The Panel on Take-overs and Mergers

Report on the Years ended 31st March, 1975 and 1976

MEMBERSHIP OF THE PANEL

Lord Shawcross (Chairman)	Nominated by the Governor of the Bank of England
Sir Alexander Johnston (Deputy Chairman)	Nominated by the Governor of the Bank of England
W. C. Harris	Chairman, British Insurance Association
N. P. Goodison	Chairman of The Stock Exchange
D. A. Hunter Johnston	Chairman, Association of Investment Trust Companies
Max Lander	Chairman of the National Association of Pension Funds
D. C. Macdonald	Chairman, Issuing Houses Association
Sir Peter Menzies	Nominated by the Confederation of British Industry
A. P. W. Simon	Chairman, Unit Trust Association
A. F. Tuke	Chairman, Committee of London Clearing Bankers
M. J. Verey	Chairman, Accepting Houses Committee

Lord Cross	Chairman of the Appeal Committee of the Panel

THE PANEL EXECUTIVE

M. R. Harris	Director General
P. R. Frazer	Deputy Director General
T. P. Lee	Assistant Director General and Secretary
F. J. P. Madden	Assistant Director General
C. R. Ward	
P. R. Hamilton	
J. M. Holt	
Miss M. J. Tomlinson	
Miss M. L. Sherwood	

FOREWORD

At this time last year the City Working Party under the able and energetic chairmanship of Mr. D. C. Macdonald was engaged in the process of going through the City Code and the Practice Notes with a view to considering any amendments which experience suggested were desirable. The Panel's own constituent bodies are, of course, kept constantly informed of the Panel's work; and statements issued by the Panel from time to time since the Report for the year ended 31st March, 1974, had kept the public aware of developments since that date. It seemed superfluous therefore to issue a formal Report at that time and this Report accordingly covers the two years ended 31st March, 1975 and 31st March, 1976.

Owing to the economic recession, activity in the field of take-overs and mergers has been much reduced during both these years and the number of proposals which the Panel took under consideration each year was in fact almost exactly the same (147 and 145), about half the number with which the Panel was concerned in the year ended 31st March, 1974. The Panel was, however, kept busy by a flow of inquiries–very many by telephone–in regard to projects under consideration and was called upon to consider several important issues which have been reported on elsewhere and need not be further commented upon here.

During the two years since our last Report, public discussion has from time to time arisen about the adequacy of the arrangement for the regulation of the securities market and the possible desirability of establishing some form of statutory organisation along the lines of the American Securities and Exchange Commission. Indeed the subject is usually one which is likely to raise its head whenever any irregularity or impropriety in company affairs–invariably reported as "new City scandal"–comes to light. In fact the number of such incidents is remarkably small, when considered against the background of the fact that there are some 3,000 UK registered companies listed on The Stock Exchange and, in addition, around 590,000 other UK companies, and compares very favourably with other countries. I have no doubt at all that the general standards of propriety and integrity in operations in the City and indeed in company matters generally is higher in London than in any other financial centre in the world. This is not, however, to deny for a moment that improvements can and should be made in the machinery for the regulation of company and financial affairs. Some activities (such as insider dealing) require amendments of the Companies Acts. The existing statutory machinery (including investigations under the Companies Acts) can be improved in a number of respects. I very much welcome the fact that these matters are under study by the government. I adhere, however, to the view I expressed two years ago that there are fields of conduct which are best controlled by self-regulation. Within these fields self-regulation is likely in this country to remain more acceptable and efficient than any statutory machinery with its tendency to be tediously slow and bureaucratic. I do not propose to rehearse the arguments on the matter which have previously been deployed and which will no doubt be developed before the proposed Committee of Inquiry into City matters.

I should, however, like to emphasize again that whilst in the case of a statutory system those concerned are legitimately entitled to find loopholes and ways in which they can avoid the application of the written rules, in the case of the City Code the obligation is to obey not only the Rules but the General Principles and the underlying spirit of the whole Code. This imposes a heavy liability on all concerned, but in our experience the obligation is well honoured. It is true that the Panel has no power to take evidence on oath or to issue subpoenas requiring the production of documents. In every case, however, the duty of complete frankness is enjoined upon the parties and they are placed "on their honour" to produce all relevant documents. I doubt whether a power to take evidence on oath or to issue subpoenas in relation to documents would in practice greatly strengthen the Panel. Perjury and the destruction or falsification of documents are not unknown in legal proceedings where these powers exist. I will, therefore, only say that voluntary self-regulatory bodies like The Stock Exchange or the City Panel have found that they can almost invariably rely on the cooperation of those who take part in their proceedings. Occasionally no doubt this duty of loyal cooperation may be disregarded, but those who do so incur general disapproval, quite apart from any censures or other penalities that the regulatory bodies may impose when the facts come to light, as eventually they usually do.

It does, however, remain the case that the jurisdiction of the various voluntary bodies– whether The Stock Exchange, the City Panel or the Disciplinary Committees associated with particular professions–is limited to the particular cases to deal with which they are established; that of the City Panel being confined to matters arising in the course of take-over or merger transactions. This is not always understood by the public who sometimes expect the Panel to intervene in cases which are not its concern. It may occasionally be that cases of unethical conduct occur which are not within the jurisdiction of any particular body and thus escape formal condemnation. It may be for consideration in the context of the proposed Committee of Inquiry under the chairmanship of Sir Harold Wilson, whether a single City Commission or Panel should be established, with separate divisions dealing with particular classes of matter, but still as a voluntary and self-regulatory body capable of dealing with any unethical conduct in the course of transactions affecting the business of the City. In the meantime, the establishment of the Joint Review body to be set up jointly by the Department of Trade and the Bank of England is a most useful and important measure which will assist in the solution of many of the problems which have arisen. Certainly the City Panel will give the fullest cooperation in the work of the Joint Review body as it will in the longer term inquiry by Sir Harold Wilson's Committee. If, as I would expect, Sir Harold Wilson's Committee is set up on an objective and non-political basis, it will dispel many current myths and show how well "the City" in the widest sense, including those responsible for the investment and control of money, has operated in the interests of the public. It should also finally destroy any idea of nationalising banks and insurance companies which could do the country such untold harm and the mere proposal of which has done so much to damage foreign confidence in the country's stability.

The Right Honourable Lord Pearce, who had acted as Chairman of our Appeal Committee since April 1969, retired in May 1976. The number of appeals over which he had to preside was not very large: the issues in some were, however, most important. We are most grateful to him not only for the courtesy and ability with which he always conducted appeals but for the wise counsel and help which he was always ready to give the Panel on less formal occasions.

We have been fortunate in securing in place of Lord Pearce, the Right Honourable Lord Cross of Chelsea, recently retired as a Lord of Appeal in Ordinary. We hope that he too will not be unduly burdened with appeals from decisions of the Panel but we greatly value his willingness to act and look forward to a most agreeable association with him.

29th November, 1976.

REPORT ON THE YEARS ENDED 31st MARCH, 1975 AND 1976

STATISTICS

Take-over and merger activity in the two years since the Panel's last report has been less than in previous years. Notwithstanding this decline in volume, several major cases involved the Panel in considerable work because of the complex problems involved.

The statistics and the commentary on them given below have been divided between the two years so as to make them comparable with similar sections in previous reports. Except where otherwise indicated, the figures given cover transactions where there was at least a public announcement of a firm intention to make an offer.

Year ended 31st March, 1975

The Panel was convened four times to hear appeals by parties to take-over transactions against rulings by the executive and four times to consider disciplinary cases brought by the Director General. The Panel met on a further fourteen occasions to consider matters referred by the Director General.

The Appeal Committee met once under the chairmanship of Lord Pearce and rejected an appeal to re-open a case.

The Panel executive was concerned with take-over or merger proposals made in respect of 147 companies (previous year *263*) of which 122 (*207*) were companies whose securities were listed on The Stock Exchange. In 5 (*21*) cases there were rival offers and altogether there were 151 (*286*) proposals of which 142 (*266*) reached the stage where formal documents were circulated to shareholders. 3 (*3*) agreed offers failed and 2 (*1*) opposed offers succeeded.

A further 27 (*26*) cases which were still open at 31st March, 1975 are not included in these figures. The executive was consulted in another 153 cases which either did not lead to published proposals or were transactions, involving control blocks of shares, approved by shareholders.

Year ended 31st March, 1976

The Panel was convened five times to hear appeals by parties to take-over transactions against rulings by the executive and three times to consider disciplinary cases brought by the Director General. The Panel met on a further fifteen occasions to consider matters referred by the Director General.

The Appeal Committee met on two cases under the chairmanship of Lord Pearce and statements were issued as a result of these appeals.

The Panel executive was concerned with take-over or merger proposals made in respect of 145 companies of which 130 were companies whose securities were listed on The Stock Exchange. In 3 cases there were rival offers and altogether there were 148 proposals of which 139 reached the stage where formal documents were circulated to shareholders. Only 1 agreed offer failed and 2 opposed offers succeeded.

A further 28 cases which were still open at 31st March, 1976 are not included in these figures. The executive was consulted in another 87 cases which either did not lead to published proposals or were transactions, involving control blocks of shares, approved by shareholders.

Analysis of figures for three years

Category of documents	1975/6	1974/5	*1973/4*
Circulated by Exempted Dealers …	85	82	*189*
Circulated by Licensed Dealers … …	10	12	*16*
Circulated by others exempted under the Prevention of Fraud (Investments) Act, 1958 … … … …	17	15	*30*
Circulated on the basis of specific authority from the Department of Trade …	6	14	*10*
Schemes of Arrangement … … …	21	19	*21*
	139	142	*266*

Outcome of the proposals

Successful proposals involving control (including Schemes of Arrangement) …	117	107	*163*
Unsuccessful proposals involving control	8	17	*36*
Proposals withdrawn before issue of documents (including offers overtaken by higher offers) … … …	9	9	*20*
Offers and Schemes of Arrangement involving minorities and unconditional offers … … … …	14	18	*67*
	148	151	*286*

MAJOR CASES

A great deal of time was devoted to two cases: Ashbourne Investments Limited and London Tin Corporation Limited.

The Ashbourne case lasted for about 2½ years and necessitated meetings of the Panel on no less than 18 occasions; the Appeal Committee also met on this case. The problems of this offer were largely caused by the financial slump, especially that of the property market. Particular difficulties are presented to the Panel where economic and financial circumstances change in such a way as to make Code obligations difficult of fulfilment.

For some twelve months the Panel was concerned with arrangements to discharge a Code obligation to shareholders of London Tin Corporation Limited. The international aspects of the case resulted in the Panel being closely involved not only with various interested parties and authorities in the United Kingdom but also with their counterparts in Malaysia and Singapore.

The considerable change in the financial and economic climate during the two years has caused the executive to spend much time on a multitude of problems relating to possible bid obligations under Rule 34 of the Code.

INVESTIGATIONS

The Panel has, in conjunction with The Stock Exchange, investigated cases where there appears to have been insider dealing, as defined in the Code, in the context of a take-over bid. It is often difficult to prove that insider dealing has taken place. The Panel did, however, issue critical statements on four cases during the two years of which three were related to failures to observe the required standards of absolute secrecy. The Panel remains of the opinion that legislation should be enacted to make insider dealing a criminal offence.

The Panel executive has also continued to monitor on a sampling basis the profits subsequently reported by companies who have made forecasts in the course of an offer. The impression is that such forecasts have, in general, been prepared and reviewed with due care and consideration. To date it has not been necessary to bring any disciplinary cases to the full Panel.

REVISION OF THE CODE

Following the receipt of a number of submissions from various users of the securities market and also from practitioners and professional bodies, a detailed review of the Code was carried out. As a result of this, a new edition of the Code was published in April 1976, which took into account these submissions and the experience of the Panel over the last few years.

The new edition incorporates many textual amendments with a view to clarification. There is included a new Practice Note which, in some detail, attempts to give guidance on how various aspects of Rule 34 are interpreted; there have also been certain important additions to Rule 34 itself. The requirement that a shut-out should be cleared with the Panel has been abolished. Changes have been made to Rule 27 dealing with partial bids.

Rule 24, which requires the announcement of an offeror's shareholdings and of the acceptances he has received, has been slightly amended and the Panel would like to stress its provisions. There is a requirement to announce on the occasion of each extension or revision of an offer as well as when the offer is declared unconditional or is due to expire. Where, however, an offer has been extended prior to the original expiry date, it is not necessary to make an announcement at the time of the original expiry date.

DISCLOSURE OF DEALINGS

While the Panel believes that generally the fact that dealings have taken place during bid situations is promptly disclosed, the wording used and the details given in a number of disclosure letters fall short of the requirements of the Code. The attention of stockbrokers, bankers and others dealing in securities is drawn to Rule 31 of the Code and Practice Note No. 7. The most common mistake is failure to follow section 2(b) of the Practice Note, which requires that when dealings by or on behalf of an associate are disclosed, it should always be indicated with which principal he is associated, although the associate himself need not normally be named.

VARIOUS LEGISLATIVE MATTERS

In January 1975 the Panel published its answers to questions contained in the Inquiry of the Department of Trade on the Supervision of the Securities Markets. The main conclusion reached was that a new supervisory body established by statute could play no useful or effective role in the regulation of take-overs.

The Panel has commented on various aspects of the Companies (No. 2) Bill 1976, with particular reference to the proposed clauses introducing stricter requirements for the disclosure of holdings by directors and substantial shareholders and empowering a company to ascertain the beneficial ownership of holdings registered in nominee names.

Submissions were also made on the legislation under which the National Enterprise Board was set up. Assurances were given at the Committee stage in the House of Commons that the NEB would comply with the provisions of the Take-over Code and these assurances are reflected in the draft guidelines for the NEB.

Following discussions with the Department concerned, agreements between the member bodies and their own members relating to the implementation of Panel decisions and the observance of the Code have been specifically exempted from registration under the restrictive trade practices legislation.

INTERNATIONAL DEVELOPMENTS

Mr. Trembath of the Panel executive assisted representatives from the Department of Trade on an EEC Working Party which considered a report and a preliminary draft Directive on take-overs prepared for the Commission by Professor Pennington of Birmingham University.

The Chairman and Director General gave evidence to the House of Lords EEC scrutiny committee on the draft Third Directive on domestic mergers.

Several take-over bids are in part affected by overseas regulations. The Panel is therefore pleased to have been able to develop its contacts with the relevant regulatory authorities in a number of countries, including Australia, Belgium, Canada, France, Holland, Hong Kong, Malaysia, Pakistan, the Philippines, Singapore and the USA. Contacts have also been developed with the directorates-general in Brussels whose work may affect that of the Panel. A visit was also paid to the European Court in Luxembourg.

Mr. Lee of the Panel executive is a member of an international study group set up by the Centre for Study of Financial Institutions at the University of Pennsylvania Law School. The group meets each year to study the regulatory controls over the securities market in a number of different countries; in July 1977 it will meet in London.

STAFF

The Panel has been fortunate in always having been well served by its staff, most of whom have been on secondment. Since the last Annual Report, Mr. John Hull has returned to J. Henry Schroder Wagg & Co. Limited, Mr. John Trembath to Allen & Overy, Mr. Christopher de Boer to James Capel & Co. and Mr. Ian Clarke, Mr. Christopher Ball and Miss Joan Sturgess to the Bank of England; Mr. Basil Denington has retired.