

THE TAKEOVER PANEL

BSQ SECURITIES LIMITED ("BSQ")/

COURT HOTELS (LONDON) LIMITED ("COURT")

On 19th May, 1975 The Stock Exchange announced that, at the request of Court, the listing of the company's ordinary shares had been temporarily suspended pending clarification of the position regarding a possible offer for the company.

On 30th May, 1975, Court, with the agreement of BSQ and BSQ's financial advisers, Gittins & Co. ("Gittins"), stockbrokers, made the following announcement:-

"The directors of Court Hotels (London) Limited ("Court") announce that agreement has been reached with BSQ Securities Limited ("BSQ") whereby Gittins & Co. will make a cash offer on behalf of BSQ for all the issued ordinary shares in Court at a price of 50p per share.

At the same time Court has agreed to sell to Tollman Hotels and Tourist Industries Limited ("Tollman") in exchange for the reciprocal assumption of certain liabilities the entire share capital of a subsidiary company which owns and operates the Montcalm Hotel, London. Full details of this transaction will be sent to Court shareholders in due course when their approval will be sought. The offer will be subject to and conditional upon:-

- (a) Court shareholders (with the exclusion of Tollman who will not vote thereupon) approving the above mentioned transaction concerning the Montcalm Hotel and
- (b) The consent of the Bank of England, the South African Exchange Authority to the several transactions with Tollman which is a company incorporated in South Africa.

Should the offer be referred to the Monopolies and Mergers Commission it will be withdrawn.

Tollman, which owns approximately 53% of the issued share capital of Court, has undertaken to accept the offer in respect of its holding.

The directors of Court, who are being advised by Joseph Sebag & Co., intend recommending acceptance of the offer.

Mr. Ronald Edwin Nordhoff and Mr. Thomas Davis Scrase have been co-opted to the board of Court."

Gittins had sent the following letter on 15th May to the Chairman of Court:

"We have been requested to make an offer on behalf of BSQ Securities to all the ordinary shareholders of Court Hotels (London) Ltd., for the purchase of their shares at 50p for each 10p share. Having satisfied ourselves that funds are available to make such offer, we have agreed to make this offer requested".

During discussions in the two weeks preceding the announcement quoted above, the Panel executive had stressed to Gittins that it was essential for them to ensure that BSQ would have sufficient funds available to implement the offer before any public announcement was made.

During the latter half of June the Panel executive was informed by Mr. T.D. Scrase, a partner in Gittins, that:

1. it was doubtful whether BSQ had sufficient cash available to make the bid; and
2. BSQ alleged that there had been misrepresentations and breaches of warranties by Court and Tollman.

On 30th June, BSQ wrote to the Panel requesting permission under Rule 9 of the Code to withdraw from its proposed offer, and the full Panel met on 4th July to consider that request. At this meeting, the Panel was informed by Mr. J.W. Lamb, Chairman of BSQ and an associate member of Gittins, that in fact there were sufficient resources available to make the offer; Mr. Scrase, however, said that they could no longer confirm that the cash would be available. The Panel decided that at that stage the application to withdraw should not be allowed.

The Panel executive continued to monitor the position, and, as no offer document appeared to be forthcoming, a further meeting of the full Panel was held on 28th August. At this meeting the Panel was told that BSQ was commencing legal proceedings against Tollman and Court for rescission of its agreement to purchase Tollman's share-holding in Court, primarily on the grounds of misrepresentation. However, it is no part of the functions of the Panel to investigate allegations of misrepresentation; this is a matter for the courts.

The Panel then proceeded to inquire into the availability of cash to BSQ as at 30th May, 1975 to enable BSQ to implement the offer. The Panel was advised that, in a letter dated 29th May, Mr. S.S. Tollman (the chairman of Court) had agreed with BSQ that the holders of 360,000 shares in Court (whom he did not name) would not accept the offer. Accordingly a balance of approximately £1,100,000 was required. BSQ and Gittins explained to the Panel that they had expected to raise this amount in the following manner:-

- (i) £400,000 by way of mortgages on the security of certain pieces of land. It was proposed that the owner of land in Scotland and Mr. Tongs (a director of BSQ), who owned certain land in Surrey, would sell their land to BSQ in exchange for shares in that company, which would then raise the cash by mortgage of these pieces of land. Although these arrangements

- were made before 30th May the land had not been acquired by BSQ. BSQ, however, still believed that the necessary transactions would be completed.
- (ii) £210,000 by the sale to Court of a property company, the vendors using the proceeds of sale to subscribe for new shares in BSQ. Although Court was not a party to the sale agreement, BSQ and Gittins maintained that the directors of Court were well aware of this proposed transaction and had approved it in principle; this was disputed by the directors of Court.
 - (iii) The balance of some £500,000 was intended to be provided by way of a loan from Davis Investments (Jersey) Limited ("Davis"), pursuant to an agreement with BSQ and Gittins. The agreement in fact covered the whole amount required to make the offer but it was stipulated that the offer was to be conditional upon the shareholders approving the transaction concerning the Montcalm Hotel, referred to above, and to a satisfactory report by accountants to be appointed by BSQ. The latter condition was not made a condition of the offer and no accountants were ever appointed. Mr. Scrase, who is a director of Davis, signed the agreement on its behalf.

In a letter dated 26th June and signed by Mr. Scrase, Davis purported to rescind its agreement with BSQ and Gittins on the grounds that "none of [certain] representations have passed from the stage of being reasonable hope to being actual fact". The representations referred to in this letter included the arrangements referred to at (i) and (ii) above.

The Panel takes the view that "hope" was not good enough at the time of the announcement. Indeed, the Panel considers these financing arrangements to be unsatisfactory and that, in relying upon them at the time of the announcement, BSQ and Gittins failed to act with reasonable prudence.

The Panel is very concerned at announcements of offers being made in circumstances where there must be serious doubts from the outset as to whether the necessary finance to implement the offer will be available when it is required. The Panel considers that no firm announcement of an offer should be made unless those concerned have taken all reasonably prudent steps to satisfy themselves that the necessary funds will be available when required.

In this case the Panel considers that no announcement of the offer should have been made until there was virtual certainty that the finance would be available.

The Panel therefore censures the directors of BSQ for allowing the offer to be announced by Court on 30th May, 1975 without having taken all reasonably prudent steps to ensure that the necessary funds would be available.

The Panel also censures Mr. Scrase and Gittins, in their capacity as financial advisers to BSQ, for agreeing to make a cash offer on behalf of BSQ in these circumstances.

No useful purpose would be served by prolonging the present state of affairs, and the Panel has decided that BSQ's request to withdraw its offer for Court should be acceded to. From the Panel's point of view, it is relevant that Court's quotation had been suspended before the offer was announced so that there had been no false market in the shares, and that BSQ had purchased no shares in Court. The Panel emphasises, however, that its decision to allow withdrawal of the offer in no way affects any legal rights which may exist under any contract between the parties.

6th October, 1975.