

THE TAKEOVER PANEL

STATEMENT OF THE APPEAL COMMITTEE OF THE PANEL ON TAKE-OVERS AND MERGERS

Mr. S.R. Gae appealed to the Appeal Committee against the Panel's findings and against the publication of the attached statement.

The Appeal Committee has given careful and sympathetic consideration to Mr. Gae's appeal, but has come to the conclusion that the Appeal should be dismissed and the statement published in the form prepared by the Panel.

16th March 1979.

Chaddesley Investments Limited ("Chaddesley")

Following an investigation into dealings by The Stock Exchange and the Panel executive the Panel met to consider whether Mr. S.R. Gae, formerly the accountant of Chaddesley, was in breach of Rule 30 of the City Code when on 28th March 1978 he bought an option to buy 25,000 shares in Chaddesley at 16½ p. and on 28th April 1978 another option to buy a further 25,000 shares at 17 p.

Chaddesley is a listed company engaged in property investment and development which had an issued share capital at the beginning of 1978 of 3,705,920 ordinary shares of 25 p. each. It had not paid a dividend on its ordinary shares for ten years and had reported a loss before tax in nine of these ten years. Its shares stood at about 14 p. in the early months of 1978.

Mr. Gae joined Chaddesley in July 1977 as the company's accountant and the full-time staff consisted of Mr. Gae and a secretary. Mr. Gae reported to Mr. R.J. Wade, company secretary and a director, who came to the office for one or two days a week.

At the board meeting of Chaddesley on 20th February, 1978, at which Mr. Gae was present, Mr. D. Ellman the chairman of the company reported that a Swiss company, CAPI S.A. Compagnie Auxiliaire pour l'Industrie ("CAPI"), which held about 38% of the capital of Chaddesley, had received an approach to sell its holding and, subject to the price being right, had made a decision in principle that it was prepared to sell. Mr. Ellman was CAPI's representative on the Chaddesley board. Mr. Gae has accepted that the knowledge which he had gained at the board meeting on 20th February meant that at that time it would have been improper for him to deal in Chaddesley shares.

Mr. Gae was dissatisfied with his job and indicated an intention to leave. In late March one of the directors, Mr. A.W. Aronsohn, at the instance of Mr. Ellman, who was resident in South Africa, tried to persuade Mr. Gae to remain. According to Mr. Gae, Mr. Aronsohn used the argument that CAPI would play an important role in the

development of Chaddesley, and Mr. Gae says that he assumed this to mean that CAPI was not persisting in its intention to sell a substantial number of shares and thus he was relieved of any continuing restraint on dealings. Mr. Aronsohn denies that he made any such statement. Mr. Gae also had a conversation on the telephone with Mr. Ellman at about the same time and Mr. Gae contends that from this conversation, too, he inferred that CAPI was no longer a seller of its shares. Mr. Ellman has written with his own recollection of the discussion but this does not include any suggestion that CAPI was not intending to sell its shares.

On 28th March Mr. Gae telephoned a firm of stockbrokers dealing in options and asked for a quote in options over several securities, including Chaddesley. He indicated that he was interested in buying 50,000 Chaddesley call options and he bought 25,000 at 2 p. with an exercise price of 16½ p. and left a limit with the brokers for a further 25,000 at the same price. Mr. Gae says that he interpreted a message from the broker that the further 25,000 could be obtained only at 2¼ p. as referring to a cancellation of the first order. Mr. Gae says that it was not till mid May that he found that he had dealt in 25,000 options on 28th March. The brokers considered that the first bargain was made and they held him to it.

On 21st April Mr. Gae gave a month's notice to his company and he left Chaddesley's employment on 23rd May. On the afternoon of 28th April Mr. Gae purchased through the same firm of stockbrokers a further 25,000 call options at 2¼ p. with an exercise price of 17 p. Mr. Gae did not inform the board of Chaddesley of his dealings until 17th May, after he had learnt of The Stock Exchange investigation into dealings. Mr. Gae called the two options on their respective declaration days of 22nd June and 20th July (the shares having been suspended since 5th May) and had to obtain from relatives a considerable amount of the sum required. Mr. Gae admitted to us that his previous dealings in shares had been in much smaller amounts and that he had not previously bought options.

The controlling shareholders in a private company, Greycoat Estates Investments Limited ("Greycoat"), had shown an interest in acquiring some or all of the CAPI holding in Chaddesley and, following a preliminary announcement and a suspension of dealings in the shares on 5th May, it was announced on 2nd June that

agreement had been reached for the Greycoat controlling shareholders to acquire CAPI's 38% holding at 16½ p. and that Chaddesley would acquire Greycoat in return for shares in Chaddesley. As a result they would come to hold at least 68% of the enlarged Chaddesley equity and had to make an offer for the remaining shares at 16½ p. When dealings resumed on 8th August, the shares of the reconstituted company stood at 45 p.

Mr. Gae said that he bought the options because he thought highly of Chaddesley's prospects and because he knew from his work as accountant that the company was doing well in the year to 31st March 1978. This is a most unsatisfactory explanation since it means that Mr. Gae bought on the strength of confidential information acquired in the course of his employment. We consider, however, that this excuse - open to serious objections in itself - cannot be regarded as a sufficient explanation of Mr. Gae's very substantial purchases of options to buy Chaddesley shares at an all in cost in excess of the then current price of the Chaddesley shares. Mr. Gae admits to knowing of CAPI's desire to sell their 38% holding and we are satisfied that he was aware that the probable result was a chain of events that would lead to the company being reconstituted under fresh and vigorous management. The most probable consequence of the sale of the 38% holding was, as in fact happened, the creation of a Rule 34 obligation to make a mandatory bid. Mr. Gae must be regarded as being privy to these negotiations and what he did was certainly contrary to Rule 30. The Panel did not consider that it excused Mr. Gae at all that the eventual improvement in the Chaddesley share price stemmed not from the terms of the Rule 34 offer as such but from the identity of the two new controlling shareholders and the assets which were to be injected. The fact was that Mr. Gae knew that things were in train which were liable to be beneficial to shareholders and the Panel considers it is irrelevant that the exact shape of the deal which finally emerged may not have been within the scope of Mr. Gae's knowledge at the time he dealt.

Mr. Gae's conduct merits severe censure and he has agreed to pay to a charity approved by the Panel more than 80% of the net gain arising out of the two purchases of options on Chaddesley shares.

Mr. Gae has said that, although the original purchase of options was his alone, he borrowed from members of his family so that the options could be exercised, on the understanding that his relatives would participate in the profit arising from the two

transactions. By the date of the Panel meeting he had remitted to them the amount which they had advanced, together with some of their share of the profit. Mr. Gae has agreed to pay over to charity the net gain attributable to his own portion of the total profit, as well as that still retained by him on his relatives' behalf, which accounts for the greater part of their profit. He has approached his relatives to try to persuade them to surrender the element of profit which they have already received, but they have indicated to him that, as they have spent this, they are not prepared to do so. Whilst their refusal is regrettable, the Panel is not contemplating any further action in this respect.

Chaddesley had adopted the Model Code designed by The Stock Exchange for securities transactions by directors of listed companies. The Model Code requires directors of listed companies to endeavour to ensure that employees deal in accordance with the provisions of the Model Code. We are not, however, satisfied that Mr. Gae's attention had been drawn to its provisions. It is not enough that the Model Code should be adopted by boards of directors. Its requirements should be drawn to the attention of all to whom it applies.

7th February 1979.