

THE TAKEOVER PANEL

Dealings in Shares in Dexion-Comino International Limited

("Dexion")

It was announced to the Press on 22nd July, 1974 that the boards of Interlake Inc. and Dexion had reached agreement on the terms of offers to be made for the whole of the issued Ordinary and Preference share capital of Dexion, the terms being 33p in cash for each Ordinary share and 65p in cash for each Preference share. On 31st July, 1974, The Stock Exchange announced that it would carry out an investigation into dealings in the shares of Dexion which in the event covered the period from 11th to 23rd July, 1974. The Stock Exchange report was subsequently passed to the Panel which has been carrying out its own investigations.

On 19th July, 1974 Mr. J.S. McKerchar visited Kleinwort Benson Limited (advisers to Dexion) to discuss a suggestion by them that he should be appointed to the board of Dexion. He was then informed that the situation had changed in that a bid for Dexion was about to be made, although no mention was made as to the price. He received this information in circumstances which, as he frankly informed the Panel, were such as to put him under a clear obligation of confidentiality. Later that day he visited his brokers and, after enquiring about the prices of other shares, asked at what price Dexion was then standing. Mr. McKerchar has informed the Panel that he was told that the price had risen from about 12p earlier in the day to 16½p and that, in discussing the reasons for this rise, the brokers had indicated that there had been strong rumours that Dexion was about to be taken over. Mr. McKerchar did not inform his brokers that in fact he knew that such a bid was about to be made, but he instructed them to buy 20,000 Dexion Ordinary shares and, at the same time, gave instructions for them to be sold on 25th July, since he was due to be away on a boat for some time from 19th July. He says he bought these shares in the belief that there must have been a public announcement at least of negotiations for a bid for Dexion, although he did not take any steps to confirm whether this was the case; he expected that he might make a small profit once the terms were announced.

On his return from holiday on 2nd August Mr. McKerchar read in a newspaper that The Stock Exchange was enquiring into dealings in Dexion in the period between 22nd July and 24th July. Although his own purchase and sale were outside these dates Mr. McKerchar at once wrote to Kleinwort Benson Limited explaining the circumstances of the purchase and saying that he had bought in the belief that the fact of the bid had, in view of the steep rise in price, become general knowledge but that on reflection he thought he might have made a mistake in buying and would be prepared to pay the profit he had made to charity. Shortly thereafter he also wrote to the Panel executive in similar terms.

At a hearing on 23rd April, 1975 the Panel gave anxious consideration to this case under Rule 30 of the City Code which indicates that anyone "who is privy . . . to an intention to make an offer" is precluded from dealing in the shares concerned. The Panel considers that the Rule clearly forbids dealing in the shares in question by anyone who receives information about an intended bid in circumstances which impose on him a duty of confidentiality.

The Panel has no doubt, nor did Mr. McKerchar dispute, that he was privy to the intention to make an offer. Even if there were rumours that a bid was to be made, Mr. McKerchar knew that the rumours were in fact true. He was thus an insider in a better position than other investors who had at most merely heard a rumour.

The Panel considers however that he entered into the transaction without giving serious thought at the time to the grave implications under the City Code. It also takes into account his reputation for integrity and the immediate and voluntary disclosure which he made following the press report of The Stock Exchange enquiry, although the terms of this report did not apply to the dates of his own transactions.

In the circumstances the Panel reprimands Mr. McKerchar and agrees that it would be appropriate for him to donate the gross profit on the transaction of some £2,000 to a charity approved by the Panel.

Other transactions in connection with Dexion are still receiving attention.

25th April, 1975.