

Events leading up to United's application for consent to the transfer

United's intention to bid for Fleet

7.1. United's position was set out in the following paragraph in the Chairman's Statement on page 7 of its Annual Report and Accounts for 1984.

With the acquisition of a 16 per cent interest in Fleet in February 1985 and subsequent purchases, the Group now holds in excess of 20 per cent of Fleet. Your directors believe that the publishing interests of the two groups are compatible without being competitive and can be developed to mutual benefit. Your Board intends that this should be achieved through a full merger of the two businesses to be effected by an offer for Fleet. As a preliminary step application has been made to the Secretary of State for Trade and Industry for his consent, which is required by law, to the transfer of the newspaper titles of Fleet; as a result the matter has been referred to the Monopolies and Mergers Commission for a report. Your Board intends to formulate a detailed offer once the Secretary of State's consent is given.

Fleet's concern

7.2. Fleet told us that it had been concerned about some of the events which had taken place prior to United's announcement that it had sought the consent of the Secretary of State for Trade and Industry to the transfer of Fleet's newspapers to United. It had in consequence asked the Panel on Take-overs and Mergers to consider two things. The first was whether United and Montagu Investment Management Ltd (MIM), the investment division of Samuel Montagu and Co Ltd (Samuel Montagu), had been acting in concert in the acquisition of Fleet's shares, since both had bought Fleet shares and Mr Stevens was both Chairman of United and Chairman and Managing Director of MIM and a Director of Samuel Montagu. Secondly, in that context Fleet had asked the Panel to consider the fact that, in response to enquiries under section 74 of the Companies Act 1981, it had at one stage received incorrect information from Samuel Montagu as to the beneficial ownership of some of Fleet's shares, as follows. In a letter dated 10 October 1984 Fleet was told that United was the beneficial owner of 900,000 shares and Samuel Montagu the beneficial owner of 1,100,000 shares, both lots of shares being registered in the name of Glyn Mills Nominees. In a letter dated 23 January 1985 Fleet was told, correctly, that in fact United was the beneficial owner of all those shares. Fleet also suggested that Pergamon Press Ltd (Pergamon), the Chairman of which is Mr Robert Maxwell, held a substantial number of United shares, and might therefore be in a position to influence the conduct of United's business; if so, the Commission should consider the implications that might arise if United acquired Fleet's national newspapers, because some of their principal competitors are the newspapers of Mirror Group Newspapers Ltd, a subsidi-

ary of Pergamon. To understand Fleet's concern it is necessary to set out in some detail the history of the events leading up to United's application for consent, and the explanations given to us about those events.

United's acquisition of Fleet shares

7.3. Fleet told us that in June 1984 Pergamon had purchased 8,565,000 shares, or 10.14 per cent of Fleet's issued share capital. In July 1984 Pergamon purchased the Mirror Group Newspapers Ltd from Reed International PLC. By September 1984 Pergamon's holding had risen to 13,315,000 shares or 15.77 per cent of Fleet's total issued share capital.

7.4. On 15 January 1985 United, which had already bought 2,100,000 Fleet shares on the market, announced that it had entered into a conditional contract with Pergamon to purchase the latter's entire holding of 13,315,000 shares in Fleet, subject to the approval of United's shareholders and to the grant of Stock Exchange listing for the new United shares to be issued as consideration for the purchase. United told us that Pergamon was to receive its consideration as follows. Part, being the consideration for 9,000,000 Fleet shares, was to be in cash raised by the sale of some of the United shares, and the balance, being the consideration for 4,315,000 Fleet shares, was to be in the form of 3,422,241 ordinary shares in United, representing 4.65 per cent of United's ordinary share capital. Pergamon agreed that, without United's consent, it would not sell any of these newly acquired shares for a period of at least six months. These conditions were satisfied. By mid-February 1985 United had become (with the purchase of a further 1,550,000 shares in the market) the owner of 16,965,000 shares in Fleet, representing 20.08 per cent of the total shares in issue.

United's purchase of Pergamon's shareholding in Fleet

7.5. United explained to us the reasons for the arrangements agreed with Pergamon for buying its shares in Fleet. United wished to acquire at least 20 per cent of the issued share capital of Fleet in order to be in a position to account for the investment in Fleet as an associated company. At the same time, United wished to retain maximum flexibility to decide on the structure of the offer it could make for the remaining shares of Fleet if at some future date it were to make such an offer. It therefore wished to avoid purchasing for cash more than 15 per cent of Fleet's total shares, because if it did, it would have been required, under the City Code on Take-overs and Mergers, to provide a cash alternative to a share offer for Fleet's remaining shares at the highest price paid for such shares, either during the offer period (as defined in the City Code) or within the twelve months prior to its commencement. Taking into account shares it had already purchased for cash before agreeing to buy Pergamon's shares in Fleet, United calculated that if it wished to keep maximum flexibility in this regard it could only pay cash for a proportion of Pergamon's shares. It therefore negotiated with Pergamon that part of the purchase price could be met in United's shares – the quantity of 3,422,241 mentioned in the preceding paragraph. United told us that this purchase structure for Pergamon's shares in Fleet had been discussed in advance with

the Take-over Panel who had confirmed that in principle such a structure would not require a full cash alternative to be provided as part of a subsequent offer, having regard to the matters discussed below.

7.6. Mr Stevens also told us that, because of the sensitivity of his personal position through his involvement in both United and MIM, he had sought guidance from the Panel through his merchant bankers on whether any Fleet shares bought and managed by MIM on behalf of its clients would be regarded as having been bought in concert with United. The Panel indicated that it would not regard such shareholdings as having been bought in concert provided that Mr Stevens had not placed or influenced orders for Fleet shares by MIM. Mr Stevens told us that those decisions were taken by the individual fund managers, which was in any case the normal practice.

7.7. Mr Stevens explained that the Panel's guidance on that point had influenced United's decision on how much of the consideration for the Fleet shares acquired from Pergamon should be in the form of shares in United retained by Pergamon and how many shares should be placed in the market for cash, in view of the fact that the Fleet shares held by MIM had been acquired for cash. Had the Panel's view been that United and MIM were acting in concert, United would have had the option of negotiating with Pergamon for a higher number of its shares to be part of the purchase price arrangements.

The error in disclosure of the beneficial ownership of some Fleet shares

7.8. Mr Stevens also referred to the error which had been made over the disclosure of the beneficial ownership of some Fleet shares held by MIM. He told us that he had arranged for MIM to buy shares on behalf of United, to obtain the benefit of a nominee holding, and for MIM to hold the shares temporarily on a position account in the name of Samuel Montagu.¹ He had made clear in a written memorandum for internal use that the shares were to be held on behalf of United. When Fleet first inquired about the beneficial ownership, under the Companies Act, the person dealing with the inquiry had assumed that the shares were held for Samuel Montagu. Mr Stevens told us that he regarded the mistake as a natural one although the size of the holding was much larger than would normally be the case on the position account, and some further checking of the facts should have been made, particularly in the light of his internal memorandum. Fleet's subsequent inquiry had been correctly answered. The number of shares involved was 1,100,000 (about 1.3 per cent of Fleet's total shares).

The Panel's decision on the questions put to it by Fleet

7.9. The Panel on Take-overs and Mergers has considered whether United and MIM were acting in concert (as defined by the Take-over Code) in the acquisition of Fleet shares, and the error initially made in the disclosure of United's beneficial ownership of some Fleet shares. A statement by the Panel

¹ A position account is an account on which dealers employed by a bank can buy and sell, normally for the account of the bank, but sometimes – as in this case – for the account of a client.

was issued on 18 July 1985. The Panel concluded that United and MIM were not acting in concert. The statement also recorded that United had agreed that it and MIM should be regarded for the purposes of the Code as being in the same position as if they were acting in concert since the announcement on 25 March 1985 of United's intentions to make an offer for Fleet. A copy of the Panel's statement is at Appendix 7.1.

Pergamon's shareholding in United

7.10. As shown in paragraph 7.4, in January 1985 Pergamon became the owners of 4.65 per cent of United's ordinary shares. United told us that Mr Maxwell, the Chairman of Pergamon, had told it that he regarded the shareholding as a long-term investment. United did not regard the shareholding as one which gave Pergamon any influence over the conduct of United's business. Moreover, the Pergamon holding would be likely to be diluted in the event of the merger proceeding.

7.11. Nevertheless, Pergamon's subsidiary, Mirror Group Newspapers Ltd, is the proprietor of certain national newspapers, including the *Daily Mirror*, which are among the principal competitors of Fleet's national newspapers and in particular the *Daily Star*, and we therefore questioned Mr Maxwell about Pergamon's attitude towards its investment in United. Mr Maxwell told us that Pergamon's existing shareholding did not enable it to influence the Board of United in any way; nor did Pergamon intend to increase that shareholding or its resultant shareholding in the merged company.

United's interest in Morgan Grampian

7.12. Fleet suggested to us that United's interest in acquiring its business might be primarily in acquiring its magazine publishing subsidiary, Morgan Grampian (together with Fleet's shareholding in Reuters) rather than in acquiring its national newspapers. Morgan Grampian combined with United's existing magazine business would form a substantial part of that market. United denied that its interest in acquiring Fleet was limited in the way Fleet had suggested. United referred to suggestions which had been made in the financial press that it was only interested in acquiring Morgan Grampian. This was at a time when Mr Maxwell still retained his holding in Fleet. United had asked Mr Maxwell whether, if Pergamon acquired Fleet, it would be prepared to sell Morgan Grampian to it. At that time United regarded itself as too small to bid for Fleet, but the acquisition of Morgan Grampian on its own would have been a practical possibility for it. In the event Pergamon bought the Mirror Group Newspapers Ltd from Reed International PLC, and as already described, later sold its Fleet shares to United itself.