THE TAKEOVER PANEL

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

Mr. P.D. Brown appealed to the Appeal Committee against the Panel's findings and against the publication of the attached Statement.

The Appeal Committee has given careful and sympathetic consideration to the arguments on Mr. Brown's behalf, but has come to the conclusion that the Appeal should be dismissed and the Statement published in the form prepared by the Panel.

Mr. Brown told the Committee that the net gain had already been paid to his solicitors to be handed over to a charity.

PANEL ON TAKE-OVERS AND MERGERS

ULTRA ELECTRONIC HOLDINGS LIMITED

The Panel on Take-overs and Mergers met on 16th September, 1977 to investigate allegations of insider dealing in connection with the bid announced in February last by Racal Electronics Limited ("Racal") for Ultra Electronic Holdings Limited ("Ultra").

Early on the morning of 17th February, 1977 Mr. E.T. Harrison, the Chairman of Racal, discussed with Mr. Gerald Kelly of Rowe Rudd Ltd., a firm of stockbrokers, how to obtain shares in Ultra in excess of 20 per cent of the Ultra equity, from certain substantial shareholders, with a view to a possible subsequent bid for the remainder of the shares. The Ultra share price stood at about 75p and it was agreed that Rowe Rudd should offer about 85p (84 13/16p) with an undertaking to pay later any higher amount offered in a subsequent successful Racal bid for Ultra.

Although the matter was not formally before the Panel at its meeting on 16th September, this offer was in breach of Rule 36 of the City Code, which prohibits purchases of shares of an offeree company from selected shareholders, during an offer or where one is reasonably in contemplation, with favourable conditions that are not extended to all shareholders. When the matter came to the notice of the Panel executive a few days later, the executive, after investigation, ruled that Rowe Rudd, having breached the Code, should arrange for the bargains to be altered to a fixed price and this was done. What could not be undone was the mention on 17th February of a possible bid and it was this which led to the allegations of insider dealings that we have had under consideration. The Panel has recently taken steps to draw the attention of those likely to be involved in such transactions to the fact, already made clear in Annual Reports, that Rule 36 prohibits any "topping-up" clause in the sale of shares either before or during an offer period.

In the course of the morning of 17th February, 1977, Rowe Rudd approached a number of organisations and individuals whom they knew to hold, directly or for clients, substantial

numbers of Ultra shares to ascertain whether, they would sell. One of these was Mr. P.D. Brown, a director of Portfolio Management Limited, which had built up, for clients, a holding of over 300,000 Ultra shares (about 8 per cent of the equity).

On the morning of 17th February, Mr. Brown bought 10,000 Ultra shares for his own account at 77p: and it was this purchase that was the subject of our investigation.

Mr. Brown said that Mr. Kelly of Rowe Rudd made a telephone call early on 17th February and asked simply how many Ultra shares Portfolio Management held: and that it was after this enquiry - which to his mind suggested that there might be developments in relation to Ultra - that he bought the 10,000 Ultra shares. Mr. Brown said that in a second telephone conversation Mr. Kelly mentioned a purchase price of 85p, in response to which Mr. Brown implied that it would be pointless to begin negotiations at less than 95p. In a third telephone conversation, Mr. Kelly was alleged to have said that a straight purchase at 95p was unacceptable and unfolded the Racal offer of 85p and a "topping-up" in the event of a subsequent successful Racal bid.

Mr. Brown said that, by early afternoon, he was feeling unhappy about his purchase of shares, because of the development of events and his firm's involvement. Following discussions with his brokers he approached a firm of jobbers in The Stock Exchange about a cancellation of the bargain; but the jobbers declined to cancel. Mr. Brown later sold his shares and realised a profit of about £7,000.

Mr. Kelly told us that he had no recollection of making a telephone call to Mr. Brown asking no more than the size of the Portfolio Management holding of Ultra shares. After Mr. Kelly's talks with the Chairman of Racal, between 9.30 am and 9.45 am., he had set in train a series of telephone calls to a number of clients to ascertain whether the terms of 85p and "topping-up" were acceptable. That included a telephone call to Mr. Brown. A unit trust had indicated that, for technical reasons, they could not accept the terms but others did; and Racal had secured approximately 10 per cent of Ultra by about 11 am., including the Portfolio Management holding.

There is a clear conflict of evidence between Mr. Brown and Mr. Kelly. Mr. Kelly's statement that he went round the larger holders soon after 10 am giving the terms, is corroborated by those concerned, other than Mr. Brown. Mr. Kelly has no

recollection of a figure of 95p having been mentioned by Mr. Brown, nor did he consult the Chairman of Racal on any such figure. Mr. Brown's purchase appears to have been made some time between 10.30 am and 11 am.

Having carefully considered the evidence before us, we have reached the conclusion that Mr. Brown was aware that an offer was in contemplation when he made his purchase of 10,000 Ultra shares on 17th February, 1977 and that his conduct merits severe censure. We consider that Mr. Brown should hand over to a charity approved by the Panel the net gain which he made from the purchase and sale of these shares.

The Panel also considered a purchase of Ultra shares made on 17th February, 1977 by an investment manager employed in a small merchant bank. After being informed by Mr. Kelly of the offer to buy the holdings held by clients, the manager bought shares for a close relative. The manager was entirely frank at all stages of the investigation and has admitted that the purchase was a mistake of judgment. In all the circumstances, as disclosed to us, we decided that the case could be adequately dealt with by a severe caution as to future conduct.

We take this opportunity to reiterate that all who receive price-sensitive information in the course of their work must treat it as confidential and on no account endeavour to use the information for private purposes.

22nd September, 1977.