

THE TAKEOVER PANEL

ASHBOURNE INVESTMENTS LIMITED **("ASHBOURNE")**

On 23rd July, 1974 the Panel issued the following statement:-

"At a meeting held on 15th July, 1974 the full Panel considered the situation arising out of the purchase on 6th December, 1973 by a Consortium (consisting of Crest International Securities Limited ("Crest"), Corporate Guarantee Trust Limited ("Corporate") and their associates) from the directors of Ashbourne and their associates of approximately 1.7 million shares (19.9% of the issued ordinary share capital) in Ashbourne at 46p per share. Following this purchase the Consortium became the beneficial owners of over 43% of the issued share capital of Ashbourne and incurred an obligation under the City Code to make an unconditional general offer for the balance of the capital. For all practical purposes the Consortium has, since the purchase of these shares, been in management control of Ashbourne.

Proceedings were commenced by a shareholder in Crest seeking an injunction to restrain that company from proceeding to make an unconditional general offer until such time as the Crest shareholders had had an opportunity of considering the proposition in general meeting. The Panel was made a party to these proceedings by leave of the Court.

Subsequently, further and separate proceedings were instituted in the High Court by Crest and Corporate against the vendors of the 1.7 million shares, claiming, inter alia, rescission of the purchase contract on the grounds of misrepresentation of the financial position of Ashbourne at the time of the purchase. The Panel understands that the injunction proceedings have been deferred until the outcome of the second proceedings is known.

The second proceedings were adjourned by the Court sine die in order that the parties might continue negotiations which were then taking place with a view to settlement. The Panel has been informed by the parties that these negotiations have now broken down.

The Panel considers that it is essential in the interests of all shareholders that the second proceedings are restored to the Court List and are prosecuted with the maximum possible speed. Mr. L.I. Casper, the Chairman of Crest, has given an undertaking to the Panel that this will be done.

In the meantime and without seeking to influence or anticipate the result of the proceedings, the Panel considers that the proper and fairest course, pending the outcome of such proceedings, is for it to direct that the Consortium and the board of Ashbourne shall take immediate steps to procure that:-

- (1) The Consortium's representatives on the Ashbourne board be reduced from four to two.
- (2) Mr. L.I. Casper stands down as Chairman of Ashbourne in favour of a director not associated with the Consortium.
- (3) A representative of the Ashbourne Shareholders Action Committee (which represents some 12% of the issued share capital and which has requisitioned a general meeting of the company for the purpose of removing all the directors) be invited to join the board.
- (4) The Consortium do not exercise the voting rights attached to 19.9% of the ordinary shares in Ashbourne (being the shares purchased by them on 6th December, 1973) and the Consortium exercise the voting rights attached to any other shares held by any of them in such a manner as may be appropriate so as to preserve the composition of the board on the above lines.

The Panel reserves its final consideration of the conduct of the parties and the obligations under the Code until the Court proceedings have been concluded.”

Immediately upon receipt of the Statement, Crest, Mr. Casper and Corporate obtained an injunction from a Judge in Chambers restraining the Panel from publishing the Statement until 10.30 a.m. on 25th July. At a hearing on 25th July, this injunction was not extended.

On 24th July, solicitors to the Consortium sent a letter to solicitors to the Panel in which they indicated a clear intention on the part of the Consortium not to comply with the provisions of the Statement. In particular, they said:-

"The statement and directive were ones which our clients, anxious as they have been and still are to co-operate with the Panel, were quite unable to accept. . .

As to voting of shares, our clients could not possibly undertake not to vote their shares . . ."

On 1st August, four directors of the Consortium companies, Messrs. L.I. Casper, S.H. Ross, S.J. Barry and B. Simmons, issued a circular to all Ashbourne shareholders which again clearly indicated that the Consortium did not intend to comply with the requirements of the Statement. The circular included the following paragraph:-

"The Consortium. . . believe that it would be fundamentally contrary to the interests of Ashbourne shareholders and their own shareholders, for the reasons set out in more detail below, to reconstitute the Board of Ashbourne as proposed by the Panel and to accept a restriction on the voting rights attached to their shareholding in Ashbourne."

The non-Consortium directors of Ashbourne, who had a majority on the board, substituted Mr. K.F. Suggett for Mr. Casper as Chairman, added a representative of the Action Committee to the board and made certain management changes. As indicated above, the Consortium, however, failed to comply with ruling (1) and indicated an intention not to comply with ruling (4).

The Panel executive took steps to bring the whole matter before a meeting of the full Panel on a complaint that the refusal of the Consortium to comply with the directions contained in the Statement constituted a breach of the Code. Thereupon the Consortium put in an application for leave to appeal to the Panel's Appeal Committee against the findings set out in that Statement. This application was heard by the Panel on 9th August. The Panel decided that leave to appeal should not be given and proceeded to hear the complaint by the Panel executive.

After giving full consideration to the arguments addressed to it on behalf of the Consortium, the Panel has found as a fact, and indeed it was not disputed, that the Consortium had refused to give effect to rulings given by the Panel in its Statement of 23rd July. The Panel is unable to express any opinion on the validity of criticisms which were made by the representatives of the Consortium of the earlier management of the Ashbourne group. These criticisms are strongly denied by Mr. K.F. Suggett, the Chairman, and other non-Consortium directors of Ashbourne. These matters are in issue in the legal proceedings at present pending, and the Panel considered it would be quite improper for it to reach any conclusion about them even had it considered that they were relevant to the issues immediately before the Panel. The Panel noted, however, the view of the Chairman of Ashbourne that compliance with

the Statement of 23rd July would be in no way detrimental to the maintenance of the efficient management of Ashbourne or of its subsidiaries. Neither would compliance with the Statement deprive the Consortium of adequate representation on the Ashbourne board.

In these circumstances, the Panel found that, by reason of the refusal to give effect to rulings set out in the Panel's Statement of 23rd July, the Consortium were in breach of the City Code on Take-overs and Mergers and that, if they persisted in their attitude, the Panel had no alternative but to recommend that the facilities of the securities markets should be withheld from the Consortium companies and their respective groups until such time as the Statement of 23rd July had been fully complied with.

Subsequent to the hearing and to the communication of these findings to the parties, the Panel has received undertakings from the Consortium companies that they will fully comply with the directions contained in the Panel's Statement of 23rd July and that two of their representatives on the Ashbourne board will resign not later than Friday, 23rd August. In the meantime, not more than two representatives of the Consortium will attend or vote at any board meeting of Ashbourne.

In these circumstances, the sanctions recommended by the Panel are withdrawn.

14th August 1974.