

THE TAKEOVER PANEL

Orme Developments Limited ("Orme")

Recent purchases of Orme ordinary shares by Saint Piran Limited ("St. Piran") have led the Panel to consider whether a group acting in concert has acquired shares carrying more than 30% of the voting rights of Orme and thereby incurred an obligation to extend a cash offer to the remaining shareholders.

On 24th July the board of Orme announced that with its approval Messrs. A.G.P. Whitfield and R.I. Tanner, who between them held 4,918,400 shares (27.16% of the present issued share capital), had agreed to sell 4,000,000 shares (22.09%) at 55p per share to St. Piran. The two vendors remained on the board of Orme and retained the remainder of their holding (5.07%), Mr. D. Smith, a director of St. Piran, was invited to become chairman of Orme and was joined on that board by Mr. W.J.R. Shaw, the chairman of St. Piran and by Mr. W.A. Longworth, another St. Piran nominee.

On 27th July Comben Group Limited ("Comben") announced an offer for Orme in the form of 162p in cash plus five Comben ordinary shares for every six shares of Orme, worth 58.2p per Orme share on the basis of Comben's closing price on that day. Mr. Shaw, who was at that time in the Far East, was informed of the offer by telex and a subsequent telephone call. On 28th July on his own initiative and without informing any of his colleagues he telexed separately two firms of stockbrokers, Foster & Braithwaite and Joseph Sebag & Co, instructing each to buy 500,000 Orme shares on behalf of St. Piran as fast as possible and without any upper limit as to price. The orders were executed on 28th July and publicly disclosed on 31st July, the following dealing day. The highest price paid was 59p. As a result St. Piran's holding in Orme increased to 27.61%. Taking into account the 5.07% retained by Messrs. Whitfield and Tanner and the shares held by the remaining directors of Orme (0.79%), the percentage of the voting rights for which Orme's directors could

speaking had thus increased to 33.47%. Although directors are not normally presumed to be acting in concert in relation to control of the company of which they are directors, paragraph 3 of Practice Note No. 8 specifically provides that such a presumption will operate when the company is the subject of an offer. Moreover, the nature of the agreement already reached between St. Piran and Messrs. Whitfield and Tanner under which they retained a portion of their shares suggested that even prior to the announcement of Comben's offer there were grounds for regarding St. Piran and the selling directors as in concert with each other. A provisional ruling to this effect was in fact given by the Panel executive to St. Piran's advisers on 21st July before final agreement was reached on the transfer of the original 22%. Most of those involved in the transfer were made aware of this ruling and appeared to accept it. Only Mr. Shaw was said to have been unaware and therefore failed to realise the consequent limitation on St. Piran's freedom to increase its holding without incurring a bid obligation.

The Panel has concluded that the purchases by St. Piran of 1 million shares of Orme on 28th July gave rise to an obligation to bid under Rule 34 of the Code at a price of 59p per share. The evidence, however, suggests that had Mr. Shaw appreciated the consequences of these purchases and the onerous obligation that might thereby be imposed on St. Piran, he would not have issued his instructions to the brokers. The triggering of Rule 34 should therefore be regarded as inadvertent albeit caused by a regrettable lack of care on the part of St. Piran.

The Panel has therefore decided that it would be prepared to waive the requirement for St. Piran to make an offer provided that within 48 hours from the restoration of dealings at 9.30 a.m. tomorrow St. Piran sells in the market in the normal way the 1 million shares which it has acquired. The Panel has also stipulated that St. Piran should undertake not to increase its shareholding and to use its best endeavours to ensure that persons acting in concert with it do not acquire any shares within the period of the Comben offer and any competing offer.

2nd August 1978