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Review Article

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Strategies Against Mergers & Acquisitions (M&A) for Public and Privately Owned Companies: A Technical Note

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1. Introduction

Mergers and Acquisitions (M&A) are fundamental strategies for corporate growth, diversification, and consolidation. However, these transactions can pose significant risks to companies targeted for acquisition, particularly when the approach is unsolicited or hostile. Both public and privately owned companies must develop robust defense strategies to protect their independence or ensure optimal outcomes if an acquisition or merger becomes inevitable. This teaching note explores the various strategies companies can employ to defend against M&A threats. These strategies are influenced by factors such as company size, market conditions, governance structures, and geographic location. By examining these tactics, students will gain a deeper understanding of how firms can safeguard their interests in the face of M&A activity.

2. Types of M&A

Companies may face several types of M&A transactions, each with distinct characteristics and implications.

2.1 Hostile Takeovers

Unsolicited and often aggressive attempts by an acquirer to take control of a target company against the wishes of its management. These are typically financed through leveraged buyouts (LBOs) or tender offers.

2.2 Friendly Acquisitions

Both parties agree to the terms of the acquisition, often due to strategic alignment or mutual benefit. These are usually negotiated and involve due diligence.

2.3 Merger Negotiations

The combination of two companies to create synergies and efficiencies. These can be horizontal (between competitors), vertical (between companies in the same supply chain), or conglomerate (between unrelated businesses).

3. Expanded Defense Strategies Against M&A

3.1 Poison Pills (Defensive Tactics)

Poison pills are designed to dilute the value of shares, making acquisitions more expensive or less attractive. They are often implemented through shareholder rights plans, allowing existing shareholders to purchase additional shares at a discount if a hostile bidder acquires a certain percentage of the company.

Examples

Netflix (2012): Netflix implemented a poison pill strategy after activist investor Carl Icahn increased his stake. This allowed other shareholders to buy shares at a discount, diluting Icahn's holdings and making a takeover more costly [1].

Embraer (2017): The Brazilian aerospace company adopted a poison pill to fend off Boeing's bid, making the acquisition less cost-effective [2].

3.2 Golden Parachutes

Golden parachutes are compensation agreements that provide significant financial rewards to executives in the event of a merger or acquisition. These agreements can deter hostile takeovers by increasing the cost of acquisition.

Example:

Safeway (2000): Safeway's executives were granted golden parachutes that would trigger in the event of a hostile bid, significantly increasing the cost of acquisition [3].

3.3 White Knights

A white knight is a friendly company that steps in to acquire the target company in place of a hostile bidder. This strategy helps maintain the company's independence or aligns the acquisition with its strategic goals.

Examples:

Mitsubishi UFJ & Aozora Bank (2004): When Aozora Bank faced a hostile takeover by foreign investors, Mitsubishi UFJ intervened as a white knight, preserving the bank's domestic ownership [4].

RJR Nabisco (1988): During the leveraged buyout (LBO) of RJR Nabisco, the company considered a friendly offer from another bidder before ultimately being acquired by a hostile acquirer [1].

3.4 Staggered Board (Classified Board)

A staggered board ensures that only a portion of the board of directors is elected at each annual meeting. This prevents a hostile acquirer from quickly gaining control of the company by winning a single election.

Examples:

AIG (2008): AIG used a staggered board system to resist hostile takeover bids during the financial crisis [3].

Bayer AG (2018): Bayer employed a staggered board to protect itself from unsolicited takeover offers during its acquisition of Monsanto [2].

3.5 Strategic Alliances and Joint Ventures

By forming strategic alliances or joint ventures, companies can strengthen their market position and create additional barriers for hostile bidders. These alliances provide the target company with more resources and make it more attractive for long-term investors.

Examples:

Renault-Nissan Alliance (1999): Renault and Nissan formed a strategic alliance to strengthen their position in the global market, preventing hostile takeovers by other companies [4].

Comcast & Time Warner Cable (2014): Charter Communications formed a strategic alliance with Time Warner to resist Comcast's hostile bid [1].

3.6 Employee Stock Ownership Plans (ESOPs)

ESOPs involve creating an employee-owned structure in which workers can purchase shares in the company. This increases employee stake and loyalty, making it harder for an acquirer to gain control.

Examples:

Southwest Airlines (2001): Southwest Airlines employed an ESOP strategy to increase employee ownership, making the company more resilient to takeover attempts from US Airways [3].

John Lewis Partnership (2000s): John Lewis implemented an employee ownership model, making it more difficult for a hostile acquirer to take control [2].

3.7 "Pac-Man" Defense

The "Pac-Man" defense is an aggressive tactic in which the target company attempts to acquire the company attempting the hostile takeover. This move shifts the power dynamic and can deter the hostile bidder.

Example:

Inco Ltd. (2006): Inco Ltd. launched a counterbid to acquire its acquirer, Falconbridge, which was attempting a hostile takeover [1].

3.8 Crown Jewels Defense

This strategy involves selling off the most valuable assets (the "crown jewels") of a company to a friendly party, reducing the appeal of the company to hostile acquirers. While effective, it often comes at the cost of losing valuable assets.

Examples:

CSX Corporation (1987): CSX used the crown jewels defense to protect itself from a hostile bid by offering to sell its most valuable asset, its railroad business, to a friendly bidder [3].

3.9 Dual-Class Shares

Companies with dual class shares issue different classes of shares that give certain shareholders, often the company's founders or insiders, enhanced voting power. This makes it more difficult for a hostile acquirer to gain control.

Examples:

Google (2004): Google implemented a dual class share structure to allow its founders to maintain control of the company even after going public [4].

Alibaba (2014): Alibaba used a similar dual-class share structure during its IPO, allowing its executives to retain control despite going public [2].

3.10 Leveraged Buyout (LBO) Defense

In an LBO defense, a company's management or a group of investors uses debt to buy out the publicly traded shares, taking the company private and fending off a hostile takeover.

Examples:

RJR Nabisco (1988): The RJR Nabisco leveraged buyout (LBO) is one of the most famous examples of using LBO defense to avoid a hostile takeover [1].

Jagran Prakashan (2012): In response to a takeover attempt, Jagran Prakashan's management consortium initiated an LBO, preventing the hostile acquirer from gaining control [3].

4. Conclusion

M&A activity is a common feature in the business world, but it presents significant risks for companies, both public and private. The strategies outlined above provide companies with various tools to defend themselves against hostile takeovers and unwelcome mergers. Each strategy offers specific benefits and risks, depending on the company's situation, market conditions, and regulatory environment. By understanding these strategies and analyzing global examples, students can better appreciate how firms can maintain control or maximize value in an M&A scenario. The choice of defense strategy should align with the company's long-term goals, shareholder interests, and the broader market context [5,6].

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