

THE TAKEOVER PANEL

CHEZ NICO RESTAURANTS LTD

The Panel Executive has examined, at the request of a shareholder, the events surrounding acquisitions of shares in Chez Nico Restaurants Ltd ("Chez Nico") between June 1990 and September 1990 by Mr Nicholas Ladenis and Mrs Dinah Ladenis ("Mr & Mrs Ladenis"), the controlling shareholders in Chez Nico. The Panel Executive has concluded that such acquisitions should have, but did not, comply with the requirements of the Code.

1. THE FACTS

Chez Nico was the subject of a public offer for subscription made under the Business Expansion Scheme ("BES") in June 1985. An offering circular was produced and delivered to the Registrar of Companies as a prospectus under the Companies Act 1985. As a result of the offer for subscription, Mr & Mrs Ladenis, the founders of the company, together with one further executive director, came to hold approximately 40% of the issued share capital of the company.

No application was made, at the time of the original offer for subscription or subsequently, for the shares in Chez Nico to be listed on The Stock Exchange; nor was permission sought for the shares to be dealt in on the Unlisted Securities Market. Accordingly, recognising that there would be no market for the shares when the BES matured on 10 June 1990, Mr Ladenis wrote to shareholders on 22 April 1990 indicating that he and his wife would be

interested in acquiring further shares in the company and inviting shareholders to write to them if they were interested in selling. Mr Ladenis received a favourable response to his letter and, as a consequence, wrote subsequently to shareholders on 15 June 1990 inviting shareholders to sell their shares to him and his wife at a price of 40p per share. There was subsequent correspondence between Mr Ladenis and certain of the shareholders who had either not replied to Mr Ladenis' letter or who had raised particular enquiries.

No offer document complying with the requirements of the Code was sent to shareholders in Chez Nico; nor were the timetable or other requirements of the Code complied with.

As a result of these acquisitions, Mr & Mrs Ladenis came to hold over 90% of the issued share capital in Chez Nico and commenced, on 14 September 1990, compulsory acquisition procedures under Section 429 of the Companies Act 1985. It is disputed that the requirements of Section 429 of the Companies Act 1985 have been satisfied and, in that regard, application has been made to the Court under Section 430C of the Companies Act 1985. This matter is still before the Court.

At the time of the original offer for subscription, Chez Nico was a public limited company. On 1 October 1990, pursuant to a special resolution passed at an Extraordinary General Meeting of the company held on 14 July 1990, Chez Nico was re-registered under the Companies Act 1985 as a private limited company.

2. THE SCOPE OF THE CODE

Paragraph 4 of the Introduction to the Code provides as follows:

"The Code applies to offers for all listed and unlisted public companies (and, where appropriate, statutory and chartered companies) considered by the Panel to be resident in the United Kingdom, the Channel Islands or the Isle of Man. It also applies to offers for private companies considered to be so resident but only when:-

(i)...

(ii)...

(iii)...

(iv) they have filed a prospectus for the issue of equity share capital at the Companies' Registry at any time during the 10 years prior to the relevant date.

In each case, the relevant date is the date on which an announcement is made of a proposed or possible offer for the company or the date on which some other event occurs in relation to the company which has significance under the Code."

At the relevant date, Chez Nico was a public limited company resident in the United Kingdom. Therefore, it was a company to which the Code applied. It is also to be noted that, even if Chez Nico had been re-registered as a private limited company prior to the approaches to shareholders by Mr Ladenis, it would still have been a company to which the Code applied by virtue of its having filed a prospectus during the previous 10 years.

3. THE PANEL EXECUTIVE'S RULING

The Panel Executive has concluded that the relevant acquisitions of shares in Chez Nico by Mr & Mrs Ladenis should have, but did not, comply with the Code.

The Panel Executive is satisfied that the failure by Mr & Mrs Ladenis did not arise from any bad faith but arose from a lack of familiarity with the Code and from a failure to consider whether the Code applied. Nevertheless, Mr & Mrs Ladenis are to be criticised for their failure to comply with the Code.

The Panel Executive wishes to draw attention to the scope of the Code and its likely application to offers for BES companies.

20 February 1991