

# THE TAKEOVER PANEL

## SAINT PIRAN LIMITED

### ("Saint Piran")

#### Summary

1. The Panel met on 21st March, 1980 to consider whether a group of persons acting in concert had acquired more than 30 per cent of the issued share capital of Saint Piran and were thus obliged to extend a general offer under Rule 34 of the City Code on Take-overs and Mergers to the remaining shareholders in Saint Piran. The Panel considered in particular the position of Mr. J.J. Raper the former Chairman of Saint Piran. Although the hearing of the case had been postponed at Mr. Raper's request to a date convenient to him, in the event Mr. Raper declined to appear. The Panel found that the 34 per cent shareholding in Saint Piran, which Mr. Raper had in 1974, remained substantially under his control through a complex web of companies. The Panel further found that in April 1979 persons acting in concert, namely Gasco Investments Limited (a Hong Kong company), Ruffec S.A. (a Luxembourg company) and Aerolineas Cordoba S.A. (a Panamanian company), all three of which are controlled by Mr. Raper (as the Panel found), had increased their combined holding of Saint Piran shares to over 30 per cent, and thereby incurred an obligation, jointly with Mr. Raper and severally, to make a general offer to the remaining shareholders of Saint Piran at 85p. The Panel has at present no information about, but will investigate, the availability of funds to implement this obligation. The Panel investigation required a detailed analysis of transactions effected through companies registered in Hong Kong, Panama, Liberia and Luxembourg.

2. Saint Piran is a UK registered company whose principal trading activities are tin-mining in Cornwall and Malaysia and property development, principally house-building, in the UK. The issued ordinary share capital was increased to its present level as a result of a one for one capitalisation issue in March, 1977; it stands at £2,916,746 divided into 11,666,984 shares of 25p each.
3. In March 1974, Mr. J.J. Raper acquired 1,981,750 shares in Saint Piran (representing 34 per cent of its then issued share capital) This shareholding had belonged to a subsidiary of Faber Merlin Limited, a public company incorporated in Hong Kong and Mr. Raper received the shares by an agreement following litigation under which he disposed of his substantial interest in Faber Merlin.

In the normal way this would have involved Mr. Raper in making a general offer under Rule 34 to the remaining shareholders in Saint Piran but, in view of the circumstances in which the shares had been acquired, the Panel agreed that Mr. Raper should be freed of this obligation provided that he reduced his holding below 30 per cent and did not exercise any voting rights until this was done. There was some delay in disposing of the shares, but on 27th November, 1974, Mr. Raper's solicitors informed the Panel that he had sold 250,000 shares in Saint Piran which reduced his holding to 29.7 per cent.

4. Mr. Raper was appointed Chairman of Saint Piran on 13th September, 1973 and held that post until his resignation as Chairman and director on 23rd December, 1976. During his chairmanship he appears to have exercised a tight control over the company: for example within a relatively short period previous members of the board had resigned. Appointments were made to the board of persons most of whom had previous business associations with Mr. Raper. After his resignation he continued to be associated with the company as a consultant on Far Eastern matters and became Chairman of Fairmont State Limited, a Thai company which was associated with Saint Piran. Mr. Raper's disclosed shareholding was, for most of the period of his chairmanship, registered in the name of Honggroup Nominees Limited N Account,

99 Bishopsgate, London, E.C.2. Shortly before his resignation, shares began to be transferred out of this registration account, so that by the time of his resignation, Mr. Raper's disclosed interest was shown as being approximately 18 per cent. By March 1978 he was shown as holding only the 1,000 shares registered in his own name which he had held since 1973. These shares found their way into the names of eight overseas companies namely Apricot Limited, Sterling Azalea Limited, Charnwood Investments Limited (Hong Kong Companies), Corony Corporation, Menthon Corporation, Aerolineas Cordoba S.A. (Panamanian companies), Saratoga Shipping Incorporated (a Liberian company) and Ruffec S.A. (a Luxembourg company). We examine the position of these companies later.

5. Saint Piran has had a troubled recent history. The accounts for 1978/79 were the subject of important qualifications by the auditors. Its affairs are currently being investigated by Department of Trade inspectors appointed under Sections 165 (b) and 172 of the Companies Act 1948. The company's history is here referred to only to the extent necessary to understand aspects of the enquiry which the Panel has conducted. The Panel is concerned with the question whether an obligation exists under Rule 34 of the Take-over Code and not with questions that have been raised in various quarters about the affairs of Saint Piran.
6. At the Annual General Meeting of Saint Piran on 15th September, 1978 there was some criticism of the way in which the affairs of the company were being conducted. It was alleged by some shareholders who attended the meeting that Mr. Raper continued to influence the board and unease was expressed about the proportion of the company's shares that were held by what were described as foreign nominee companies. Details of these companies are given in paragraph 17. On the latter point the then Chairman of Saint Piran (Mr. W.J.R. Shaw) said that enquiries would be made under Section 27 of the Companies Act 1976 to ascertain whether there were large holdings in this country or overseas. Letters were sent to sizeable shareholders (1 per cent of share capital or more) on 25th September, 1978

asking for details of the capacity in which shares were being held and for disclosure of any voting arrangements with third parties.

7. On 21st February, 1979 certain shareholders lodged a requisition under Section 132 of the Companies Act 1948 for an Extraordinary General Meeting to consider resolutions to replace the existing board. Shortly afterwards representatives of these shareholders ("the requisitionists") commenced legal proceedings against Saint Piran and eight overseas companies that held shares in Saint Piran. They sought an interim injunction to restrain the eight companies from voting at the EGM on the ground that they had failed to disclose the identity of the beneficial owners of their Saint Piran shares. The High Court declined to grant the injunction and said that the issue would have to be determined in the trial of the action. This action has, however, been discontinued.
8. On 16th March, 1979 the board of Saint Piran (by then under the chairmanship of Mr. H.R.M. Hodding) disclosed in a circular sent that day to shareholders that Gasco Investments Limited ("Gasco"), a public company incorporated in Hong Kong, of which Mr. Raper was Chairman, had advised them that it then owned 820,000 shares in Saint Piran and that it intended to vote against the resolution for the replacement of the Board. Information about Gasco is given in paragraphs 20 to 23.
9. Meantime seven of the overseas companies together with Gasco, which had purchased through the market the shareholding formerly registered in the name of the eighth company (Saratoga Shipping), lodged proxies against the resolutions for the replacement of the board. The EGM was held on 30th March, 1979. There was some dispute about the validity of some of the proxies from the seven companies but the board of Saint Piran ruled, as it was entitled to do under Article 69 of Saint Piran's Articles of Association, that they were valid. The resolutions were defeated.

10. The requisitionists then issued a writ on 10th April, 1979 against Saint Piran, its directors and seven of the overseas companies seeking, inter alia, a declaration that the resolutions were validly passed, an order restraining the directors from continuing to act as such and the appointment of independent receivers and managers. On 24th May the High Court, which considered that there were issues requiring fuller investigation at the trial, refused to grant interim relief. The requisitionists thereafter discontinued the action.
11. Gasco continued to acquire shares and, by May 1979, held 3,450,000 shares, being 29.6 per cent of the Saint Piran capital. Of the eight overseas companies referred to above, one (Ruffec, a Luxembourg company) still held 470,000 shares (4.0 per cent) and another (Aerolineas Cordoba, a Panamanian company) held 400,000 shares (3.4 per cent).
12. In the annual report for 1973/74, Saint Piran announced that it was concentrating on its UK activities and was arranging for the disposal of its Malaysian tin-mining interests. By 1976/77, this policy was reversed and the board was engaged in acquiring new properties, particularly in the Far East. In 1978/79 it concentrated its Far East interests, including the investment in Fairmont State of which Mr. Raper was Chairman, in a wholly-owned overseas subsidiary Saint Piran (Hong Kong) Limited. Consideration was then given to the sale of Saint Piran (Hong Kong) Limited to Gasco in connection with which the board of Saint Piran had valuations made and a draft circular to shareholders reached its fourth proof. The directors have stated that this disposal, involving a substantial proportion of the group's assets, would only have proceeded if the board had approved the terms of the transaction, including the valuations, and if shareholders' approval was obtained. The Saint Piran board eventually decided not to proceed with the sale.

Present Enquiry

13. On 12th November, 1979, the Panel executive announced that it had been conducting an investigation to establish whether or not a group of persons had incurred an obligation to make a general offer and that it intended to bring the matter before the Panel. This announcement brought no offer of assistance from the Saint Piran board. Subsequently, on 7th December, a full note on the points that gave concern to the Panel executive was sent to Mr. Raper. On 21st December, letters were sent to each of the directors of Saint Piran and to Mr. Raper, inviting them to attend a meeting of the Panel on 18th January, 1980. Letters were also sent to Gasco and the eight overseas companies notifying them of the matters under investigation by the Panel and inviting them to send representatives to the meeting.
14. Considerable difficulty was experienced in getting in touch with Mr. Raper but he replied on 10th January, 1980 saying that it would take until a few weeks after the end of January to prepare his own detailed comments on the note and that a more reasonable date, convenient to all parties, should be arranged. He also referred to his need to be in Bangkok on 17th January in connection with an Extraordinary General Meeting of Fairmont State Limited. With these points in mind the Panel agreed to a postponement of the meeting on condition that Mr. Raper and the directors agreed to attend a meeting at a later date. On 16th January the present Chairman of Saint Piran, Mr. M.R. Stone, told the Panel executive that all of Saint Piran's directors, other than Mr. B. Green, would be available to attend a meeting on 21st March and that he had obtained Mr. Raper's agreement to attend on that date. A letter, dated 25th January, was sent to Mr. Raper confirming the 21st March meeting and saying that it was understood that he would attend. Mr. Raper replied on 7th March to say that he had seen and approved a written reply by Gasco to the Panel executive's note, that he had nothing to add and that he did not propose to attend on 21st March. The Panel executive pointed

out by telex and letter to Mr. Raper that he had been informed of the meeting, which had been postponed from 18th January to suit his convenience and that his presence on 21st March would enable him to answer questions that the Panel might wish to put. In reply, Mr. Raper merely repeated that he did not propose to attend the meeting. He gave no indication that he could not have attended if he had so wished although the Panel were later informed by Mr. Stone that on the advice of Tax Counsel Gasco would not be represented by any director at the Panel meeting. Mr. Raper's presence had, however, been requested in his personal capacity.

15. The Panel had the assistance at its meeting of Mr. Stone who is also Managing Director of Gasco and of its parent company Berriedale Investments Limited, of three other Saint Piran directors and of other representatives of Saint Piran and Gasco. The Panel regrets that, although Mr. Stone had earlier confirmed that all directors except Mr. B. Green would be present on 21st March, Mr. R.S.W. Ching, Managing Director of Saint Piran, was unable to attend on the ground that he was absent on business in Australia. Mr. Ching, who was Company Secretary of Gasco and Berriedale in early 1979, might have been able to assist the Panel as for instance in regard to the matters set out in paragraph 28 (iv).
16. The letters sent on 21st December, 1979 to each of the eight overseas companies named in paragraph 4 explained that the Panel was investigating evidence that the overseas company might have been a member of a group, under the control of Mr. Raper, which acted in concert. The requirements of Rule 34 were defined. Each company was asked to send a representative to the Panel meeting arranged for 18th January and to consider putting in a memorandum in advance of the meeting. Apricot, Sterling Azalea and Charnwood informed the Panel that they were in liquidation and Menthon and Corony had by that time been dissolved. Aerolineas Cordoba and Saratoga Shipping did not reply to this letter nor to a subsequent notification that the meeting had been

postponed until 21st March, and although Ruffec was subsequently visited by members of the Panel executive, this company neither was represented at the Panel meeting nor submitted any memorandum.

The Eight Overseas Companies

17. By the summer of 1978, about 31.5 per cent of Saint Piran was held by the following eight overseas companies:-

<u>Company</u>	<u>Country of Incorporation</u>	<u>Number of shares held</u>	<u>Percentage</u>
Apricot Limited )		320,000	2.8
Sterling Azalea )	Hong Kong	550,000	4.7
Limited )			
Charnwood Invest- )		400,000	3.4
ments Limited )			
Corony Corporation )		480,000	4.1
Menthon Corporation) )	Panama	420,000	3.6
Aerolineas Cordoba )		400,000	3.4
S.A. )			
Saratoga Shipping Incorporated	Liberia	570,000	4.9
Ruffec S.A.	Luxembourg	530,000	4.6
		<u>3,670,000</u>	<u>31.5</u>

18. Common features of these companies included the fact that they were located in the offices of professional advisers, such as lawyers or accountants or companies providing managerial services. They did not seem to own the premises from which they operated or to engage in any form of trading activity. Further, it was impossible to ascertain the identity of their shareholders.
19. Members of the Panel executive visited a firm of accountants in Luxembourg at whose address the registered office of Ruffec was situated. Representatives of this firm were directors of Ruffec.



The Panel executive were told that no disclosure could be made of the identity of the beneficial owner of the share capital of Ruffec, which stood at 5,000,000 Lux.Fcs. (about £80,000). It appears from the latest publicly available accounts of Ruffec, for the year to 31st December, 1978, that its investment in Saint Piran was the company's only substantial asset. The Panel has been unable, under Panamanian law, to obtain information as to whether Aerolineas Cordoba owned other assets in addition to its Saint Piran shares.

Gasco

20. Gasco is a company incorporated in Hong Kong which was listed on the Hong Kong Exchange. In the autumn of 1978, Berriedale Investments Limited acquired the shares in Gasco (amounting to 75.5 per cent of the issued share capital) owned by Hongkong Engineering and Construction Company Limited and in connection with this acquisition the principal property assets owned by Gasco were to be transferred to Hongkong Engineering. Berriedale then made a cash offer to the remaining Gasco shareholders and eventually came to own 85.1 per cent of the issued share capital although subsequently a small reduction in the level of this shareholding was made. The offer document stated that Mr. Raper would become Chairman of Gasco and the other directors would be Mr. M.R. Stone, Mr. B. Green and a United States citizen Mr. K.D. Connell.
21. It was stated in Berriedale's offer document for Gasco that it was incorporated in Hong Kong in April 1977 as a private company and since August 1977 had been a wholly-owned subsidiary of Bathgate Limited, a Bermudan investment company. The offer document stated that the directors of Berriedale were Mr. Raper, Mr. Stone, and Mr. Green.
22. The Panel was unable to establish the ownership of Bathgate. Mr. Stone informed us that Mr. Raper had described to him the shareholders as being "non-beneficial migratory discretionary trusts." The Panel has, however, seen a power of attorney

dated 22nd February, 1974, executed by a director and the Secretary of Bathgate, which gave Mr. Raper power to invest the moneys belonging to Bathgate and to vary investments and generally to exercise, in relation to the company's property, all the powers conferred on the directors.

23. It was accepted by the representatives of Gasco present at the meeting of the Panel that Mr. Raper controls Gasco.

The transfer of Mr. Raper's disclosed shareholding

24. It is now necessary to examine in detail the sequence of events concerning the shares which between 1974 and 1977 were transferred out of the registration accounts in which Mr. Raper had disclosed his interest. Reference should be made to the chart and the accompanying notes set out in the attached Appendix. Initially the shareholding was registered in three nominee accounts, namely Tan and Peh Nominees, Hong Kong and Shanghai Bank Nominees M Account and Overseas Trust Bank Nominees. Transfers were made in late 1974 and early 1975 to Honggroup Nominees N Account, which became the main holding account for the disclosed interests of Mr. Raper.
25. As already indicated, Mr. Raper's solicitors notified the Panel that he had disposed of 250,000 shares in the autumn of 1974 in order to bring his holding below 30 per cent. Investigation has shown that the transferee of 200,000 shares sold through the market was Credit Suisse (Geneva) Nominees, to which this number of shares was transferred on a single stock transfer form. With other shares acquired through the market by Credit Suisse (Geneva) Nominees, these shares were transferred without change of beneficial ownership, through another nominee account, to Menthon and Corony. (Overseas purchasers of shares incur stamp duty at 1 per cent. If there is no change of beneficial ownership only a nominal amount of duty is payable.) Nominal duty only was paid on these transfers. In 1979 the Saint Piran

shareholdings of Menthon and Corony (both Panamanian companies) were sold through the same firm of stockbrokers in Hong Kong that Gasco was using at the time to buy Saint Piran shares. The shares sold by these two companies were transferred on single stock transfer forms to Gasco.

26. The transfer of the much larger number of shares by Mr. Raper just before and after he resigned from being Chairman of Saint Piran is more complicated. As mentioned above, the registration account for the shares in which Mr. Raper had declared an interest was Honggroup Nominees N Account.

The transfers may be described as follows:-

- (i) 400,000 shares were transferred to Bathgate Limited in October 1977 on a stock transfer form which certified that no change of beneficial ownership was involved. These shares were later sold and an inspection of the register has shown that the shares were transferred out of Bathgate to Charnwood Investments on a single stock transfer form. In April 1979 the shares were sold through the market, in this instance Gasco through its nominee Vihong Nominees being the transferee, again by a single stock transfer form.
- (ii) In March 1977, 550,000 shares were acquired by Saratoga Shipping by a purchase through the market, the shares being transferred from Honggroup Nominees N Account; this was shortly before the 1 for 1 scrip issue. Saratoga Shipping's holding represented 9.4 per cent.

The Companies Act 1967 was amended in 1976 so that disclosure of the Saratoga Shipping shareholding in Saint Piran would have become necessary in May 1977. Such disclosure was not made but in early December 1977 the holding was divided, with 530,000 shares being acquired by Ruffec. Saratoga Shipping retained the balance.

In early 1979, by which time Saratoga Shipping held 470,000 shares, these were sold in the market, with Gasco being the transferee of the shares sold.

Ruffec, in April 1979, disposed of 60,000 shares in the market; Gasco was the transferee.

- (iii) Of the shares purchased in the market by Apricot and Sterling Azalea during 1976 and 1977, some were transferred to these two companies out of Honggroup Nominees N Account. Apricot and Sterling Azalea gave instructions in April 1979 for the sale of their shareholdings in the market. The transferee of the shares sold by these two companies was Gasco.

Except where otherwise stated ad valorem stamp duty was paid on all the transfers mentioned in (i) to (iii) above.

- (iv) All these companies gave instructions for the disposal of their shares between February and April 1979 through the Hong Kong office of the same firm of stockbrokers that Gasco was using for the purchase of its holding.
- (v) As regards the last company, Aerolineas Cordoba, its shares were acquired on a transfer without change of beneficial ownership from Barclays Bank Nominees (Gracechurch Street) Limited. These shares were registered in this nominee account on instructions from a Swiss bank, the shares having been purchased in the market; 335,066 shares out of its holding of 400,000 shares were acquired by transfers from Honggroup Nominees N. Account. Aerolineas Cordoba's holding has remained unaltered since July 1977.
- (vi) Corony and Menthon were dissolved shortly after disposing of their shares. It is understood that Apricot, Sterling Azalea and Charnwood are now in liquidation. It is not known whether the Liberian company, Saratoga Shipping, is still in existence.

27. At the end of the day, Gasco held 3,450,000 shares, Ruffec held 470,000 and Aerolineas Cordoba held 400,000. Mr. Raper was still the registered holder of 1,000 shares. The highest price paid by Gasco had been 85p per share in acquisitions at the end of March and beginning of April 1979.
28. There are a number of special features in these transactions.
- (i) The Panel accept, as was pointed out in the submission to the Panel from Saint Piran, that the transfer of shares from A to B through the market in itself proves nothing about any relationship of A to B. It is, however, significant that in a number of cases shares were transferred from registration accounts in which Mr. Raper had disclosed an interest back to Gasco (which Mr. Raper controlled) with few intermediate steps and with little breaking up or additions to the original parcel of shares so transferred. There were at all material times some 60 per cent of Saint Piran's shares held by a wide number of shareholders not including those held by the eight companies and it did not therefore follow that a purchaser of 29 per cent would inevitably have secured his shares from those companies.
  - (ii) When Mr. Raper was disposing of his shares, the eight were all buying. When Gasco wished to acquire a very substantial holding, enough were prepared to sell at the then market prices to enable Gasco to secure virtually the maximum number of shares Gasco could acquire without triggering a general offer under Rule 34 of the Code. The source of more than three-quarters of the shares acquired by Gasco was sales made by seven of the eight companies. A memorandum of 26th January, 1978 prepared in Saint Piran (see paragraph 32) had taken it for granted that Berriedale, Gasco's parent company, would hold 29 per cent of the Saint Piran shares.

- (iii) It is common practice for a prospective large purchaser to examine the share register and locate strategic shareholdings but it is to be noted that companies widely dispersed throughout the world gave instructions to deal through the Hong Kong office of a London stockbroker.
  - (iv) The Managing Director of the Hong Kong office of this firm of stockbrokers was informed by Mr. R.S.W. Ching, then Company Secretary of both Berriedale and Gasco and now Managing Director of Saint Piran, and by an accountant employed by Gasco that Charnwood, Sterling Azalea and Apricot wished to sell their holdings in Saint Piran and that Gasco wished to buy them. The instructions to effect these transactions were confirmed in writing on 3rd April, 1979 in the case of Charnwood and on 12th April in the case of Apricot and Sterling Azalea and contained the further instructions that the proceeds of sale were to be remitted to Berriedale i.e. the parent company of the purchaser. The last instruction stood until countermanded on 27th and 28th April when a different instruction on remittance was substituted. By this time, however, the proceeds of sale of Charnwood's holding had been remitted to Berriedale. Mr. Stone had earlier given instructions on 6th April for any sterling balance standing to the credit of Berriedale's account to be paid to Gasco; thus in effect the instructions were for the proceeds of sale to flow as if in a circle from seller to purchaser.
29. There is a remarkable similarity in the way in which the eight companies, or a majority of them, reacted to situations:
- (i) All supported the Saint Piran board in the contentious issues that came before shareholders' meetings.

- (ii) In response to the Saint Piran letter of 25th September, 1978 seven of the eight companies replied that the shares were held by the company as beneficial owner. Saratoga Shipping did not reply. Ruffec's reply is dated 29th September, 1978. The others sent replies dated between 3rd February and 16th March, 1979. The exact date of their receipt by Saint Piran is unknown. Five of the replies were stamped as received at the Saint Piran office on 19th March. Mr. Allen, a director of Saint Piran, informed the Panel that, although a non-executive director, he had been designated to assist in the preparation of the defence against the requisitionists and as the director who arrived first in the morning he had opened the mail and had put these letters on one side. Some time after receipt he passed the five letters to an employee of the company so that the information contained in the letters could be entered on the company's register of substantial interests. The employee date-stamped the letters as received on 19th March. Evidence was given in the Court proceedings that there had been no entries in the names of these five companies on 8th March, 1979 in the company's register of substantial interests and that details were not entered until 19th March.
- (iii) Notice of the EGM on 30th March, 1979 was despatched to shareholders on 7th March, 1979 with a proxy form. Seven of the overseas companies sent proxies; (Saratoga Shipping had sold its shares by then). Notwithstanding the wide geographical spread of the offices of these companies - Hong Kong, Panama, Switzerland and Luxembourg - the proxies all bore dates between 12th and 14th March and the proxy forms of six of them bore London postmarks. The proxies received from Apricot in Hong Kong and from Menthon in Panama were both posted in the same postal district - S.W.I. - on the same date.

30. In Berriedale's offer document for Gasco it was stated that Berriedale had, since August 1977, been a wholly-owned subsidiary of Bathgate. Berriedale's annual return for the year 1977 showed that it had an issued share capital of HK \$500,020 and that 500,000 shares were held by a nominee company, Gregson Limited, 10 by Sterling Azalea and 10 by Apricot. Sterling Azalea had acquired its shares from Gregson and Apricot from another nominee company called Dredson Limited. Since Berriedale was a wholly-owned subsidiary of Bathgate it followed that Sterling Azalea and Apricot must have held their shares in Berriedale as nominees for Bathgate. Sterling Azalea and Apricot transferred their shares to Dredson on 22nd August, 1978. Whilst they held these shares in Berriedale as nominees for Bathgate, Sterling Azalea and Apricot between them held 7.5 per cent of Saint Piran.
31. The directors of Saint Piran showed no interest in the buildup of shares in the eight companies between September 1976 and May 1978 and did not make enquiries about the beneficial ownership of the shares until concern was expressed publicly by the shareholders. The board had a share transfer committee of a director and the Secretary which received regular reports from the Company Registrar of changes in shareholdings and there were periodical reports to the board. One would have expected that some concern would have been felt about these substantial shareholdings in anonymous hands, several apparently not connected with the Far East. Mr. Shaw told the Panel that he never asked Mr. Raper how he had disposed of his shares. The board informed the Panel that at all material times since incorporation approximately half of the shareholders had been non-resident or incorporated overseas and had anonymous characteristics. The Panel were furnished with a list of shareholders, with their holdings, on 16th January, 1980. There is no reason to believe that the general pattern of shareholdings was substantially different at earlier stages. There were a great many relatively small holdings held by individuals, companies or in the names of nominees and the holdings of the eight overseas companies must have stood out because of their large size. The Panel is left with the impression that the directors were aware of the position and therefore saw no need to make enquiries.



Mr. Raper's position vis-a-vis Saint Piran

32. As already indicated, after Mr. Raper ceased in December 1976 to be Chairman of Saint Piran, he became an adviser to the board as and when required, in particular in relation to the Group's interest in the Far East. There was no written agreement nor any board minute on the subject and no remuneration. He also became Chairman of Fairmont State Limited, a Thai company which was associated with Saint Piran. All the subsequent chairmen of Saint Piran - Mr. Hodding, Mr. Shaw and Mr. Stone - had been associated with Mr. Raper in his earlier commercial activities, as had been a number of the other directors of Saint Piran. Mr. Raper was thus likely to be in touch with the board of Saint Piran. The Panel had to consider whether Mr. Raper's participation in management went beyond that and suggested an influence based on control of a substantial shareholding. A former employee of Saint Piran informed the Panel (and directors of Saint Piran in office at the time did not dispute his evidence) that at least up to November 1979 when the employee resigned there was a box into which were put copies of papers intended for the Chairman of Saint Piran, other reports and internal memoranda, the fortnightly report by the Registrars on the larger share transfers and the monthly financial statements. Mr. Raper's chauffeur collected the contents of the box daily and sometimes twice daily. Papers submitted to the Court in connection with the law suits initiated by the requisitionists purported to show that Mr. Raper's role as adviser was not limited only to matters connected with Far Eastern business but extended to advising on several occasions on acquisitions and on the purchase of shares in other companies. A memorandum dated 24th November, 1977 purporting to be addressed by Mr. Raper to the Chairman of Saint Piran (Mr. Shaw) shows Mr. Raper as involved in proposals for the concentration of Saint Piran's Far East interests in Saint Piran Hong Kong and proposing the subsequent sale of Saint Piran Hong Kong to a company in which Saint Piran would hold a large stake. All this is then reflected in a policy

memorandum dated 26th January, 1978 which appears to have been prepared or accepted by the Saint Piran board. It appears that Mr. Raper on his visits to this country had meetings with the directors of Saint Piran and is recorded as attending three board meetings in 1979 either as alternate director to Mr. Green or in his capacity as Chairman of Fairmont State. The notes from Mr. Raper show that he was actively participating in the management of the company and the style is that of a man whose views had to be heeded. He may well be a director within the meaning of the Companies Acts. The company has not produced the written appointment of Mr. Raper as an alternate director nor any minute approving his appointment as required by the company's Articles of Association. Indeed the company declined to produce a number of its board minutes for 1979 without conditions which the Panel was unable to accept.

#### Findings

33. When considering its findings the Panel had under consideration, inter alia, the following shareholdings :

	Number of	
	<u>Shares</u>	<u>Percentage</u>
Gasco	3,450,000	29.6
Ruffec	470,000	4.0
Aerolineas Cordoba	400,000	3.4
J.J. Raper	1,000	
	<u>4,321,000</u>	<u>37.0</u>

There is no dispute that Gasco is under the control of Mr. Raper and holds 29.6 per cent of the voting shares of Saint Piran. One aspect to which the Panel had to address itself was the control of Ruffec and Aerolineas Cordoba which still hold 4 per cent and 3.4 per cent respectively of the voting shares. If either company was acting in concert with Gasco, there is an obligation to make an offer for the remaining shares in Saint Piran at the highest price paid by those acting in concert - namely the 85p paid by Gasco in March and April 1979.

34. Gasco argued before the Panel that there was no evidence of any link between it and Ruffec and Aerolineas Cordoba. They also took a preliminary point on the interpretation of the Code. Rule 34 is triggered by an acquisition of shares, not by the mere holding of shares. Gasco contended that after parties had reached agreement to obtain control of a company, any one of them was only acting in concert if it acquired shares thereafter. The argument then ran that Mr. Raper acquired control of Gasco in October 1978 and that neither Ruffec nor Aerolineas Cordoba could be said to have acquired Saint Piran shares after being in concert with Gasco. The Panel do not accept this interpretation of Rule 34. Persons who come together to obtain control of a company are regarded as one and the acquisition of shares thereafter by any of them can set Rule 34 in motion. This is the plain meaning of the first paragraph of the definition of "acting in concert" in the Code and is spelt out in the Practice Notes. Any other interpretation would open the way to wholesale evasion of the intentions of Rule 34. As has repeatedly been made plain, the Panel is the authority on the interpretation of the Code and its decisions are final.
35. There is no direct evidence of the ownership of the eight overseas companies but the circumstantial evidence strongly points to their being under the control of Mr. Raper. It is conceivable that Mr. Raper might have been able to rebut the conclusions thus forced upon the Panel, as for instance by showing how he used the substantial amount which would have resulted from any realisation of his former holding in Saint Piran, or by establishing another explanation for the control of Ruffec and Aerolineas Cordoba. In the absence of his assistance there are too many unexplained coincidences for it to be possible to regard the overseas companies as independent of Mr. Raper, and the evidence in paragraphs 28 (iv) and 30 suggests that in at least two respects there was a breakdown in the efforts to maintain the illusion of independence. The Panel considers

that Mr. Raper never truly divested himself of the large holding in Saint Piran that he derived from Faber Merlin. Accordingly when Gasco acquired 29 per cent of Saint Piran, it must be regarded as acting in concert with Ruffec and Aerolineas Cordoba, because of the common control by Mr. Raper. As the Panel considers that no real divestment below 30 per cent was made by Mr. Raper in 1974 it is apparent that the acquisition by Gasco of some 750,000 shares (6.4 per cent) in the market from February to April 1979 from persons outside the concert party increased the concert party's shareholding by more than 2 per cent in a period of 12 months. Moreover, as Ruffec and Aerolineas Cordoba hold 7.4 per cent of the shares, Mr. Raper and the three companies incurred an obligation to make an offer when their combined holdings exceeded 30 per cent, which took place in April 1979. In both cases there is an obligation on Mr. Raper and these three companies, Gasco, Ruffec and Aerolineas Cordoba - jointly and severally - to make a general offer to the remaining shareholders of Saint Piran at the highest price paid for shares, namely 85p in March and April 1979.

36. The Panel has been unable to explore, before issuing this statement, the ability of Mr. Raper and the companies concerned to find the funds necessary to finance the bid. This is a matter to which the Panel will now turn its attention. Unless the offer is promulgated in the interim, it is intended to invite those concerned, in due course, to a meeting of the Panel. To the extent that resources to implement an offer are available to Gasco's controlling shareholder Berriedale and to its parent company Bathgate Limited, the Panel will expect those companies to assist in the making of the offer.

General

37. The Panel would like to draw attention to a particular aspect of this case which may be of general interest and application to the interpretation of acting in concert in circumstances where the ultimate beneficial ownership of shares is difficult to establish. It will be evident that there are circumstances where the Panel is faced with a declaration that a particular company is the beneficial owner of shares - a statement which may satisfy the requirements of Section 27 of the Companies Act 1976 on disclosure of the capacity in which a person holds shares in a company. Nonetheless, the ultimate ownership of that company, which is highly relevant to the question of acting in concert, may be difficult to establish, e.g. where the share capital of the investing company is in bearer form or where trusts without nominated beneficiaries are the registered holders of its share capital or where the identity of the shareholders is otherwise unavailable. In such circumstances, the Panel may have to determine the existence of parties acting in concert in relation to a potential offeree company by reference to a common pattern of behaviour of the shareholders of the offeree company together with the conduct and composition of its board of directors.

1st April, 1980.

## Saint Piran

Notes to accompany Chart

1. Shareholding figures shown in each box are the shareholdings at 31st March in each year. In April 1977, St. Piran's issued share capital was doubled as a result of the 1 for 1 capitalisation issue. This is reflected in the shareholdings for subsequent years.
2. A double line on the Chart indicates a transfer for nominal stamp duty only, i.e. where no change of beneficial ownership was involved. A single line indicates a transfer where stamp duty was paid.
3. The total shareholding column includes, for the years 1975 - 1978 the shareholding represented by Credit Suisse Geneva Nominees / Midland Bank Overseas Nominees. This shareholding represented 3.4 per cent of the issued share capital as at 31st March, 1975; for the period 31st March, 1976 to 31st March, 1978 it was 7.7 per cent.
4. Lines drawn on the Chart indicate a transaction between two accounts during a particular year. Where no line is drawn, and the total for the subsequent year has increased or decreased, the difference is accounted for by transfers between parties believed to be unconnected with any of the shareholding accounts shown on the Chart.
5. Where an account acquired only part of its holding from an account shown on the Chart this is shown by a break in the line, with the relevant number of shares indicated.
6. Reference is made on the Chart to the shareholding of Leonidas N.V. This company, which is believed to be incorporated in The Netherlands Antilles, acquired shares in Saint Piran during 1977. It maintained two registration accounts, 350,000 shares being

registered at Case Postale 120, 1700 Fribourg 7, Switzerland with the balance of 50,000 shares registered at 26, Broadwalk House, 51 Hyde Park Gate, London, S.W.7. The first of these is Mr. Raper's address in Switzerland, and the second was, until recently, his London flat. During 1978 disposals of shares were made out of both registration accounts. The transferees of the shares in question appear mostly to have been private individuals apparently unconnected with any of the eight companies or Gasco. Mr. Raper has given the Panel no reason to suppose that these shares were not controlled by him whilst they were registered in the name of Leonidas.

1st April 1980.

**SAINT PIRAN**

Date	Shareholder Holdings										No. of SHARES		
31 <sup>st</sup> March 1975	200,000	TAN AND PEH NOMINEES 391,250	HONGKONG AND SHANGHAI BANKING & A/C 827,500	HONG GROUP N ACCOUNT 1,731,750	OVERSEAS TRUST BANK NOMINEES 658,000	JJ RAPER 1,000	1,932,750	33.1					
31 <sup>st</sup> March 1976	CREDITSUISSE GENEVA NOMINEES 431,800	167,533	HONG GROUP N ACCOUNT 1,731,750	50,000	158,300	JJ RAPER 1,000	2,184,550	37.4					
31 <sup>st</sup> March 1977	CREDITSUISSE GENEVA NOMINEES 431,800	BARCLAYS GRAFTON RCHST NOMINEES 281,302	HONG GROUP N ACCOUNT 282,280	SARATOGA SHIPPING 550,000	ARRCOT 152,000	STERLING AZALEA 275,000	JJ RAPER 1,000	1,913,382	32.8				
31 <sup>st</sup> March 1978	MIDLAND BSNK OVERSEAS NOMINEES 903,600	W/C ARR NOMINEES 350,000	LEONIDAS 400,000	BATHGATE 400,000	RUFPEC 530,000	SARATOGA SHIPPING 570,000	ARRCOT 320,000	STERLING AZALEA 550,000	JJ RAPER 1,000	4,074,600	34.9		
31 <sup>st</sup> March 1979	MENTION 420,000	CORONY 480,000	AEROLINEAS CORROBRA 400,000	CHARANWOOD 400,000	RUFPEC 530,000	VIHONG A/C GASCO 820,000	ARRCOT 320,000	STERLING AZALEA 550,000	JJ RAPER 1,000	3,921,000	33.6		
31 <sup>st</sup> May 1979					40,000	VIHONG A/C GASCO 3,450,000	JJ RAPER 1,000						
PRESENT POSITION												4,321,000	37.0

March 1977  
1 for 1 scrip  
issue