
Editorial

Judicial Review of Panel on Takeovers and Mergers

We unreservedly welcome the recent decision by the Court of Appeal that determinations by the City's non-statutory Panel on Takeovers and Mergers are in principle susceptible to judicial review. In *R v Panel on Take-overs and Mergers, ex p Datafin* [*The Times*, December 8, 1986] the Court rejected the contention of Prudential Bache, an American securities House, that the Panel had misdirected itself in considering an alleged breach of the City Code on Takeovers and Mergers in the context of a takeover bid for McCorquodale plc, but it held that the Panel, though part of the self-regulating apparatus of the City, is within the purview of administrative law.

In his judgment, the Master of the Rolls observed that although the Panel lacks any authority *de jure*, it exercises immense power *de facto* through administering and applying the Code, and applying or threatening indirect sanctions: "although it appear[s] to have no visible means of support, there [is] abundant invisible support". The Panel

had gradually been absorbed into the Government's own externally imposed regulatory framework, backed up in the last analysis by the statutory powers exercised by the DTI and the Bank of England.

His Lordship considered the long line of recent authorities relating to the courts' jurisdiction over quasi-official bodies (to adopt terminology still better-known to political scientists than to lawyers), dating back to *R v Criminal Injuries Compensation Board, ex p Lain* [1967] 2 QB 864, and noted that the panel fitted well into the format that the court had had in mind in the latter case. It was performing an important public duty; the rights of citizens were indirectly affected by its decisions; it had a duty to act judicially. In his Lordship's view, it was unthinkable that in the absence of legislation such as that relating to trade unions, the Panel should be "cocooned from the attention of the courts in defence of the citizenry". Public law rather than private law is the appropriate basis for judicial control. However, his Lordship also made it "clear beyond peradventure" that the special needs of the financial markets for speed and certainty, and the fact that decisions in this context affect a very

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