

THE TAKEOVER PANEL

THE BOOTS COMPANY LIMITED ("BOOTS")/ HOUSE OF FRASER LIMITED ("HOUSE OF FRASER")

On 13th November, 1973 the Panel announced that it had requested The Stock Exchange to carry out an investigation into dealings in the ordinary shares of House of Fraser prior to the announcement in the morning newspapers on 7th November, 1973 of the offer by Boots for the whole of the issued share capital of House of Fraser. Both The Stock Exchange and the Panel have now completed their enquiries. The background to these enquiries is as follows.

Commencing early in 1973 inconclusive discussions had taken place between House of Fraser and several other public companies with a view to an offer being made for the issued capital of House of Fraser. During this period there was fairly regular comment in the Press, never contradicted, that Sir Hugh Fraser (Chairman of House of Fraser and the holder, together with his family and his publicly quoted family investment company, Scottish and Universal Investments Limited, of over 20% of the House of Fraser capital) was a willing seller of his interest in House of Fraser. This comment inevitably led to speculation in the market and was reflected in the movements in the price of House of Fraser shares during the period, particularly in the earlier part of the year. In June, Boots, through Lord Redmayne, who is a director of both companies, approached House of Fraser to discuss a possible joint venture. This proposal, which did not involve a merger of the two companies, was favourably received and led to a suggestion by Sir Hugh Fraser that Boots might consider making an offer for the whole of the share capital of House of Fraser. Boots agreed to examine this possibility and in August Lord Redmayne was asked by Boots to obtain from House of Fraser certain detailed information regarding that company in order to assist it in carrying out the examination. The Panel were informed by the parties that the collecting together of the necessary information was undertaken by Lord Redmayne with the maximum degree of discretion so as to prevent any suspicion arising among the staff of House of Fraser that an offer was in contemplation. On 25th October Boots, having by then satisfied itself as to the commercial basis for a merger, instructed its advisers, J. Henry Schroder Wagg & Co. Limited ("Schroders"), to work out the terms of an offer for the House of Fraser capital. On 5th November the terms were finally fixed by Boots and Schroders and later that day those terms were communicated by

Schroders to S. G. Warburg & Co. Limited, financial advisers to House of Fraser. On 6th November Lord Redmayne attended a board meeting of House of Fraser at which the Boots proposals were submitted for the board's consideration. The Panel was informed that this was the first indication that the board of House of Fraser had that Boots might be making an offer. On the same day the board of Boots met and approved the terms of the offer.

The enquiry into dealings covered the period from 22nd October to 6th November, 1973 during which some seven million shares were traded, representing about 7% of the capital of the company. An examination of all deals involving 5,000 shares or more revealed a very large volume of business, particularly on the Scottish Exchange, seemingly sparked off by a rumour that Boots were possible bidders for House of Fraser; this rumour was apparently first reported in "The Scotsman" on 24th October. The price of House of Fraser shares rose from 115p on 22nd October to 125p on 25th October and continued to rise on further press comment to 150p by the date of the announcement of the offer.

The list of dealings showed a number of transactions which appeared to be significant. Amongst them were purchases by a director of House of Fraser, Mr. A. I. Moffatt, on 1st November and by Sir Robert Hobart, a director of John Barker & Co. Limited and personal assistant to Sir Hugh Fraser at Harrods Limited, on dates between 26th October and 5th November. In addition, a past employee of the House of Fraser group was seen to have dealt very heavily, together with a number of other persons connected in various ways with the company. The Panel executive interviewed the Chairmen and the merchant bank advisers of both companies, together with all those persons whom it felt might be able to help in its enquiries and questioned them all in great detail. Mr. Moffatt told the Panel that he was quite unaware of the negotiations with Boots when he dealt and had in fact delayed dealing for some two months after negotiations, of which he and all the board members were aware, with another potential purchaser had broken down. He considered himself quite free to purchase shares at the time he had dealt. Sir Robert Hobart sold his family business to the group many years ago and had since then been closely associated first with Sir Hugh Fraser's father and, subsequently, with Sir Hugh himself. He told the Panel that he had no knowledge of the negotiations with Boots and this was confirmed by Sir Hugh Fraser. He said that he was aware that Sir Hugh Fraser was a willing seller and thought it would be to his advantage to build up a holding in the company in order to safeguard his future position; to this end he

acquired in his own name and that of his family some 100,000 shares representing about 0.1% of the capital of the company. Amongst other dealings examined were the sales on 23rd and 24th October by Sir Hugh Fraser and his family trust of 50,000 shares and on dates between 26th October and 1st November of 720,000 shares by Scottish and Universal Investments Limited; although constituting a technical breach of Rule 30 of the Code, the Panel considered that these dealings, being sales, were not significant in the context of its enquiry.

From the Panel's enquiries it was clear that Boots had maintained complete security throughout the negotiations but in view of the close connection between the company and many of the purchasers the Panel was unable to reach the same conclusion with regard to House of Fraser. Whilst no source of a leak could be positively identified it seemed likely from the apparently knowledgeable buying which took place in the weeks before the announcement of the bid on 7th November that information had "leaked" from House of Fraser although it is accepted that the identity of the bidder may not have been known.

There is not sufficient evidence to suggest that anyone was guilty of insider dealing as defined in the Code, but there are strong grounds for concluding that House of Fraser did not adequately observe the strict requirement of Rule 7 of the Code, which stresses the need for complete secrecy during bid negotiations.

In conclusion the Panel considers that the propriety of dealings by directors or close associates of directors of a company in the shares of the company at a time when it is known that the Chairman is seeking a purchaser for his holding and that negotiations affecting the future of the company may take place is open to question.

23rd July, 1974.