THE TAKEOVER PANEL

D. F. LYONS & CO. LIMITED/ ROWAN AND BODEN LIMITED

On a reference to it by the Director General, the full City Panel on Take-overs and Mergers, under the chairmanship of Lord Shawcross, has considered dealings by D. F. Lyons & Co. Limited and its associates in the shares of Rowan and Boden Limited and has concluded that these involved a clear breach of Rule 30 of the City Code deserving most severe reprobation.

Rule 30 of the Code is intended to guard against the risk of so called "insider" dealings where individuals or companies in a privileged position are in possession of information not available to other shareholders of the company concerned and are thereby enabled to enter into market transactions likely to be advantageous to themselves and possibly correspondingly disadvantageous to the other parties to those transactions who are in ignorance of the information in question. In the context of the present case the Rule and the relevant Practice Note provide that no person or company (other than the offeror) who is privy to preliminary take-over or merger discussions or to an intention to make an offer may deal in the shares of the offeree company between the time when there is reason to suppose that an approach or an offer is contemplated and its formal public announcement.

Over a period of some time D. F. Lyons & Co. Limited, a private company described as investment bankers, and its associates, had been purchasing on the market the shares of a quoted company, Rowan and Boden Limited. On 6th June 1972 D. F. Lyons & Co. Limited announced that it and its associates controlled "just under 40%" of the Rowan and Boden shares. The expression was significant since had persons acting in concert acquired over 40% Rule 35 of the Code would have imposed upon them an obligation to make an unconditional offer for the remainder of the share capital with a cash price (whether as an alternative to paper or not) equal to the highest price paid in the market for the shares already acquired during the preceding 12 months. Further purchases were made and on 10th July, 1972, after the company's attention had been called to Rule 35 and some prompting by the Panel executive, it made a public announcement that it controlled 52% of the issued

capital and its associates a further 8%. It stated that it would accordingly make a general offer for the remainder of the shares of Rowan and Boden at 65½p.

By the end of July no offer document had been sent out and, in accordance with its custom after the lapse of three weeks or so from the public announcement, the Panel executive enquired when the offer document would be posted. It was informed that the document would go out on 11th August. On 7th August the executive telephoned the company to confirm the position. The company secretary then stated that there had been "a change of plan" and that the offer document would not be posted on 11th August. There were further exchanges on the 9th and 10th August and on the latter date the Panel wrote to Mr. D. F. Lyons, the Chairman and Managing Director of D. F. Lyons & Co. Limited, stating that an explanation was required and requesting a meeting. On 11th August, after a sharp fall in the market price of Rowan and Boden shares following rumours that the offer would not be made, the Panel executive succeeded in making telephone contact with Mr. Lyons and he agreed to put out a clarifying statement which he did on that day saying, inter alia, that the offer document would be despatched early in September. We are bound to add that this statement indicated qualifying conditions which would have been difficult to fulfil by early September.

In the meantime, on a date which is put as either during the last few days of July or early in August, Mr. Lyons was introduced to Mr. D. J. Cohen of the stockbroking firm of Messrs. Simon & Coates. Mr. Cohen's account of this meeting differed from that of Mr. Lyons but beyond saying that there appear to have been exploratory discussions about the possibility of selling the Lyons' holding in Rowan and Boden, it is unnecessary to discuss this meeting further. On 11th August, however, in the early afternoon, and after he had undertaken to the Panel executive to put out the clarifying statement already referred to, Mr. Lyons telephoned Mr. Cohen and said he could offer his parcel of Rowan and Boden shares for sale. His terms were 52% of the total share capital firm at 60p or 60% at 65p. Mr. Cohen understood that Lyons had reached a firm decision to sell the shares and, whilst saying that he thought the offered price was too high, agreed to make enquiries about the possibility. Mr. Cohen was quite clear that it was a condition of any such sale that the purchaser would accept the obligation to make a general offer at 65½p.

Later that afternoon Simon & Coates received a telex from D. F. Lyons & Co. Limited in these terms:

"Following Mr. Lyons' telephone conversation with you it is confirmed that D. F. Lyons & Co. Limited will contract to sell 1,912,000 ordinary shares of Rowan and Boden Limited at 60p per share not of all expenses. This figure

represents the total holding of D. F. Lyons & Co. Limited and its associates. Alternatively we will contract to sell 51% of the ordinary share capital, that is, 1,652,400 at 55p net of all expenses. Delivery would be made against payment to the account of D. F. Lyons & Co. Limited at National Westminster Bank Limited, 16, Library Place, St. Helier, Jersey. Please confirm by 4.15 to this office if the contract has been completed. "

Mr. Cohen regarded this as indicating a firm intention to sell on the terms mentioned. He says that he telephoned the company's office later on 11th August and explained that the matter could not possibly be completed within the time limit indicated in the telex but that he would proceed to negotiate with a potential purchaser whose name he did not disclose. The company agreed. It may be relevant to note at this stage that the figure of 1,912,000 shares mentioned amounts to 59% of the issued share capital.

Mr. Lyons gave a totally different account of the matter. He invited the Panel to believe that the telephone conversation and the subsequent telex were simply to test the capabilities of Simon & Coates to sell the shares and that he was not offering to sell and indeed had no intention of selling at that time. Mr. Cohen, however, proceeded to conduct negotiations with a potential purchaser and on 16th August he put forward a firm offer to purchase all the Lyons' shares at a price of 55p subject to it being possible to put the deal though the market, to make arrangements about completion and to secure board representation. Mr. Lyons instructed him to "deal". On 18th August, the conditions having been satisfied, a deal for the sale of 1,944,000 shares, namely 60% of the issued share capital, was concluded at approximately 9.30 in the morning.

The Panel examined a further transaction. On a date which he was able to fix as 4th August, an officer of the Prudential Assurance Company Limited, Mr. Medhurst, in response to earlier enquiries and after receiving clearance from the Panel executive, informed Mr. Lyons that the Prudential would be willing in principle to sell their holding of 226,600 shares in Rowan and Boden to his company in advance of the Lyons offer but at the offer price of 65½p. Mr. Medhurst said that, if Lyons sent a formal offer letter giving satisfactory details of the arrangements for settlement, the offer would in all likelihood be accepted. Mr. Medhurst explained that if such a formal offer had been received within 48 hours or so he would no doubt have accepted it, but that he certainly did not consider himself legally bound and if before any formal offer had been made the circumstances had changed he would not have proceeded. Mr. Lyons on the other hand said that he had no doubt that there was a firm agreement to sell to his company at 65½p and that he was entitled to complete within a reasonable time. If there had been any such firm

agreement he would have been required under the Code to disclose that fact. He did not do so. Mr. Medhurst said that on 16th August Mr. Lyons telephoned him and enquired if the Prudential were willing to go ahead. Mr. Medhurst felt that he had to clear the matter again with his colleagues and also with the Panel executive, which he did on 17th August. The transaction was in fact completed on 18th August. Between the 14th and 17th August D. F. Lyons & Co. Limited and its associates purchased further blocks of shares totalling 210,000 at prices which for the most part were less than 65½p.

On 10th July the market price rose on the announcement of the intention to make an offer but, as already mentioned, on 11th August, following market rumours there was a sharp fall prior to the issue of the clarifying statement by D. F. Lyons & Co. Limited. On Friday, 18th August, however, it was announced that London & County (A & D) Limited, having purchased 60% of the issued shares from D. F. Lyons & Co. Limited and associates at 55p per share, would make a general offer at 65½p. This led to an immediate rise in the share price, with deals on the following Monday averaging about 76p.

Where the evidence of Mr. Cohen and Mr. Medhurst differs from that of Mr. Lyons the Panel prefers the evidence of the former witnesses. The Panel finds the facts to be as follows.

By 11th August, if not before, Mr. Lyons, who was by this time under pressure from the Panel to proceed with his offer, had decided that, if possible, his company should dispose of the shares rather than go on with the offer. He communicated his wish to sell the shares to Mr. Cohen and his later telex was calculated and was understood by Mr. Cohen to convey a firm intention to sell. This was, however, subject to a condition that any purchaser should accept the obligation to make a general offer for the remainder of the shares at 65½p. Mr. Lyons knew that at all events from that point Mr. Cohen was entering into negotiations with a view to completing a transaction on these lines. It follows that he was, in the language of Rule 30, privy at least to "preliminary" take-over discussions and an intention (which any purchaser of the shares would have to have) to make an offer. This is so notwithstanding that Mr. Lyons' company was still at that time nominally an offeror: he had not announced an intention to withdraw his own company's offer nor received the Panel's permission so to do.

So far as his offer was concerned there was no ban on market dealings. The offer, to the preliminary discussions or intentions of which he was privy, was an offer by a third party, which offer, although at the same figure as his own, might in the event be preferred by the market - as indeed it was. Notwithstanding this Lyons' company went into the market after 11th August to purchase further shares.

Some of those they bought they used in order to implement the contract to sell 60% of the issued shares to London & County: the remainder, stated in their announcement of 21st August to be 10% of the issued capital but in fact amounting to about 8%, they continued to hold as an investment.

It appears to the Panel to be beyond doubt that the conduct of Lyons company under the direction of Mr. Lyons constituted a breach of the prohibition imposed by Rule 30. It is unnecessary to consider to what extent, had the market been aware of the impending offer by London & County, the price of the Rowan and Boden shares would have hardened (as indeed it did when the facts were known) or whether those who sold their shares to D. F. Lyons & Co. Limited and associates during those days in the middle of August were damnified in the sense that had the facts been known they would have secured a higher price. Rule 30 contains an absolute prohibition. As the Panel again emphasises, this Rule is directed against "insider" dealings and in so far as such dealings come within their jurisdiction (which is only the case in mergers or take-overs) the City Panel is determined to apply it.

In all the circumstances of this case and having regard both to the dealings themselves and to the nature of Mr. Lyons' own evidence before them, the Panel unanimously and severely censures him and, in view of the business of investment banking in which he is currently engaged, expresses its opinion that it would be contrary to the public interest for Mr. Lyons or his company to be given any licence to deal in securities.

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

The Panel which heard this case was composed of eleven persons of standing and experience in the City of London, who heard and saw the demeanour of the witnesses. Any appeal on questions of fact is not maintainable before this Committee, and indeed the letter of appeal stated that there was no dispute that the "conduct of Mr. D. F. Lyons constituted a breach of the prohibitions imposed by Rule 30". Mr. Lyons, however, contended before us that various inferences drawn by the Panel were wrong, that this was an innocent breach and that it did not warrant public censure of such severity. We have given careful consideration to all the arguments before us but we have come to the conclusion that there is no justification for altering the Panel's findings and conclusions. The appeal therefore fails. Nevertheless, we have made three or four not very important alterations to words in the Panel's statement which Mr. Lyons argued carried inferences which we felt sure were not intended.

(Signed)

The Right Hon. Lord Pearce
J. M. Clay
Maurice Haddon-Grant
G.A. Loveday

27th October, 1972.