

THE TAKEOVER PANEL

Gilgate Holdings Limited ("Gilgate")

The Panel has had under consideration for some time the position under Rule 34 of Mr. J.D. Kidd, Mr. D.A. Lucas and Mr. C.D. Reynolds, in consequence of the purchase of shares in Gilgate.

Mr. Kidd, Mr. Lucas and Mr. Reynolds were directors of a number of inter-connected companies. On 1st July, 1975 one of these companies, The National Investors Life Assurance Company Limited, bought 940,000 Gilgate ordinary shares, representing over 29 per cent of the voting rights at 22.5p per share. Subsequently, on 2nd July, 1976, another of these companies - United Life Assurance Holdings Limited - bought 200,000 shares at 8.75p per share. This last purchase, which bought the total holdings to some 36 per cent of the votes in Gilgate, was not announced and was registered in a nominee name. On 1st January, 1977, a third related company, Heath Investments Limited, purchased 152,410 shares out of the 200,000 shares held by United Life; the balance were sold elsewhere. Mr. Kidd became chairman of Gilgate and Mr. Lucas and Mr. Reynolds became directors.

In April 1977 the Department of Trade, under Section 165 (b) of the Companies Act 1948, appointed Mr. R.A. Morrill, QC, and Mr. P.L. Ainger of Price Waterhouse & Co. to investigate the affairs of Gilgate and other related companies. On 8th June, 1978 Gilgate's Stock Exchange listing was suspended at the request of the company because shareholders had received no accounts later than those for the year ended 30th June, 1975 and were awaiting a circular from the directors. The market price was around 7p. The listing is still suspended.

In the spring of 1978 the Panel executive was approached by some Gilgate shareholders and decided to investigate whether Mr. Kidd, Mr. Lucas, Mr. Reynolds and possibly others had incurred an obligation under Rule 34 to make a general offer for Gilgate because of the share purchases made in January 1977. They asked Mr. Kidd for information and in due course indicated that in their view an obligation had been incurred at that time and that Mr. Kidd should make an offer for the remaining shares. Subsequently the Panel executive learned of the transaction on 2nd July, 1976. The shareholdings were dispersed among various nominee and other companies and Mr. Kidd cannot be said to have actively co-operated with the Panel executive in unravelling the share transactions in which he, with Mr. Lucas and Mr. Reynolds, was involved. A good deal of time was taken up in endeavouring to obtain information from him.

The Panel at meetings on 25th June and 11th July, 1979 confirmed the ruling by the Panel executive, to which reference had been made in a statement issued on 16th May, that Messrs. Kidd, Lucas and Reynolds had an obligation under Rule 34 to make an offer at 8.75p to the other Gilgate shareholders. Messrs. Kidd, Lucas and Reynolds have accepted this ruling and the intervening period has been spent in exploring means by which they would be able to implement the offer.

Messrs. Kidd, Lucas and Reynolds claim that they do not have the personal means to make an offer, nor have they been able to borrow the necessary funds. A proposal was made that United Life should sell a life assurance subsidiary, using the proceeds to make a bid, but the transaction did not commend itself to the Department of Trade. Likewise a proposal that various inter-connected companies should forego their rights as shareholders of Gilgate to the extent necessary to give the other shareholders 8.75p in a liquidation of Gilgate fell through save in the case of one company owning just under 5 per cent. Those companies which were insurance companies could

not waive the rights of policy-holders and it was not clear that the interests of outside shareholders in the inter-connected companies could be adequately protected by guarantees given by Mr. Kidd and his colleagues. Mr. Kidd and his colleagues have undertaken to pursue certain other measures which might possibly at some future date realise for shareholders some indeterminate value for their investment in Gilgate. These measures will be closely monitored.

The Panel considers that Messrs. Kidd, Lucas and Reynolds ought never to have engaged in the purchase of Gilgate shares which led to a Rule 34 obligation, since they did not have the financial means to implement the obligation. This is a clear breach of General Principle 13. Moreover they ignored their obligation and concealed the purchase of shares on 2nd July, 1976. The fact that they left this purchase till a year and a day after the earlier purchase on 1st July, 1975 (thereby avoiding the obligation to make an offer at a much higher price) indicates that they were well aware of the provisions of the Code.

The Panel has decided that their conduct deserves severe censure. The question whether they are suitable to be directors of public companies is before the High Court in an action initiated by the Department of Trade.

14th March, 1980