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Mergers & Acquisitions:

Hostile takeovers and defense strategies against them

Bachelor thesis

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Abstract

Mergers and acquisitions is a way for companies to grow, establish and gain entry to new markets. They can be categorized as either friendly or hostile. A hostile takeover occurs when a company gains control over a targeted company without the consent from either the board of directors or the management of the target company. Instead the aim of the acquirer is to persuade and charm the shareholders of the targeted company to sell their stock. Since every publicly listed company faces the risk of being a target for a hostile takeover, many companies protect themselves by implementing various defense measurements and strategies. These strategies could be either pro-active, such as the poison pill and staggered board defense strategy or re-active, such as the crown jewel and white knight defense strategy. The purpose of this thesis is to describe and explain which defense strategies are the most effective and easiest to implement when facing a hostile takeover.

Based on our researches and analyzes, we believe and argue that the most easiest and effective way of fending off a hostile bid, is to implement both the poison pill and staggered board defense measurements combined. By doing this, the acquirer is not able to gain immediate control over the target company and the poison pill defense measurement help stagger and make the bid more expensive for the bidder.

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1 Introduction

1.1 Background

Companies worldwide have realized the importance of being present and to be operating transnational. That is why many firms tend to expand globally through Mergers & Acquisitions. Furthermore a takeover could be categorized as either friendly or hostile, whereas the latter one is characterized as an acquisition of control of a target company without a contract or a mutual understanding with the management of the target firm (Savela, 1999). Furthermore, if a bid is placed for the shares of the target company without informing its board, the term hostile takeover is also applied (Damodaran, 1997)

A target company which faces a hostile bid from an acquiring firm does not stand helpless. The management of the targeted firm may implement certain defense measures, such as various corporate defense strategies, which aims to make the hostile bid less profitable for the acquiring firm as well as protecting the shareholders and the management of the targeted firm.

Commonly known is that there are several reactive measurements that can be implemented in the case of a hostile takeover, but one important aspect that we will also look further in to are the proactive measures that can be implemented prior to a hostile bid. The commitment to defend against future takeover attacks is important both because of preventive defenses take time to construct and because they signal that the board and the executives are united in the pursuit of the goal of the companies' independence.

Furthermore, a company which is publicly listed should never feel totally safe nor out of range for possible future hostile takeovers. That is why it has become more common and significantly more important for today's companies to highlight and realize the importance of various defense strategies against hostile takeovers as well as being aware of the potential risk of being bought by another company.

1.2 Purpose

The purpose of this study is to investigate which defense strategies are the most effective and easiest to put into practice. To do so, we want in this thesis give an understanding regarding the meaning of hostile takeovers and the reasons behind them and also further investigate the different defense strategies available for the targeted firm and what their effects and purposes are against the hostile bid. We will try to clarify the use of some of the defense strategies by presenting some cases where actual defense measures have been used and look in to what happened and what effects they gave. These different aspects we feel are important to high light because they may not always be considered when governing a publicly listed company and could thereby oppose a threat in the future if neglected.

The following crucial questions are necessary to respond to in order to reach the purpose of the study:

- What is a hostile takeover?
- What are the driving forces behind a hostile takeover?
- Which different hostile takeover defenses are available when facing a hostile takeover bid from another company?
- What effect did the chosen defense strategies have in some specific cases?

1.3 Limitations

Since the purpose of our thesis is to investigate which defense strategy is the most preferable and easiest to put into practice, we will besides from collecting and analyzing theoretical information, also want to mention historical events which we believe is relevant to our thesis. In order for us to do so, we have chosen not to limit ourselves to hostile takeovers cases within the same region or industry and instead investigate cases of hostile takeovers that are transnational and global, penetrating boarders from a country to another. We are limiting ourselves to some of the most common and mentioned defense strategies in literature and will not mention the few rare and special strategies that are used occasionally. As we have not focused on one specific country or industry, we will not give details on the matter of different legal frameworks between countries or industries if it does not affect the choice of defense strategy, the bid or the outcome. However, if there are large legal differences regarding some of the defense measures this will be brought up in the thesis, but commonly they are very similar to the legal frameworks originating from the U.S.

2 Theoretical framework

In this chapter of our thesis, we will give an introduction to, as well as describe the term corporate acquisitions. Furthermore, we will develop and explain the three most common ways of acquisitions used today. We will continue this chapter by defining and explaining the term 'hostile takeover' as well as explain and discuss the different defense measurements available when facing a hostile bid. They consist of pro-active measurements which are implemented before facing a hostile bid and re-active measurements, which are implemented after a hostile bid has been offered.

2.1 Mergers and Acquisitions

We are speaking about merger and acquisitions of a company, when the controlling position of a company is transferred from one shareholder group of interest to another. The bidding company is known as the acquiring company and the company which is being targeted for a possible merger or acquisition is known as the target company.

There are three general ways (vertical acquisition, horizontal acquisition and conglomerated acquisition) for a company to take control over a company which is publicly listed. First of all there is the possibility for a small group, consisting of either board members or external investors who find the target company interesting and has the financial recourses, to put a bid for the whole company and possibly gaining ownership over the target company's entire stock distribution and their by controlling it. Another way would be if a single shareholder successfully convinced other shareholders to give up their voting rights, in order to gain access to the board of decision with a majority of the voting rights. This way of acquiring a company is relatively difficult, since one has to argue and give good reasons for shareholders of a company to give up their stakes. A third option of gaining control over a target company could be through a merger, acquisition of the company's assets or stocks (Ross, Westerfield & Jaffe, 2005).

There are several reasons why a company would put a bid or acquire another company. The main reasons for acquiring another firm is naturally the possibility in improving productivity, gaining market shares as well as improving the stability of positive results. Improvement in productivity is generally achieved by reorganization and restructuring of the management as well as the company structure, while at the same time looking to utilize the company's resources in a more efficient and effective way. Furthermore, the acquiring company is seeking to take advantage of the potential economic of scale an acquirement often means, as well as seeking to reduce and cut expenses related to information and intelligence logistics. If the main reason for acquiring another company is to seek productivity improvements, the deal could be characterized as a vertical acquisition. If the main reason and motive for acquiring another firm is to improve presence as well as gaining market shares, the settlement could be characterized as horizontal acquisition. If the company is only seeking to establish more sustainable positive results in spreading its risks in many different industries through ownership, the acquisition could be called a conglomerated acquisition (Ross et al, 2005).

2.1.1 Vertical Acquisition

A vertical acquisition takes place when a company gains ownership over a company, operating in the same industry as the acquiring company. As we have mentioned before, the reasons and motives for the acquiring company could be several, but usually the acquiring company chooses to implement a vertical acquisition in order to establish control of the whole production chain, thus potentially securing and strengthening its market position. One example of vertical acquisition could be when an airline company gains ownership over a travel agency. By doing so, the airline company prevents the possibility for the travel agency to change airline in the future, as well as improving and developing its marketing strategy, which could be for instance marketing of travel and flights to destinations where the airline has the most available flights (Weston, Mitchel & Mulherin, 2004).

2.1.2 Horizontal Acquisition

A horizontal acquirement involves two companies, operating and competing in the same industry. The motives are as usual several, but the most general goal is to seek advantages in economics of scale by improving the management and administration of the company as well as better take advantage of the unused and available capacity in production. Furthermore, horizontal acquisitions have a negative impact on competition, in the sense of increased potential monopoly revenues for companies, while firms gradually decrease from the market or being bought up. These types of acquisition are relatively common, since a company's growth strategy often include acquiring other companies, operating in the same industry. When a company wants to go abroad and establish its presence in a foreign country which it has never operated in before, it is generally known that acquiring an already established firm with a brand which is already known in the region with already existing product and supply chains, is many times a lot easier and more cost efficient than trying to establish one's unknown brand in the region from scratch. After an acquisition, the companies merged together, often adopts a brand name in the beginning, including both the previous companies' names, illustrating that an acquisition has been made but also to ensure a feeling of comfort for the acquired company's already existing customers (Weston et al, 2004).

2.1.3 Conglomerated Acquisition

A conglomerated acquisition occurs when a company gains ownership over another company, operating and existing in an entirely different kind of industry. These types of acquisitions are often made in the purpose of diversifying one's risks, and are often performed by companies which have their core businesses in a relatively high risk type on industry. The main goal is to seek a sustainable platform with interests and operations in different types of industries entirely independent of each other, risk diversifying and enabling the possibility of one industry which it has interests in to be profitable, while other industries might have a downturn, since it is normal for some industries to do better when others are doing worse (Weston et al, 2004).

2.2 Hostile Takeovers

The term "Hostile Takeover" is defined as when a company puts a bid on a target firm, which is being opposed by the management of the targeted company which furthermore advises its shareholders not to sell to the acquiring firm (Savela, 1999). Also, if a bid is placed for the shares of the target company without informing its board and is directly aimed to the shareholders, the term hostile takeover is also applied (Damodaran, 1997). The bid or offer could be suggested towards the shareholders with or without the consent or negotiations from the management of the targeted firm. Furthermore, there is a thin line between what is characterized as a hostile bid or a normal bid, since it sometimes occurs that a friendly or normal bid if you, develops into a hostile bid. However, hostile bids and offers are generally directly aimed at the shareholders of the targeted company in hope of gaining control over the company without the consent from the board of directors of the targeted firm (Statens Offentliga Utredningar SOU, 1990).

The motives behind a hostile takeover in theory, is usually the same as with other acquisitions, except one additional reason or motive for a hostile bid. It is said that the most effective way of replacing an ineffective board of directors or management of a targeted firm, is through a hostile takeover. When a company operates ineffectively even though it has great growth potential or the value of the stock price doesn't properly illustrate the real value of the company, the firm is undervalued. The acquiring company then wishes and aims to replace the old management, in order for the company to achieve its full revenue and growth potential, thus increasing its stock value. For this reason, companies with a management that doesn't seek the best interests for its shareholders are often potential objects for future acquirements.

A company could during a short period of time have a management that is ineffective, but in theory, if the market has its way, they will eventually in the long run be replaced. As we have mentioned before, this could be due to the lack of economic growth potential the management has been able to realize or perhaps that the strategic plan of the board does not comply with the shareholders view or expectations (J.M Samuels, et al, 1999).

A hostile takeover could therefore sometimes also be seen as an effective market transaction, which simply replaces a bad management, in order to gain increased company value for the acquiring company as well as for the shareholders of the targeted firm (Weston et al, 2004).

2.2.1 Are Takeovers Positive or Negative?

The opinions are many in this question and a lot of research has been undertaken. It is still hard to say whether takeovers are beneficial on the balance and the only thing that is certain is that the beneficial or negative affects depend highly on from whose angle one is viewing from.

There is still an unresolved issue in empirical research about corporate control in whether a take-over actually improves the value of the bidder and the target firm. However, what studies have been able to show, is that all the gains or positive effects tend to go to the shareholders of the target firm and that the acquiring firm pays a premium for their company. Furthermore, hostile takeovers in most cases improve the value for the shareholders of the targeted firm, thus the term hostile is being used to illustrate the opposition faced by the target firm's board of directors and not necessarily the shareholders´. A takeover which takes the shareholders of the target firm in consideration first, in other words maximizing shareholder value, is called positive (Weston et al, 2004).

2.2.2 Bid Premium

For a hostile bid to take place, an offer has to be made to the shareholders of the target firm. This bid is very often a lot higher than what the target firm is valued on the market, in order to receive a positive response from the shareholders and the board of directors of the target firm. The difference between the bid and what the target company is actually worth is called bid premium. The size of the bid premium depends on the acquiring company's willingness to pay for the target company and according to surveys done in the UK, average bid premiums of hostile takeovers in UK are between 35-45 per cent higher than the market price of the target company (Schoenberg, 2003).

Defense strategies issued by the targeted company have different purposes. While some strategies are formulated specifically to prevent the bidder from gaining ownership over the company's equities or stocks, other help stagger the bid and even increase it, thus resulting in a higher bid premium received by the target firm.

2.3 Defense Strategies

All bids that are made between companies are, as mentioned earlier, not always welcomed with open arms from the target company's board of directors. In that case the bid is recognized as hostile, also called unconsolidated bid. This occurs when the acquiring company is trying to acquire the target company directly through its share holders rather than through a mutual agreement with the target company's board of directors. The expression of hostile takeover has its roots in the negative attitude expressed from the board of directors of the targeted company (Savela, 1999). The reasons for the targets board of directors' negative attitude can perhaps be explained by several reasons and not always related to the valuation of the actual bid. Some of them are; the board of directors' fears that the acquisition will have a negative effect on the company's growth, strategy, revenues or dividend, they may also experience fear of losing their jobs by being replaced by the biding company's employees (Bebchuk, Coates & Subramanian, 2002).

When facing a hostile takeover trough a hostile bid the board of directors will act accordingly to protect their independence and current management or to ensure that the hostile bidder is pressured to sweeten their bid further. Often, the main purpose of the chosen defense strategy is to make the acquisition more costly or time consuming and in such way making the targeted company less attractive due to the rise in cost which follows. This can be done through several different ways and theses measures are commonly called defense strategies, shark repellent tactics or antitakeover measures. These can be used in a reactive approach to fend off a presented hostile bid or be used in a proactive approach to make sure to that future raids from targeting companies are slows down or even hindered (Pearce & Robinson, 2004).

There are many different defense strategies to use and are often used in combination with each other to ensure the effectiveness of the defense. There is no one-situation fit all strategy and therefore the choice of strategy is dependent on the acquisition strategy used by the acquirer and also what motives the targeted board of directors have available (Nilsson, 2001).

This section contains a review on some of the most common defense strategies and how they are designed to defend against a hostile takeover. These different measures can be divided in to *proactive* and *reactive* strategies, depending on when a company decides to adapt it. As their name suggests, a proactive measure is used to make the company less attractive before the actual hostile bid presents itself and the later one is implemented in connection to the hostile bid (Pearce & Robinson, 2004).

2.4 Proactive Defense Measures

2.4.1 Staggered Board

One solution for a company which is seeking to take control over a targeted company is to try and get representation on the targeted company's board. Why this approach is important for the acquirer is because by attaining representation and voting power on the board of directors, the targeting company can try to influence the other board members to accept the bid or influence the shareholders to take a more positive stance towards the takeover (Bebchuk, Coates & Subramanian, 2002).

For a company to be allowed to create a staggered board, first its shareholders have to approve its creation on a shareholders meeting. Obtaining a seat on the board of directors can only be achieved through a shareholder meeting where the members are chosen with the support of the shareholders. This can be achieved by buying enough shares to vote with which enables a single shareholder to take a seat on the companies' board of directors. By using a staggered board the process of gaining influence and control on the board is made very time consuming and costly.

By now explaining how precisely a staggered board is constructed its effects will be clear. In a company with, for example nine members, a staggered board is created by dividing the members in to groups, typically in groups of three. Companies with staggered board do not re-elect all the board members annually, instead they only submit a group of members for re-election each year. This means that the entire group of board members cannot be replaced on one annual meeting. To replace the whole board it would take three years due to the structure of the staggered board. For example the targeting company my obtain three seats on the board initially on the first annual meeting by buying shares, but must at least wait one more year for the next annual meeting to re-elect three new members to obtain majority on the board of directors (Bebchuk, Coates & Subramanian, 2002).

This shows that the staggered board tactic provides an effective protection against a hostile takeover when it comes to preventing the acquirer to gain control of the whole board instantly. What is clear is that this defense establishes a large delay for the bidder because it has to wait at least one more year and is also forced to win two elections separated in time to be able to gain control. This large delay is often associated, within the corporate world, with extra expenditures which can make it more difficult getting finance for the acquiring company and therefore making the targeted company less attractive (Bebchuk, Coates & Subramanian, 2002).

Studies that have been made by Bebchuk, Coates & Subramanian (2002) has shown that the staggered board defense is moderate effective and substantially increases the companies' likely hood of remaining independent 9-months after facing a hostile bid. Approximately 60 per cent of the U.S corporations and almost one-half of the Standard & Poors 500 firms list have adopted a staggered board. Also mentioned in their studies is that this defense strategy can be costly for the shareholders, due to the negative effect it has on the acquisition premium presented by the targeting company. It was estimated that on average shareholders would get 8-10 per cent less in acquisition premium from the bidder when adopting a staggered board.

Though this tactic is moderately effective, it does not imply a definite protection against a hostile bid. As mentioned earlier, its effects are more or less threatening and delaying the bidder's ability to take control instantly, meaning that the staggered board strategy would not prevent or revoke a bidder from buying a big block of it shares which eventually after re-election of the board, the bidder would thus gain control. Also, it is argued that maybe the bidder would not even need to wait until the second re-election meeting. If the bidder has obtained majority shares in the company the remaining board members would be expected to resign thus the board would have little legitimacy when its largest shareholder clearly did not wish it to stay (Bebchuk, Coates & Subramanian, 2002).

What is shown is that the staggered board strategy is moderately effective on its own and is not an ultimate defense against hostile takeovers but would be very effective in combination with other defense measures to help it fend off a hostile takeover.

"The staggered board tactic serves more as a nuisance to the acquiring firm than a true roadblock." (Pearce & Robinson, 2004: page 19)

2.4.2 Poison Pills

We will in this section mention the general structure of a poison pill and also two of its most common forms, the "*flip-over*" pill and the "*flip-in*" pill.

Poison pill is one of the most used and controversial defense strategies used. This strategy was first introduced 1982 by the New York layer Martin Lipton under the name "warrant dividend plan" but was later changed to poison pill when he mentioned it in an article in The Wall Street Journal. The expression poison pill comes from the domains of espionage. This refers to back in the days when agents were instructed to swallow a cyanide pill instead of being captured or as in our case overtaken. When it comes to the corporate world the effect of the pill is similar. There are several variations of the pill, but most work roughly in the same way (Pearce & Robinson, 2004).

Poison pills have many names and therefore also described as, shareholders rights, preferred shares, stock warrants or options, which the target company offers and issues to its shareholders. In the U.S the board of directors can incorporate a poison pill without asking the shareholders, but in some countries this must be decided through a shareholders voting, some of those countries are Canada and Sweden (Pearce & Robinson, 2004). Once implemented, the poison pill can only be redeemed by the board of directors. These rights are inactive until they are triggered. These rights are issued in the case of a hostile takeover and are triggered when an unwanted shareholder acquires a pre-specified amount of the outstanding stocks which has been agreed on by the board of directors. Once triggered, the poison pill can only be redeemed in a short period of time by the board of directors (Ruback, 1988). These pre-specified thresholds can obviously be set in any range but are often set in the range of 15-20 per cent of the stock for a single shareholder who has not been in contact with the board of directors. If the company receives an offer for a large amount of its stock at one single occasion, a so called tender offer, then the threshold is higher and often around 30 per cent (Pearce & Robinson, 2004).

The logic behind the pill is to dilute the targeting company's stocks in the company so much that bidder never manages to achieve an important part of the company without the consensus of the board and thus loses both time and money on their investment. This is though not the only reason for the use of a poison pill as it has other implications. Two other aspects for the use of the pill can be seen as tools for creating more time. More time to reflect over the actual bid and maybe start some kind of negotiation process between the two companies to see if they can agree on some other terms or even put pressure on the bidder to raise its premium offer even further thus serving the shareholders wealth (Bebchuk, Coates & Subramanian, 2002). Theobald (2006) also argues that the poison pill is a preventive measure even though it is implemented after a bid has been presented. Its features can be categorized as acquisition cost enhancers and force the bidding company to pay more for the stocks and in return makes the targeted company less attractive (Theobald, 2006).

A *flip-in pill makes* it possible for the targeted company to issue preferred shares which only existing shareholders have the rights to buy. If they chose to exercise their rights then they will get the opportunity to buy additional shares in the company for a price often far beneath the market value of that share. These rights can explicitly not be exercised by the acquiring firm or shareholder, thus leading to the dilution of the bidders' shares because it cannot compete with shareholders who can buy them for a discounted price. This literally pulls the brakes for the bidder and gives the targeted company time to reflect over the bidding situation and also gives the exciting shareholders incentives to not sell their shares to the bidder (Pearce & Robinson, 2004).

A *flip-over pill* issues rights rather than issuing preferred shares to existing shareholders. These rights are only triggered and set in motion when 100 per cent of the firms' shares have been bought. The flip-over pill gives the existing shareholders in the targeted company the right to buy the acquiring companies' shares for a discounted price in the event of a total merger or acquisition. Using such rights is advantageous in defending a target because of its negative impact on a balance sheet which comes from the raise in debt to the shareholders as an affect of the rights. Increasing the debt means to raise the risk of the company's financial leverage and thus seen as very unattractive for the acquirer who has to inherit these debts. One major drawback regarding the flip-over pill is that its actions are only made accessible when the company is acquired 100 per cent. This gives the bidder a loophole by gaining control of the company but not acquiring it fully and thus avoiding paying out the rights to the shareholders. Therefore, such a poison pill is useful only for corporations looking to prevent a full acquisition (Pearce & Robinson, 2004).

Once again these different forms of the poison pill have general weakness, which is that these pills can easily be redeemed by the board of directors and are thereby not extremely effective on its own. Therefore, you must have some kind of defense mechanism which protects the pill by making it difficult or impossible for the bidder to enter the board and thus redeem the pill its self, one of these measures would be to combine it with a staggered board (Bebchuk, Coates & Subramanian, 2002).

2.4.3 Super-Majority Amendment

Typically, when it comes to making decisions regarding a merger, approving takeover or other large decisions in a company you need a majority of the votes, >50 per cent of the votes, to approve the decision, meaning shares. But if a company implements a super-majority amendment in its corporate chart then this defense measure can raise this specific per cent age needed to approve large majority decisions to somewhere between 67 – 90 per cent. This amendment can only be placed in the companies chart by the shareholders and not by the board of directors, but it is the board who can decide to activate it. Regarding this defense strategy, the bidder does not actually have to own the share to complete a merger, it only have to present a merger proposal which then the shareholders have to vote on, but now have to acquire a larger acceptance (Ruback, 1988).

Some super-majority amendments apply to all mergers and others does only apply in the event of a hostile takeover or when it involves a large stockholder. These amendments are often accompanied by escape clauses which allow the board of directors to redeem the amendment if the board decides to change its attitude towards the bid and enter negotiations thus not restraining the boards' managerial power.

However, this defense measure, once again, does not alone stop a bidding company from buying and acquiring a large stock of the targeted company. As with the poison pill this measure makes it impossible for a bidder to immediately gaining control over the company and thus making the deal costly and unattractive. Instead the targeted company buys time to reflect over the bid and perhaps negotiate or pressure the bidder to present a higher premium offer (Ruback, 1988).

2.4.4 Golden Parachutes

Golden Parachute as a defense strategy is a special and lucrative package, which aims to stagger and make hostile takeovers more expensive by distributing what is usually a lump-sum payment to the board of directors of the target company. The defense strategy sets in motion as soon as the acquiring firm has acquired a specific amount of the target company's shares; the average per cent is 26.6 according to Lambert and Larcker (1985).The strategy is usually implemented in combination with other takeover defense measurements and according to a survey done by Lambert and Larcker, implementing golden parachutes as a line in defense measurements against hostile takeovers, on an average increased the wealth of the shareholders by 3 per cent.

The Golden Parachute's primary function in a hostile takeover is to align incentives between shareholders and the executives of the target company as there generally are concerns about executives who face a hostile takeover while risking losing their jobs, oppose the bid even when it increases the value for shareholders. Furthermore, Walking and Long (1984) in support of this rationale, concluded that the probability of executives opposing a takeover bid, is directly related to the takeover's effect on their personal wealth. Thus, Golden Parachutes are in fact intended to help executives resist takeover attempts that endanger their jobs by aligning their wealth more closely with the shareholder's interests (Pearce & Robinson, 2004). Also, it is argued that if receiving a large payment in the event of a job loss, the managers will be less inclined to block any takeover attempts and therefore evaluating the best decision for the shareholders (Harris, 1990).

In conclusion of this chapter, implementing a golden parachute defense strategy could potentially help stagger and make a hostile takeover more expensive, though only to a certain degree. In general the cash payments as a cause of the golden parachute strategy are only a drop in the ocean compared to what the whole acquirement as a whole would cost and for this reason, one could argue the real effectiveness of the golden parachute strategy.

2.5 Reactive Defense Measures

2.5.1 Attack the Logic of The Bid

By attacking the logic of the bid, the board is trying to persuade the shareholders that a fusion will have a harmful outcome on both the company and the stock price. This is considered to be an effortless and cost beneficial tactic when facing a hostile bid. Arguments used is often that the bid is too low and is not adequately representative to the real value of the firm, that the two involved firms are operating in different industries and fusion will therefore have undesirable effect for the future. The board can also try to discourage their shareholders' beliefs about the acquiring company through accusing them of being incompetent and only trying to acquire the firm's assets. That action may not go as planned and maybe result in shareholder thinking that the board is only interested in keeping their positions and not taking the shareholders wealth in consideration (Weston et al, 2004). Management can also devolve insider information to other potential bidders, to encourage them to enter the bidding contest thus increasing the probability of a higher bid. Management could also raise doubt the merger and encourage shareholders to hold their shares for additional bids (Turk, 1992).

2.5.2 White Knight & White Squire

These two defense measures require and involve a third party. In the first, the targeted firm seeks for a friendly firm which can acquire a majority stake in the company and is therefore called a white knight. Whit a white knight the management of the targeted company can negotiate several deals that do not have to include a full takeover of the firm and risk losing their positions. A white knight can be chosen for several reasons such as; friendly intentions, , belief of better fit, belief of better synergies, belief of not dismissing employees or historical good relationships. The intention of the white knight strategy is to make sure that the company remains independent but could also be used to play the other two parties against each other to further sweeten the bid. However, the most common outcome of a white knight strategy would be that targeted firm eventually gets overtaken by the white knight. This implies that it is not always certain that the targeted company will remain independent but instead slips away from a hostile bidder which would suggest greater restructuring of the firm. The problem with this strategy is the complicated process of finding the white knight, because they do not often present them self (Weston, 2001).

A different variation of the white knight strategy is the white squire. Instead of acquiring a majority stake in the targeted company the white squire acquires a smaller portion, but enough to hinder the hostile bidder from acquiring a majority stake and thereby fending off an attack. A white squire is not always needed to be found but can also be created by raising an investment fund with the help of financial advisors. Here are hedge funds and banks suitable white squires due to their ability to move large amount of capital on short notice (Weston, 2001).

2.5.3 Greenmail

If the bidders' interests are short-termed profit rather than long-termed corporate control then an effective and simple defense measure could be to use a so called greenmail, also known as targeted repurchase or a goodbye kiss. Greenmail involves repurchasing a block of shares which is held by a single shareholder or other shareholders at a premium over the stock price in return for an agreement called a standstill agreement. In this standstill agreement it is stated that the bidder will no longer be able to buy more shares for a period of time, often longer than five years. Thereby, the hostile attack will end but what is worth re-mentioning is that this is only proven effective towards short-termed profits seeking bidders by offering incentives to a bidder to cease the offer and then sell its shares back at a profit. Not against bidders who is seeking long-termed synergy effects and control in the company.

Since 1986 the use of this defense measure as drastically declined due to tax regulations which indices a 25 per cent age penalty on the company making the greenmail payment and therefore making it to a very expensive measure. But this measure is still used because of some bidders' soul intentions still are to act in such a way so they receive a greenmail offer from the targeted company (Pearce & Robinson, 2004).

2.5.4 Crown Jewel

Very often a hostile bid is made based on the targeted firm's assets or ongoing operations. By implementing a defense strategy such as the Crown Jewel defense, the target company has the right to sell of the entire or some of the company's most valuable assets (Crown Jewels) when facing a hostile bid, in hope to make the company less attractive in the eyes of the acquiring company and to force a drawback of the bid. Another way of implementing this type of defense strategy is for the target company to sell its Crown Jewels to another friendly company (White Knight) and later on, when and if the acquiring company withdraws its offer, buy back the assets sold to the White Knight at a fixed price agreed in advance (Weston, 2001).

The Crown Jewel strategy does not go without risks. By selling of the targeted company's most valuable assets, one puts the whole operation of the company in danger and if the target company chooses to adopt a Crown Jewel strategy to sell of its most valuable assets to a White Knight, they need guarantee to able to buy the assets back. Another complication in the risks of adopting the Crown Jewel defense strategy has to do with the amount of cash or liquidation the target company is able to receive from a third party. If it turns out that the target firm received a lot of money for its assets, it could potentially make the company even more attractive to the acquirer, a result completely opposite the aims of the Crown Jewel defense strategy (Weston, 2001).

2.5.5 Litigation

After that a hostile bid has been received the targeted company can challenge the bid. Litigations are ways for companies to stall a hostile attack, but are often not effective against long-term bidders. The litigations often involve pursuing legal injunction, filing antitrust litigations, restraining orders or filing a law suit against the bidding company. This pressures the bidder to gather information to prove its legitimacy of the takeover, often towards the institution in each country that handles these matters, in U.S it is the Security Exchange Committee (SEC). During the time the bidder is preparing and presenting its legal preferences, the targeted company receives a space to implement other defense measures or to pressure the bidder to sweeten the bid additionally in exchange drop the litigations.

These litigations can also be a step in the board of director's propaganda against the bidder, with intentions to make its shareholders react more harmfully towards the bid in general by implying that there might be something wrong with their intentions. Also, these litigations often pressures the bidding company to reveal its post-acquisitions plans for the company, which may even more strengthen the board of directors arguments towards the bid (Pearce & Robinson, 2004).

3 Method

We will in this thesis use a deductive approach, where theories will be used as guidance when searching for explanations. Regarding the defense strategies which will be presented in the theoretical framework, data will be collected with the purpose of seeking if they are effective, how they are implemented and if they have been implemented in recent years and what happened in those specific occasions. The deductive approach is also most fitting with using secondary data, which is the case in this thesis. In other words, this thesis will use secondary data to come up with explanations, and not carry out any interviews or any other processes to collect primary data.

Theoretical approach

By using and implementing our research in the theoretical framework combined with the presentation of three cases, we hope to deepen the reader's understanding of the whole context which regards hostile takeovers. The cases presented in the latter part of our paper, are of qualitative nature, whereas according to Denzin & Lincoln (2005), a qualitative approach is suitable when grasping and understanding context is important.

In our analyzes, theoretical frameworks along with our previous knowledge, new acknowledgements accompanied by common sense, have allowed us to draw conclusions in comparing and analyzing the different outcomes of each case study. Given the unique nature of each hostile takeover situation, it is not possible to draw generalizations concerning all takeover events. However, the data collected and learned from the theoretical framework has allowed us to make reasonable conclusions and assumptions about the three case studies individually and to hopefully realize some kind of pattern as well as specifics about hostile takeovers.

Case study

When analyzing the different case studies, we have chosen to look at the cases about Arcelor & Mittal Steel, Lundin Mining & Equinox Minerals and Schaeffler & Continental AG. We believe these case studies are especially relevant to our thesis, based on the share size and media attention they have received. Furthermore, the several actions taken by each part in the three case studies are relatively unlike each other, which further broadens our data collection and give possibility for comparison and discussions between the two cases. We further acknowledge the fact that the case about Lundin Mining & Equinox Minerals has still not reached a conclusion and the final outcome is still yet to discover. Some might argue about the credibility from the latter case since a final outcome has not yet been reached, but to justify our bringing of the case into our thesis, we believe the most relevant and useful data collected from each case study come from the different implementations and strategies used in a given situation.

There are however some disadvantages in using case studies. According to Cavye, (citied in Williamson, 2000) the collection of analysis and data are dependent and influenced by the researchers' characteristics and backgrounds.

Collection of data

As we have mentioned earlier, this thesis will be conducted mainly by collecting and analyzing prior research, articles and press releases within the field of hostile takeovers. Our focus of data collection will therefore mainly consist of secondary data, which according to (Lundahl, 1999), is both less costly and more efficient to gather compared to collection of primary data. Furthermore, this data will be collected from not only previously done research papers on mergers & acquisitions and hostile takeovers, but also from the Internet in forms and news articles, press releases and official media releases from the concerning companies in our case studies as well as from libraries.

Information concerning the theoretical aspect in our thesis will be mainly collected from library, books and written papers. These collections of data are especially important in order to grasp and understand the underlying logic and reason behind the situation in every case study as well as draw analyzes and conclusions in our findings.

Regarding the empirical findings for our case studies, most are gathered from the Internet through business press, companies' reports, media and press releases. The reliability of these kinds of data collection could be doubtful since the accuracy of the answers explained highly depends on the potential subjective characteristic and attitude of the interviewees. The case studies which have been chosen in this investigation has been highly and widened highlighted in the media and press and although using information from the press might not always guarantee a 100 per cent accuracy on the data collected, we believe the nature of the required data to fulfill our purpose with this thesis, is not very sensitive to bias.

4 Case Studies

In this chapter of our thesis, we will present and discuss our case studies. They consist of the merger between Arcelor & Mittal, Lundin Mining & Equniox and Schaeffler & Continental AG. The structure of the cases is as follows: A general presentation of the parties, the bid, reactions to the bid and finally what the defending company did.

4.1 Mittal & Arcelor

All data presented in the case about Arcelor and Mittal are collected from the book International Management, Som 2009(pages 329-350) if no other source is mentioned

4.1.1 The Bid

On 27 January, 2006 Mittal Steel, the India-based world's top steel producer with its headquarters in the Netherlands, announced a hostile bid for Arcelor, the world's largest steel producer in terms of turnover at that time. Arcelor was at the time the world's second largest steel producer and the bid from Mittal Steel caused a lot of opposition and many parts got involved, including the former French President Jacques Chirac who publicly opposed the hostile offer. If successful, the bid would have created the world's first 100 million ton plus steel producer, creating an entity four times larger than Mittal Steel's, at the time, closest rival.

Mittal Steel offered a €28.21 per Arcelor share, which meant that Arcelor would be receiving a premium of 27 per percent per share since the offer was 27 per cent over the market price for one Arcelor share and the total offer on Arcelor from Mittal was valued €18.6 billion. The merger would furthermore create a company whose market position in steel production as well as in the automotive sector, would be world leading in NAFTA, the EU, central Europe, Africa and South Africa. Moreover, Mittal Steel's stand-alone raw material (iron ore) had a self-sufficiency rate at 60 per cent and this capacity combined with Arcelor, would create the world's fourth largest iron ore producer.

The offer was subject to three conditions: (1) a minimum acceptance of more than 50 per cent; (2) Mittal Steel shareholder approval and the Mittal family undertaking to vote in favor of the transaction; and (3) no change in Arcelor's substance, in other words no disposal or acquisition from Arcelor was allowed during the offer. The offer from Mittal consisted of a mixture of cash and stocks as the main offer from Mittal consisted of four Mittal Steel shares plus an additional of €35.25 cash in exchange for five Arcelor shares (or 0.8 Mittal shares plus an additional €7.05 cash for each Arcelor share). Alternative offers consisted of 16 Mittal shares for 15 Arcelor shares or as previously mentioned €28.21 for each Arcelor share.

4.1.2 Reactions to The Bid

This hostile bid did not come without repercussions or criticism. The board of Arcelor stated that the company did not share the same strategic vision, business model or values as Mittal Steel, risking severe consequences on the group, shareholders, employees and its customers. (Som, 2009)

Furthermore the management of Arcelor, in attempt to scare its shareholders about the takeover, explained that the merger did not make any 'industrial sense' and used what in the theoretical framework is referred as an 'attack on the logic of the bid' by Weston et al (2004) in 2.5.1 which gave the same results as the defense strategy in theory should do, which was to buy Arcelor time as well as increase the bid premium received.. Arcelor argued that the Mittal Steel Company had weak corporate governance, implemented a monoculture management and a weak strategy. The management of Arcelor continued stating that the shareholders of the company would be better off without Mittal Steel, thus forming a defense strategy against the hostile takeover, 'Project Tiger' (Som, 2009).

Arcelor originally emerged from national steel interests from France, Luxembourg and Spain while also operating in Belgium. Even though only Luxembourg possesses shares in the company (5, 6 per cent), France, Spain and Luxembourg had publicly opposed the takeover while Belgium remained neutral. In result, the prime minister of Luxembourg, Jean-Claude Juncker appeared in the press, saying that the bid was "incomprehensible" and encouraged initiatives to stop the takeover by "all necessary means". Soon the French Prime minister Dominique de Villepin and Finance Minister Thierry Breton joined in, questioning the bid's 'industrial logic' as well as pushing for a mobilization of 'economic patriotism'. The takeover issue even moved to the top of the agenda list when the French President Jacques Chirac met with Mr. Juncker in Luxembourg days later. Furthermore, Spain's Finance Minister announced its opposition against the bid and the Belgium government, which owned 2.6 percent share in Arcelor, even appointed Lazard in order to conduct a more thorough analyze of the bid. Even the Department of Justice of the US government got involved in the issue, announcing they would conduct an antitrust review of the deal (ArcelorMittal, 2011).

Furthermore, in an attempt to protect French companies from hostile takeovers, Thierry Breton, the French minister of Economy, Finance and Industry at the time, proposed a new law, allowing companies listed in the principality to issue new shares without calling for a meeting with the shareholders when a hostile takeover is at hand. This new law meant in practice that the bidding company needs a 95 per cent share in the target company, in order to force minority shareholders to sell. As the discussions went on, nationality, culture and patriotism had been associated with the refusal of the bid. Since the chairman and CEO of Mittal Steel, Lakshmi Mittal originally is an Indian-born citizen, the Indian government felt need to protect and support him, thus resulting in that the Indian Trade Minister, Kamal Nathn, publicly accused the European governments of being racist and discriminating (Som, 2009).

4.1.3 What Arcelor Did

Project tiger

While facing the hostile bid from Mittal Steel, Arcelor developed a communication plan, 'Project Tiger', in hope to prove to and to persuade its shareholders that the company was better off without Mittal Steel's involvement and to not sell their shares to Mittal Steel. They introduced a '2006-2008 plan' with the aim to 'maximize value creation for shareholders' and the board of Arcelor even promised an increase in results by 24 per cent and generous bonuses.

In the last week of May 2006, the management of Arcelor announced a €13.6 billion merger proposal with Severstal, the largest Russian steelmaker, as an attempt from being hostelry overtaken by Mittal Steel. If this merger would have succeeded, a combination of the second largest steel company and the largest Russian steel company would have created globally the largest and most profitable steel company in the world, removing Mittal from its number one position. The offer from Severstal was described as friendly as they valued each share of Arcelor to a price at €44, which represented a 100 per cent premium compared to Arcelor's closing share price on 26 January 2006.

The possible merger did not get positive reactions from analysts, who described a merger with Mittal Steel as a more attractive and reasonable option than merging with Severstal. Severstal-Arcelor would geographical have been mainly restricted to the EU, Russia and Latin America, whereas a merger with Mittal would contribute to a greater global presence, a larger production capacity and a greater self-sufficiency for iron ore (ArcelorMittal, 2011).

Even though rumors were cited in the press about a defense strategy against the Hostile bid from Mittal, Arcelor did not adopt the in our theoretical framework mentioned ‘White Knight’ defense strategy by Weston (2001) in 2.5.2, which in theory would have made the offer by Mittal even more expensive and time consuming. Eventually Mittal agreed to pay €40.27 for each Arcelor share, almost double the amount they first offered, and a merger between the two giants occurred. Furthermore, Arcelor had to pay Severstal a fine of €140 million, as a result in failing to close a deal after negotiations with the Russian giant.

4.2 Lundin Mining Corporation & Equinox Minerals Ltd

Lundin Mining Corporation which is Canadian based, is a diversified base metals mining company with operations in Portugal, Sweden, Spain and Ireland, producing copper, zinc, lead and nickel. It has an annual production capacity of almost 250 thousand tons of metal. In addition, Lundin Mining holds a development project pipeline which includes expansion projects at its Zinkgruvan and Neves-Corvo mines along with its equity stake in the world class Tenke Fungurume copper/cobalt project in the Democratic Republic of Congo (Lundin Mining, 2011).

Equinox Minerals Limited is an international mining company with an annual production of 145 thousand tons of copper, which is listed in Canada and Australia. The Company is currently focused on operating its 100 per cent owned large scale Lumwana copper mine in Zambia, one of the largest new copper mines to be developed globally over the last decade and the construction of the Jabal Sayid Copper-Gold project in Saudi Arabia (Equinox Minerals, 2011).

4.2.1 The Bid

On Monday the 28 of February 2011, did Lundin Mining Corp receive a hostile takeover bid for the whole company from Equinox. The tender offer was valuing its offer to C$4.8 billion in cash and shares. The announcement provides that once the offer is commenced that each Lundin Mining shareholder will be able to elect to receive consideration per Lundin Mining common share of either C$8.10 in cash or 1.2903 shares of Equinox plus $0.01 for each Lundin Mining common share. The Offer reflects a 26 per cent premium to the closing price of C$6.45 per Lundin share on the TSX on February 25, 2011. They also announce that the bid would be funded with a loan of $3.2 billion from Goldman Sach Partners and Credit Suisse Securities.

They did also present some of the highlights regarding a potential acquisition and what that may result in. Some of them where; (1) Equinox believes that the combination of Equinox's and Lundin's will position the combined company to deliver significant value to its shareholders through its superior strength in copper prices and strong growth profile. (2) Growth would be delivered entirely from lower risk expansions of existing operations and a project currently under construction. (3) The combination of Equinox and Lundin will also deliver a significantly higher copper production over the next six years to 500 thousand tons (Equinox Minerals, 2011).

4.2.2 Reactions to The Bid

On the 20 of March, Lundin Mining announced that after careful consideration of the bid that they recommend their shareholders to reject the tender offer from Equinox. Their recommendations to not accept the offer was based on several reasons, such as: (1) Equniox has undervalued the assets owned by the company, (2) They seek control without paying an adequate premium for the control. Since they day of the announcement the share has risen and the bid is now only 6 per cent over share price. This is substantially low for these types of transactions in this industry, where the average premium has been of 64 per cent since 2004 for transactions over $100 million. (3) There are no strategic benefits for Lundin Mining shareholders under the Unsolicited Offer. The acquisition would results in a company with high Africa and Middle East concentration and few, if any synergies with Lundin Mining's business and their lack of knowledge regarding minerals other than copper. (4) Also these differences would have a negative effect on the stock price and hence affect the shareholders negatively. (5) Due to the extensive loan for the funding of the bid the lenders to Equinox will have considerable influence over the business decisions of a combined Equinox and Lundin Mining. (6) The takeover would present increased financial risk due to that short-term cash flow will be utilized to pay for: lenders' fees; interest charges; and the principal repayments of the debt incurred to fund the offer (Lundin Mining, 2011).

4.2.3 What Lundin Mining Did

On the 29 of March 2011, Lundin Mining announced that its Board of Directors has adopted a limited duration Shareholder Rights Plan, also called a Poison Pill, to enable a full consideration of their strategic alternatives, develop and negotiate alternatives to maximize shareholder value. The Rights Plan also seeks to ensure the fair treatment of shareholders and to provide them with adequate time to properly assess any potential take-over bid without undue pressure.

Mr. Philip Wright, President and CEO stated "*This plan has been put in place to ensure that we have adequate time to explore all alternatives to bring value to Lundin shareholders.*"

The details regarding the pill were also revealed which explained that it was flip-in pill. As mentioned earlier, this meant that Lundin Mining now could offer its existing shareholders preferred shares far beneath the market price and thereby removing incentives for shareholders to sell share to Equniox.

On April 3, 2011 MMR a Chinese state owned mining company, announced its intention to make an all cash takeover offer for Equinox of C$7.00 per share, being a 33% premium to the 20 trading day VWAP of Equinox Shares on the TSX to April 1, 2011. This offer was described by Equinox as being "opportunistic" and *"Such a low premium is a fraction of premiums paid in recent acquisitions of base metal mining companies*".

Commenting on this, Mr. Phil Wright, Chief Executive Officer of Lundin Mining, said, "*This response by Equinox seems very hypocritical seeing that they are urging Lundin Mining shareholders to accept an offer that is significantly worse than what has been offered to Equinox's shareholders by MMR*." (EPC Engineer, 2011)

Mr. Lucas Lundin commented on the adoption of the pill by saying that he is not against selling if it achieves an excellent financial return to the shareholders but will not support selling at a bargain price (Lundin Mining, 2011).

Until this day, 30 of July 2011, there has not been any changes regarding the premium of the bid and both parties have not managed to negotiate any further deals. Equinox's CEO said that they had no urgent plans to sweeten the bid when there is no other competing bid against them. This may change because analysts have predicted that Lundin Mining may attract other company who wishes to secure assets of copper if copper prices continue to increase. (Bloomberg Businessweek, 2011)

4.3 Schaeffler Group & Continental AG

Schaeffler Group

In 1883, Friedrich Fischer develops the ball grinding machine, which allows grinding of large volumes of hardened steel balls, to absolute roundness. The innovation starts its success story all over the world and later that year a company was founded, which today is recognized as the Schaeffler Group.

The Schaeffler Group, based in the town of Herzogenaurach, Germany, is one of the largest German and European industrial companies in family ownership. The company is currently owned by mother and son Maria-Elisabeth- and Georg Schaeffler with Juergen Geissinger as the current CEO.

The company develops and produces high-precision products and parts for everything that moves: machines, equipment, vehicles as well as aviation and aerospace applications. The company is currently present in over 50 countries, at 180 locations and employs around 70,000 people worldwide. Its biggest brands are INA, FAG and LuK which are active in the automotive, industrial as well as in the aerospace divisions. As the company seeks to develop and enhance its products, a significant amount has been invested by the group into research and development, most recently in new R&D centers in Asia and North America. As the company is characterized by creative engineering and unconventional solutions, around 4,800 employees work in more than 32 research and development centers around the world, looking for future solutions. The group currently owns the rights to more than 14,000 patents and patent applications and around 1,100 inventions are file for patent applications every year. (Schaeffler Group, 2011)

Continental AG

The Continental corporation was founded in Hanover 1871. At the time it was known as the stock corporation “Continental – Caotchouch- und Gutta- Percha Compagnie. The manufacturing at the main factory in Hanover consisted of oft rubber products, rubberized fabrics, and solid tires for carriages and bicycles.

Today, with its around 148,200 employees working in 46 countries worldwide, Continental is the second largest automotive supplier in Europe and ranks among the top 5 automotive suppliers in the world. The company is divided into the Automotive Group and the Rubber Group and consists mainly of six division,

- **Chassis & Safety** embraces the company's core competence in networked driving safety, brakes, driver assistance, passive safety and chassis components.
- **Powertrain** represents innovative and efficient system solutions for powertrains.
- **Interior** combines all activities relating to information in the vehicle.
- **Passenger and Light Truck Tires** develops and manufactures tires for compact, medium-size, and full-size passenger cars, as well as for SUVs, vans, motorcycles, and bicycles.
- **Commercial Vehicle Tires** offers a wide range of truck, bus, industrial, and off-road tires for the most diverse service areas and application requirements.
- **ContiTech** develops and produces functional parts for the automotive industry.

In 2010, sales reached an estimate of 26 million Euros. (Continental AG, 2011)

4.3.1 The Bid

On 15 July, 2008, the Schaeffler Group announced a takeover bid for the three times larger Continental AG at a price of €69,37 per share. The aim was to acquire a strategic shareholding of more than 30% in the company (eBearing, 2008).

4.3.2 Reactions to The Bid

The Executive Board of Continental AG at the time rejected the offer because they did not think it represented the true and full value of the company. Thus, they rejected the bid and also attacked the logic of the bid by stating that: "The strategic benefits of a closer collaboration of both companies are very limited. Schaeffler would benefit from Continental, but Continental not from Schaeffler".

Schaeffler Group on the other hand, insisted that its offer was "based on sound business logic" and denied that they in any way have acted unlawfully, as suggested by Continental (eBearing, 2008).

As the negotiations went on, the Schaeffler Group bypassed the board of directors of Continental AG and instead turned and went directly to investors and shareholders, offering them €70.12 cash for each of their shares. They were able to do so because of the previously proposed official bid made by the group on Continental AG. By lodging an official offer, Schaeffler were not obligated to make another and could therefore under the radar creep to majority control by gaining control over shareholders individually. Furthermore, the Schaeffler Group secured to buy 36 per cent of Continental's stock at a total price of €11 billion through several swap deals that banks organized on its behalf (Bloomberg, 2010).

4.3.3 What Continental AG Did

As mentioned earlier their first action was to reject the bid and attack the logic of the bid. In its final attempt, Continental tried to look for a 'White Knight' as they evaluated different hedge funds and other tire manufacturers. They failed to secure any serious interest and as negotiations went on, Schaeffler finally decided to raise its offer from €70.12 to €75 which values Continental AG to a total of €12.1 billion. Continental first rejected the bid but later on settled for an agreement in which the conditions will be official by the year of 2012 (NY Times, 2008). These are:

- Schaeffler will buy more than 49.99% of Conti until 2012
- Conti will remain publicly traded
- Offer remains at €75 per share
- Schaeffler will pay up to €522 million to cover any financial impact on Conti
- Conti's Hanover headquarters will remain in place
- Conti's relative debt will not increase without consent
- Both companies will seek to develop synergistic strategic projects
- Conti has the authority to raise Schaeffler's ownership limit
- Conti CEO, Manfred Wennemer, leaves the company
- Conti shareholders have until September 16 to tender their shares
- Former German Chancellor Gerhard Schroder is authorized to enforce the contract

(eBearing, 2008).

5 Analyze

5.1 Comments and Recommendations: Mittal & Arcelor

According to what we have managed to learn from the Arcelor-Mittal case, a hostile takeover goes rarely flawless or without opposition. Since dealing with such a big player like Arcelor, one might think that the opposition faced by Mittal Steel was inevitable, and surely enough several governmental organs and actors opposed the bid issued by Mittal.

What Arcelor did to prevent the hostile takeover to a start, was to develop a communications plan, 'Project Tiger', in hope to convince its shareholders not to sell their stocks. Furthermore, they looked for alternatives, thus engaging negotiations with Russian Severstal in hope to create a mergence through what in media and press had been referred as a 'friendly' merger. The deal never closed and Arcelor failed to adopt what potentially could have been a "White Knight" defense strategy.

What we would have liked to see from Arcelor's side in its line of fending off the hostile bid from Mittal Steel, is perhaps that they would have considered implementing other strategic defense strategies, such as either Staggered Board or even the Poison Pill defense. These options are available of course only to Arcelor before receiving a hostile bid. Arcelor could have had issued a proposal with the consent from their shareholders, to implement certain defense actions that would have had a pro-active effects when facing a hostile takeover. Furthermore, we believe it is rather ignorant of Arcelor not to have prepared certain defense measurements against future potential hostile takeovers, based on the share size and attractive market position of the company. One would think that such a well-established and big company such as Arcelor, competing globally, would have had developed defense measurements to fend off any hostile attempt on the company.

With the implementation of the poison pill defense measurement, Arcelor could have potentially diluted their stocks, thus forcing the bidder to have consensus from the board of directors, in order to be able to gain ownership over enough amount of stocks to control the company. Furthermore, the poison pill defense strategy also works as a tool for creating more time. More time for the target company to evaluate and analyze the bid and logic behind it while potentially engaging negotiations with the bidder in hope to increase its bid offer, thus receiving a higher bid premium which in the end increases the wealth of the shareholders.

A flip-in poison pill enables the target company to issue new shares when facing a hostile bid. The new shares issued, are available to the target company's shareholders only and are usually sold at a price far beneath the market price of the share. This makes it more difficult for the bidder to gain a majority stake of the shares in the company, thus buying the target firm some time to reflect over the actual bid as well as potentially increasing the bid premium received from the bidder.

Furthermore, the poison pill defense strategy could be implemented in combination with for instance, the staggered board defense strategy. A combination of these two defense measurements would potentially have made the bid issued by Mittal, far more time consuming and probably a lot more expensive. In practice, the Staggered Board defense strategy, prohibit a replacement of the entire board of directors of the targeted firm in one single year. By implementing the Staggered Board strategy, the acquiring firm is only allowed to replace parts of the management and board of directors each year, even if they have control and the majority in shares.

In conclusion of this case study, based on the case study on Mittal-Arcelor and the different strategies used in defense, we believe that the actions taken by Arcelor was relatively rationale and reasonable. They did not implement any official conventional defense strategy, but instead developed a communications plan, in hope to persuade its shareholders not to sell to Mittal Steel. They engaged negotiations with Russian Severstal, the possible White Knight for Arcelor, but the deal never went through. According to our research, there were possible alternatives for Arcelor in defending against the hostile bid. For instance, they could have implemented either a poison pill defense strategy, a staggered board defense strategy or even the two of them combined for the best potential result. Instead, Mittal Steel increased its offer for Arcelor and this time, a merger between the two giants was a fact.

5.2 Comments and Recommendations: Lundin Mining & Equniox Minerals Ltd

What we can see after following these events that has taken place between Lundin Mining and Equniox, is that it is proven that the poison pill serves as an excellent defense measure. It was show in the case that the implementation of the pill really stopped Equinox in its tracks and created time for Lundin Mining. Gain time to really gather its resources, investigate the bid and give its shareholders the opportunity to make an unstressed and informative decision.

Also time to consider further strategically alternatives, attract other bidders and initiate negotiations that would benefit the shareholders wealth. All these effects go hand in hand with what was mentioned in the framework regarding poison pills by Pearce & Robinson (2004) in 2.4.2.

From our view Lundin Mining proceeded with all the right measures to fend off or at least stop a hostile takeover. By fast reacting to the bid and doing an excellent work on dissecting the offer and attacking the logic of the different part of the bid, they probably put a lot of pressure on Equniox and induced a lot of trust in its shareholders mind, which was explained by Weston et al (2004) in 2.5.1. Also, by fast introducing the adoption of the pill they showed that they really are serious with their arguments and will not move their stand until they have reached better understanding regarding the bid.

We feel that they now could take two possible directions. First, if their intentions are to get a better offer they could now try to find a White Squire or find a second biding company. This action would probably not scare away Equniox but instead even further pressure Equinox to engage in a bidding contest to secure Lundin Mining's assets. Second, if their intentions are to completely cancel the bid, with the consent from their shareholders, they could now try to find a White Knight or continue to stall the negotiations until Equniox finds the takeover to unattractive and time consuming and perhaps in a worst case scenario proceed with a Crown Jewel strategy combined with litigations.

5.3 Comments and Recommendations: Schaeffler Group & Continental AG

What we have been able to learn from the third and final case about Schaeffler & Continental AG is once again that a company which is publically listed can never be 100 per cent safe from future hostile takeovers. Even if the targeted company's size succeeds the bidder's by many folds, it is still very possible for the bidding company to gain control or influence over the targeted one, as this third and final case in our thesis evidentially shows.

In the beginning of the negotiations, Continental AG did refuse the bid offered by Schaeffler, stating it to be an unfair evaluation of the company while attacking the logic of the bid, asking their shareholders not to sell to Schaeffler Furthermore, Continental AG stated that a fusion would much more benefit the smaller Schaeffler than it ever would Continental AG. The negotiations were prolonged and Continental AG hired an investigator in order to state what they believed were a fairer evaluation of the company. As negotiations continued, Schaeffler managed to secure a substantial ownership of more than 30 per cent of Continental AG through several banks and financial deals. Schaeffler continued buying single shareholder's stake in the company as they slowly worked towards even more influence over Continental AG. At this point, we would have liked to have seen more defense measurements implemented by Continental AG, for example the poison pill defense strategy, in order to potentially make the bid offered by Schaeffler more costly if not more time consuming, allowing them to find another way out. No such defense measurement was taken but instead Continental AG tried to adopt a White Knight at the very end of negotiations, which failed. The negotiations have now ended with Schaeffler being allowed to buy up to 49.99 per cent of Continental AG by the year 2012.

5.3 Summary

To sum up our thesis about "*Mergers & Acquisitions: Hostile takeovers and defense strategies against them*", we have learned that there are three common ways of making acquisitions today. They consist of merging with another company, purchasing the target company's stocks and the purchase of the target company's most vital equities. If the main reason for acquisition is to seek productivity improvements, it is called a vertical acquisition. Horizontal acquisition is characterized by motives such as improving presence and increasing market share, while a conglomerated acquisition aims to diversify one's risks by investing in other industries.

We further conclude that hostile takeovers very much have occurred in the past, as they are still occurring today. Additionally, there is a thin line between whether an offer being hostile or friendly, since a friendly offer or takeover eventually could develop into a hostile bid.

The reasons and motives behind a hostile bid, is pretty much the same as with other acquisitions. By merging with or acquiring another company, the bidder seeks advantages and cost savings through, for instance, economy of scale and potential synergies. Furthermore, hostile takeovers are often used when the motive or goal of the bidder is to replace an ineffective management of a company with strong growth potential.

There are several defense measurements for a target company to implement when facing a hostile bid or offer. Some of them which we have presented are pro-active while others are re-active. The pro-active ones, which are to be implemented and prepared before a hostile event, are; staggered board, golden parachute, super-majority amendment and the poison pill defense strategy. The re-active ones, which are to be implemented once facing a hostile bid, are; the white knight and squire defense strategy, greenmail, litigation and the crown jewel defense strategy. These defense measurements are preferably implemented in combination of each other and do not guarantee a withdrawal of the hostile bid offered, but can help stagger the bid as well as potentially increase the bid premium offered by the bidder.

We will not present a short comparison between the three case studies which aims to get a better overview of their actions and results.

Cases	Defense measure	Defense measure	Result
Arcelor & Mittal	Attack the bid	White Knight initiative	Merger
Lundin & Equinox	Attack the bid	Poison Pill initiative	Unsettled/halted
Schaeffler & Continental	Attack the bid	White Knight initiative	Merger planed 2012

What we can observe from the chart above is that that each and every one has reacted initially in the same order, with attacking the logic of the bid. There after there are some differences in the second line or action of defense. What is interesting to notice is that in the cases where a white knight has been used it has eventually resulted in a merger whit the hostile company and not really resulted in a continued independence. However, from the Lundin & Equniox case the implementation of the poison pill has halted the whole negation process and is until this day still unsettled and Lundin remain independent. We believe that the result regarding the Lundin & Equniox case is a result of the true effectiveness of the poison pill and its construction. This truly stops and halts a hostile takeover attempt in its tracks and therefore has made it too hard for Equniox to overcome further negation processes. Regarding the white knight strategy it seems to merely ignite a bidding contest which further sweetens the bid and do not actually stop the takeover. Something that we have discussed earlier is the lack of defense measure taken from both Arcelor and Continental AG. We feel that it is odd that they have not chosen to implement more defense measure, but this may have its reasons in what final achievement they wish to accomplish.

6 Conclusions & Implications

What we have managed to learn from the three case studies about Arcelor & Mittal, Lundin Mining & Equniox and Schaeffler & Continental AG is that most companies can never be totally certain about future hostile takeovers. Given this reason, we believe it is crucial today for any company to develop and prepare some kind of a defense strategy, especially if the company is as big as Arcelor was before the merger with Mittal. Furthermore, we were actually surprised about the lack in defense measurements taken by Arcelor against Mittal, considering the share size of former Arcelor. One would assume that such a big player as Arcelor would be able to fend off almost any hostile attack, but evidently that was not the case. In contrary, when analyzing the case of Lundin Mining & Equniox, we found that Lundin Mining initially attacked the logic of the hostile bid offered by Equniox. They then continued adopting the poison pill defense strategy, specifically the flip-in method, and managed to put the deal on hold as they got more time to reflect and negotiate the terms of the bid and has not still been overtaken. As with the case of Arcelor & Mittal, we were once again surprised that a smaller company as Schaeffler, with a share third size of Continental AG, has managed to engage in hostile negotiations and not to mention, settle a deal with the giant Continental AG in 2012.

It is now known that there are several different defense measures one could use to fend off a hostile takeover against a firm that is targeting your company. It has also been shown that these different measures have various motives behind their implementation and their outcomes are not always 100 per cent accurate or forecasted. Some are very delicate constructed and some have very simple logic behind them. What we also have learned is that there is no one-size fit all solution when facing a hostile takeover. There are many variables to consider before implementing them and not all of them may be offered on every occasion.

After reviewing the cases and data presented in the literal review, we could find that there were some defense measures that were more common and favorable to implement in the event of a hostile bid than others. This was observed both regarding defense measures that where proactive or reactive to a hostile bid and the reason for this was often in line with their effectiveness to stop a bidder and the time it took to implement them.

Also observed was that a lot of these measures are more effective in combination with other defense measure, rather than implemented on their own. This shows us the complicated world of the corporate business where there is no room for errors and a lot of preparation work has to be done to have a smooth transaction. What we also could observe was that there is no pre outlined steps in how a hostile bid should be met and countered, instead the process depends more on the negotiations and the measures taken in the right time.

Something that also is important to mention is that all of these defense measure often can lead to controversial discussion about which party they really serve. Is it the board of directors' interest or the shareholders interest that are taken in to consideration? What gradually is occurring is that more power is shifting from the board of the directors towards the shareholders, which will be more involved in the process of implementing different defense measurement.

Now, try to give somewhat of an answer on the purpose of the thesis; *investigate which defense strategies are the most effective and easiest to put into practice?*

We feel, after reviewing our literal work that a combination of a good prepared plan that includes both proactive measures and reactive measures is to prefer, also that a combination of different defense measures in the proactive group and reactive group measures is the ultimate defense. Depending on if you intentions are to fully make the bidder withdraw their offer, in consent with the shareholders, or to prevent immediately control of the company and later pressure them to additionally sweeten their bid, there are several combinations to consider.

If a majority of the shareholders have agreed by voting, before or after the bid to not accept a takeover in any condition then there is almost no limit on what combinations of defenses you could put into practice to make the bidder cancel their offer. Probably the most effective and easiest combination would be with a well prepared proactive defense strategy and several reactive alternatives in hand. The plan could include a staggered board, poison pills of flip-in and flip-over structure, a super-majority amendment and a well-covered parachute plan. All these proactive measures are fairly easy to implement to the company stagger and do not take more than a shareholders voting to approve them. Regarding the options for reactive measurements in the target company's attempt in defending against a hostile bid, they could for instance implement the White Knight defense strategy, conduct litigations in order to gain more intelligence about the bid offered and to strongly oppose the rationale of the bid.

Commonly, the target company does not exclude the possibility of a merger through a hostile bid, but still wants to be relatively prepared if such an event should occur. Regarding the pre-active measurements, we feel that the implementation of the staggered board defense strategy combined with the poison pill flip-in defense structure is preferable in this scenario. And as mentioned before this is a good way of hindering the bidder in gaining immediate control over the target company. Furthermore, we believe that these options are the most effective and easiest to implement, since they only require acceptance at a shareholders meeting and are implemented automatically when facing a hostile bid. Regarding the re-active measurements, instead of using the white knight defense strategy should adopt the white squire defense measurement, which would mean the invitation of a third party, hence pressuring the bidder to potentially increase the bid premium. Additionally, one should avoid the majority amendment defense measurement, since it can help stagger bids offered to the target company. By implementing these defense measurements while avoiding others, the effects would be sufficient and effective enough in order for the target company to prolong the bid and receive more time to evaluate the bids offered to them.

For future research and development of the subject presented in our thesis, we would like to point out some of the aspects we felt could be complementary in addition to those areas we already have touched upon in this thesis. Since our collection of data consisted only of secondary data, it didn't allow us to analyze and conclude our findings as deep and broad as if we had collected both secondary and primary data, from for example interviews. Furthermore, we believe an increase of case illustrations in a thesis of this kind, would have given the reader a more graspable understanding of the different defense strategies described in our thesis and their practical implications. Lastly, we would like to promote a discussion about the defense strategies available exclusively to the shareholders of a targeted firm and what the affects and outcome of the different implementations would mean for a single shareholder as a contrast to looking at the effects on a company as a whole.

We never know when or where the next hostile takeover will take place but one thing is certain, it will happen again and the efficiency in protecting against it will surely depend on how well prepared the target company is.

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