Financial Times

January 26, 2007

Dubai Ports case prompts surge in takeover probes

By Stephanie Kirchgaessner in Washington
Published: January 26 2007 02:00 | Last updated: January 26 2007 02:00

The Bush administration initiated more national security investigations of foreign deals last year than it did in the previous four years combined, according to research released yesterday by the **National Foundation for American Policy**.

The data underscores the deep impact the Dubai Ports World controversy, which erupted early in 2006, has had on the US government's approach to foreign take-overs and supports accusations by some prominent voices in the business community that the process of getting deals approved in Washington is now rife with uncertainty.

The Committee on Foreign Investment, or Cfius, the 12-member agency chaired by the Treasury department and charged with reviewing deals on national security grounds, saw the number of voluntary filings for review increase 73 per cent last year from 2005 to 113 filings, according to the research, which was compiled by David Marchick, a partner at Covington & Burling. Of those proposed transactions, seven deals were subjected to extended investigations and five companies withdrew their proposed deals during the investigation.

More worrying for some attorneys, the number of "mitigation", or national security agreements negotiated between the government and companies as a condition of deal approval, rose markedly. The Department of Homeland Security, a powerful member of the security panel, was a party to 15 mitigation agreements in 2006, compared to 13 agreements from 2003-2005.

"It appears some agencies are attempting to address industry-wide issues on a catch-as-catch-can basis when they happen to have leverage over an industry player seeking Cfius approval," says Todd Malan, a lobbyist who represents US subsidiaries of foreign companies.

Hank Paulson, the Treasury secretary, last year warned Congress against passing legislation that would create "uncertainty and delay" in the review process, but under his watch as chairman of the panel, Cfius has forced companies involved in two separate transactions - Lucent's merger with Alcatel and Nokia's joint venture with Siemens - to agree to controversial mitigation agreements.

Some experts say the Bush administration has become too cautious about foreign transactions because of the intense political scrutiny it came under last year for approving - after a 30-day probe - the takeover of five US port terminals by DPW, an operator controlled by the United Arab Emirates. The congressional backlash against the deal ultimately scuppered the transaction.

While no other transaction has been as politically unpopular as that deal, Washington experts say the uproar weakened the hand of some agencies and departments that are meant to encourage foreign investment.