

THE TAKEOVER PANEL

HOUSE OF FRASER PLC

The Panel Executive is now able to announce the results of its enquiry into whether there were breaches of the City Code on Takeovers and Mergers ("the Code") at the time of the offer by Alfayed Investment and Trust (UK) plc for House of Fraser plc ("House of Fraser") in March 1985 and, if there were, who was responsible for them.

The Executive's conclusion is that Mohamed, Salah and Ali Al Fayed ("the Al Fayed brothers") were responsible for a breach of General Principle 12 of the Code then in force and by this public statement they are censured accordingly.

Background

At the time of the offer for House of Fraser it did not appear that there had been any breach of the Code. The possibility that a breach had occurred became apparent as a result of the Department of Trade & Industry Inspectors' Report on the affairs of House of Fraser Holdings Plc ("the Inspectors' Report") which was published on 7 March 1990.

The Executive's enquiries were conducted during 1990 and the first half of 1991. The Executive concluded that the Al Fayed brothers were responsible for a breach of General Principle 12 of the Code and, in October 1991, commenced disciplinary proceedings against them. On 6 December 1991, the Panel heard an application on behalf of the Al Fayed brothers that the disciplinary proceedings should be adjourned until after the outcome of certain litigation brought by Lonrho Plc. The Panel, by a majority, rejected the application although leave to appeal was unanimously granted. The appeal was heard by the Appeal Committee on 18 December 1991 and was dismissed.

In early January 1992, the Executive was informed that the Al Fayed brothers would be seeking leave for judicial review of the decisions of the Panel and the Appeal Committee. The application was heard by Lord Justice Watkins on 23 January 1992 and was rejected. The proceedings before Lord Justice Watkins and the fact of the proposed disciplinary proceedings were subsequently reported in the press.

On 3 April 1992, the Court of Appeal refused a renewed application by the Al Fayed brothers for leave to apply for judicial review of the decisions of the Panel and the Appeal Committee not to adjourn the proposed disciplinary proceedings.

On 4 June 1992, the Panel heard applications on behalf of both the Executive and the Al Fayed brothers with regard to certain procedural matters and a date for the Panel hearing of the Executive's disciplinary case was fixed for early October 1992. That hearing will not now take place in view of the release of this statement.

The Code issues

The Inspectors' Report examined many more of the circumstances of the offer for House of Fraser than are of concern to the Panel but it did point to the possibility of breaches of General Principles 3 and 12. The Al Fayed brothers have stated that they do not accept many of the findings of the Inspectors' Report and their challenge to its publication is currently before the European Commission of Human Rights in Strasbourg.

All references to the Code in this statement are to the Code in force at the time of the offer for House of Fraser.

General Principle 3 stated:

"Shareholders shall have in their possession sufficient evidence, facts and opinions upon which an adequate judgement and decision can be reached and shall have sufficient time to make an assessment and decision. No relevant information shall be withheld from them."

General Principle 12 stated:

"Any document or advertisement addressed to shareholders containing information, opinions or recommendations from the board of an offeror or offeree company or their respective advisers shall, as is the case with a prospectus, be treated with the highest standards of care and accuracy. Especial care shall be taken over profit forecasts."

In view of these two General Principles, the Executive sought to establish whether any relevant information was withheld from the offer document which was sent to House of Fraser shareholders on 23 March 1985 and whether what was publicly stated on behalf of the Al-Fayed brothers before the offer document's despatch, and what was contained in the offer document itself, had been treated with the highest standards of care and accuracy.

The scope of the enquiry

The introduction to the Code in force at the time of the offer placed responsibility for compliance with the Code not only on "those who are actively engaged in the securities market in all its aspects" but also on "directors of public companies and persons or groups of persons who seek to gain control of public companies" and on "their professional advisers (insofar as they advise on the transactions in question)".

In this case, the Executive's concern was with the fairness and accuracy of information released publicly by and on behalf of the offeror. Accordingly, the Executive has had no reason

to make enquiries of the then board of House of Fraser and its financial advisers and has confined its enquiries to the Al Fayed brothers and their financial advisers at the time, Kleinwort Benson Limited ("Kleinwort Benson").

The Executive focussed its enquiry on the content of the three press releases which were specifically authorised by the Al Fayed brothers and issued on 2 November 1984 and 4 and 7 March 1985 and of the offer document posted on 23 March 1985 and, in each case, on what the relevant document stated about the Al Fayed brothers' business interests and resources. The relevant extracts from these documents are set out in the Appendix.

The findings of the enquiry

In March 1985, at the time the offer document was being prepared and as described in the Inspectors' Report (reference 8.2.3 - 8.2.16), Kleinwort Benson consulted the Panel about the information on the Al Fayed brothers and their resources which was to be included in the offer document. The Panel required an expansion of the normal offer document wording (confirming that the cash for the offer is available) to include a statement to the effect that the funds to implement the offer were drawn from the existing resources and normal trading facilities of the Al Fayed family. The language actually used is set out in the Appendix.

In the light of the Inspectors' Report, the Executive was concerned to enquire again whether any relevant information about the source of the funds for the acquisition had been withheld by the Al Fayed brothers. The Executive was informed by Mr Mohamed Al Fayed that he and his brothers "were the beneficial owners of the cash" and "are the beneficial owners of House of Fraser". In view of this categorical assurance the Executive did not believe that any useful purpose would be served by its attempting to investigate this particular matter further since it was one which the Inspectors, with the resources and powers available to them, had been unable to

probe to a definitive conclusion. Thus, the Executive finds that no breach of General Principle 3 has been established.

Accordingly, the question of principal concern to the Executive was whether the statements about the business interests of the Al Fayed brothers, as set out in the Appendix, may not have been treated with the highest standards of care and accuracy, as required by General Principle 12, and may thereby have created a misleading impression.

The Executive received from the Al Fayed brothers the material supplied to the Inspectors in support of the accuracy of the statements they had made about their business interests and this material was, as stated by the Inspectors (reference 11.1.2), one category of evidence on which Chapter 11 of their report, "Commercial Activities of the Fayed's and their Income-Generating Capacity", was based. In the light of this material, the Executive put to the Al Fayed brothers the proposition that they had given a misleading impression that the £568 million which they spent on the acquisition of House of Fraser had been derived from their business interests, as described in the press releases and the offer document. The Al Fayed brothers contended that the statements in the press releases and the offer document were merely descriptions of their current business interests and that no inference could be drawn from them as to the source of their wealth or as to the origin of the funds used in the acquisition of House of Fraser.

The Executive's conclusion is that such an inference could reasonably be drawn from those statements in the context in which they were made and that they were thereby in breach of General Principle 12.

In particular:

1. In the initial public statement of 2 November 1984 the reference to the Al Fayed family's "widespread international interests", when juxtaposed with the view

that the acquisition of 29.9% of House of Fraser was "a logical step in the continuing evolution of these worldwide businesses" implied that the then £138 million investment had been financed from the resources of the family's worldwide businesses.

2. The information about the Al Fayed family's interests which was subsequently contained in the offer announcement on 4 March 1985 and in the offer document of 23 March 1985 did not alter the impression originally conveyed and indeed extended it by implying that the £430 million cost of the offer was also being financed from those same resources.
3. The categorical denial, in the press release issued on 7 March 1985, that anyone other than the Al Fayed brothers was the ultimate financier of the offer for House of Fraser begs a very large question as to the source of the funds for the offer if the reader of that announcement was not to conclude that the funds were derived from the business interests which the Al Fayed brothers had publicly described.

In finding a breach of General Principle 12 it is not necessary to determine whether or not the statements made were intentionally misleading and, accordingly, the Executive's case under General Principle 12 contains no such allegation.

The Executive received a detailed submission from Kleinwort Benson which explained how it discharged its responsibilities under the Code in this case and the basis for its opinion at the time that the Code had been complied with. In view of the fact that, if the offer document had not been treated with the highest standards of care and accuracy and may thereby have created a misleading impression, it was a matter of the omission of information available only to the Al Fayed brothers and in the light of the reasonable care taken by

Kleinwort Benson to ensure that its clients complied with the Code, the Executive finds no reason to hold Kleinwort Benson responsible for any breach of the Code.

14 September 1992

APPENDIX

Extract from press release of 2 November 1984:

"Alfayed Investment and Trust (UK) Limited ("AIT") announces that it has today acquired 46,098,800 Ordinary shares of House of Fraser plc ("House of Fraser") from Lonrho Plc ("Lonrho"). The shares, which represent approximately 29.9 per cent. of House of Fraser's issued Ordinary share capital, were acquired at a price of 300p each in cash and the total consideration paid was £138.3 million.

AIT is a private company, controlled by Mohamed, Salah and Ali Al-Fayed, who are members of an old established Egyptian family who for more than 100 years were shipowners, landowners and industrialists in Egypt. The Al-Fayed family now has widespread international interests including, in particular, ship-owning, luxury hotels, construction, oil, oil services, banking and property. Since 1979 the Al-Fayed family has owned the Ritz Hotel in Paris.

AIT sees the acquisition of this holding in House of Fraser as a logical step in the continuing evolution of these worldwide businesses. It regards its holding in House of Fraser as a long term investment."

Extract from press release of 4 March 1985:

"AIT is a private company, controlled by Mohamed, Salah and Ali Al-Fayed. The Al-Fayed family has widespread international interests including, in particular, ship-owning, luxury hotels, construction, oil, oil services, banking and property."

Press release of 7 March 1985:

"It has been alleged that persons other than the Fayed brothers, Mohamed, Ali and Salah are the ultimate financiers of the £615m Alfayed Investment and Trust offer for House of Fraser. The brothers categorically deny that this is the case. Kleinwort Benson are satisfied that Mohamed, Salah and Ali Al-Fayed are the beneficial owners of Alfayed Investment and Trust and moreover that they have more than adequate funds of their own to finance the offer. Furthermore the Fayed brothers are advised that any allegations that they are not acting on their own account are defamatory."

Extracts from offer document of 23 March 1985:

"AIT is a wholly-owned subsidiary of AIT SA, which is beneficially and wholly owned and controlled by three brothers, Mohamed, Salah and Ali Al-Fayed. The Al-Fayed family is an old established Egyptian family, which has interests in the USA, Europe and the Middle East which include, in particular, shipping, construction, oil, banking and property.

The shipping companies are based in Genoa, Piraeus, London, Dubai and Egypt. The family has been involved in many construction projects, particularly in the Middle East. Oil interests consist of minority investments in oil exploration consortia in the Middle East with major international oil companies. The family is a significant shareholder in National Bancshares Corporation of San Antonio, Texas of which Ali Al-Fayed is an advisory director. Ali Al-Fayed is also an advisory director of the Peoples Bank in Houston. The family's major property interests are in Park Lane in London, in the Rockefeller Center in New York, in the Champs Elysees in Paris, in Switzerland and an estate in Scotland. The Al-Fayed family has owned the Ritz Hotel in Paris since 1979."

"(d) Kleinwort, Benson Limited is satisfied that AIT has available from the existing resources and the normal trading

facilities of the Al-Fayed family, the necessary financial resources to implement the Offers in full."