

Key issues of takeover regulation

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Enforcement Aspects of Takeover Regulation
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Takeovers are good for market development and for shareholders, but:

- there is a lot of money involved
- there is a huge temptation to earn some extra money in the takeover process
- there could happen takeovers abusing
- shareholders so the takeovers have to be regulated appropriately

Key issues of takeover regulation (1):

- transparency
- impact on trading
- insider trading
- enforcement

Key issues of takeover regulation (2):

- minority shareholders' rights
- majority shareholders' rights
- appropriate balance between rights of majority and minority shareholders

Transparency:

- most important for investors
- setting the thresholds at appropriate level
- calculation of thresholds
- disclosure of passing thresholds

Transparency most important for investors:

- allows for timely reaction of investors
- makes investors more responsible
- delegates part of supervision to market participants

Setting the thresholds at appropriate level:

- absolute or relative values (i.e. passing the threshold or changing the ownership by given amount)?
- both absolute and relative?
- votes or shares?
- both votes and shares?

Calculation of thresholds:

- single companies or capital groups?
- single persons or groups?
- acting in concert
- passing the thresholds without any activity

Disclosure of passing thresholds (1):

- how the information has to be provided?
- when the information has to be provided?
- by whom the information has to be provided?

Disclosure of passing thresholds (2):

- where the information will be available?
- how long this information will be available?
- is there any track record of changing
- ownership in particular companies?

Impact on trading:

- accumulation of shares could affect price discovery mechanism
- there should be solutions in place to address this problem, eg:
 - block trades
 - tender offer for specific amount of trades

Insider trading:

- information on increased demand for shares is a price-sensitive information
- takeovers are good opportunities for insider trading
- problems with establishing when the information becomes price-sensitive
- problems with establishing who and when learned the information
- many people involved in the project

Many people involved in the project:

- management
- staff
- consultants
- lawyers
- auditors

Enforcement:

- disclosure- transparency
- requirements to be met after passing thresholds
- sanctions

Requirements to be met after passing thresholds:

- disclosure
- launching a bid
- selling the shares
- deadline for meeting these requirements
- voting restrictions before meeting these requirements

Sanctions:

- fines imposed on companies
- delisting
- fines imposed on members of the board

Minority shareholders' rights:

- right to know – transparency
- right to sell – launching bid
- ... at fair price – establishing minimum price in a bid

Majority shareholders' rights:

- they have the money
- their rights also have to be respected
- possibilities for joint voting
- squeeze-out

Appropriate balance between rights of majority and minority shareholders:

- small need to be protected because they are small
 - they provide liquidity to the market
 - they have less possibilities to defend themselves
- big need to be protected because they are big
 - they provide capital to the market
 - they push harder for more efficiency (they are “better owners”)
 - they can leave the market easier

Key issues of takeover overregulation:

- markets less efficient
- markets less developed
- investors earn less
- higher costs of raising capital
- minority shareholders rights can be used
- against minority shareholders

Thank you for your attention!

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