THE TAKEOVER PANEL

Manx & Overseas Investments Limited

1. The Panel met on 15th March, 1978, to consider an appeal by Sir John Bolton and other shareholders in Manx & Overseas Investments Limited ("M & 0"), representing approximately 9.6 per cent of the company's issued share capital, against a ruling by the Panel Executive published on 20th September, 1977. Sir John Bolton and the others argued that, when Mr. R.T.D. Stott (acting for one of his family's private investment companies, Cronk Mullagh Investments Limited) bought 21.82 per cent and Mr. H.A. Bonning bought 27.91 per cent of the issued share capital of M & O on 29th June, 1976 at 14p per share, they were acting in concert to obtain control of the company and accordingly had an obligation under Rule 34 of the City Take-over Code to make a general offer at the same price to the remaining shareholders.

2. M & O is an unlisted public company registered and resident in the Isle of Man. The Code applies to offers for companies resident for exchange control purposes in the United Kingdom, which in that context includes the Isle of Man.

3. Prior to 29th June 1976, Douglas Estates Limited ("Douglas Estates"), a private company owned by Sir Douglas Clague, held in all, as a result of a recent acquisition of shares, 49.73 per cent of the issued share capital of M & O. Mr. Stott, the Chairman of M & O, and his family held about 6.5 per cent and Mr. Bonning, a Midlands businessman who had recently retired to the Isle of Man, held 1.5 per cent.

4. Douglas Estates by that date also held over 50 per cent of the shares in Isle of Man Associated Investment Limited ("Associated"), a public company listed on The Stock Exchange, which had close links with M & O.

5. On 25th June, 1976, Sir Douglas Clague informed Mr.Stott, who is a stockbroker as well as being Chairman of M & O throughout, that he was prepared to dispose of his entire holding in M & O. Mr. Stott, with his brother and an associate, and Mr. Bonning visited Sir Douglas Clague in Ireland on 29th June, 1976. Mr. Bonning and Mr. Stott agreed to buy the Douglas Estates holding at Sir Douglas Clague's price of 14p. The price in other recent bargains had been between l0p and 12p. The shares were first put in the name of Mr. Bonning and later divided in the proportions indicated in the first paragraph.

6. On 8th July, 1976, Mr. Bonning joined the board of M & O and was appointed Vice Chairman and Chief Executive. Sir Douglas Clague and Mr. J.D. Bolton (Sir John Bolton's son, who was also a director of Associated and Douglas Estates) resigned from the Board. Directors associated with Mr. Stott were appointed to the Board as well as one director with associations with Mr. Bonning.

7. On 10th January, 1977, Sir John Bolton wrote to Mr. Stott saying that Mr. Stott and others acting in concert with him had acquired shares giving a majority holding in M & O and that, as an M & O shareholder and on behalf of other shareholders, he considered that an offer at 14p should be made to all shareholders. On 1st April, 1977, Sir John Bolton wrote to the Panel, whose attention had been drawn to the case by Mr. Stott on receipt of Sir John Bolton's initial letter.

8. We are concerned here with the question whether Mr. Stott and Mr. Bonning, when acquiring the Douglas Estates shares in M & O on 29th June, 1976, were actively cooperating to obtain control of M & O. Events after the acquisition may throw light on their intentions at the time of the acquisition

but are not in themselves decisive on the issue. The question can be particularly difficult when two parties acquire roughly similar amounts of shares and when the events took place nearly two years ago.

9. The basic facts appear to create a strong presumption that Mr. Stott and Mr. Bonning were acting in concert for the purpose of Rule 34. Mr. Bonning and Mr. Stott, who was his stockbroker, went together to Ireland on 29th June, 1976 and negotiated the purchase of the Douglas Estates holding of M & O shares. On 8th July, 1976, the sale was recorded in a written agreement, which also purported to require the completion by the board of M & O of various arrangements involving M & O, Associated and a private company, Isle of Man & Overseas Estates Limited. The shares were assigned in one lot to Mr. Bonning and then parcelled out to Mr. Bonning and Mr. Stott's family company. At a board meeting of M & O on 7th July, 1976 Mr. Stott had reported that he and other parties had acquired 49% of the issued capital of M & O. On 8th July, Mr. Bonning joined the board of M & O and became Vice Chairman and Chief Executive.

10. The case on the other side, as presented by Mr. Bonning, is that he had bought his original holding in M & O through Mr. Stott as his stockbroker. Mr. Bonning had indicated that he would be interested in a larger investment, his motives being to secure a satisfactory investment in the Isle of Man and if possible to find congenial work on the board of the company. On 27th June, 1976, Mr. Stott telephoned to enquire whether he wished to acquire further M & O shares at 14p per share. At some stage Mr. Stott told him that it would be dangerous for him to acquire more than 30 per cent of the issued capital and he therefore regarded 28 per cent as the ceiling of any purchase. He told Mr. Stott that he would expect to be co-opted to the M & O board if he made such a substantial purchase of shares. Mr. Bonning said that the discussion of his appointment as Vice Chairman and Chief Executive took place after the purchase of the shares on 29th June, 1976. He was not aware that he might be regarded as acting in concert with Mr. Stott until the matter was raised by Sir John Bolton in January 1977

11. Mr. Stott supported Mr. Bonning's statements. He was anxious to break the close links that existed between M & O and Associated, which he did not consider to be in the best interests of M & O. He was, therefore, prepared to buy shares in M & O to the extent of his resources; and, as Sir Douglas Clague was prepared to negotiate only on the basis that the entire holding, held by Douglas Estates, was sold, he was glad to find that Mr. Bonning was prepared to buy shares. We found it difficult to determine whether Mr. Stott negotiated with Sir Douglas Clague as stockbroker, as Chairman of M & O or as representative of his private family companies. We do not think that he is to be regarded as having acted as Mr. Bonning's financial adviser. As a member of The Stock Exchange, though practising in the Isle of Man, Mr. Stott ought to have had a better acquaintance with the current version of the City Take-over Code and this and some technical aspects of the transaction on 29th June, 1976 might, we think, be examined with advantage by the Council of The Stock Exchange.

12. This is a difficult case. Mr. Stott and Mr. Bonning's lack of sufficient knowledge of the Take-over Code would not in itself be an excuse, but it may have resulted in some aspects of the transaction being presented in ways that compromised them unnecessarily; and it certainly made it difficult for us to know what precise significance to attach to statements in other evidence that was given to us. We did not find the agreement useful in reaching a conclusion, since it is a loosely drafted document produced after the event and, apart from recording the sale of shares, it seems to have been regarded as a convenient instrument in which to refer to certain other matters which, it was assumed, it would be in the interests of all parties, including the companies concerned, to resolve. Our view is that it has not been shown sufficiently conclusively that Mr. Stott and Mr. Bonning were acting in concert within the meaning of the Code. We have, therefore rejected the appeal.

13. There is one other matter we should refer to. The fact that Sir John Bolton and Mr. J.D. Bolton, who was involved in various discussions at an early stage, did not raise the question of Mr. Stott's and Mr. Bonning's possible obligation under Rule 34 before January 1977 would not in itself be a ground for waiving such an obligation, which is intended to be to the advantage of the general body of shareholders. We think, however, that we should record that we were not satisfied with the explanations given for the failure to raise the matter at an earlier date. There should be no delay in drawing attention to Code obligations.

20th March 1978