

THE TAKEOVER PANEL

**The Peninsular and Oriental Steam Navigation
Company ("P & O")/
Bovis Limited ("Bovis")**

The full Panel, under the chairmanship of Lord Shawcross, considered an appeal by Morgan Grenfell & Co. Limited, ("Morgan Grenfell") representing certain stockholders in P & O against an appeal from a decision of the Panel executive refusing to require a postponement of the Extraordinary General Meeting of stockholders called by P & O for the 12th October.

The facts as far as material to this appeal are that on 25th September Morgan Grenfell invited Lazard Brothers & Co. Limited ("Lazards"), advisers to P & O, to answer a detailed questionnaire by the morning of 28th September. No answers were in fact received by that date, but on 29th September Lazards posted a document to all stockholders, some of the information in which was said to have been inspired by the questionnaire. A copy of this document was delivered to Morgan Grenfell on the late afternoon of 29th September with an embargo against publication until the following day. The following day, that is on 30th September, the P & O document did in fact receive wide coverage in the newspapers.

Morgan Grenfell's representatives indicated to us that they did not consider this document provided adequate answers to their questions and that they were themselves contemplating issuing a statement to the stockholders of P & O. In answer to a question by the Chairman, they stated explicitly, however, that nothing in this document would in itself justify a postponement of the Extraordinary General Meeting, so that stockholders would have further time to consider it. The appellants were therefore thrown back to suggesting that stockholders would have insufficient time to consider the P & O circular of 29th September. Morgan Grenfell were, however, unable to point to anything particular in that circular which really added materially to the information already provided so as to necessitate much further time for its consideration. In answer to a further question the representatives of Morgan Grenfell stated that it was no part of their case that the stockholders had not been supplied with sufficient information for the purpose of forming an adequate judgement as required by General Principle 3 and Rule 15 of the City Code. The point was

solely one of time for consideration of the information and in this context they submitted that an advertisement published widely in the press on 30th September and subsequent days by P & O inviting stockholders to "post your proxy now" was improper.

Having considered all the circumstances the Panel felt unable to conclude that stockholders would have insufficient time to make a judgement; there was therefore no breach of the Code and a postponement of the Extraordinary General Meeting, whilst remaining in the discretion of the Board of P & O, could not be insisted upon. The appeal was therefore dismissed.

In dismissing it, however, the Panel took the opportunity of emphasising the great importance they attached not only to the provision of all relevant information, but of allowing full time for consideration by all shareholders, including small shareholders in the country, who might wish to consult their bank managers or advisers.

Finally, the Panel took the opportunity of saying that, contrary to suggestions elsewhere, no question had arisen at any time in the present case about the publication of or the failure to publish, a profit forecast by the Board of P & O, nor was any such question raised in this appeal. The City Code, whilst not forbidding forecasts, as in the case of the United States S. E. C., does not insist on their being made. Whether or not to make them is solely the responsibility of directors. No permission is required from the City Panel nor does the City Code impose any limitation on the period to which they relate. If made, however, they must be reported on by accountants and by any financial advisers that there may be. If forecasts were to be put out by third parties they should, in the view of the Panel, be prepared with a similar sense of responsibility.

2nd October, 1972.