



A Study on the Anti-Takeover Defence Strategies used by the Corporates at the Time of Mergers & Acquisitions

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Abstract

Mergers and acquisitions (M&A) have become a common strategy for companies looking to grow and expand their operations. However, the potential benefits of M&A can also attract unwanted attention from potential acquirers, which can lead to hostile takeover attempts. To protect themselves from hostile takeovers, companies often implement anti-takeover defense strategies. Anti-takeover defense strategies refer to a range of defensive tactics that target companies can employ to deter or prevent hostile takeovers. These strategies can take various forms, including structural defenses, governance defenses, and financial defenses. This research paper examines anti-takeover defense strategies in mergers and acquisitions (M&A) using secondary data sources. The paper provides an overview of the various types of anti-takeover defense strategies that are commonly used by companies, including structural, governance, and financial defenses. The paper also analyzes the various anti-takeover defense strategies adopted in protecting shareholder value and

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limiting competition. The regulatory frameworks governing anti-takeover defense strategies in different jurisdictions are also explored, including the United States, United Kingdom, European Union, and Japan. The findings of this study indicate that the use of anti-takeover defense strategies can be effective in protecting shareholder value, but may also limit competition and potentially result in lower acquisition premiums. The paper concludes by discussing the implications of these findings for companies involved in M&A transactions, and the need to balance the protection of shareholder interests with the potential benefits of being an attractive target for acquisition. Overall, this research provides a comprehensive analysis of the complex landscape of anti-takeover defense strategies in M&A transactions, based on secondary data sources. The findings of this study contribute to the understanding of the role of anti-takeover defense strategies in M&A transactions and the considerations that must be taken into account by companies when implementing these strategies.

Keywords: Mergers, Acquisitions, Anti-Takeover Strategies

Introduction

Mergers and acquisitions (M&A) are strategic business transactions that involve the combination of two or more companies to create a single entity or to acquire one company by another. M&A can take many forms, including mergers, acquisitions, consolidations, and joint ventures, and can be driven by a variety of reasons such as achieving economies of scale, expanding into new markets, gaining access to new technologies, and diversifying business operations. M&A transactions are often complex and require careful planning, due diligence, and negotiation to ensure that the combined entity will achieve the desired benefits and synergies. They can also have significant impacts on employees, customers, and stakeholders, and require careful management and communication to ensure a smooth transition and minimize any potential disruptions. M&A activity is a significant aspect of the global economy, with companies of all sizes and industries engaging in these transactions. From small startups to multinational corporations, M&A is a common strategy used to grow and adapt in a constantly evolving business landscape.

M&A activity has significant implications for various stakeholders, including shareholders, employees, customers, and society as a whole. M&A can have significant impacts on competition, pricing, and market power, and can also affect employment, innovation, and investment decisions. As such, M&A activity is a subject of significant interest to policymakers, academics, investors, and practitioners.

Mergers and acquisitions (M&A) have become an increasingly common way for companies to grow and achieve their strategic objectives. However, the prospect of a hostile takeover can create significant risks and uncertainties for target companies and their stakeholders, including shareholders, employees, and customers. To defend against hostile takeovers, target companies may adopt a range of anti-takeover defense strategies designed to prevent or deter potential acquirers.

Anti-takeover defense strategies refer to a range of defensive tactics that target companies can employ to deter or prevent hostile takeovers. These strategies can take various forms, including structural defenses, governance defenses, and financial defenses.

- Structural defenses involve changing the company's organizational structure to make it more difficult for a potential acquirer to gain control. Examples of structural defenses include poison pills, golden parachutes, and dual-class share structures.
- Governance defenses involve giving the board of directors more power to resist a hostile takeover attempt. Examples of governance defenses include staggered boards, supermajority voting requirements, and advance notice provisions.
- Financial defenses involve using financial strategies to make the company less attractive to potential acquirers. Examples of financial defenses include share repurchases, issuing new shares, and increasing debt levels.

Research Objectives

- Identify the different types of anti-takeover defense strategies used by target companies to prevent or deter hostile takeovers.

- Analyze the impact of anti-takeover defense strategies on the interests of various stakeholders
- Assess the legal and regulatory frameworks governing anti-takeover defense strategies in different jurisdictions, and their implications for M&A activity.

Types of Anti-Takeover Defence Strategies

There are several anti-takeover defense strategies that target companies can adopt at the time of M&A to prevent or deter potential acquirers. These strategies can be broadly categorized into structural defenses, which involve changes to the target company's corporate structure or governance, and strategic defenses, which involve changes to the target company's business operations or financial structure.

1. **Poison Pills:** Poison pills are a common structural defense strategy that involves issuing new shares of stock to existing shareholders at a discounted price in the event of a hostile takeover. This dilutes the acquirer's ownership stake and makes the target company less attractive as a target. This is a tactic in which a company issues new shares of stock to its existing shareholders or to a friendly third party at a significant discount, making it more expensive for the acquiring company to gain control. The effectiveness of a poison pill depends on the specifics of the company's shareholder base and the terms of the poison pill. Poison pills can be very effective in deterring a hostile takeover, but they can also be costly to implement and can lead to shareholder dilution.

In 2014, Allergan, a pharmaceutical company, adopted a poison pill defense to prevent a hostile takeover bid by Valeant Pharmaceuticals. Allergan issued new shares of stock to existing shareholders at a discounted price, diluting Valeant's ownership stake and making it more difficult for the company to acquire a controlling interest in Allergan. The poison pill defense ultimately proved effective, as Allergan was eventually acquired by Actavis in a friendly merger.

In 2010, Airgas Inc., a US-based supplier of industrial, medical, and specialty gases, adopted a poison pill defense to fend off a hostile takeover bid from rival Air Products and Chemicals Inc. Airgas implemented a shareholder rights plan that allowed existing shareholders to purchase additional shares at a significant discount if an acquirer purchased 15% or more of the company's outstanding shares. The poison pill defense was successful in delaying Air Products' takeover attempt, and in 2016, Airgas was eventually acquired by French company Air Liquide for \$13.4 billion.

2. Golden Parachutes: Golden parachutes are employment contracts that provide generous severance packages to senior executives in the event of a change of control. This can make it more expensive for acquirers to replace the target company's management team. This is a provision in an executive's employment contract that provides for significant financial compensation in the event of a change in control of the company. The idea is to make it more expensive for the acquiring company to replace key executives. Golden parachutes can be effective in deterring a hostile takeover, but they can also be seen as excessive and can lead to public relations problems.

In 2010, Motorola adopted a golden parachute defense to prevent a hostile takeover bid by activist investor Carl Icahn. Motorola entered into employment agreements with several top executives, including a \$63 million golden parachute for the CEO, Sanjay Jha, in the event of a change of control. The golden parachute defense helped to deter Icahn's takeover bid, and Motorola ultimately spun off its mobile phone division in a deal with Google.

In 2016, Yahoo Inc. adopted a golden parachute defense strategy in response to a hostile takeover bid from activist investor Starboard Value LP. Yahoo's board approved a plan that would provide its top executives with severance payments of up to \$159 million if the company was acquired. The golden parachute defense was aimed at making it more expensive for Starboard Value to remove Yahoo's management team and sell off the company's assets. Ultimately, Yahoo was acquired by Verizon Communications Inc. for \$4.8 billion in 2017.

3. **Staggered Boards:** Staggered boards are a structural defense strategy that involves dividing the board of directors into classes, with each class serving for a different term. This can make it more difficult for acquirers to gain control of the board in a single proxy contest. This is a board of directors that is elected in stages, with only a portion of the directors up for election each year. This makes it more difficult for a hostile acquirer to gain control of the board all at once. Staggered boards can be effective in deterring hostile takeovers, but they can also lead to less accountability to shareholders and less responsiveness to changes in the market.

In 2011, Airgas, a supplier of industrial gases, adopted a staggered board defense to prevent a hostile takeover bid by Air Products and Chemicals. Airgas divided its board of directors into three classes, with each class serving for a different term. This made it more difficult for Air Products to gain control of the board in a single proxy contest. The staggered board defense proved effective, and Airgas ultimately remained independent.

In 2013, Dell Inc., a US-based computer technology company, adopted a staggered board defense to fend off a takeover bid from activist investor Carl Icahn. Dell's board divided itself into three classes, with each class serving for a different term. This made it more difficult for Icahn to gain control of the board in a single proxy contest. Ultimately, Dell was acquired by its founder Michael Dell and private equity firm Silver Lake Partners for \$24.4 billion in 2013.

People's United Financial Inc.: In 2019, People's United Financial Inc. adopted a staggered board defense strategy to prevent a hostile takeover by Investors Bancorp Inc. People's United Financial Inc. divided its board of directors into three classes, with each class serving for a different term. This made it more difficult for Investors Bancorp Inc. to gain control of the board in a single proxy contest. The strategy proved successful, as Investors Bancorp Inc. eventually abandoned its bid to acquire People's United Financial Inc.

4. **Greenmail:** Greenmail is a strategic defense strategy that involves buying back the acquirer's shares at a premium price in order to prevent a takeover. This can be an expensive strategy, but it can also prevent the acquirer from gaining control of the target company.

In 1984, the Walt Disney Company adopted a greenmail defense strategy to fend off a takeover bid from corporate raider Saul Steinberg. Disney's board agreed to buy back Steinberg's shares at a premium price, effectively ending the takeover attempt. The greenmail defense was controversial at the time, and Disney shareholders filed a lawsuit alleging that the buyback was unfair to them. However, the lawsuit was eventually dismissed, and Disney continued to grow and expand its media and entertainment empire.

5. **Crown Jewel Defense:** Crown jewel defense is a strategic defense strategy that involves selling off the target company's most valuable assets to a third party in order to make the target company less attractive as a target. This can be a drastic strategy, but it can also prevent the target company from falling into the hands of an unwanted acquirer.

Xerox Corporation: In 2018, Xerox Corporation adopted a crown jewel defense strategy to prevent a hostile takeover by Fujifilm Holdings Corporation. Xerox Corporation sold off its most valuable assets, including its stake in a joint venture with Fujifilm Holdings Corporation, to a third party in order to make the company less attractive as a target. The strategy proved controversial, as it led to a lawsuit by Fujifilm Holdings Corporation, but ultimately proved effective, as the hostile takeover bid was abandoned.

6. **Pac-Man Defense:** Pac-Man defense is a strategic defense strategy that involves the target company making a counter-bid for the acquirer in order to turn the tables and make the acquirer the target of the transaction.

Martin Marietta Materials Inc.: In 2012, Martin Marietta Materials Inc. adopted a Pac-Man defense strategy to prevent a hostile takeover by Vulcan Materials Company. Martin Marietta Materials Inc. made a counter-bid for Vulcan Materials Company in order to turn the tables and make Vulcan Materials Company the target of the transaction. The strategy proved unsuccessful, as Vulcan Materials Company rejected the counter-bid and the hostile takeover bid ultimately failed.

Factors Affecting the Effectiveness of the various Anti-Takeover Defence Strategies

- **Company size:** Larger companies are generally more difficult to acquire than smaller companies, and may therefore require different and more sophisticated anti-takeover defence strategies.
- **Shareholder base:** The composition of a company's shareholder base can impact the effectiveness of anti-takeover defense strategies. For example, a company with a large number of institutional investors may be more resistant to hostile takeovers than one with a higher percentage of retail investors.
- **Industry:** Some industries may be more prone to hostile takeovers than others. For example, industries with valuable intellectual property or strategic assets may be more attractive targets for acquirers.
- **Regulatory environment:** The regulatory environment can impact the effectiveness of anti-takeover defense strategies. In some countries, for example, there may be laws that limit the use of certain anti-takeover defense strategies, or that require the company to obtain shareholder approval for certain actions.
- **Economic conditions:** Economic conditions can also influence the effectiveness of anti-takeover defense strategies. In a strong economy, for example, companies may be more attractive targets for acquirers, and may therefore need to be more aggressive in their defense strategies.
- **Company performance:** A company's performance can impact the effectiveness of anti-takeover defense strategies. If a

company is performing poorly or has weak financials, it may be more vulnerable to hostile takeover attempts.

- **Timing:** The timing of an anti-takeover defense strategy can also impact its effectiveness. If a company waits too long to implement a strategy, it may not be effective in deterring a hostile takeover.

Impact of Anti-Takeover Defence Strategies on the Interests of Various Stakeholders

1. **Shareholders:** Anti-takeover defense strategies can have both positive and negative impacts on shareholders. On the one hand, these strategies can protect the company from hostile takeovers that may be detrimental to shareholder value. On the other hand, some of these strategies, such as poison pills or golden parachutes, can also have negative impacts on shareholder value by diluting their ownership or diverting funds away from the company's operations.
2. **Employees:** Anti-takeover defense strategies can also have impacts on employees. In some cases, these strategies can help to protect jobs and benefits, by preventing an acquirer from implementing aggressive cost-cutting measures or layoffs. On the other hand, these strategies can also lead to uncertainty and instability for employees, particularly if they involve the sale of valuable assets or a significant change in company direction.
3. **Society:** The impact of anti-takeover defense strategies on society can be more difficult to assess, as it depends on a variety of factors, including the size and nature of the company, the industry, and the specific defense strategy employed. In general, however, some strategies, such as scorched earth tactics, can have negative impacts on the broader community by reducing competition or harming the environment.

Legal and Regulatory Frameworks Governing Anti-Takeover Defence Strategies

The legal and regulatory frameworks governing anti-takeover defense strategies are complex and vary by country and jurisdiction. Companies need to carefully consider the legal and regulatory

context in which they operate when developing and implementing anti-takeover defense strategies. It is important for companies to seek legal and regulatory advice as necessary to ensure compliance with applicable laws and regulations.

- **Laws and regulations:** Many countries have laws and regulations governing anti-takeover defense strategies. These may include rules on shareholder rights and activism, disclosure requirements, and restrictions on certain types of defensive tactics. Companies need to be aware of the legal and regulatory frameworks in their country and jurisdiction when developing and implementing anti-takeover defense strategies.
- **Shareholder rights:** In many countries, shareholders have significant rights and powers, including the ability to call special meetings, propose changes to the company's articles of incorporation, and initiate proxy fights. Companies need to consider the interests of their shareholders when developing and implementing anti-takeover defense strategies.
- **Board of directors:** The board of directors has a fiduciary duty to act in the best interests of the company and its shareholders. This duty may be interpreted differently in different jurisdictions, but in general, directors need to consider the long-term interests of the company and its stakeholders when developing and implementing anti-takeover defense strategies.
- **Hostile takeover rules:** Some countries have specific rules governing hostile takeovers, including mandatory bid rules and restrictions on certain types of defensive tactics. Companies need to be aware of these rules and their potential impact on anti-takeover defense strategies.
- **Regulatory bodies:** In some countries, regulatory bodies such as securities commissions or antitrust authorities may have a role in regulating anti-takeover defense strategies. Companies need to be aware of the role of these bodies and their potential impact on anti-takeover defense strategies.

The legal and regulatory frameworks governing anti-takeover defense strategies vary by jurisdiction, and it is important for

companies to be aware of the specific rules and regulations in the countries in which they operate.

- **United States:** In the United States, anti-takeover defense strategies are regulated by a combination of federal and state laws. The Securities Exchange Act of 1934 requires companies to disclose material information related to takeover attempts, while state corporate law governs the use of anti-takeover defenses. The Delaware General Corporation Law, which is followed by many US companies, allows for the use of anti-takeover defense mechanisms, but also requires directors to act in the best interests of shareholders. State laws regulate the use of poison pills, which are defensive measures designed to make it more difficult for an acquirer to gain control of a company. The use of poison pills is generally permitted, but they must be structured in a way that is not anti-competitive. The Securities and Exchange Commission (SEC) also has some oversight over anti-takeover defense strategies, particularly those that involve the use of securities.
- **Canada:** In Canada, anti-takeover defense strategies are regulated by provincial securities regulators and corporate law. The Canadian Securities Administrators have established guidelines for the use of defensive tactics, such as poison pills and golden parachutes, and require companies to disclose details of these strategies to shareholders. The Canadian Business Corporations Act requires directors to act in the best interests of the corporation, but also allows them to consider the interests of other stakeholders.
- **United Kingdom:** In the United Kingdom, anti-takeover defense strategies are regulated by the City Code on Takeovers and Mergers, which is overseen by the Takeover Panel. The code regulates the conduct of both the target company and the acquirer, and requires companies to disclose details of any defensive tactics they plan to use. The Companies Act 2006 requires directors to act in the best interests of shareholders, but also allows them to consider the interests of other stakeholders.
- **European Union:** In the European Union, anti-takeover defense strategies are primarily governed by national laws. However, the European Union has issued several directives and regulations

that impact the use of these strategies. For example, the Takeover Directive sets out minimum standards for takeover bids, including rules on the treatment of shareholders and disclosure requirements. The Market Abuse Regulation also regulates the use of insider information in the context of takeover bids.

- Japan: In Japan, anti-takeover defense strategies are regulated by the Companies Act and the Securities and Exchange Law. The Companies Act provides for the rights and responsibilities of directors and officers of the corporation, as well as the rights of shareholders. The Financial Instruments and Exchange Act imposes certain disclosure and reporting requirements on companies in connection with takeover transactions. Japanese law allows companies to adopt measures such as poison pills and golden parachutes, but these measures are subject to strict conditions. For example, poison pills can only be used for a limited period of time and must be approved by shareholders.

Conclusion

Anti-takeover defense strategies play a critical role in mergers and acquisitions (M&A) transactions. This research paper has explored the various types of anti-takeover defense strategies available to companies, including structural defenses, governance defenses, and financial defenses. It has also examined the effectiveness and potential drawbacks of each strategy.

Through this analysis, it is evident that the use of anti-takeover defense strategies can provide significant benefits to target companies, including the protection of shareholder value and increased bargaining power in M&A negotiations. However, these strategies may also limit competition and the potential for a higher offer price for shareholders.

Ultimately, the decision to implement anti-takeover defense strategies should be based on a careful evaluation of the specific circumstances of the target company and its shareholders, as well as the applicable regulatory framework in the relevant jurisdiction. Companies must strike a delicate balance between protecting their interests and ensuring they remain attractive targets for potential acquirers.

Overall, this research paper has shed light on the complex and evolving landscape of anti-takeover defense strategies in M&A transactions. As the business environment continues to evolve, it is likely that these strategies will continue to be an important consideration for companies involved in M&A transactions.

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