

THE TAKEOVER PANEL

27TH JULY, 1976

Seafield Amalgamated Rubber Company Limited

1. Because of new evidence the Panel on Take-overs and Mergers has recently had a number of meetings to re-examine a case with which it dealt in December, 1971 and January, 1972.
2. In the summer of 1971 Sime Darby Holdings Limited ("Sime Darby") made a bid for Seafield Amalgamated Rubber Company Limited ("Seafield"). An announcement of the proposed bid was made on 10th August, 1971 and the offer document was posted on 21st August, 1971.
3. Although registered in England, Sime Darby was managed in Singapore. The chairman at that time was Mr.D.W.Pinder who lived in Singapore. Mr.P.S.Edwards was an executive director based in Malaysia. Mr.A.W.Scott, who lived in England, was a non-executive director. Mr.Scott was also chairman of R.G.Shaw & Company Limited ("R.G.Shaw"), a London-based group trading in the Far East which had a close relationship with Sime Darby. Sime Darby held 21% of the shares of R.G.Shaw and R.G.Shaw held 45% of the shares of Sime Darby. R.G.Shaw was merged with Sime Darby in 1972. Mr.Pinder, Mr.Edwards and Mr.Scott have not been connected with Sime Darby for some time and the company is under new management.
4. In the autumn of 1971, the Panel investigated various dealings in Seafield shares which had taken place before the announcement of the offer. One was the purchase by Mr.Scott's secretary of 10,000 Seafield shares on 3rd August, 1971. When the Panel executive asked Mr.Scott to explain this purchase, he admitted that he had known of Sime Darby's impending bid for Seafield but said that the purchase had been made in error. He had asked his stockbroker about the nature of the market in Seafield shares and had asked to be informed if any large parcels of shares came on offer. He had been on holiday when the purchase was made and, on being contacted, had said that, to avoid embarrassment, the purchase should be in the name of his secretary. R.G.Shaw had paid for the shares on 17th August and had debited Sime Darby in Singapore. The stockbroker concerned maintained that he had had an instruction to buy on 3rd August.
5. The Panel executive first saw Mr.Scott on 21st September, 1971; and on 23rd November, 1971 the Panel executive wrote to Mr.Scott, alleging that he had engaged in insider trading contrary

to the then Rule 30 and had failed to report the purchase of shares for inclusion in the offer document. Mr.Scott replied to the Secretary of the Panel on 30th November, 1971 indicating that the Panel executive had misunderstood the position. Mr.Scott said that, when the purchase was made, he had immediately consulted Mr.Pinder who had found an independent buyer in Singapore for the 10,000 shares in the period 5th to 7th August, 1971. Sime Darby had never been the beneficial owners of the shares and had, therefore, not been under an obligation to explain the timing of the purchase or to refer to the purchase in the offer document.

6. The Panel interviewed Mr.Scott on 2nd December, 1971 and, in view of the conflicting explanations that Mr.Scott had given, decided to seek an explanation from Mr.Pinder. Mr.Pinder wrote a letter to the Panel dated 17th December, 1971 and appeared before the Panel on 18th January, 1972. Mr.Pinder produced a letter from a Chinese friend, Mr.Chen Jan Jee, stating that he had met Mr.Pinder in England on 6th August, 1971 and that he had agreed then to buy the 10,000 shares. Mr.Pinder also produced a letter from Mr.P.B.Chapman of J.M.Sassoon & Co. (Pte), stockbrokers in Singapore, stating that he had effected a transfer of the shares later in the same day from Mr.Pinder to Mr.Chen Jan Jee. Two contract notes, dated 6th August, 1971, were produced, one for the sale of the shares by Mr.Pinder and the other for their purchase by Mr.Chen Jan Jee at the same price. The Panel was not satisfied about the circumstances in which Mr.Scott had bought the shares in the first instance, but it accepted the evidence of the contract notes that Mr.Pinder had immediately disposed of them to someone unconnected with Sime Darby or R.G.Shaw.

7. Later, Mr.Pinder was convicted in Singapore of criminal breach of trust in connection with the affairs of Sime Darby and sentenced to 18 months' imprisonment. He is at present in prison in Singapore. At the time of his arrest, the Singapore police took possession of papers and tapes of telephone conversations, recorded by Mr.Pinder in Singapore, relating inter alia to the purchase of the 10,000 Seafield shares. The Singapore Authorities sent copies of documents and tapes to the Panel. These showed that early in August, 1971 Mr.Pinder knew nothing about the purchase of the shares and that in November or December, 1971 he had arranged for the preparation of contract notes, ante-dated to 6th August, 1971, in order to convince the Panel that neither Mr.Scott nor R.G.Shaw nor Sime Darby was the beneficial owner of the shares at the time of the announcement of the Sime Darby bid for Seafield. We understand that in proceedings before the

Registrar of Companies in Singapore, Mr.Chapman admitted that the contract notes were ante-dated. The Panel sent Mr.Pinder 2 statement of facts based on the evidence in its possession but in the circumstances could not adjudicate on him.

8. What is now established is that the shares remained in the nominal ownership of Mr.Scott's secretary until at least November, 1971. R.G.Shaw paid for them on 17th August and debited Sime Darby, Singapore, on the following day. From 27th September onwards, the cost was charged to a succession of subsidiaries and associated companies of Sime Darby. Then on or about 10th December, 1971 Mr.Pinder disposed of the shares by a sale to Mr.Chen Jan Jee.

9. It is difficult at this time to unravel the details of the planning of the deception. It seems to have been arranged towards the end of November, 1971. The false statement of events was contained in Mr.Scott's letter of 30th November and reiterated at the Panel meeting on 2nd December. Mr.Scott saw Mr.Pinder in Singapore in the course of November and Mr.Edwards read over to Mr.Pinder on 29th or 30th November the letter of 30th November which Mr.Scott sent to the Panel. The exact date to which the contract notes were to be ante-dated was settled in a further telephone conversation between Mr.Pinder and Mr.Edwards on the same day.

10. In May, 1976 Mr.Scott and Mr.Edwards were told that the evidence in the Panel's possession appeared to indicate that they had taken part in the preparation of the false story contained in Mr.Scott's letter of 30th November, 1971 and in the presentation of false documents to corroborate that false story in order to deceive the Panel and persuade it that there had been no breach of either Rule 30 or Rule 16 of the then Code. They were asked to appear before the Panel and give any answer or explanation.

11. Mr.Scott informed the Panel that he now has neither directorships nor employment and he submitted medical evidence to show that his health made it impracticable to appear before the Panel. He wrote that he does not recollect the events of five years ago sufficiently clearly to be able to give any assistance to the Panel. He has not denied that he deceived the Panel in his letter of 30th November, 1971 and in his evidence before the Panel on 2nd December, 1971 and 18th January, 1972.

12. Mr.Edwards appeared before us on 21st July, 1976. He was co-operative and helpful though he found it difficult to recollect in detail the events of 1971. He did not, however, deny that he had been involved in the preparation of Mr.Scott's letter of 30th November, 1971. He had been present for part of the time at the Panel meeting on 2nd December, 1971 and throughout the Panel meeting on 18th January, 1972.

13. It now seems clear that there was a breach of the then Rule 30 of the Take-over Code in the purchase of the Seafield shares at the instance of Mr.Scott at a time when he was privy to the take-over discussions and a breach of the then Rule 16 in Mr.Scott's failure to see that this purchase was referred to in the offer document. More serious is the collaboration of Mr.Scott, Mr.Edwards and Mr.Pinder in the presentation of false information to the Panel. Mr.Scott deserves censure in the severest terms and has shown himself to be unfitted to be a director of public companies. Mr.Edwards, who told us that up to July, 1971 he had spent virtually all his working life abroad on plantations management, performed a subordinate role in these matters and he was under the dominating influence of Mr.Pinder. Nevertheless his role in helping to deceive the Panel deserves criticism.

14. In relation to some of the questions raised by these matters, and for different reasons, we have had to consider the position of Mr.James Joll, a director of N.M.Rothschild & Sons Limited ("Rothschilds"). In 1971, he was 34 years of age. He had joined Rothschilds' Corporate Finance Department from financial journalism in 1968 and was appointed a director late in 1970.

15. Rothschilds acted for Sime Darby in the bid for Seafield. Mr.Joll handled the bid and in that capacity was consulted by the Panel executive in their examination of the purchase of the 10,000 shares. He also attended the meetings of the Panel on 2nd December, 1971 and 18th January, 1972. Tapes of telephone conversations between Mr.Pinder and Mr.Joll, recorded by Mr.Pinder in Singapore, were among the material sent to the Panel by the Singapore Authorities.

16. It seems to us to be necessary at this point to set out the considerations we have had in mind in examining Mr.Joll's position. The Panel has always expected the utmost candour and full disclosure from those who are involved in its work and appear before it. This general obligation applies with special force to those who are actively engaged in the securities market in the United Kingdom. They are represented on the City Working Party and the Take-over Panel and are pledged to support both the Code and the Panel by their Associations. City houses and their representatives therefore deal with the Take-over Panel on the basis that they are part of the system by which the City disciplines itself. The effective working of that system requires that they should recognise that fact and conduct themselves in all respects accordingly. It follows that

they have a duty to assist the Panel in discovering the whole truth of any matter under examination and this duty overrides any duty to a client.

17. Mr.Joll was in close touch with Sime Darby throughout the latter part of 1971 and subsequently, first in connection with the Seafield bid and then in connection with other matters. As Mr.Scott was a director of Sime Darby and another share dealing involving Mr.Scott raised questions under the Code, Mr.Joll at the Panel's request accompanied Mr.Scott to the Panel executive on 21st September, 1971. It was then that the Panel executive first learned of the purchase of 10,000 shares by Mr.Scott's secretary. Mr.Joll informed Mr.Pinder by telephone on 21st September of the outcome of that meeting and he had contacts with Mr.Edwards on the subject in the latter part of November. Mr.Edwards informed Mr. Joll of the contents of Mr.Scott's letter of 30th November, 1971 before it was sent to the Panel. Mr.Joll said to us that he did not feel that he had any responsibility for the letter, which, he understood, had been prepared with legal advice.

18. Before the meeting of the Panel on 2nd December, 1971. Mr.Joll had two telephone conversations with Mr.Pinder in Singapore and a telephone conversation after the meeting. We have heard tapes of these conversations. In the first conversation Mr.Pinder revealed to Mr.Joll that, although Mr.Scott in his letter of 30th November said that Mr.Pinder had found an independent buyer for the 10,000 shares in the period 5th to 7th August, be (Mr.Pinder) had not in fact known anything about the matter then. The conversation then went on to a discussion of the transactions, with Mr.Joll saying that he wanted to know the truth but not pursuing various leads.

19. At the Panel meeting on 2nd December, in answer to specific questions, Mr.Joll said that he had not known about the 10,000 shares until Mr.Scott's talk with the Panel executive on 21st September, that Mr.Pinder on 21st September had said that the shares had not been bought with his knowledge but that Mr.Joll thought that by 21st September Mr.Pinder was not unaware of them. At the meeting of the Panel on 18th January, 1972 Mr.Joll attended to answer some questions and was present when Mr.Pinder confirmed the description of the share transactions he had already given.

20. In a statement submitted to the Panel and at meetings held on 21st and 22nd July, 1976, Mr.Joll accepted that he had gathered from Mr.Pinder on 2nd December, 1971, before the Panel meeting on that day, that Mr.Pinder had not in fact arranged the sale of the shares to Mr.Chen Jan Jee in the period 5th to 7th August. He also

said that he now saw that there was more than one point in his conversation with Mr.Pinder when he should have pressed Mr.Pinder harder to discover whether any other details of the Scott story were false. He believed that Mr.Pinder was saying that a contract note, or contract notes, dated 6th August existed, transferring the shares to a purchaser in Singapore independent of Sime Darby and that Mr.Pinder knew about the transactions about the middle of August. Mr.Joll said that, in 1971, he was addressing himself to the question whether Sime Darby had been involved in any breach of the Code and, so long as a resale had taken place, considered that it did not much matter whether Mr.Pinder had arranged it or not.

21. Mr.Joll admits that before 2nd December, 1971 he was already sceptical about the truth of the account of events in Mr. Scott's letter of 30th November. Mr.Pinder's admission that there was no truth in the statement that he had arranged a sale in the period 5th to 7th August must have increased Mr.Joll's scepticism. In telephone conversations on 2nd December Mr.Pinder referred to the "current story" which was an unusual way to describe past events in which he purported to play a part. Admittedly it is not easy, on a hearing of the tapes, to determine when Mr.Pinder was purporting to describe actual events and when fictitious events, but Mr.Joll's doubts about the truth of Mr.Scott's account must have been enhanced and he could not have placed any firm reliance on the statement that a transfer had in fact taken place on 6th August.

22. Mr.Joll apparently made no further effort to get at the facts or to see the contract notes. He saw Mr.Pinder in Singapore in the week following the Panel meeting on 2nd December; he told us that he had no recollection of the details of what was discussed on the issue and that he assumed that nothing new had emerged. Mr.Joll said that he did not see the letters and contract notes submitted by Mr.Pinder to the Panel. On 17th January, 1972 he saw Sime Darby's London solicitor who had, he told us, gone through the documentation with Mr.Pinder and believed it to be in order but Mr.Joll told us that he did not see the documentation. He informed us that he did not see the letters or contract notes at or before the Panel meeting on 18th January, 1972 or indeed afterwards.

23. Mr.Joll informed us that he did not tell his senior colleagues in Rothschilds of Mr.Pinder's admission on 2nd December or of his doubts about the whole affair and he accepted that this was a serious mistake on his part. He thus took upon himself full responsibility for his handling of the matter.

24. We are of the opinion that Mr.Joll showed not simply a serious error of judgement but a failure to observe the standard of conduct we have set out above in not drawing the attention of the

Panel to the unsatisfactory position as he knew it on 2nd December. He could have given further information at the Panel meetings on 2nd December, 1971 and 18th January, 1972 or he could at any time after 2nd December have communicated his disquiet to the Panel executive. Ample opportunity existed for speaking to a member of the Panel executive and this makes us unwilling to accept the excuse that Mr.Joll had to take a sudden and difficult decision at meetings of the full Panel.

25. Nor does the exact extent of Mr.Joll's doubts really determine the issue. It was for the Panel or Panel executive to judge the significance of the information and in this case the knowledge that Mr.Pinder was lying in at least one particular might have focussed attention on weak points in the whole story. Information that Mr.Pinder did not know on 5th to 7th August about the purchase of shares by Mr.Scott's secretary would have shown that a contract note of 6th August in Mr.Pinder's name was possibly suspect.

26. The main criticism of Mr.Joll's conduct must be that he failed to observe the standards of frankness and complete disclosure to the Panel and its executive which is required from all and particularly from organisations; such as the house of which he is a director, which sponsor and support the Panel. In these circumstances, while recognising that five years ago Mr.Joll was younger and less experienced and that his conduct in other matters relating to the Panel or its executive has not given any ground for complaint, we are of the opinion that, in relation to the standards of conduct outlined in paragraph 16 above, his behaviour in this case five years ago is deserving of censure.

27. We should add that, after the Panel had formulated its complaint, Rothschilds, who have behaved with complete propriety, set up an Internal Investigation Committee, including individuals independent of Rothschilds, to examine these matters. We had the advantage of a memorandum submitted to the Panel by this Committee and we took the views of the Internal Investigation Committee into account in reaching our conclusions.

28. We wish to express our appreciation of the action of the Attorney-General of Singapore in making all the information at his disposal available to us.