

THE TAKEOVER PANEL

STATEMENT OF THE APPEAL COMMITTEE OF THE PANEL ON TAKE-OVERS AND MERGERS

Saint Piran Limited **("Saint Piran")**

The Appeal Committee met on 11th June to consider appeals by Gasco Investments Limited and Mr. J.J. Raper against the publication of the attached Statement. Mr. Raper and representatives of Gasco Investments Limited were present and addressed the Committee.

The Appeal Committee has given careful consideration to the appeals but has concluded that the Panel's Statement should be published, subject to some minor alterations of wording.

While doubting the right of Saint Piran to appeal in this matter, the Committee did in fact hear submissions on behalf of that company. These submissions were not accepted.

11th June, 1980.

SAINT PIRAN LIMITED**("Saint Piran")**

1. The decision contained in the Panel's statement, dated 1st April, 1980, following the meeting of the full Panel on 21st March, was that persons whom the Panel found to be acting in concert, namely Mr. J.J. Raper, Gasco Investments Limited, Aerolineas Cordoba SA and Ruffec SA were obliged, jointly and severally, under Rule 34 of the City Code to extend a general offer for shares not held by them in Saint Piran at 85p per share. The combined registered shareholding in Saint Piran of these persons is 4,321,000 shares, representing 37.0 per cent of its issued share capital.

2. At the meeting on 21st March, the Panel did not give consideration to the ability of these persons to implement a general offer at 85p per share. The Panel decided that if no offer was announced by or on behalf of the persons acting in concert within a reasonable period of time following the release of its statement, a further meeting of the Panel would be held to review the steps being taken to implement the obligation and to consider what action to take if it appeared that no offer was likely to be forthcoming in the near future.

3. In a letter to the Panel dated 21st April Mr. Raper stated that he did not accept the findings set out in the Panel's statement of 1st April, and that he would not in his personal capacity be making a general offer for shares in Saint Piran, nor would he fund or support any such offer. He said that his letter was not written on behalf of Gasco of which he was Chairman; this company would make such response to the statement as it decided upon. It was accepted by the representatives of Gasco present at the Panel meeting on 21st March that Mr. Raper controls Gasco. None the less, they told the Panel at a meeting on 20th May that he did not wish to exercise that control to prevent Gasco from making an offer.
4. As no general offer had been announced by 30th April, letters were sent by the Panel executive to Mr. Raper, Gasco, Aerolineas Cordoba and Ruffec requesting their attendance at a meeting of the Panel to be held on 20th May. The letters stated that the Panel would consider whether these persons were in breach of Rule 34, and, if so, might wish to consider what action, under the Code, should be taken. Representatives of Gasco, including Mr. M.R. Stone, both Managing Director of Gasco and Chairman of Saint Piran, attended the meeting. Mr. Raper did not attend, although his solicitor was present, nor had he, by the time of the meeting, responded personally to the Panel's letter. Aerolineas Cordoba did not reply to the Panel's letter and were not represented. Ruffec acknowledged receipt of the letter and said that they would not be represented at the meeting.
5. In a written submission to the Panel, made on behalf of Gasco, an account was given of the steps Gasco has so far taken to raise finance. Approaches were made to banks in the earlier part of this year, prior to the Panel meeting on 21st March. The Panel was told that approximately 10 per cent of the amount necessary to implement the offer could be financed from Gasco's own

resources. The Panel was also told that the potential ability of Gasco to raise finance had been improved by the capitalisation of loans of £1.74 million made to it by Berriedale, a wholly-owned subsidiary of Bathgate, a company from which, it is understood, Mr. Raper holds an unrestricted Power of Attorney; the further shares issued to Berriedale mean that it now owns more than 90 per cent of Gasco's issued share capital. The Panel was informed that two banks were still giving consideration to the provision of finance, although no documentary evidence of this was presented to the meeting. The written statement made on behalf of Gasco accepted that Gasco was not at present in a position to make the offer. Its representatives at the meeting did not seek any adjournment of the proceedings.

6. The Panel has received no information about the ability of Aerolineas Cordoba and Ruffec to make the offer and these companies have not indicated whether any steps are being taken by them to raise finance. Neither Aerolineas Cordoba nor Ruffec have contested their liability to make the offer nor have they in any way commented upon the Panel's findings. It is unsatisfactory that persons in a case such as this should choose to remain silent when presented with the Panel's conclusions, particularly having regard to the nature of these conclusions.

(* See below).

7. The Panel concluded that Mr. Raper, Gasco, Aerolineas Cordoba and Ruffec were in breach of Rule 34 and of General Principle 13 of the Code; it further concluded that early implementation of an offer was improbable.
8. The Panel is therefore faced with the situation that control of Saint Piran, as defined by the Code, has been acquired by the above-named persons and they are unable or unwilling to meet their obligation under the Code.

9. Since the time that the Code has imposed an obligation to extend a general offer upon the acquisition of control, the number of instances where persons have failed to meet this requirement has been extremely small. In the very few cases where breaches of the Rule have taken place, the Panel has been concerned to see that those who have acquired control are restricted in the manner in which it is exercised and enjoyed. To this end the Panel has on occasion requested persons to refrain from exercising voting rights until the breach has been remedied and this has been agreed to.
10. At the meeting of the Panel on 20th May, the representatives of Gasco were asked if they would give an undertaking that Gasco would not exercise voting rights over its shareholding in Saint Piran until an offer had been made. Mr. Stone, the Managing Director of Gasco (who will no doubt give consideration to his position as Chairman of Saint Piran and to any conflict to which this gives rise) said that he would not advise the board of Gasco to give the undertaking.
11. In the light of the general behaviour of the parties and of this refusal to undertake to refrain from voting, the Panel has considered what courses of action it should take. It has always been a principle of the Code that those guilty of flagrant breaches should cease to enjoy the facilities of the securities markets. The Panel has invited The Stock Exchange to consider what action it may now be appropriate for The Stock Exchange to take in this respect. The Panel has concluded that Mr. Raper, whose conduct in this matter has been deplorable, is unfit to be a director of a public company. It will so advise the authorities concerned.

12. Because the persons whom the Panel found to be acting in concert are in breach of their obligations under the Code and because of other factors set out in the Panel's statement of 1st April, the Panel has invited The Stock Exchange to consider maintaining the suspension of the listing of Saint Piran's shares.
13. Should any of the following events occur, the Panel will review the matter:
 - (a) The receipt by the Panel of a certified copy of a Resolution of the Board of Gasco undertaking not to vote its shareholding until an offer by or on behalf of the persons acting in concert, which discharges the obligation under Rule 34, has been made to shareholders.
 - (b) The announcement of an offer by or on behalf of any or all of the persons acting in concert which meets the obligation under Rule 34.
 - (c) The disposal by the persons acting in concert of all or a substantial proportion of their shareholdings in Saint Piran either to a person who accepts the obligation to extend a general offer at 85p per share or to a person or persons otherwise approved by the Panel.
14. The Panel strongly endorses the action of the Department of Trade in appointing Inspectors pursuant to Sections 165(b) and 172 of the Companies Act 1948 to investigate and report on the affairs and ownership of Saint Piran. The Panel will also reconsider the position following publication of any report of the Inspectors and any action the Department may take in connection therewith.

15. In addition, the Panel has directed that the persons it found to be acting in concert should not carry out any further transactions in Saint Piran's shares until the offer obligation has been met unless the permission of the Panel is first obtained.
16. The Panel appreciates that these measures may bring some temporary hardship to individual shareholders but considers it of vital importance in the interests of shareholders generally that persons acting in concert should either meet their obligations under the Code or until they do so, should not enjoy the facilities of the securities markets. This hardship could perhaps be removed if Gasco, whose Managing Director is also Chairman of Saint Piran, were to undertake not to vote its shares.
17. The Panel will continue to monitor any attempts by the persons acting in concert to raise the necessary finance and will meet again as necessary to review progress.

23rd May 1980.

*Note

Since the above statement was prepared and delivered to the parties, the Panel has received a communication from the directors of Ruffec (R. John Usher, George F.M. Rufford and Karl U. Sanne) dated 29th May requesting that paragraph 6 above should be amplified as follows:-

"No offer has been made by Ruffec, nor is the company taking any steps to raise the finance for this purpose. Its directors have stated that they have no knowledge of Ruffec acting in concert with other shareholders. In view, however, of the gravity of the Panel's conclusions and of their own inability to satisfy the Panel that Ruffec has not acted in concert with other shareholders of Saint Piran Limited, they are now resigning their appointments."

11th June 1980.