
Carlo Drago
S. Sepe (2007): “Private sale of corporate control: why the european mandatory bid rule is inefficient”

Discussion

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The Directive on Takeover Bids

Intended to be one of the main pillars of the economic reform boosting Europe’s competitiveness. Four fundamental principles:

- **Board neutrality rule**
- **Breakthrough**
- **Reciprocity**
- **Protection of minority shareholders (the Mandatory Bid Rule or MBR)**

Transposition of the Directive on takeover bids in the EU, January 2006

Transposition of Directive

- 68% yes
- 32% no

Board neutrality

- 68% yes
- 28% no
- 4% expected yes

Breakthrough rule

- 88% yes
- 12% no

Reciprocity

- 52% yes
- 44% no
- 4% yes*

Directive on takeover bid transposition

- Higher transposition of the Directive for transition countries (Lithuania and Latvia in example).
- Lower transposition for such countries as Italy, Belgium and Spain (higher number of listed companies and higher market capitalization).
- Typically the transposition of the Directive is associated with the transposition of the breakthrough rule, the board neutrality but at the same time no reciprocity. Such pattern characterizes for instance Lithuania and Latvia.

The arguments in favor of MBR

• “The purpose of the directive in facilitating takeover activity through efficient takeover mechanisms required the removal of some of the main company-related obstacles permitted under or created in national company law; these obstacles meant that takeovers could not be undertaken on equal conditions in the different Member States...”

• “One is based on the distributive-concerned claim that the MBR prevents the expropriation of minority shareholder value from opportunistic buyers, whose principal expectation in seeking control of the company is the extraction of high DPB...”

• “The other, instead, is grounded on the allocative-efficiency claim that the MBR, by enhancing the minority share value, lower the corporation’s cost for raising equity capital and, in turn, promote more effective corporate structures.”


Discussion
The arguments against MBR

- “Level playing field “Takeover regulation”: The harmonized mandatory rules provided by the Directive do not suit the widely diversified control and ownership patterns characterizing European countries. A default regime of rules would have been a better choice to promote a competitive European capital market. A default takeover regulation, supported by a few strong recommendations of the Commission as to some basic common principles, would have secured a beneficial competitive pressure among Member States in corporate lawmaking…”

- “The European MBR: can be considered efficient only if the aggregate values of the inefficient transactions that it deters is higher than the aggregate value of the efficient sales of control that would occur in its absence…”

- “..There are three reasons why this is unlikely to be the case, at least in Europe.”

MBR is definitely inefficient...

- “Adoption of an harmonized mandatory approach”
- “Confusion between distributive and allocative objects”
- “Failure in protecting minority interests.”
- “The rule may lead to further increase in corporate ownership concentration”
- “the European legislator seems to neglect a basic instrument that minority shareholders, who often are institutional investors use to protect their corporate interests: the acquisition of diversified portfolios.”


Discussion
Some empirical questions to answer

- What are the economic foundations of the MBR? Are they empirically grounded?
- What are the impacts of the MBR on minority shareholder protection? (is there a specific causal relationship?)
- Are there different approaches in measuring minority shareholder protection? (can MBR impact on them?)
- What are the legal and economic instruments to improve the minority shareholder protection?
- In general what is the level of DPB (dissipative private benefits) in Europe and in the US? (is it decreasing or increasing over time?)

MBR: economic and empirical foundations

- What are the economic foundations of the MBR? Are they empirically grounded?
- Different international models of MBR
- Leximetric approach to MBR (Lele Siems 2006)
- Economic foundation (I): incentive to create hostile takeovers, with an incentive for management toward efficiency
- Are countries which adopt MBR at the same time characterized by an higher management efficiency?
- Empirical verification ex ante (Goergen Martynova Renneboog 2005)
- Empirical verification ex post (MBR impact)

Discussion
Impact of MBR on Minority Shareholder protection: is there a causal relationship?

- What are the impacts of the MBR on minority shareholder protection? (is there a specific causal relationships?)
- Economic foundation (II): minority shareholder protection
- Are countries which adopt the MBR at the same time characterized by an higher minority shareholder protection?
- Empirical verification
- The case of Italy: MBR and higher DPB. See Dyck and Zingales (2004)
- Case of Italy (II): lower DPB in the last years? Consob (2006)

Approaches to measuring minority shareholder protection

- Are there different approaches in measuring minority shareholder protection? (can MBR impact on them?)
- DPB measures (Dyck Zingales 2004)
- Leximetrical approaches? (Lele Siems 2006)
- Transparency and disclosure measures (Patel Dallas 2002)
- Other possible measures related to specific key aspects of minority shareholder protection. For instance Independent Directors (Santella Paone Drago 2005)
- Index of minority shareholder protection using different measures

Minority Shareholder protection: the impact of disclosure and compliance

- What are legal and economic instruments to improve shareholder minority protection?
- Disclosure and compliance as fundamental tools to ensure minority shareholder protection: the case of independent directors (Santella Drago Paone 2007)
- Market monitoring (role of the rating agencies)
- Company signalling and opportunism
- “...Rare independent directors?” or an “...High number of independent directors”: the number does not ensure the quality of disclosure
- Failures of Corporate governance (Melis 2005)


Discussion
Recent data on DPB: a review

- In general what is the level of DPB in Europe and in the US? (is it decreasing or increasing over time?)
- Recent DPB computation for Italy (Consob 2006)
- Trend?

Bibliography

- Santella Paone Drago (2005) How Independent are Independent Directors?


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