

# THE TAKEOVER PANEL

## GRANADA GROUP PLC ("GRANADA")

## FORTE PLC ("FORTE")

The Panel met today to hear an appeal by Forte against a ruling by the Executive that the presentation of Granada's belief regarding possible improvements of the profits of Forte, as set out in Granada's circular dated 14 December, satisfied the standards relating to the provision of information set out in the Code.

### **Background**

On 22 November 1995 Granada announced the terms of its offer for Forte and the formal offer document was posted on 24 November.

On 14 December Granada issued a circular. In that document Granada set out its belief that "from Granada's first full financial year following acquisition, the ongoing profits of Forte, as part of the enlarged Granada Group, can be improved by over £100 million per annum, before reorganisation costs", and it set out the bases on which it had reached that belief. In the circular Granada's advisers, Lazard Brothers & Co., Limited and Touche Ross & Co., confirmed their belief that Granada's analysis had been carried out with due care and consideration.

The appellant contended that, in the particular circumstances of this offer, the express inclusion of the figure "£100

million", without any detailed breakdown of that figure being given, failed to meet the standards relating to the provision of information set out in the Code, and in particular General Principles 4 and 5 and Rule 19.1.

### **Executive ruling**

The Executive, having considered representations from both parties, ruled that the statement satisfied the standards relating to the provision of information set out in the Code and, in particular, the requirements set out in the above General Principles and Rules.

### **Panel decision**

The Panel, having heard the submissions of all parties, concurred with the view of the Executive and accordingly dismissed the appeal. The Panel considered that, in accordance with the Code's general requirements as to information, Granada's statement was properly prepared and adequately and fairly presented.

The Panel has nevertheless asked the Executive to examine whether there might be any need for new specific requirements in respect of any statements made about the expected benefits of a proposed merger where such benefits are quantified.

21 December 1995

**APPENDIX 1**

**SECTION E. DEALINGS AND RESTRICTIONS ON THE  
ACQUISITION OF  
SHARES AND RIGHTS OVER SHARES**

**RULE 4**

*NB Notwithstanding the provisions of Rule 4, a person may be precluded from dealing or procuring others to deal by virtue of restrictions contained in the Company Securities (Insider Dealing) Act 1985. Where the Panel becomes aware of instances to which such restrictions may be relevant, it will inform the Department of Trade and Industry.*

**4.1 PROHIBITED DEALINGS BY PERSONS OTHER THAN THE OFFEROR**

- (a) No dealings of any kind (including option business) in securities of the offeree company by any person, not being the offeror, who is privy to confidential price-sensitive information concerning an offer or contemplated offer may take place between the time when there is reason to suppose that an approach or an offer is contemplated and the announcement of the approach or offer or of the termination of the discussions.
- (b) No person who is privy to such information may make any recommendation to any other person as to dealing in the relevant securities.
- (c) No such dealings may take place in securities of the offeror except where the proposed offer is not price-sensitive in relation to such securities.

**4.2 RESTRICTION ON DEALINGS BY THE OFFEROR AND CONCERT PARTIES**

During an offer period, the offeror and persons acting in concert with it must not sell any securities in the offeree company except with the prior consent of the Panel and following 24 hours public notice that such sales might be made. The Panel will not give consent for sales where a mandatory offer under Rule 9 is being made. Sales below the value of the offer will not be permitted. After there has been an announcement that sales may be made, neither the offeror nor persons acting in concert with it may make further purchases and only in exceptional circumstances will the Panel permit the offer to be revised.

**RULE 4 CONTINUED***NOTES ON RULES 4.1 and 4.2**1. Other circumstances in which dealings may not take place*

*An offeror or other persons may also be restricted from dealing or procuring others to deal in certain other circumstances, eg before the announcement of an offer, if the offeror has been supplied by the offeree company with confidential price-sensitive information in the course of offer discussions.*

*2. Consortium offers and joint offerors*

*If an offer is to be made by more than one offeror or by a company formed by a group of persons to make an offer or by any other consortium offer vehicle, the offerors or group involved will normally be considered to be in a consortium for the purpose of this Note.*

*The Panel must be consulted before any purchases of offeree company securities are made by members or potential members of a consortium. If there are existing holdings of such securities, it will be necessary to satisfy the Panel that they were acquired before the consortium was formed or contemplated.*

*It will not normally be acceptable for members of a consortium to purchase such securities unless there are, for example, when a consortium company is to be the offeror, appropriate arrangements to ensure that such purchases are made proportionate to members interests in the consortium company or under arrangements which give no profit to the purchaser. The Panel will also be concerned to ensure that the purposes of the Code are not avoided through characterising persons acting in concert as joint offerors.*

*3. No-profit arrangements*

*Arrangements made by a potential offeror with a person acting in concert with it, whereby offeree company securities are purchased by the person acting in concert, on the basis that the offeror will bear all the risks and receive all the benefits, are not prohibited by this Rule. Arrangements which contain a benefit or potential benefit to the person acting in concert (beyond normal expenses and carrying costs) are, however, normally prohibited. In cases of doubt, the Panel must be consulted.*

**RULE 4 CONTINUED***NOTES ON RULES 4.1 and 4.2 continued**4. When an offer will not proceed*

*If, after an announcement has been made that offer discussions are taking place or that an approach or offer is contemplated, the discussions are terminated or the offeror decides not to proceed with an offer, no dealings in securities of the offeree company or, where relevant, the offeror, by the offeror or by any person privy to this information may take place prior to an announcement of the position.*

*5. No dealing contrary to published advice*

*Directors and financial advisers to a company who own securities in that company must not deal in such securities contrary to any advice they have given to shareholders, or to any advice with which it can reasonably be assumed that they were associated, without giving sufficient public notice of their intentions together with an appropriate explanation.*

*6. Discretionary clients*

*Sales of securities of the offeree company for discretionary clients by fund managers connected with the offeror, unless they are exempt fund managers, may be relevant (see Rule 7.2).*

*7. Dealings between an offeror and connected exempt market-makers*

*See Rule 38.2.*

## **SECTION Q. DEALINGS BY CONNECTED EXEMPT MARKET-MAKERS**

### **RULE 38**

#### **38.1 PROHIBITED DEALINGS**

An exempt market-maker connected with an offeror or the offeree company must not carry out any dealings with the purpose of assisting the offeror or the offeree company, as the case may be.

#### *NOTE ON RULE 38.1*

##### *Suspension of exempt status*

*Any dealings by an exempt market-maker connected with an offeror or the offeree company with the purpose of assisting an offeror or the offeree company, as the case may be, will constitute a serious breach of the Code. Accordingly, if the Panel determines that a market-maker has carried out such dealings, it will be prepared to rule that the market-maker should cease to enjoy exempt status for such period of time as the Panel may consider appropriate in the circumstances.*

#### **38.2 DEALINGS BETWEEN OFFERORS AND CONNECTED EXEMPT MARKET-MAKERS**

An offeror and any person acting in concert with it must not deal as principal with an exempt market-maker connected with the offeror in relevant securities of the offeree company during the offer period. It will generally be for the advisers to the offeror to ensure compliance with this Rule rather than the market-maker.

#### **38.3 ASSENTING SECURITIES**

Securities owned by an exempt market-maker connected with the offeror must not be assented to the offer until the offer is unconditional as to acceptances.

#### **38.4 VOTING**

Securities owned by an exempt market-maker connected with an offeror or the offeree company must not be voted in the context of an offer.

#### **38.5 DISCLOSURE OF DEALINGS**

Dealings in relevant securities (as defined in Rule 8) by an exempt market-maker connected with an offeror or the offeree company, whether in or outside the United Kingdom, should be aggregated and disclosed to the Stock Exchange, the Panel and the press

**RULE 38 CONTINUED**

not later than 12 noon on the business day following the data of the transactions, stating the following details:—

- (i) total purchases and sales;
- (ii) the highest and lowest prices paid and received;
- (iii) whether the connection is with an offeror or the offeree company; and
- (iv) in respect of dealings which take place outside the United Kingdom, the relevant overseas location.

*NOTES ON RULE 38.5**1. Method of disclosure*

*Announcements of dealings by or on behalf of an exempt market-maker under Rule 38.5 which are disclosed in writing (or by telex) to the Stock Exchange (Company Announcements Office) may be inspected there. Disclosure to the press is, therefore, unnecessary; separate disclosure to the Panel is, however, required.*

*2. Exception*

*If the offer is not a securities exchange offer, there is no requirement to disclose dealings in securities of the offeror.*

*3. Rule 8*

*See Note 9 on Rule 8.*

## **GENERAL PRINCIPLES**

6. All parties to an offer must use every endeavour to prevent the creation of a false market in the securities of an offeror or the offeree company. Parties involved in offers must take care that statements are not made which may mislead shareholders or the market.