/>                      |
|                                 | <b>787,056</b>                     | 662,737                    |
|                                 | <hr/> <hr/>                        | <hr/> <hr/>                |

| <b>2 Operating expenditure</b>  | <b>Year ended<br/>30 June 2000</b> | Year ended<br>30 June 1999 |
|---------------------------------|------------------------------------|----------------------------|
|                                 | <b>IR£</b>                         | IR£                        |
| Operating expenditure includes: |                                    |                            |
| Depreciation                    | 12,790                             | 6,540                      |
| Auditors' remuneration          | 2,000                              | 3,025                      |
|                                 | <hr/>                              | <hr/>                      |
|                                 | <b>14,790</b>                      | 9,565                      |
|                                 | <hr/> <hr/>                        | <hr/> <hr/>                |

### **3 Employees**

The number of persons employed by the company at June 30, 2000 was 5. The average number of persons employed by the company and the employee costs during the year were as follows:

|                                 | <b>Year ended<br/>30 June 2000</b> | Year ended<br>30 June 1999 |
|---------------------------------|------------------------------------|----------------------------|
| <b>Number:</b>                  |                                    |                            |
| Administration                  | 3                                  | 3                          |
| Non - executive directors       | 7                                  | 7                          |
|                                 | <hr/>                              | <hr/>                      |
| <b>Costs:</b>                   | <b>Year ended<br/>30 June 2000</b> | Year ended<br>30 June 1999 |
|                                 | <b>IR£</b>                         | IR£                        |
| Salaries                        | 183,461                            | 102,531                    |
| Non - executive directors' fees | 113,087                            | 122,088                    |
| Social Welfare costs            | 12,023                             | 7,111                      |
| Pension costs (note 4)          | 5,506                              | 3,850                      |
|                                 | <hr/>                              | <hr/>                      |
|                                 | <b>314,077</b>                     | 235,580                    |
|                                 | <hr/> <hr/>                        | <hr/> <hr/>                |

## Financial Statements

### Notes *(continued)*

| 4 Pension costs | Year ended<br>30 June 2000<br>IR£ | Year ended<br>30 June 1999<br>IR£ |
|-----------------|-----------------------------------|-----------------------------------|
| Pension charge  | 5,506                             | 3,850                             |
|                 |                                   |                                   |

The company contributes to a defined contribution scheme for certain employees. The cost of contributions are included in the income and expenditure account. At 30 June 2000, £2,800 was accrued in creditors relating to this scheme.

### 5 Taxation

Under the provisions of the Finance Act, 1997 the company is exempt from Corporation Tax on its income.

### 6 Tangible fixed assets

|                                | Motor<br>vehicle<br>IR£ | Fixtures and<br>fittings<br>IR£ | Computers<br>IR£ | Total<br>IR£ |
|--------------------------------|-------------------------|---------------------------------|------------------|--------------|
| <b><i>Cost</i></b>             |                         |                                 |                  |              |
| At 30 June 1999                | -                       | 26,192                          | 3,906            | 30,098       |
| Acquisitions                   | 25,000                  | -                               | -                | 25,000       |
|                                | 25,000                  | 26,192                          | 3,906            | 55,098       |
| <b><i>Depreciation:</i></b>    |                         |                                 |                  |              |
| At 30 June 1999                | -                       | 10,234                          | 2,604            | 12,838       |
| Charge for year                | 6,250                   | 5,238                           | 1,302            | 12,790       |
|                                | 6,250                   | 15,472                          | 3,906            | 25,628       |
| <b><i>Net book amount:</i></b> |                         |                                 |                  |              |
| At 30 June 1999                | -                       | 15,958                          | 1,302            | 17,260       |
|                                | 18,750                  | 10,720                          | -                | 29,470       |

## Financial Statements

### Notes (continued)

| <b>7 Debtors</b>               | <b>2000</b> | 1999   |
|--------------------------------|-------------|--------|
|                                | <b>IR£</b>  | IR£    |
| Debtors                        | 988         | 1,250  |
| Prepayments and accrued income | 36,121      | 30,197 |
|                                | 37,109      | 31,447 |
|                                | 37,109      | 31,447 |

All amounts fall due within one year.

| <b>8 Investments</b> | <b>2000</b> | 1999    |
|----------------------|-------------|---------|
|                      | <b>IR£</b>  | IR£     |
| Commercial paper     | 794,906     | 352,206 |
|                      | 794,906     | 352,206 |
|                      | 794,906     | 352,206 |

| <b>9 Creditors: amounts falling due within one year</b> | <b>2000</b> | 1999  |
|---|-------------|-------|
|   | <b>IR£</b>  | IR£   |
| Trade creditors   | 872         | -     |
| PAYE and Social Welfare insurance                       | 41,569      | -     |
| Accrued expenses  | 66,060      | 9,734 |
|   | 108,501     | 9,734 |
|   | 108,501     | 9,734 |

| <b>10 Contingency reserve</b>                | <b>2000</b> | 1999    |
|--|-------------|---------|
|  | <b>IR£</b>  | IR£     |
| At beginning of year                         | 350,000     | -       |
| Transfer from Income and Expenditure account | 300,000     | 350,000 |
|  | 650,000     | 350,000 |
| At end of year                               | 650,000     | 350,000 |

### 11 Approval of financial statements

The Board of Directors approved these financial statements on September 25, 2000.



# Appendix 1

## Administrative Appendix

### *Relevant Companies*

The Irish Takeover Panel Act, 1997 (“the Act”) established the Irish Takeover Panel as the body responsible for the monitoring and supervision of takeovers and certain other transactions in relation to securities in relevant companies in Ireland. A relevant company is defined in the Act to include public limited companies or other bodies corporate incorporated in Ireland whose securities are currently being traded, or (if the subject of a takeover or other relevant proposal) were traded within the previous five years, on a market regulated by a recognised stock exchange (the Irish Stock Exchange is the only exchange prescribed as such). In addition, the Minister, after consultation with the Panel, may prescribe any other public limited company as a relevant company in order to secure the protection of its investors. To date, the Minister has not prescribed any such company. At June 30, 2000 77 companies were deemed relevant for the purposes of the Act (see Appendix 3).

### *The Rules*

In addition to its supervisory function, the Panel is also entrusted with a rulemaking function. The Irish Takeover Panel Act, 1997 (Takeover) Rules, 1997 (“the Rules”) and the Irish Takeover Panel Act, 1997 (Substantial Acquisitions) Rules, 1997 which came into effect on July 1, 1997, were made in fulfilment of this function. These Rules have been made principally to ensure that takeovers and other relevant transactions comply with the principles (referred to in the Rules as “the General Principles”) set out in the Schedule to the Act. The Rules also provide an orderly framework within which takeovers are conducted. They are not concerned with the financial or commercial advantages or disadvantages of a takeover, which are matters for the companies

concerned and their shareholders. Neither are the Rules concerned with issues such as competition and merger policies, which are regulated under different legislation. The drafting of the Rules by the Panel was based substantially on the City Code of the UK Panel on Takeovers and Mergers; however, there are significant differences at the detail level.

*Members of the Panel and Board of Directors*

The Members of the Panel are representative of bodies professionally involved in the securities markets and in the field of takeovers. They comprise the following five bodies, or in certain cases, their corporate or personal nominee:

Consultative Committee of Accountancy Bodies – Ireland

Law Society of Ireland

Irish Association of Investment Managers

Irish Bankers Federation

Irish Stock Exchange Limited

If deemed necessary, the Minister may alter this list by introducing appropriate regulations. Each of the aforementioned bodies has appointed a director to the Board of the Panel. In addition, the Governor of the Central Bank of Ireland has appointed the Chairperson and Deputy Chairperson to the Board.

The Act also provides for the Governor of the Central Bank and the five nominating bodies to designate one or more alternates for each director appointed by them, and three of the nominating bodies have done so. This facilitates the functioning of the Panel when directors are unavailable or are faced with a potential conflict of interest in relation to a case under consideration. Finally, there is also a provision for up to three additional directors to be co-opted by the existing directors. To date, no additional directors have been co-opted. The Board is often required to meet at short notice in order to consider issues requiring urgent decisions.

### *The Executive*

The day-to-day work of the Panel is carried out by the Executive through the office of the Director General. The Executive deals with the general administration of the Panel and the Rules, including consideration of queries and submissions which do not require reference to the Board. The Executive is available for consultation and to give guidance before and during takeover transactions. The Executive is also responsible for monitoring dealings in the shares of relevant companies to ensure compliance with the Rules.

### *Enforcement of the Rules*

The Act gives the Panel statutory authority to make rulings as to whether any activity or proposed activity complies with the General Principles and the Rules. The Panel is also empowered to give directions to any party to a takeover to do or refrain from doing anything specified by the Panel. The Panel may also investigate a person's conduct where it reasonably believes that a contravention of the General Principles or Rules has occurred or may occur. Where appropriate, the Panel may advise, admonish or censure such a person in relation to his or her conduct. In order to carry out its functions, the Panel may conduct a hearing in relation to the matter concerned. For the purposes of such a hearing, the Panel has the same powers, rights and privileges as are vested in the High Court in relation to compelling attendance, examining on oath and compelling the production of documents. The Act also affords witnesses before the Panel the same immunities and privileges as witnesses before the High Court.

### *Access to Reports*

Where it deems it necessary, the Panel (under section 21 of the Act) may require a Court-appointed inspector to furnish it with a copy of a report provided to the Court or the Minister under the Companies Act, 1990. Similarly, the Panel may

require a recognised Stock Exchange to furnish it with a copy of any report given to the Director of Public Prosecutions in respect of an insider dealing offence. To date, no such requests have been made.

### *Charges*

In order to defray the expenses incurred in the performance of its functions under the Act, the Panel is authorised to impose charges on relevant companies, on offerors who are not relevant companies, on dealings in the securities of relevant companies and on documentation submitted to the Panel in accordance with the Rules or in relation to Panel proceedings. The consent of the Minister to the current level of charges, which are set out below, has been obtained.

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## **Panel Charges**

made under section 16 of the Act and effective from July 1, 2000.

1. *Annual charge payable by relevant companies*

Relevant companies pay an annual charge to the Panel based on Market Capitalisation as at June 30 in each year. The scale is as follows:

| Market Capitalisation<br>Euros 000,000 | Annual Charge<br>Euros |
|--|------------------------|
| over 1,250                             | 18,750                 |
| 625 - 1,250                            | 12,500                 |
| 125 - 625                              | 6,250                  |
| 62 - 125                               | 5,000                  |
| 31 - 62                                | 3,750                  |
| 12 - 31                                | 2,500                  |
| Under 12                               | 1,250                  |

2. *Charge on transactions in securities of relevant companies*

Charges are made on contracts in respect of dealings in securities of relevant companies. This charge amounts to 1.25 Euros on each contract note in respect of transactions valued at more than 12,500 Euros.

3. *Document charges - takeovers and other relevant transactions*

A document charge is made in respect of documents furnished to the Panel under the rules in connection with takeovers and other relevant transactions. The scale for these charges is:

| Value of the Offer<br>Euros 000,000 | Charge<br>Euros |
|-------------------------------------|-----------------|
| Under 5                             | 2,500           |
| 5 - 15                              | 10,000          |
| 15 - 35                             | 17,500          |
| 35 - 65                             | 35,000          |
| 65 - 125                            | 50,000          |
| Over 125                            | 62,500          |

The charge in respect of “whitewash” waiver applications is 2,500 Euros.

4. *Charge on offerors which are not relevant companies*

Where an offeror is not a relevant company, or a subsidiary of a relevant company, a charge is made additional to the document charge as set out above. This charge is made for an amount equal to the annual charge payable by a relevant company having a market capitalisation equal to that of the offeree at the offer price.

5. *Document charge - proceedings of the Panel*

The Panel is empowered to charge up to 900 Euros per document, in respect of documents furnished to the Panel by a person in relation to proceedings to the Panel.

Note: There are provisions for certain of the above charges to be mitigated in certain circumstances. Further details can be obtained from the Executive.

---

### **Administrative Diary**

- |                |  |
|----------------|--|
| March 6, 2000  | The Irish Stock Exchange appointed Mr. Leonard Abrahamson as a director of the Panel, in place of Mr. Kenneth Beaton, with Mr. Brendan O'Connor as his alternate, for a three year period commencing April 29, 2000.                 |
| March 9, 2000  | The Governor of the Central Bank of Ireland re-appointed Mr. Daniel O'Keeffe and Mr. William McCann as Chairperson and Deputy Chairperson respectively of the Panel, in each case for a three year period commencing April 29, 2000. |
| March 30, 2000 | The Consultative Committee of Accountancy Bodies-Ireland re-appointed Mr. Daniel Kitchen as a director of the Panel for a three year period commencing April 29, 2000.   |
| April 15, 2000 | Mr. Miceal Ryan replaced Mr. Leo Conway as Director General of the Panel.  |
| May 12, 2000   | The Law Society of Ireland re-appointed Mr. Brian O'Connor as a director of the Panel for a three year period commencing May 12, 2000. Mr. Laurence Shields was nominated as Mr. O'Connor's alternate.                               |

- May 22, 2000      The Irish Association of Investment Managers re-appointed Ms. Ann Fitzgerald as a director of the Panel for a three year period commencing June 30, 2000.
- June 23, 2000      The Irish Bankers Federation appointed Ms. Roisin Brennan as a director of the Panel, in place of Mr. Philip Sykes, with Mr. John Butler as her alternate, for a three year period commencing June 30, 2000.

## Appendix 2

### Takeovers supervised by Irish Takeover Panel July 1, 1999 to June 30, 2000

- |                            |   |
|----------------------------|---|
| (i) Clondalkin Group plc   | (Offer by Edgemoor Limited, a company backed by Candover Partners Limited)                |
| (ii) Petroceltic plc       | (Disposal by Dana Petroleum plc)  |
| (iii) Gaelic Resources plc | (Merger with Desire Petroleum plc)  |
| (iv) Esat Telecom plc      | (Offer by Newtel Ireland AB)  |
| (v) Esat Telecom plc       | (Offer by BT Hawthorn Limited)  |
| (vi) IFG Group plc         | (Acquisition of statutory control by the directors of IFG Group plc)                      |
| (vii) Ardagh plc           | (Acquisition of statutory control by Mercury Asset Management Limited)                    |
| (viii) Navan Resources plc | (Transfer, without change of beneficial interests, to a new UK company, Navan Mining plc) |

Note: The following companies were in an Offer Period at June 30, 2000, but offers had not been made for either at that date:

Dunloe Ewart plc  
Adare Printing Group plc



## Appendix 3

### List of Relevant Companies under the Irish Takeover Panel Act, 1997 as at June 30, 2000

|                                   |                               |                              |
|-----------------------------------|-------------------------------|------------------------------|
| Abbey plc                         | Glanbia plc                   | Norish plc                   |
| Adare Printing Group plc          | Glencar Mining plc            |                              |
| Allied Irish Banks plc            | Golden Vale plc               | Oakhill Group plc            |
| Aminex plc                        | Grafton Group plc             | Oglesby and Butler Group plc |
| Anglo Irish Bank Corporation plc  | Greencore Group plc           | Ormonde Mining plc           |
| Arcon International Resources plc | Green Property plc            | Ovoca Resources plc          |
| Ardagh plc                        |                               | Providence Resources plc     |
| Arnotts plc                       | Heiton Holdings plc           |                              |
| Athlone Extrusions plc            | Horizon Technology Group plc  | Qualceram Shires plc         |
|                                   |                               |                              |
| Bank of Ireland Group             | IAWS Group plc                |                              |
| Barlo Group plc                   | ICC Bank plc                  | Rapid Technology Group plc   |
| Bula Resources (Holdings) plc     | ICON plc                      | Readymix plc                 |
|                                   | IFG Group plc                 | Reflex Group plc             |
| Celtic Resources Holdings plc     | IRE-TEX Group plc             | Riverdeep Group plc          |
| CPL Resources plc                 | Independent News & Media plc  | Ryanair Holdings plc         |
| James Crean, plc                  | IONA Technology plc           | Ryan Hotels plc              |
| CRH plc                           | Irish Continental Group plc   |                              |
|                                   | Irish Life & Permanent plc    | Seafield plc                 |
| DCC plc                           | ITG Group plc                 | Sherry FitzGerald Group plc  |
| Donegal Creameries plc            | Ivernia West plc              | SMF Technologies plc         |
| Dragon Oil plc                    | IWP International plc         | Jefferson Smurfit Group plc  |
| Dunloe Ewart plc                  |                               |                              |
|                                   | Jurys Doyle Hotel Group plc   | Trinity Biotech plc          |
|                                   |                               | Tullow Oil plc               |
| eircom plc                        | Kenmare Resources plc         | Tuskar Resources plc         |
| Elan Corporation, plc             | Kerry Group plc               |                              |
| Ennex International plc           | Kingspan Group plc            | Unidare plc                  |
|                                   |                               | United Drug plc              |
| FBD Holdings plc                  | Marlborough International plc |                              |
| First Active plc                  | McInerney Holdings plc        | Vislink plc                  |
| Fyffes plc                        | Minmet plc                    | Waterford Wedgwood plc       |



**EURO denominated memorandum Income & Expenditure**  
**Account for the year to 30 June 2000**

|   | Year ended<br>30 June 2000 | Year ended<br>30 June 1999 |
|---|----------------------------|----------------------------|
|   | €                          | €                          |
| <b>Operating income</b>                   | <b>999,355</b>             | 841,502                    |
| <b>Operating expenditure</b>              | <b>636,871</b>             | 426,048                    |
|   | <hr/>                      | <hr/>                      |
| <b>Operating surplus</b>                  | <b>362,484</b>             | 415,454                    |
| Interest income                           | <b>31,334</b>              | 16,852                     |
|   | <hr/>                      | <hr/>                      |
| <b>Operating surplus after interest</b>   | <b>393,818</b>             | 432,306                    |
|   | <hr/>                      | <hr/>                      |
| Surplus for the financial year            | <b>393,818</b>             | 432,306                    |
| Accumulated surplus at beginning of year  | <b>128,306</b>             | 140,408                    |
| Transfer to the contingency reserve       | <b>(380,922)</b>           | (444,408)                  |
|   | <hr/>                      | <hr/>                      |
| <b>Accumulated surplus at end of year</b> | <b>141,202</b>             | 128,306                    |
|   | <hr/> <hr/>                | <hr/> <hr/>                |

## EURO denominated memorandum Balance Sheet as at 30 June 2000

|  | 30 June<br>2000  | 30 June<br>1999 |
|--|------------------|-----------------|
|  | €                | €               |
| <b>Fixed assets</b>                            |                  |                 |
| Tangible fixed assets                          | 37,419           | 21,916          |
|  | <hr/>            | <hr/>           |
| <b>Current assets</b>                          |                  |                 |
| Debtors  | 47,119           | 39,929          |
| Investments                                    | 1,009,322        | 447,209         |
| Cash at bank and in hand                       | 10,440           | 76,020          |
|  | <hr/>            | <hr/>           |
|  | <b>1,066,881</b> | 563,158         |
| <b>Current liabilities</b>                     |                  |                 |
| Creditors: amounts falling due within one year | 137,768          | 12,360          |
|  | <hr/>            | <hr/>           |
| <b>Net current assets</b>                      | <b>929,113</b>   | 550,798         |
|  | <hr/>            | <hr/>           |
| <b>Total assets less current liabilities</b>   | <b>966,532</b>   | 572,714         |
|  | <hr/> <hr/>      | <hr/> <hr/>     |
| <b>Capital and reserves</b>                    |                  |                 |
| Contingency reserve                            | 825,330          | 444,408         |
| Income and expenditure account                 | 141,202          | 128,306         |
|  | <hr/>            | <hr/>           |
|  | <b>966,532</b>   | 572,714         |
|  | <hr/> <hr/>      | <hr/> <hr/>     |