

# THE TAKEOVER PANEL

## Chaddesley Investments Limited ('Chaddesley')

Following an investigation into dealings by The Stock Exchange and the Panel executive, the Panel met on Wednesday, 13th December 1978 to consider whether Mr. M. S. Gorvy, a director of a number of companies in the Schlesinger Group ("Schlesingers") was in breach of Rule 30 of the City Code in advising a client of Schlesingers, South African British Investment Trust ("SABIT"), in April 1978 to purchase shares in Chaddesley.

Chaddesley is a listed company engaged in property investment and development. It had an issued share capital at the beginning of 1978 of 3,705,920 ordinary shares of 25 p. each. It had not paid a dividend on its ordinary shares for ten years and had reported a loss before tax in nine of these ten years. CAPI S. A. Compagnie Auxiliaire pour l'Industrie ("CAPI"), a Swiss company, held about 38% of the capital of Chaddesley. Schlesingers, whose subsidiary Portman Estates Limited had acted as the managers of the Chaddesley property portfolio since December 1976, held, together with clients, 16.2%.

On 20th February 1978 Mr. D. Ellman, chairman of Chaddesley and the representative of CAPI on the board, reported at a Chaddesley board meeting (according to the board minutes) "that 'CAPI had received an approach to sell their shares in Chaddesley and, subject to the price being right, had made a decision in principle that they are prepared to sell" and "that CAPI had appointed Mr. Gorvy of Schlesingers to act as their agent for a possible sale". At a meeting later that day Mr. Ellman discussed CAPI's intentions with Mr. Gorvy and gave formal instructions for Mr. Gorvy to act. These were confirmed in a letter dated 23rd February 1978 from Mr. Ellman to Mr. Gorvy, which restated CAPI's willingness to dispose of its shareholding in Chaddesley, subject to immediate repayment of its loan to Chaddesley of approximately \$405,000, and indicated a price of 18 p. per share. The letter also referred to the possibility that the controlling shareholders in a private company, Greycoat Estates Investments Limited ("Greycoat") might be interested in negotiating the purchase of the CAPI shareholding, or in introducing property assets into Chaddesley and purchasing some of CAPI's shareholding.

During the rest of February and March discussions took place involving CAPI and the Greycoat controlling shareholders on the price of the Chaddesley shares, the terms on which the loan might be repaid and other matters, without CAPI committing itself to sell or the Greycoat controlling shareholders to buy. There were also discussions with other interested parties.

In April 1978 Mr. Gorvy, in the course of a regular visit to South Africa, had a meeting with SABIT. During the discussion, SABIT asked about the listed companies in the U.K. with which Schlesingers were known to have some connection, including Chaddesley. Mr. Gorvy advised SABIT to purchase shares in Chaddesley and on 24th April Schlesingers purchased 25,000 Chaddesley shares through the market on behalf of SABIT at 16 p. per share.

On 25th April the Greycoat controlling shareholders informed Mr. Gorvy that they had decided to endeavour to purchase the CAPI holding. Mr. Gorvy then gave instructions that Schlesingers should engage in no further dealings in Chaddesley shares on its own behalf or on behalf of clients till the outcome of the negotiations was known. The Chaddesley board announced on 5th May that negotiations were in progress and on the same day dealings in the shares were suspended. On 2nd June a further announcement was made that agreement had been reached with the Greycoat controlling shareholders to acquire the 38% shareholding of CAPI at 16½ p. per share and that as a result they would be obliged to make a general offer to the remaining shareholders of Chaddesley at 16½ p. The announcement went on to say that Chaddesley would acquire Greycoat in exchange for ordinary shares in Chaddesley. The result would be that the Greycoat controlling shareholders would come to hold at least 68% of the enlarged Chaddesley equity. In these new circumstances the shares in Chaddesley opened at 45 p. when listing was restored on 8th August 1978. Schlesingers were not involved in any negotiations after 5th May relating to the terms on which Chaddesley was to acquire Greycoat.

Mr. Gorvy admitted that in a limited field Schlesingers had failed to separate corporate finance functions from investment advisory functions, since he and other Schlesingers executives engaged in corporate finance work visited certain South African clients and advised them on U.K. investments. He said that Schlesingers had now taken steps to ensure that strict separation of the two functions which was applied elsewhere within the group was extended to the South African operations. Mr. Gorvy also admitted that in relation to normal business practice his recommendation to SABIT was incorrect, but did not believe that

controlling shareholders had been interested in Chaddesley for some time and that there had been discussions in 1977 about them acquiring some or all of the CAPI shareholding. The mandate to sell in February 1978 had been only a phase in a long process of negotiation. As appears from Mr. Ellman's letter of 23rd February, CAPI was not wedded to selling all its shares nor to selling them all in one block. It was not therefore clear until 25th April that there would be a purchaser who would acquire over 30 per cent of the Chaddesley shares and so incur an obligation to make a mandatory bid for the remaining shares at the purchase price. Whilst not seeking to contend that Rule 30 should be narrowly construed, Mr. Gorvy maintained that there did not exist, before 25th April (a date later than the date of his advice to SABIT and of the purchase of Chaddesley shares by SABIT), what he termed a "bid situation" which would have brought Rule 30 into play.

The Panel finds it difficult to accept such a contention in the circumstances. It is true that the Rule does not refer specifically to a sale of shares which may lead to a mandatory offer, that it forbids the release of information relating to the potential offer (rather than specifically forbidding the giving of advice based on that information) and that it contemplates the insider himself dealing in the shares. The Rule, like the rest of the Code, is not expressed in precise and detailed language: it is expressly stated and has been repeatedly emphasised that the spirit of the Code must be observed, as indeed Mr. Gorvy has acknowledged. In the view of the Panel, Mr. Gorvy must have been aware at the time when he advised the purchase of the shares that the probable result of CAPI's desire to sell its holding would be a chain of events that would have a favourable impact on the share price. Rule 30 is specifically concerned with an insider dealing in shares but it cannot be accepted (and nor did Mr. Gorvy represent) that an insider escapes criticism if he advises someone else to deal. Accordingly the Panel considers that Mr. Gorvy's action in advising SABIT to buy shares in Chaddesley, when he was privy to the wishes of CAPI to dispose of its shares, was contrary to the spirit of Rule 30. The Panel is not here concerned with a transaction for personal gain and Schlesingers have since altered their arrangements so as to prevent a repetition. Nevertheless, the Panel must record its strong disapproval of the action which Mr. Gorvy took on this occasion.

19th December 1978.

(as amended 31st January 1979).