

THE TAKEOVER PANEL

KNIGHTSWOOD (PROPERTY & INVESTMENTS) CO LIMITED ("KPI")/ PCT GROUP PLC ("PCT")

BREACH OF RULE 9

The Panel Executive examined, following notification of a share dealing disclosure from The Stock Exchange, dealings in the shares of PCT to establish whether a mandatory bid under Rule 9 had been triggered. The Executive concluded that a concert party comprising Mr W S Wilson, chairman of PCT, Mr P R B Agnew, managing director of PCT, Mr L D Grainger, an executive director of PCT and KPI (entirely owned by Mr Wilson, Mr Agnew and Mr Grainger) had triggered a Rule 9 offer. This was because the Code contains a presumption that the directors of a company act in concert with that company. Messrs Wilson, Agnew and Grainger are the sole directors of KPI and were unable to rebut that presumption. Following discussions with the Panel, the concert party announced on 19 July that subject to funding being obtained, it would make a Rule 9 bid. On 16 August, after funding had been obtained, a full announcement of an offer at 130p per share was made. The offer document was posted on 12 September.

1. The Facts

Prior to a rights issue in 1991. Messrs Wilson, Agnew and Grainger had since incorporation owned over 50% of the shares in PCT. As a result of the rights issue their aggregate holding was diluted to 28.97%. KPI was incorporated in 1990 and is owned by Messrs Wilson, Agnew and Grainger. KPI bought its first shares in PCT in October 1993, taking the concert party holding to 33.1%. During the first six months of 1996 KPI bought further shares, taking the total holding of the concert party to 50.15% by 10 June.

The great majority of the purchases by the concert party were at 130p per share or less. 1.000 shares (0.01%) were bought in September 1993 by a company owned by Mr Grainger at 135p. 100.000 shares (1.13%) were bought by each of Mr Wilson and Mr Agnew in June 1994 at 161 p. 200.000 shares (2.26%) were sold by KPI in October 1994 at 155p.

Until its acquisition by Greig Middleton in August 1995, Allied Provincial Securities ("APS") were brokers to PCT. The individuals responsible for advising PCT left Greig Middleton at the end of 1995. Thereafter it is not clear who was acting as broker to PCT until the appointment of Greig Middleton was confirmed in writing on 24 April 1996. Greig Middleton resigned as independent financial adviser and broker on 16 September 1996.

On 11 July 1994 APS wrote to Mr Agnew, shortly after he and Mr Wilson had each purchased 100.000 shares. That letter from APS (which Mr Agnew states that he did not receive) contained the following two paragraphs:-

"As the Company's stockbrokers and financial advisers we liaise on its behalf with the London Stock Exchange including releasing to Company Announcements all notifiable share transactions advised to ourselves by the Company Secretary. The Directors' interests are shown in the Annual Accounts and we can confirm that all Director's share purchases notified to ourselves by the Company Secretary have been immediately notified to the London Stock Exchange. The critical point is when shareholdings exceed 30% and we believe that this threshold was reached with the previous purchase by Knightswood (Property and Investment) Co Limited in October 1993. This transaction was advised to the Stock Exchange at that time and no suggestion has since been received from the Takeover Panel that it should trigger a bid."

"We have considered the share purchases made by yourself and Stuart Wilson and whilst our understanding of the circumstances of the acquisitions is that they would not trigger a Rule 9 bid you will appreciate that when shareholdings in

total exceed 30% it is only when a formal approach is made to the Takeover Panel that definite confirmation can be received. You will appreciate that no adviser is able to give such confirmation without making such an approach and that the process takes a number of days. In the case of client companies it is not our practice to make such an approach without being specifically requested."

Advice on the Code and Rule 9 was obtained from Baker & McKenzie in September 1993 and intermittently thereafter.

2. The Panel Executive's ruling

The Panel Executive has concluded that the concert party first triggered a mandatory bid in October 1993, since when it has increased its holding to 50.15%. The Executive has ruled that, taking everything into account, the bid should be at 130p per share, the price at or below which the great majority of shares have been purchased by the concert party in the last three years. 200,000 shares (2.26%) were bought at 161p in June 1994. In effect these 200,000 shares were sold in October 1994 at 155p. This purchase was at market price, there were no other buyers around and the shares were offered by the market. The Executive has decided that because of these circumstances this purchase price should be ignored. 1,000 shares (0.01%) were bought at 135p in September 1993. On de minimis grounds the Executive is disregarding this price. The four independent directors of PCT (Mr B H Lemond, Mr R J Amos, Mr J H F Macpherson and Mr R R S Taylor) together with PCT's Rule 3 advisers, W&J Burness, WS. have confirmed to the Executive that they are satisfied that a price of 130p per share is adequate to discharge the obligations under Rule 9.

The Executive criticises KPI and its directors for failure to consult the Executive and for their repeated breaches of the Code.

The letter of 11 July 1994 to Mr Agnew appears to have been the sole attempt by Allied Provincial Securities to provide any advice to its client. PCT, in respect of Rule

9 in relation to the position of the concert party. Allied Provincial Securities were, at the time of writing, sufficiently aware of the facts to appreciate that Rule 9 was likely to apply. To the extent that the letter implied that it was for the Executive to react to notifications made to The Stock Exchange, it was clearly wrong. Furthermore, in the absence of any additional measures by Allied Provincial Securities, it was wholly inadequate to discharge its responsibilities as PCT's financial adviser. Specifically, the Executive would have expected that, in the absence of any response from Mr Agnew to the letter, a further attempt be made to ensure that the concern was understood both by Mr Agnew and also by an independent representative of PCT and that, if there were reasons for being uncertain as to the application of Rule 9, that the Executive was consulted as a matter of urgency. The Executive criticises Allied Provincial Securities and in particular the individuals advising PCT for their advice, conduct and failure to consult the Executive.

It would appear that there was a misunderstanding in January 1996 between the concert party and Baker & McKenzie in relation to the nature and extent of the involvement of KPI which consequently led Baker & McKenzie to then be of the view that no concert party existed. Nonetheless, despite having first advised that the Panel should be consulted if the transaction then being discussed had not yet taken place, Baker & McKenzie should not then have advised that if the transaction had taken place "the best course of action would probably be to notify the Stock Exchange and the Company in accordance with the normal rules and see whether any objection is raised".

In any circumstances of doubt or uncertainty about the application or interpretation of the Code in respect of a completed or prospective transaction the Executive must be consulted. Disclosure can never be a substitute for consultation, especially in cases where a mandatory bid obligation might have been incurred.

24 September 1996