Hostile Takeovers and Defence

Frequently, hostile takeover attempts are the result of a friendly acquisition bid rejected by the board of the target company. As merely to "dislike" a suitor is not sufficient, common reasons given are that the acquirer seems unable to fund the offer or that it fundamentally undervalues the target.

As a subsequent step, the suitor might try taking control by directly approaching target shareholders: This can be done by either launching a tender offer (i.e. bidding for target shares at a premium above market price) or stimulate a proxy vote (i.e. influencing shareholders to replace the target company's board with a more takeover friendly one which will support the change of ownership).

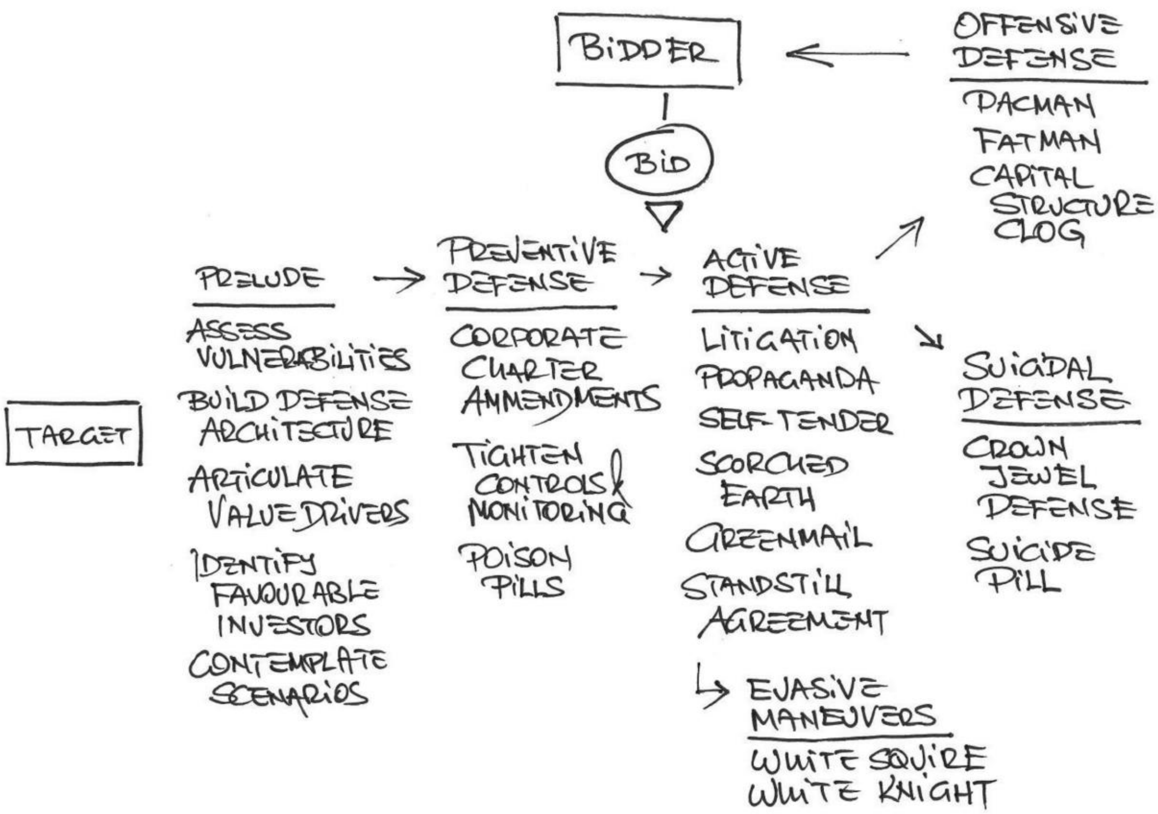
Whilst the success of takeover attempts foremost depends on whether target company shareholders are happy with current management and share price performance, there are several tools and strategies, which can be used by resisting companies against hostile takeovers.

Preventive, pre-offer mechanisms aim to deter attacks in the first place. For instance, a company can add certain clauses to its charter, so-called shark repellents: Triggered by a hostile takeover attempt, they make a company unappealing to the would-be acquirer. However, they could be detrimental to shareholder value as well:

- A Poison Pill allows current shareholders in the target company to purchase more shares in the case of an attempted change in ownership: The voting rights of the current shares will be diluted, with the potential acquirer having to purchase more shares to reach control, making the takeover harder and less attractive. (Flip-In: Established shareholders allowed to buy shares at a significant discount; Dead-Hand: New shares automatically issued to existing shareholders once a certain number of shares has been purchased by the unwanted acquirer; No-Hand: Prohibits redemption of the pill within a certain period of time).
- A Staggered Board (i.e. directors are elected at different times for multi-year terms) makes a proxy fight time-consuming.
- A Supermajority requires a qualified majority vote (majority over 50 per cent, such as 60 per cent or higher) in order to confirm a takeover by another company.
- A Fair Price requires companies making takeover offers to pay the shareholders at least a „fair price" defined earlier (e.g. highest price paid for the shares of a bought company recently).
- A Poison Put refers to issuing bonds containing a covenant that in case a target is acquired, the bonds must redeemed prior maturity. Hence, an acquirer will be obliged to instantaneously repay the outstanding debt, thus inducing financial strain.
- Golden Parachutes decrease the value of a target´s assets through high severance packages (e.g. stock options, bonuses, increased severance pay).

Post-offer defence mechanisms are counteractions after a target company receives a bid for a hostile takeover. Next to intense lobbying (i.e. media campaign with messages, such as: the offer is too low, shareholder value-creating steps are about to be implemented in due course) there are several tactics that can be applied in parallel, such as:

- As a usually costly defence, Greenmail refers to a target company buying back own shares from a bidder in pursuit of a hostile takeover.
- The Crown Jewel defence involves a target selling core assets, often at a discount, to a (friendly) third party or spinning them off into a separate entity.
- The Pac-Man defence occurs when a target company attempts to buy into its potential acquirer with the goal to obtain controlling interest: It is only feasible, if the target has sufficient financial resources avail.
- The White Knight defence involves the acquisition of the target by a friendly partner company.



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