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Cross-border Takeover Regulation and Control
The effect of short-termism in the UK market: The Cadbury
experience

MSc International Business Economics

Master's Thesis

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Executive Summary

Mergers and Acquisitions are considered to be a great strategic tool for a company expansion into international markets. Moreover, as such, they are often considered to be a good method how to secure international competitive position around the world. Despite the popularity of M&A, disturbingly low number of successful, finished transactions follows the trend. It has been estimated that every third of M&A is a failure because of many different reasons. The United Kingdom in particular is characterized by a great interest in takeover activity (Ali et al. 2016).

This thesis focuses on issues that are related to the government involvement and control power, specifically in cross-border takeovers that occurs on the pre-stage deal. However, despite the seriousness and importance of this problem, only little has been research by the scholars so far that would cover the problem in its wholeness. Hence, this master thesis examines the matter of government control and its impact on M&A and the impact of short-termism and the outcome for the deal.

Despite the companies' growth and increase in productivity rates, wages in the UK has been severely reduced particularly for the middle-class earners. One of the significant reason behind this trend is a takeover activity that has become very short-term oriented. Subsequently, the high number of takeover deals are likely to be characterized as hostile bids. The findings have implied that the vast number of the takeover activity in the UK is not favorable towards the creation of long-term shareholder value that brings harmful consequences to the industry, UK economy and the whole society. Due to the lack of takeover intervention and legal takeover setting in the UK, not much is being done for the reversal of this short-term problem and its consequences. This is a reason why the link between the takeover regulation and short-term shareholder orientation had been chosen for further analysis. The contribution of the paper is thus an argument that will evaluate whether there is a necessity for more progressive reform of takeover regulation. Whether regulatory bodies in the UK should re-evaluate how the takeovers are being operated. The heated discussion over the media and former research papers have already showed that the current institutions and the whole regulatory regimes start to not be adequate (Davis et al. 2013).

Furthermore, the paper identifies the possible causes when the government can begin with their intervention and analyzes it more thoroughly along the way. The main purpose is to define to what extend the government and other competent organizations, can get engaged, what are the tools that are possible to use and lastly in which situations the regulatory organs can get engaged. Furthermore, the effect and result of such involvements are taken into the consideration as well. The focus is put

primarily on the relationship between foreign firms and local ones (domestic). Thus, comprehensive examination of cross-border M&A has been made.

In order to support the theoretical knowledge, found in the literature review, one practical case from the UK business setting that experienced government intervention in their pre-deal stage of their bids and simultaneously an issue of shareholders short-term behavior which significantly influenced the deal, had been chosen and analyzed. Both engaged companies had an international background where Kraft was an US bidder and Cadbury a UK based company that was a target. The case was characterized as a hostile takeover and despite the result of the transaction, there was a public outcry due to proceed failure for Kraft to fulfill its un-kept promises. The transaction ended up with a success for the American acquirer.

The structure of the thesis consists of eight chapters that are connected with one another and graduate continuously. The structure is developed this way in order to answer the research questions by the end of the paper. The aim of first chapter is to state the introduction for the whole project and define research questions which give an overall essence of where the whole thesis goes and results. Chapter two serves its purpose to clarify how the research is put together and had been conducted. Hence, methodological approach alongside with classifications of various paradigms and techniques are analyzed in this part. Another chapter in the chronological order belongs to the literature review where sources from various types of academic literature had been collected in order to create a valuable foundation of knowledge for the rest of the thesis. Also, the literature review serves its purpose to understand the matter that has been investigated. All the gained knowledge played an important role when working on the chapter four, where the already mentioned case is thoroughly analyzed. The fifth chapter critically discusses the result of the Cadbury case and links it with a short-term behavior. It is outlined that the current concept of shareholders is out to date and creates a problem in the UK economy. If the UK wants to maintain its leading position in the Europe and a high level of its industrial sector, leaving the takeover regime unchanged is not an option (Davis et al. 2013). Therefore, the last chapter has given a suggestion for the takeover reform where the basic areas for the change is mentioned with possible suggestions for the reform proposal that would better work not only for the British economy but also employees and other stakeholders.

Keywords: Government Control, Intervention, Mergers and Acquisition, Takeovers, Regulations, Protectionism, Shareholder's primacy, Short-termism, EU, UK, Cross-border takeovers

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List of Acronyms

ATP - Anti-Takeover Provisions

BIT - Bilateral investments treaties

bn - billion

CAT - Competition Appeal Tribunal

CBM - Cross-border merger

CC - Competition Commission

CEO - Chief executive officer

EU - European Union

FDI - Foreign Direct Investments

IC - intervention costs

ILO - International Labor Office

M&A - Mergers and Acquisition

mil - million

MNC - Multinational Company

OECD - Organization for Economic Co-operation and Development

OFT - Office of Fair Trading

OFR - The Office of Financial Research

RBS - Royal Bank of Scotland

UK - United Kingdom

US - United States

WTO - World Trade Organization

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1. Introduction

Chosen Topic and its justification

The literature dedicated towards the topic of mergers and acquisitions is rather extensive. It is so, because M&A are classified as corporate activities that majorly influence a broad range of various stakeholder groups. Besides, the field of M&A is very popular throughout all different researchers over the past few decades. Scholars have been examining the theoretical and empirical knowledge. As a result, there is a substantial body of literature that covers and address different elements of the M&A topic (Yaghoubi, et. al. 2016).

Understanding how mergers and acquisitions work is an immensely important discipline with a great value in today modern businesses. Only a quick look at any big economic newspaper will indicate that M&A are a big business that happens on a regular basis around the globe. Especially sectors such as finance, telecommunication, food, pharmaceuticals, and chemicals, experienced the transformation from early 90s and shown a significant increase of very large-scale M&A deals. The amount of money that are involved during and after the process in some of the cases reach astronomical figures. Despite the growing number of M&As, it is indicated that because of the fast development of technologies, deregulation and evolving globalization, the number of cross-border M&A is about to grow even more steeply and some scholars implies that national influence will play even less significant hurdle to international trade. Thus, it is interesting to examine in this thesis to what extent the national protectionism is presented during the cross-border deals (Roberts, et al. 2012).

Even though the numbers are growing, vast number of deals end up being unsuccessful. Actually, fewer than 20% of business combinations manage to accomplish their hoped financial or strategic objectives (Davidson, 1991; Elsass and Veiga, 1994; Lubatkin, 1983), cited in Marks, 1997). It has been indicated before by scholars that every other deal is a failure due to various reasons. However, when talking about the lost deals, only bids that went through the negotiation phase and were allowed to carry on are considered in this estimation since it is fairly easier to predict in this stage (Cameron, 2012). Since the implementation of M&A transaction is a challenging and a complex task, it requires a proper strategic planning and preparation of the organizational change, however problems and issues appears on every stage despite it (Roberts et al, 2012).

The most indispensable purpose why even businesses decide to merge or acquire is a generation of various types of profitable synergies through which it is possible to support corporate growth by

enhancing cost effectiveness, improve market power, and enlarge profitability and foster shareholder's wealth. However, several empirical studies conducted in the US and the UK showed that the key findings were almost the opposite when it comes to the shareholder's returns. Shareholder's experience from majority of acquiring companies that had been researched showed that the returns were usual or even slightly lower around the time when the acquisition happened to be publicly announced, especially when the target companies were publicly listed businesses. One of the reasonable explanation can be the market for corporate control. When public firms are considered, the market is characterized as highly competitive. This is often accompanied by aggressive bids coming from the acquirer's side where significant premiums are promised to target companies. As an effect, the premiums capture majority of the acquisition benefit and result in the price appreciation (Alexandridis et al, 2010).

When the deal is signed and both companies are about to start a new phase of their business life, it does not mean that everything will go smoothly from that time onward. Referring to the high number of unsuccessful M&A transactions, the reason behind could come from poor governance, lack of communication, financial fit, wrong program management, cultural dis-match, missed opportunities in synergies and some more (Siegenthaler, 2010). However, during the pre-deal stage, companies face also couple of challenges that involve establishment of a M&A plan, form a proper valuable team or be aware of the target's county legislation and authorities. This part is fundamental for the following paper (Roberts et al, 2012).

When two companies decide to merger or when a bid is proposed for a targeted company, engaged firms must be aware that a possible approval from the government must be granted before any possibility co carry on with the transaction. When the deal is either between international company and a local one, or when both companies are from the same country, the intentions from the acquirer plays an important role. If the proposed activities that every single country has are against the legislation, the chance that the government will get involved and the bid will be disapproved is rather high. However, to ban a deal is possible in situations that are justified and supported by the legal framework and done so with appropriate policy regulators. If the bid is according to the country's jurisdiction, the government will support the deal otherwise.

The government intervention in every country occurs during the stage before the deal can be materialized, when the future of the transaction is still very uncertain and everything is open. Hence, the consequences of the possible government disagreement of the bid which would forbid a company to continue would be dramatic for both engaged parties. Considering the invested resources, time or

engagement in the lawsuit that would follow in the worst-case scenario. Also, the benefits that could have arisen from the deal and all the synergies that would go to waste are the one of the reason why the ideal to merge or acquire even started. As such, it is crucial for both companies before the bid even starts to know what are the reasons and the outcome for which the government controls the M&A transactions. The possible effects and outcomes that would be negatively influenced by the deal does not involve only the materialistic and business side of the two companies but especially when the deals are arranged between huge international corporations that employ a vast number of people, the impact could be towards them, as well as the industry and the country's economy of the targeted company (Kandilarov, 2015).

The question regarding the dismissal of some people from the acquired companies is often seen in real life right after the deal is finalized. On one hand, it is a logical move when some positions will double after the transaction while they are needed just once. This is the case of higher managers and CEOs. Furthermore, the acquiring company can also employ its former people who would take over also in the newly acquired one. However, dismissing a huge number of employees could negatively affect the unemployment rates and harm the specific region. Everything is dependable on the enormity of the situation. Another worry comes from the combined power of newly existed entity. Moreover, the enlarged position in the market from the takeover or acquisition, could have a negative impact on the competition of a certain sector and a monopoly or oligopoly could appear. As a prevention for similar situations, many governments apply mechanisms that would increase the competition in the market and avoid such gains. Lack of anti-trust regulation would allow companies to build monopolies across different industries (Yaghoubi et al, 2016).

Although, it is important to say that M&A are not only about losses and failed opportunities. The deals hold a level of prosperity as well, when done correctly. Companies sometimes merge out of necessity to be financially secured and to protect value for shareholders that might be losing its worth. Another reason to engage in a takeover is an increased management efficiency where shared know-how and resources increase the productivity and secure better position on the market. A way how to gain a bigger customer base or secure long-term competitive advantage is another reason why to go through M&A process. Despite the job losses in some of the M&A cases, in the same way the situation can be reversed and many job positions can be found by new options in the newly merged companies. As a strategic reason, the new formation can stimulate the other companies down in the value chain and deliver better results (Roberts et al, 2012).

Despite the positive as well as the negative effect of cross-border M&A deals, the number of individuals that can be influenced by the finalized deals is so high that there is no surprise that when huge

corporates decide to combine its power, attention from the government and other institutions is kindled. Despite the European harmonization process and creating a cross-border M&A Directive, in which the trend is towards approach which is more market-inclined and focusing on shareholder value, there is no all-embracing research of government interventions with the connection of takeover activity. The idea of such research would be to put into the perspective a picture, in which specific situations and to what extent the reasons from government to control M&A bids exists (Dobos, 2012).

When the companies decide to engage in the takeover activity, the shareholder value is significantly influenced by the activity. Subsequently, it is no surprise that shareholders particularly international investors, influence the company's decision making during the process (Andriosopoulos, Yang, 2010). The lack of commitment on long-term company success from shareholders is a great concern among the British public and starts to be an area of an interest from many researchers. As one of the severe reasons as for to blame was recognized an appropriate shareholder oversight. Shareholders with a short-term behavior and strategy are blamed for shifting the corporate investment decision off from the long-term strategy of growth and the real interest and true reasons for what the company was established by the owners, including the distortion of economy. This long non-changing matter of short-term shareholders bring calls for a change in the takeover regulation and better intervention from appropriate institutions (Thanassoulis, 2014).

The approach towards country's economy protectionism differ according the country. Research made in past showed that some nations are more sensitive to cross-border M&A than others. Including Canada and France in 1960, some EU member states in recent history, and China after becoming a part of the WTO. The most politicized cases are considered being those in which the authorities act beyond the traditional aim to keep healthy competitive markets, and pursue to protect domestic companies or restrain bids in which the foreign company is the acquiring organization (Conybeare et al, 2010).

The increase in cross-border M&A activated the need to understand the European business environment. After the long process of economic integration, an effort to foster standardization and boost transparency were developed by European Commission that oversee the competition authorities, takeover activities and national industrial authorities. As a reason, the control by the government and other independent authorities can be seen in countries that used to be known for its open market policies and economic freedom, including western economies. National differences are present especially between the UK and the rest of European countries (France, Italy, and Germany). Regarding the acquisition techniques in the UK, a vast majority of deals are done through private negotiation or tender offers. The differences do not occur only in the business environment or types

of regulation, but also in structural characteristics or governance structure. As for the contrast, German, Spanish, France companies are characterized by a higher level of ownership concentration than already mentioned UK or US companies (Moshieri et al, 2009).

As for a reason, why the United Kingdom was chosen as a specific country to research in this master thesis, was partly done due to their liberal market and welcoming approach towards foreign investments. Also, the United Kingdom is the number one in international cross-border mergers and acquisitions. Furthermore, the country is a leader when it comes to the selling businesses to foreign firms and purchasing new corporations abroad than any other European country. And lastly, the field of takeover activity and overall the whole researched topic lays in the author's personal interest.

By supporting inward investments made by foreign companies, the inflow of new ideas, technologies, knowledge and skills stimulates the productivity and improve the growth of the UK economy. Moreover, attracting investments to the country is an important strategy that is applied by the government to maintain sustainable growth. However, government's power to get involved in a certain M&A activity that is established by the Enterprise Act, allows to the UK government use power in specific cases and grant that UK interests are safe and intact (Seely, 2016). However, the regulation policy towards the shareholders 'short term behavior is lacking more improved approach that would protect other non-shareholding stakeholders.

In order to gain practical knowledge and a foundation for the analytical part while simultaneously get acquainted with the real business cases of M&A environment, one illustrative case was chosen specifically from the UK. The single case study was chosen from the time of recent years which also significantly affected the people's presumptions of international cross-country deals and contributed on minor changes in M&A jurisdiction. During the decision process, the shareholders played a crucial role during the takeover and showed a short-term commitment. Moreover, the case was severely discussed over the media and involved government involvement. Besides, the acquiring company was classified as a huge foreign corporate that attempted to take over the British well-establish company. The British company shared an important history, name and was a valuable business for the country.

As an ideal case was thus chosen the acquiring process between US second most important food corporation, Kraft and British Cadbury that is a valuable confectionery operation. After several months of negotiation, the bid was finalized by the acceptance of Kraft's offer in February 2010. The result was followed by the widespread outcry and public disapproval supported by the uncertain response that came from the UK government. Due to the abnormal attention that both cases faced, not only the

British government was involved but also the European Commission acknowledged the situation. Consequently, questions regarding the freedom of British market and its liberal approach were discussed and naturally, those cases were well-documented.

The contribution of this paper was to put into the perspective almost the whole picture of how one specific country determine the cross-border M&A and what are the barriers that foreign company must be aware when deciding to acquire another company in other country. Simultaneously, it points out the issue of short-termism and the lack of regulation of this matter. The purpose was to provide an evidence between the short-term behavior of shareholders, shareholder primacy, regulation of M&A in the UK and impact of the deal. Another point was to introduce this field of investigation which is in the author's eyes very interesting and complex but on the other hand, very under researched.

Problem Formulation and Research Questions

Problem statement

The main goal of this master thesis is to examine the matter of legal authority control in regards to the cross-border mergers and acquisition and its impact on the target's society and economic with a reference to the short-term behavior from shareholders. Hence, the problem statement was determined as follows:

"Cross-border Takeover Regulation and Control

The effect of short-termism in the UK market: The Cadbury experience."

The biggest focus will lay specifically on the United Kingdom and their government intervention of international bids from foreign companies that plan to target British companies. The aspects of the investigation are to analyze to what extend the role of government can interfere in the M&A transactions and what is the outcome of such actions and how precisely is short-termism involved in the decision making.

Research questions:

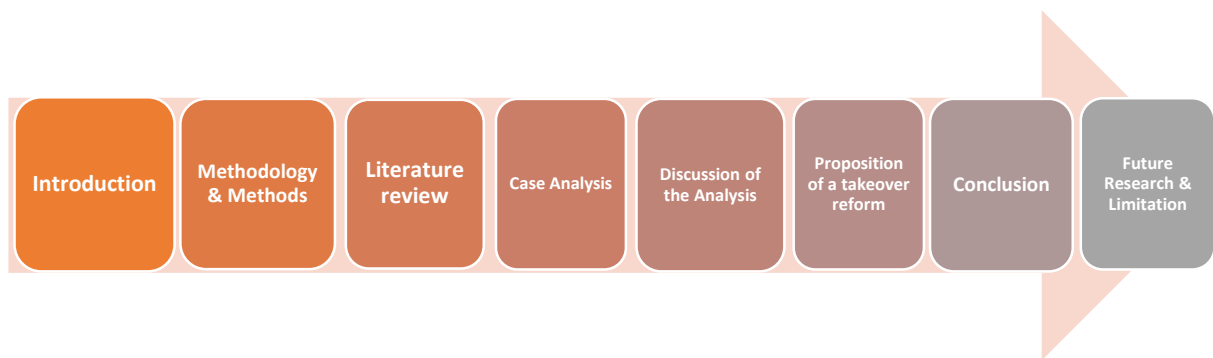
- In what situations and for what reasons the decision for a government involvement in takeovers is likely to happen?
- To what extend the government control influences the result of the international merger or an acquisition?

- How the shareholders' primacy influence the result of the takeover bid?
- Does the UK takeover regulation protect the long-term value creation and non-shareholding stakeholders, such as employees?

The purpose and design of the thesis

After introducing the master thesis and standing the research question that will form the guidelines for the whole project, the methodology research has been applied. In that chapter, the reasoning of applying methods, assumptions and research procedures has been clarified that also helped make a structure of the project. In order to gain a knowledge that would contribute to answer the research questions, literature review follows. Here, the reviewing of already existing secondary data is applied with a focus on the government control and engagement in the field of cross-border M&A. Moreover, the effect of short-term value creation of takeovers and the shareholders' lack of long-term growth focus is recognized as well. All the relevant and applicable knowledge had been extracted from the various types of data, using academic articles, newspaper articles, legal documents, and various projects. All combined data formed a valuable foundation for the analytical part. Subsequently, the main purpose of the research is to gain the core knowledge that would evolve into the focus where takeover control in cross-border deals is concerned. Furthermore, examine the possible variables that are present and could have had a harmful effect towards the target company and overall the whole target country. As such, the aim of the literature review was to provide an overview of that matter and put a detailed focus on the conceptuality of this paper while stressing the lack of government towards the short-termism. In the analytical part, a single case from the UK M&A setting has been analyzed with the aim to support or argue the findings that were gained in the literature review. In the fifth chapter, the discussion concerned the case analyzing is accompanied with the link on shareholder short-termism as the influential factor of the bid. In the last chapter, the recommendation for a possible reform regarding some aspects of the British Takeover regulation is proposed. In the part that was dedicated to the conclusion, the answer of the research questions was addressed alongside with the overall contribution of this master thesis. In the following Figure 1, the structure of the paper is outlined.

Figure 1: Outline of the project



(Source: own creation)

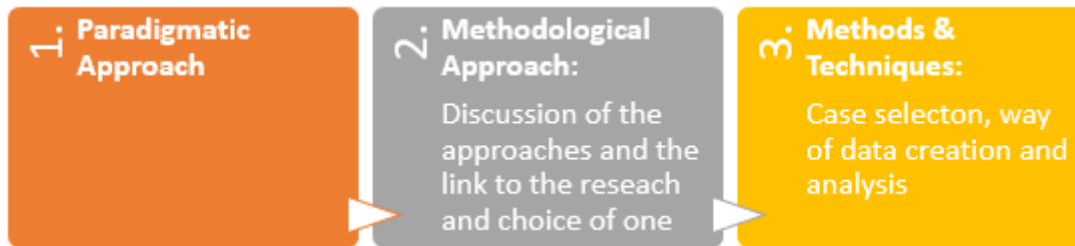
2. Philosophy of Science and Methodology

Every research paper consists of different approaches that are formed in various ways depending on the researcher's needs and viewpoints. Furthermore, different foundation for knowledge depends on the way how the world is perceived by the researcher and how is reality understood. As a reason, it is important to formulate how root assumptions and methodological aspects were built along the way of this research. However, firstly, understanding of the basic classifications of Paradigms in Social Science will be characterized, followed by the author's clarification of reality assumptions and chosen methodological approach which has been presented and justified (Kuada, 2010).

According to Kuada (2010), methodology is a plan and a strategy of activities that set a guideline for the whole research. It analyzes the reasons for the choice by using specific methods in the research. Methodology can be also recognized as a research design or a process that is required to conduct in order to be able to find the desired knowledge (Kuada, 2010). Frankfort and Nachmias (1996, cited in Yin, 2013) stated that methodology brings a plan that helps leading a process of the researcher and subsists of analyzing and gathering data, portraying the observations and results. Besides, they expressed that methodology should be an outline of evidence which contributes with the assumptions about the factors that are investigated. All factors that the researcher needs to take under the consideration are immensely important and provide an answer to the researcher's question (Yin, 2013).

This following chapter analyzes the concept of paradigms, describes and discusses different methodological approaches. Even though, there are various different approaches examined and introduced in the academic literature, this thesis focuses only on two that are commonly accepted between scholars. The following Figure 2 sets in the picture the outline of this chapter.

Figure 2: Chapter development



(Source: own creation)

Introduction of Paradigm and Paradigmatic Assumption

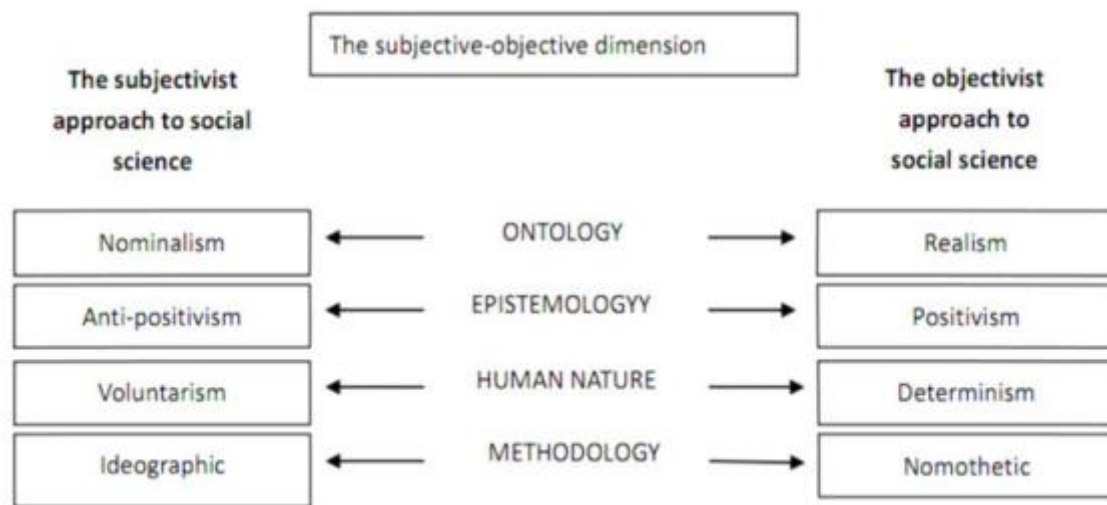
To fully understand the research methodology discussed and used in this thesis, the clarification must be made regarding the definition of paradigm. A paradigm is a set of theories, methods, set of beliefs, dominant thoughts and principles that justify the choice that had been made by the researcher in a specific area of the research under the intense examination. Thomas Kuhn (1970) is the first person with who the term paradigm is associated with. He suggested that every single form of a research is symbolized by a definite variety of the phenomena studied involving both the research question and also applied methods through the research. The main idea is to deeply understand why and how the research had been formed to its final results. Furthermore, according to Burrell & Morgan, there are four main groups of assumptions from which the researcher can distinguish. These are: ontology, epistemology, methodological assumptions and assumptions about human nature (Kuada, 2010).

Consequently, by differentiating between these four aspects it will also help guiding the research and clarify how the researchers fathom and determine problems (Arbnor & Bjerke, 2009). Furthermore, the contrast is also created between objective and subjective approach to the investigation.

Assumptions developed by Burrell and Morgan

Their assumptions imply that knowing and the world are both created in a very unequivocal manner and viewpoint. As mentioned earlier, those sets of assumptions include ontology, epistemology, methodology and lastly, human nature. Moreover, they are spread in the two-dimensional spectrum which is either objective or subjective. The next figure (Figure 3) clarifies these assumptions and two directions (Burrell, Morgan, 1979).

Figure 3: Burrell's & Morgan's Assumptions



(Source: Burrell and Morgan, 1979)

Ontological consideration

Ontology points to a terminology that implies that reality is understood as a concrete investigation. According to Burrell and Morgan 1979, cited in (Kuada 2010), interpretation of Ontology has two forms. These are either realism or nominalism. Realism perceives the social world as real and external to the particular and distinctive comprehension. Thus, it is considered that world is formed by tangible and quite unchangeable systems (Fast and Clark, 1998: cited in Kuada, 2010). Moreover, Burrell and Morgan imply that Ontology is an objectivist approach. On the other hand, nominalism suggests that reality is an interaction created by people. This puts reality into many objects and multiple realities in everyday scene of a social life (Fast and Clark, 1998: cited in Kuada 2010). Thus, this understanding is rather subjective (Burrell and Morgan, 1979).

Epistemological consideration

Epistemology, recognized also under the name of the Conception of Science, defines the nature of knowing and the knowledge. It can be described by a question "How do we know what we know and what is true?" (Kuada, 2010, p. 59). Epistemology also advocates the way of how the research should be understood by the reader. Since every researcher considers factors of knowledge differently to be crucial for the research, individual's preferences are the core for the epistemological viewpoint. Besides, some researchers conduct their research by being external observers but on the other hand, have a considerable knowledge about the truth and facts in a social world. Some may stress that the

real knowing of a social world is conquered only if individual actors of the research will be part of the research. Also, epistemology can be adopted by two different standpoints (Kuada, 2014).

Human Nature

The third term examines the understanding of the researcher towards the human existence and the environment that is surrounding them. The question is again whether the individual human being, the researcher, is determined by the outside individualism or if people are determined by one another. This assumption also finds important the way how knowledge is gained and what is considered to be truth (Kuada, 2010).

Methodology

Kuada (2010) refers to the methodology as a strategy or a plan of action that helps to structure the whole research. Methodology analyzes the reasons that led to the choices and usage of concrete methods in the process of researching. Scholars understand methodology as a design that is developed with the purpose to help find the required knowledge. Burrell and Morgan (1979) argues that methodology is a direction that is developed in order to find out the true meaning of a social world.

Assumptions developed by Arbnor and Bjerke

Arbnor's and Bjerke's assumptions had the opposite belief than what was considered by Burrell and Morgan. Their paradigmatic understanding was grounded in the philosophical view and can be distinguish into four paradigms. These are: conception of reality, conception of science, scientific ideals and ethics/aesthetics. The most significant differences between those two sides of understanding was that Burrell and Morgan shared more unequivocal and straightforward path of researching; the pragmatic assumptions, whereas Arbnor and Bjerke were more open to different options of interpretations (Arbnor and Bjerke, 2009).

Conception of reality refers to the view that humans have of the world. It also refers to the presumptions about the reality and how exactly it is designed.

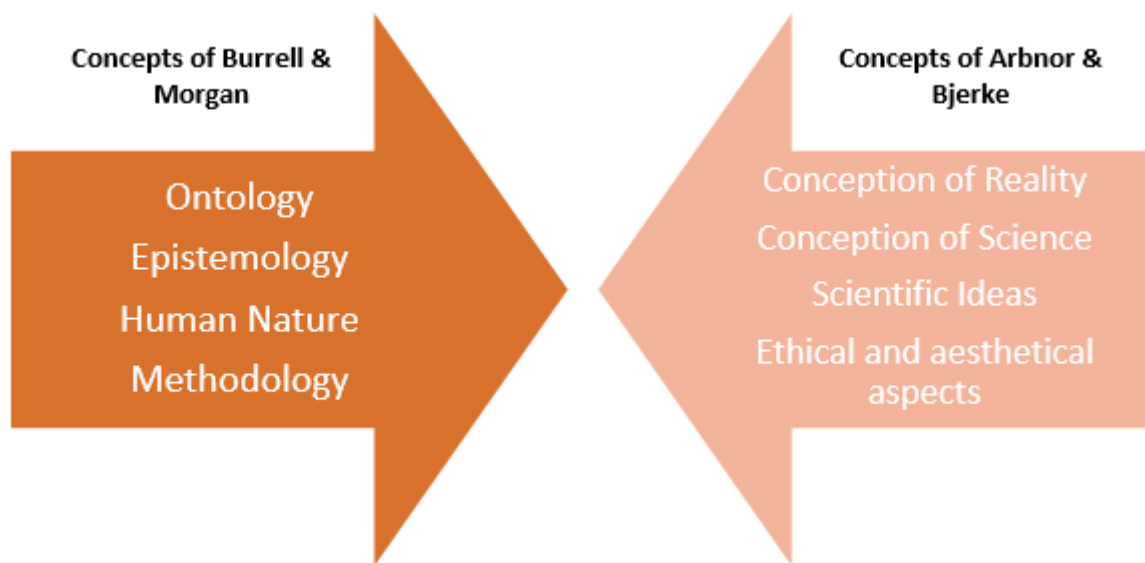
Conception of science refers to the knowledge that had been gained through education and its link to the concepts and beliefs of researcher which concerns the subject of study.

Scientific ideals deal with the desire that each researcher has for the investigation. Everyone's different views, standards or ideas influence and help develop the research.

Ethical and aesthetic aspects refer to the elements that are morally accepted for a researcher and involve moral appropriateness and inappropriateness (Arbnor and Bjerke, 2009).

By investigating the work of both authors more thoroughly, it could have been understood that the viewpoints that they had were similar but with a usage of different terminology. Furthermore, some philosophical perceptions that had been argued by Burrell and Morgan (1979) overlap with assumptions outlined by Arbnor and Bjerke (1997) as can be seen from the Figure 4. (Matic and Vabale; 2015).

Figure 4: Comparison of the two concepts of the Methodology



(Source: own creation based on Arbnor and Bjerke (2009) and Burrell and Morgan (1997))

The main understanding of conception of reality and how it was constructed by Arbnor and Bjerke, shares the same elements as the ontological consideration that was defined by Burrell and Morgan. The main purpose of both of these concepts is to find the answer about the reality. Also, conception of reality by Arbnor and Bjerke overlap the concept of human nature explained by Burrell and Morgan and strive to describe what connection is between reality and humans (Matic and Vabale, 2015).

Conception of science by Arbnor and Bjerke share the same attributes with the concept of epistemological consideration researched by Burrell and Morgan. The concepts examine the process of creating the knowledge and focusing on what is considered as the truth. Moreover, scientific ideas that had been characterized by Arbnor and Bjerke covers similarities with the understanding of epistemology and methodology explained by Burrell and Morgan. They are focusing on explaining the comprehension of reality from objective point of view to subjective point of view in a way of social

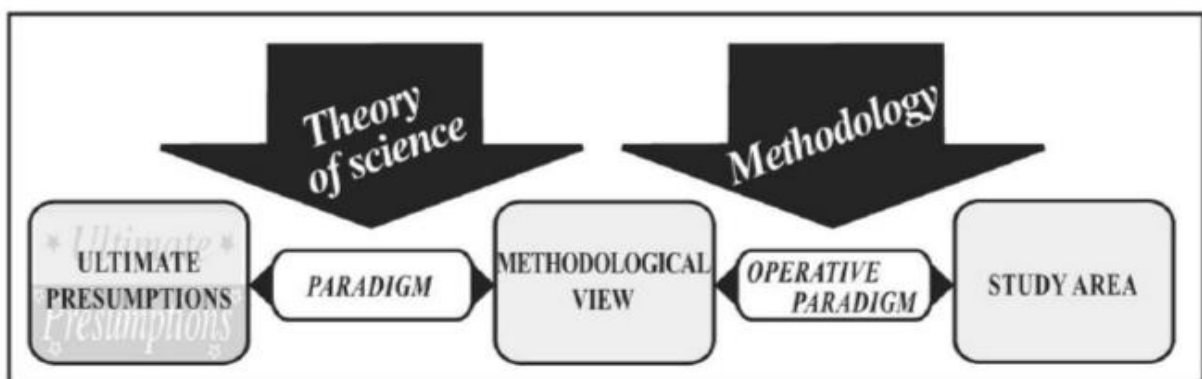
construction or relationships. Objectivist's attempt is try to find out and discover random connection between constituent elements with the aim to comprehend and foresee the reality. They assume that researchers should be unbiased by external investigators from outside. Similar understanding is also regarding the phenomena. Socialists on the other hand assume that reality is socially formed and thus, it is the only way how to observe it from a standpoint by a specific individual who is involved in the research (Kuada, 2012, Arbnor and Bjerke, 2009, Matic and Vabale; 2015).

The ethics alongside with the aesthetics can be linked to the concept of methodology by Burrell and Morgan (1979), since both concepts handle matters that are connected with the researcher's morality and willingness when conducting the research. (Matic and Vabale; 2015)

Classification of paradigms by Arbnor and Bjerke

The methodology of how the paradigms created by Arbnor and Bjerke are classified belongs to the recent classifications. The authors succeeded in identifying the difference between the understanding of Theory of science and Methodology (Kuada, 2012). The Ultimate presumption share a characteristic that is rather philosophical (Arbnor and Bjerke, 2009). According to the authors, the Theory of science lies in a presumption of social science that share characteristics with ontological and epistemological understanding. Furthermore, there is a contrast between paradigms and developed methodological approaches. Paradigms are characterized by the description of a researcher's presumptions and various applied methods that are being utilized along the way. While methodology (operative paradigm) clarifies the knowing that is directly linked to the concrete study area. This can be subsequently seen in the Figure 5. (Kuada, 2010).

Figure 5: Arbnor & Bjerke Theory of Science and Methodology



(Source: Arbnor and Bjerke, 2009)

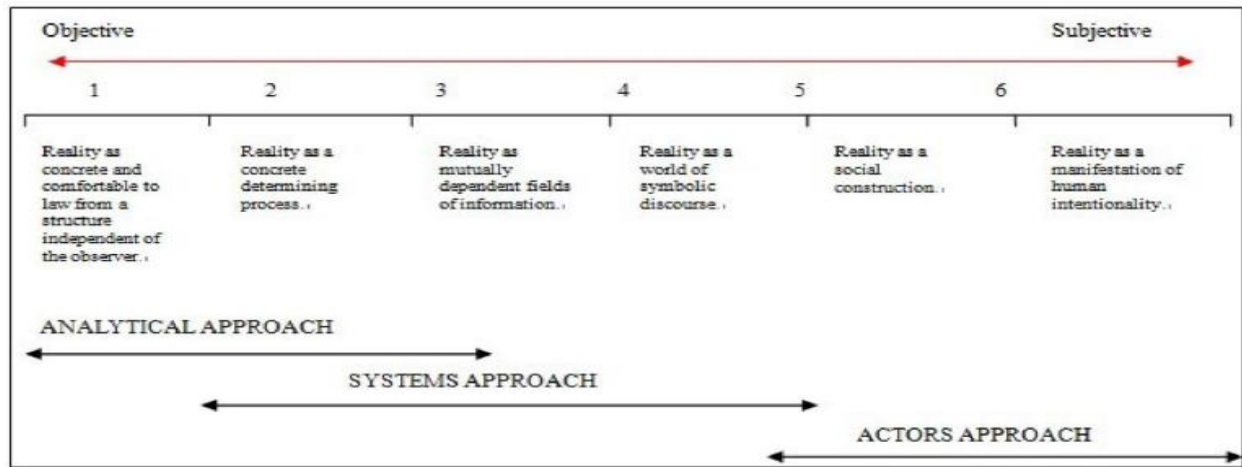
Arbnor and Bjerke's paradigmatic classifications suggests the six following paradigms that are crucial for the research and are entwined with each other. (Arbnor and Bjerke, 2009; and Kuada, 2010):

- Reality is determined as a concrete phenomenon and is characterized as self-determined from the observer. Upon this premise, the reality can be tangible and is objective.
- Reality is deliberated to be a specific determined process. The main presumption of this paradigm is that the general public ought to be seen as a formative process where each component has its impact on the procedure. In this way, the researcher needs to concentrate on analyzing carefully the relations that are found in the society and between populations.
- Reality is reciprocally subordinated fields of information. Development process of exchanging information is the core element of the society. Thus, it is assumed that reality is not stable, rigid and concrete since change of one component will influence change of another component of the society.
- Reality is understood as a world formed by symbolic disclosure.
- Reality is defined as a social construction and thus it leans to be more subjective than it would be objective. It is an incessant development in which the social reality is formed by interaction of elements.
- Reality is determined to be a manifestation of human intentionality. Reality is considered to reflect the imagination and behavior of individuals. Hence, their consciousness contributes on the reflection and formation of reality (Arbnor and Bjerke, 1997; and Kuada, 2012).

Methodological Approaches

The following part will interpret the paradigms including the analytical view, the system view and the actors view further. (See Figure 6) (Kuada, 2012, Arbnor and Bjerke 2009).

Figure 6: Methodological Approaches



(Source: Arbnor and Bjerke, 2009)

In the **Analytical view**, the knowledge that is recognized by creators is formed by every single known reality that is gathered together and there ought to be a level of autonomy from the individual observer. Thus, it implies that the researcher needs to be objective. Additionally, the truth is divided into sum of parts which by the end it turned into a one entire substance of one whole entity and hence, it has got a summative nature (Kuada, 2012). This view requires to inspect all parts (new findings) independently and afterwards put them together in order to have the capacity to make a comprehension of a specific phenomenon (Arbnor and Bjerke, 2009). Being as objective as it is attainable while seeking a general clarification of problems is another key part of analysts in this view. Hence, in this way, it can be often common to utilize theory, quantitative research strategies and formulating "causes and effect connections" and consequently, the researcher ought to know how to generalize (Arbnor and Bjerke, 2009). The reality here is to comprehend a specific phenomenon that is dependent of the observer and goes up against to law. Also, the researcher can distance himself from people observed and keeps its neutrality. Knowledge is not determined by subjective experiences and findings from individuals, it is an actual defining process or correspondingly reliant field of data (Kuada, 2014), (Arbnor and Bjerke, 2009).

The system view compartmentalizes reality into the system of framework which is either shaped as an objective reality or subjective opinions. The creator of the knowledge develops the idea which allows subject to comprehend in its specific situation. Thus, searching for similarities and patterns and collaborations that would clarify the link between the frameworks is needed from the creator. The

system view finds fundamental to look for synergies between the sub-systems for the relationship to be working. Moreover, the researchers are attempting to comprehend the reality or clarify it (Arbnor and Bjerke, 2009). While the reality is apprehended as a particular deciding process, a jointly dependent field of data or as a world of symbolic exchanges (Kuada, 2014). Furthermore, the System approach can be identified as rather unpredictable regarding the context in which the social actors are situated (Kuada, 2010)

The actors view assumes that the social setting is partly chaotic and socially constructed but on the other hand shares a level of stability that comes from the actors (Arbnor and Bjerke, 2009). Moreover, reality is classified as not independent of the researcher and interactions with others where experiences are exchanged is crucial. Thus, there is an emphasis on individuality, interaction and subjectivity. Also, the process of a research is dependable on changes in the social developments along the way and it is important to liberate the researcher from a categorization that had been set prior the research. (Kuada, 2010, Arbnor and Bjerke, 2009)

The application of a methodological approach

In order to keep the reliability of this research, a selection of a methodological approach that would be the most reflective to the approach of how this master thesis has been conducted, needs to be made in order to establish a successful research. After the close analysis and the examination of two different paradigmatic approaches, characterized by Arbnor and Bjerke and Burrell and Morgan, it can be expressed that the approach that was utilized, is outlined in a very actual and specific way and as such, it has appeared to be supporting rather subjective view of reality (Matic and Vabale; 2015).

The way how the authors define the ultimate assumption, appears to be rather direct. It is either objective or it can be subjective, followed by the radical change or regulating governance. On the other hand, the description of the paradigms that have been provided by Arbnor and Bjerke seems to be more opt for interpretation which is a significant difference from what it was implied by Burrell and Morgan. In this manner, this thesis will follow the understanding that has been offered by Arbnor and Bjerke since the interpretation of the assumptions regarding the reality can be more adaptable and adjustable and thus, universally applied. Their paradigms are identified by hypothetical nature. However, one of the drawbacks that are possible to argue, are the six paradigms which appears to be not as straightforward to comprehend as it was intended. This can be caused by the fact that the core understanding of each of the paradigms share similarities with one another and overlap.

The assumptions presented by Burrell and Morgan obtain a definition that is clear; however, it might be influenced by the two faraway ends that the radical humanist and the functionalists represent. The

other two share the middle position. The approach is lacking some continuous, moderate change and uniformity when talking about the paradigms. It can be due to the vague and descriptive explanation regarding their four characteristics of paradigms.

The regular uniformity and smooth progression regarding paradigms is noticeable to a much higher degree between objective vs. subjective understanding in the model developed by Arbnor and Bjerke. This has more significant importance especially if the research is conducted in the business field where the world of practice is not characterized and dependable on a two-scale options. The model allows more freedom to choose from while developing a research. Thus, it is more suitable choice to implement in this paper. Also, the System approach developed by Arbnor and Bjerke has been recognized as the idea approach to apply for this master thesis. It has been done mainly for the reason of a formulation of a research questions and the field of the study, where both are closely dependable on situation in the world. Also, many interconnected factors which can appear as system influence the outcomes and setting of mergers and acquisitions. Systems Approach also better reflects the understanding of the government regulations in the UK that is influenced by a bigger regulatory system of the EU. Also, it appeared to the researcher that the behavior of shareholders pursuing the short-term value is rather systematic in its nature.

Also, the keywords that refer to the phenomenon of government control are investigated from the position of the issue of short-termism and the needed reform in cross-border mergers and acquisitions. Hence, it needed to be determined to what extent government influences the process and how the short-termism can influence the outcome of the M&A deal. Moreover, it needed to be clarified what are the causes of such engagement, which refers to the systematic outlay.

The System approach that had been developed by Arbnor and Bjerke allows having a combination of objectivity or subjectivity depending on the specific investigation of subsystems. The system is particularly noticeable in the issue of government takeover regulation, since the motives for a interference are recognized as either objective or subjective when it comes to the various motives of cross-border takeover regulation. Those decisions are based on the level of anti-trust regulation, economic nationalistic policies, or level of information about the foreign entity (bidder), level of trust for the country. However, the System approach is slightly accompanied by elements from other approaches. Mainly because assumptions or results that came from other sources or studies when authors utilized their subjective sided of their opinions, will be taken into the consideration as well. Also, the links between the various different tools used as a government interventions and effect of short-termism corresponds with the aim of the Systems approach where the right synthesis of various circumstances tend to result in the right solving (Arbnor and Bjerke, 2009).

Moreover, the field of enquiry regarding the chosen approach of this researched paper comes from the real-life problems that occurs in the today modern technological world that tends to be rather complex in some ways. In the author's understanding, the researched topic of government control and short-termism in the UK M&A's market, especially in the cross-border mergers and acquisitions, appears to be the matter. In order to prevent the complexity, the key approach is to form different types of components and various subsystems that are joined and organized together for the reason to develop a discipline or sub-discipline. In order to fully master the generation of groups the system approach requires high level of coordination. In the specific case of this paper, the acquirer (foreign bidder) alongside with the target are here recognized as a sub-system also with all the governing institutions and commissions representing the right intentions. Besides, there is other system and sub-system formed with the competitors, customers, financial organs, public relations or working groups (employees) and others that are presented and involved in the process and in the specific setting and all these systems are fragments of the grater system where together they are interacting with each other and influence each other. Furthermore, the systems that are the most important for the research will be examined individually depend on the assumptions (Bandyopadhyay, cited in Hegde, 2015).

The aim in this research when evaluating the available and reliable data is being objective when coming to the conclusions. Although, the knowledge and experience limitation may have an effect on the data gathering and how they are interpreted. Thus, it is not possible to be entirely objective when conducting the research. Although, this factor also accompanied the system approach that allows level of subjectivity about the reality (Matic and Vabale, 2015).

Methods and Techniques

In the following part, the description of data collection tools and the reasoning for their use is clarified and justified.

The Case Study Research and the Selection of ideal Case

The ideal approach chosen for this paper is The Case study research. The main purpose of The Case study method is to bring a more detailed insight and understanding how organizations and humans operate and interpret the theoretical knowledge into a certain context. As determined by Yin (2008), Case study method is an empirical analysis that researches apply. Furthermore, it is an existing phenomenon with a link to the real-life context, in which various different sources of evidence are being utilized. Case studies permit the researchers to further investigate the surroundings of events while being within the close proximity to practice, compared to a laboratory research and testing (Yin, 2008 cited in Merriam, 2014). Besides, Case study is characterized as a research strategy and as such

it is not a methodological choice (Piekkari, Welch & Paavilainen 2009). Some literature however implies that case study is an option that can be used in a qualitative research. But it is necessary to emphasize, that case study research can be developed by many methodological approaches including both qualitative, and quantitative or using mixed methods (Oguji, 2015). It can be achieved by engaging in data collection which includes participant observation, document analysis, surveys, and various types of questionnaires or personalized interviews (Dooley 2002; Piekkari et al. 2009).

By using the Case study research, the researchers get an understanding of an issue that is complex and is particularly handy in situations when an in-depth knowledge is required to answer the research questions. With the possibility to use both qualitative and quantitative data, the understanding process is accompanied by a complete observation, reconstruction and analysis of the particular case (Tellis, 1997 cited in Zainal 2007.)

As Yin furthermore pointed out, using a case study is particularly useful when the researcher is striving to get answers for questions starting with “why” or “how”. Kuada also argued that by using The Case study method, it allows to unfold the wholeness of any possible social phenomenon, particularly once the previous knowledge regarding the phenomenon is insufficient. This is precisely the situation with this master thesis since there has been done very limited and inadequate research or applicable theories that would help with clarifying or formulating problems for this project. Consequently, using case study method as a practical platform for the research goes hand in hand with the Systems approach by Arbnor and Bjerke, chosen for this research. During examining the subject in a single system, it has to be also examined in the context of others and see what relations are within. This is also supported by Yin when he suggested that due to the case study method the investigation is apt to keep the holistic characteristic and stay relevant while showing real-life aspects (Yin, 2003, Yin, 2009).

For this thesis, a concept of a single-case study method is being accounted in order to explore the decisions by government and their way of involvement and control in cross-border mergers and acquisitions. The focus is particularly put on the effects of short-termism while using the gained knowledge from the Cadbury/Kraft takeovers. The analyzed case supported an understanding of why the United Kingdom apply protection approaches and explored the possible reasons of government engagement or at least show in more practical way the actual position during the process of negotiation. Due to the research scope which required the presence of takeover control mechanism in the UK while on the same time showed issues of short-termism and the shareholder primacy, only a single-case study had been found and thus analyzed.

The researcher is aware that by using only a case-study method as a tool to conduct a research is rather limiting. However, due to the occurrence of the problem, only the Cadbury takeover case appeared to

be the most suitable case for this thesis. The author's aim was to provide as reliable and valid analysis possible. Even though, the lack of ability to provide a generalizing conclusion was one of the negative aspects of the single-case study (Zainal, 2007). Furthermore, no data triangulation which would utilize other methods during the researched had not been followed.

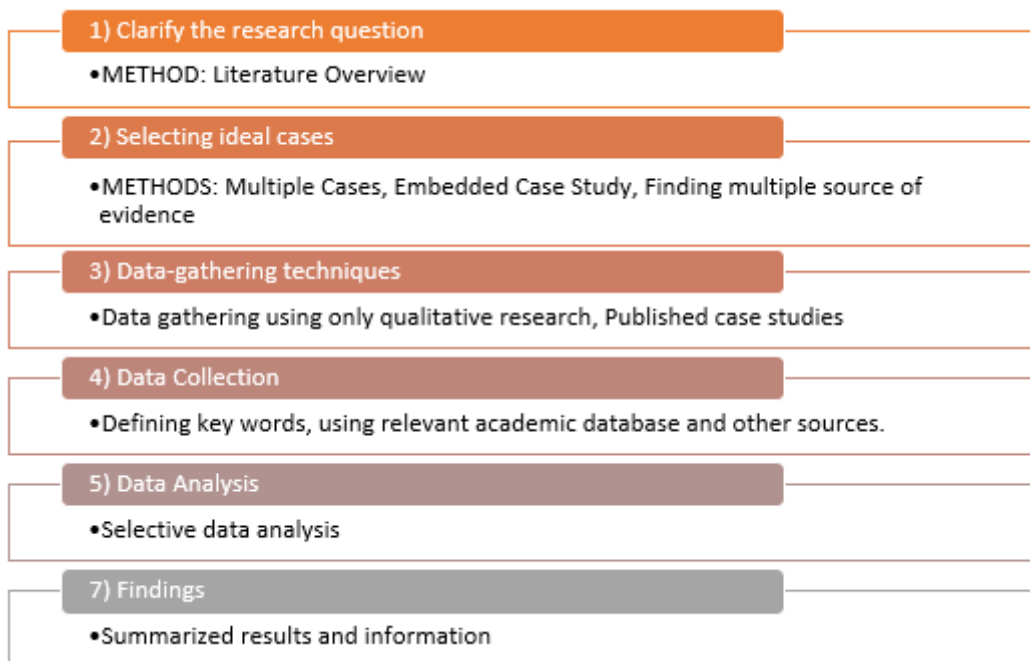
Case Study Research and Theory Development

According to Yin and Eisenhard's proposition, the case study is ideal to use for a theory building and testing (Oguji, 2015). This was also the case and reason why the case study approach had been chosen as the most ideal one. The researched topic seemed to be very vague in some aspects, especially when describing law related issues. As such, findings with the real-life situation case that would confirm or not support the knowledge found in the literature review seemed to be beneficial and supportive for this researched topic.

When using case study approach for theory building, Dooley (2002) in his work emphasized specific steps that should be considered in order to fulfill the accepted approach and gain validity, reliability and methodological rigor. Starting off with the determination of specific research question that will help guide the research. Secondly, selection of data-gathering techniques should have been clarified. Third, collecting data should have been accomplished by the researcher and most importantly, the data should cover the relevant field of research. Fourth, the data evaluation and analyzing follows. Lastly, the research paper should have been structured, prepared and finalized (Oguji, 2015).

The following figure sums up how the case study research had been accomplished in order to develop a theory for this paper. Knowledge from authors Eisenhardt's (1989); Yin (2003); Dooley (2002) and Sinkovics, Penz & Ghauri (2008) had been utilized in order to compile the Figure 7.

Figure 7: Theory Building Process for the research



(Source: own creation, based on Oguji, 2015)

Case Selection

In regards to the case study method, one case had been chosen as a good and suitable representative that showed a government involvement in the process of acquisition or merger where the issue of a short-termism played an important role (Welch et al. 2011). The process of selection had been determined by the field of research where keywords such as government intervention, cross-border mergers and acquisitions, M&A, the United Kingdom and short-termism were applied. The aim was to choose case that had an impact on the British country, people and formed the presumptions of mergers and acquisitions for the future situations and simultaneously showed an impact of a short-termism.

Besides, the focus that had been stated prior in the problem formulation was also mirrored in the case analysis. This means that only a bid that was a cross-bordered, formed by two different countries where one had to be registered as the British one, were taken into the consideration. Choosing the international transactions contributed and showed better complexity of the problem since the government was likely to show some restrains and national policies in order to protect the home businesses. Furthermore, factors such as size of the company and therefore, size of the negotiation deal and their reputation or established name were also taken into the account. Also, for the reason of better relevancy, the M&A deal was tried to be chosen in the recent times. It was assumed that case

from recent years would better reflect the current M&A jurisdiction, legal setting and people's frame of minds regarding the M&As.

With reference to the availability of information, all government involvement regarding the takeover regulation happens in the pre-merger stage where firms do not share documents due to the sensitivity of the information of the topic. However, the chosen case of cross-border M&A in the UK, had such a great impact on the government and general public that the heated discussions were followed in the media. Last but not least, while researching the topic and gaining the knowledge from the literature review and various different articles, the analyzed case was keep re-appearing very often in the literature as an example, which served as another impulse for choosing it for this master thesis.

Techniques of Data-gathering

The techniques applied in this master thesis is utilized by the Qualitative Case Study method.

Researchers when developing a research can draw on four basic research designs they can use in order to collect data to inspect the concepts they want to test: surveys, experiments, field research, and secondary sources. Each research design provides a researcher with the unique ways how to collect data about the investigated topic. Recently it is also fairly common to combine methods in order to triangulate their data (Abbott et al, 2012).

The qualitative research, is characterized as that type of research that obtained findings which did not came from statistical procedures or any other type of quantification (Strauss, & Corbin, 1998). The qualitative designs are developed through quality of description (Abbott et al, 2012). Hence, this technique leans towards concepts that come out from various situations and approaches that are not based on statistical data. It is also stated that by using this method, studying functions of social movements, behavioral experiences and many other entities are allowed.

Furthermore, in the qualitative research, the focus is put more on the words reasoning than numbers that had been collected and then analyzed, in other, words it is less important how the data were quantified. Also, this method follows the characteristic of interpretive epistemological approach, thus, the researchers are more on the subjective side and the understanding is gathered by the interpretation of participants. The two designs in qualitative analysis that can be used as a tool for a research are field research and content analysis. Field research is usually obtained in "natural" setting where people are in less artificial settings. This provide research with data that are rich in descriptive information about smaller groups of people and processes. The content analysis is characterized in unobtrusive measure. The outcome here is the study of cultural affairs providing detailed and rich

description of phenomena: for instance, are government intervention a populist way how to get votes from public? (Abbott et al, 2012). The content analysis is therefore one method that has been applied during the case analyzing where the knowledge regarding the matters were gathered from the publicized reports from the UK Government, legal documents from European Commission, press releases, newspaper articles, companies' web pages, M&A policy documents and others.

Besides, regarding this qualitative research, the case study method had been applied since the case study method is part of qualitative methods for research. Furthermore, the qualitative research had been applied and followed since the purpose of this thesis is to recognize and discuss in-depth the motivation and reasons behind which the government engage itself in the pre-merge/acquisition process and intervene in the cross-border M&As. Thus, the analysis of the behavior and reasons have been thoroughly analyzed. For this reason, when analyzing the situation from reliable sources is a key point, the qualitative analysis is more appropriate than the quantitative one. This also allowed the researcher to develop better descriptions of the phenomenon rather than engage in statistical procedures. Besides, the qualitative method provides a more freedom regarding data collection. The researcher can get acquainted with various perspectives and angles and hence, analyze the topic without being limited to stringent definitions (Kandilarov, 2015).

Data Collection and its types

There are two types of data that can be collected in order to help answer the research question. It is crucial to classify which one of these two types are being used since it forms the research differently.

Primary data

Primary data are types of data that had been collected for a certain problem at hand and using techniques that fit best the problem that is being researched. Besides, every time when primary data are collected, new data are added to the existing one of social knowledge (Hox & Boeijs, 2005). They can be gathered via surveys, observations, experimentation, interviews, questionnaires and focus group interviews, etc. (Saunders et al, 2007).

Secondary data

Secondary data are characterized as all data that can be found for a specific topic and had been collected researched by another researcher in the past Saunders (2007) implies that secondary data can be both quantitative and qualitative and are part of the explanatory and descriptive research.

Due to the scope of research, surveys, experimentations, interviews, interviews or any other ways how to gain primary data could not have been used. As such, using only secondary data had been utilized

during the research. Moreover, secondary data cover both raw data and published summaries. Data were gathered using quality newspapers, scholars' papers, various reports, surveys and minutes that government undertook and many other official statistic data. To gather a reliable source of information, data were compiled from multiple sources. Documentary data included reports to shareholders, transcripts, books, journals and magazines (Saunders et al, 2007).

This researched paper will take upon the secondary data and hence, it is crucial to be aware of advantages but also possible characteristic problems that using secondary data can bring. The biggest advantages are the easy accessibility and low-cost source of information. Also collecting secondary data can increase validity of the research since the research is not limited to only a handful of sources. However, using secondary data can meet with certain problems. Firstly, it is necessary to locate data sources that perfectly fit the researched topic and would be useful for the own researched problem. Secondly, researchers need to know how to retrieve the relevant data in order to meet the methodological criteria (Hox & Boeijs, 2005). However, considering the researched scope and topic, the only possibility how to obtain a relevant data was to use secondary data in this thesis since conduct interviews, surveys was not possible.

For the research of this master thesis, various different types of data from several sources had been collected in order to support the validity of this paper; using academic journals, articles published in news, books, previous researched papers, company website, written case studies, online materials, and official statistics available for public. Besides, by using different types of secondary data, a multiple source of evidence could have been applied while addressing a broader spectrum of issues that could have been tackled. The following analyzed single-case study further on in this research paper contributes to the evidence that can support the knowledge found through the literature review puts a foundation to the conceptual framework.

Advantages and disadvantages of secondary and primary data

When deciding if collecting primary or secondary data, there are few factors that need to be considered prior. For many researchers, the main advantage when using secondary data is the advantage of fewer monetary resources that need to be allocated for the research. Moreover, the validity and reliability regarding the information that is being collected by the researched first hand, rely on the subjective interaction. However, the researcher has a full control over the data that are being researched. Subsequently, the method that needs to be used when collecting data goes hand in hand with the nature of researched topic and the questions that need to be answered. Using secondary data that used to be collected in the past by some organization, support an unobtrusive measure. (Cowton, 1998, cited in Saunders et al, 2007.) By re-analyzing secondary data again, the researcher can come up to a newly found discoveries that have a permanent nature and are easily accessible and checked by others (Descombe 2007, cited in Saunders 2007.)

Reliability and Validity

When evaluating a research, it is important to keep in mind if the methods that had been chosen during the research process were consistent and accurate. Thus, two elements are necessary to consider: reliability and validity (Abbott et al., 2012) Reliability asses a specific consistency of a required measure. The following part will focus on the suggestions that will ensure that validity and reliability will be intact since both have an important meaning in the case study research and overall qualitative research (Bryman and Bell, 2015). According to Lecompte and Goetz, 1982, there are four types' views that signify the reliability and validity (Lecompte and Goetz, 1982, cited in Bryman and Bell, 2015).

- External reliability, correlates to the degree to which a research would be acceptable to replicate.
- Internal reliability, presents to the situation when there are more than one observer and how should those researchers agree upon what they hear and see.
- Internal validity, relates to the relations between the observations from a researcher and the ideas that had been theoretically developed and how well they match.
- External validity, concerns about degree of findings that can be generalized in the social setting.

In this research paper, the external validity is fulfilled by reaching for a high transparency and explanation how to administer a structured design. This master thesis is striving for internal validity by developing a conceptualized framework that has been created based on the obtained theoretical knowledge from the literature review and the case study analysis.

3. Literature review

The purpose of the following chapter as the literature review is to provide an overview of the researched topic and to gain a required understanding of cross-border takeovers, its regulation. The topic is partly linked with the impact of takeovers on the society, particularly employees. That is why there is a connection between possible involvement from the authority organs during mergers and acquisitions in general. Even though, the main awareness is over the takeover regulation in the United Kingdom, the literature review provides an overview of the regulatory organs in the EU as well. The awareness has been furthermore focused on political reasons for public takeover control, signs of protectionism and regulatory tools that can be used during the negotiation process. Furthermore, the examination of shareholders' short-term behavior and its consequences are put into the perspective alongside with the takeover regime and lack of policy control in this matter. Also, the influence of shareholders during the pre-acquisition phase is acknowledge simultaneously with the short-term performance and value creation of cross-border takeovers. Finally, the literature review will be concluded with economic theories of regulation. Here, the author aimed to examine the most relevant ones that have a link with the researched topic and determined if there is still a relevance in today's world and whether they can be applied in the practice.

Cross-border Mergers and Acquisitions

Majority of the growth from international production over the last years originated from cross-border mergers and acquisitions. According to the data in Journal of Finance, global cross-bordered mergers and acquisitions evolve from \$49.8 billion in 1987 to \$1.6 trillion in 2007 and the UK has performed well in the worldwide cross-bordered M&A deals, both as a target or an acquiring member and holds the top position in the EU (Uddin, Boateng, 2011).

Generally, the cross-border merges and acquisitions happen due to the same reasons as domestic ones. Two companies will join their assets when the takeover brings increased value. Besides, managers from both companies perceive that the value of the combined company is higher than the sum of both separate entities. This change in value can be determined by a handful of reasons. Narrowing costs can be lower within than across companies or developing more effective and efficient production in combined firms. Also, mergers can form market power since it is legal for post-merger linked companies to charge profit-maximizing prices. However, it is not possible to do so for separate ones that are in pre-merger stage. Decision to merge can additionally decrease the combined tax liability of the two companies if the usage of tax shields that another firm hold but cannot use, is

allowed to apply. Nevertheless, national borders bring set of extra elements because they are identified with difficulties and associated with friction that can hinder the process. For example, cultural and geographic location can enlarge the costs of merging. Besides, countries have their own cultural foundation they identify with, languages they speak or religion (Erel, Liao, Weisbach, 2012).

Furthermore, governance-related dissimilarities across countries can bring a positive impulse if the combined company is better protected for a target company. Generally, corporate governance arguments foresee that companies in countries where governance implements better legal or accounting standards are better, higher quality and will seek to acquire firms in countries where the level of corporate governance is in lower-quality. This goes hand in hand with the development of markets where firms tend to acquire in countries with emerging markets where they can benefit from weaker contracting environments. Another important factor affecting international M&A is valuation. Not well integrated markets in different countries can have an effect in cross-border mergers as well. Most importantly, imperfect integration of capital market in the international setting, where acquirer is high-valued company would most definitely consider to merge with a low-priced target. Changes in exchange rates or stock market valuation in the local currency of this country can follow. Suppose that a currency of a certain country rises which results in the firm's profitability for some external reasons. This company will thus target another company for a potential acquisition, a profitable acquisition that would not be profitable under the old exchange rates, in a relatively inexpensive country. It can be expected that other companies from this country will engage in acquisitions since they would pay for such acquisition in currency that had been inflated. The reason why valuation differences contributes in cross-border acquisitions depends if people, who take part in this activity believe whether these movement are temporary or permanent. In the temporary valuation, the acquisitions productively arbitrage these differences, resulting in expected profits for the acquirers. When talking about permanent valuation differences, the allure of acquisitions, especially those that include targets with cash flow in local currency, would not have been touched by valuation movements. Although, there are number of channels where permanent valuation differences can cause merger weaknesses. As an illustration, if domestic business makes a production of goods for sale in foreign countries or compete in their home market with competitors that came from outside, domestic companies will potentially make an increased profit considering the permanent currency depreciations while making them more appealing to potential foreign acquirers. To continue, when a foreign company experiences a value increase opposite to domestic company, e. g. through unhedged exchange rate changes or stock market fluctuation, it results in capital lessening in relation to the domestic company. Consequently, permanent changes in valuation can surpass in cross-border mergers because value changes yield lowering cost of capital under a foreign control. Resulting in more aggressive bidding of potential

foreign acquirers over domestic assets than what domestic rivals would bid on. Overall, the relation of currency movements and cross-border mergers arise from information asymmetry, it appears to be particularly relevant in the case of private targets over public targets (Erel, Liao, Weisbach, 2012).

The Cross-border Merger Process

The first step that had be made in the merging process is to write a draft of terms of the cross-border merger. This is done by the management of administrative organs from each of the companies that are participating in the merger. There is a minimum which had to be disclosed as a mandatory context in the CBM Directive and is integrated by the Member State. All terms in the common draft had to be made public at least one month prior the date of the general meeting. According to regulations, the common draft must be also accompanied alongside with the two types of reports. The purpose of the firs one is to disclose and justify the legal and economic aspects of the M&A transaction. It also includes the relative suggestions for members, creditors and employees and is written by the management or administrative organ of each engaging firm. The other one is conducted by independent experts, legal representatives, who are acting in the interest of both companies but independently at the same time. This draft must be approved and appointed by judicial or administrative authority. Further on, the general meeting joined by each of part-taking companies is on the line in order to approve the terms that had been formulated in the common draft. The date from which the cross-border merger is authorized and take on further actions is dependent on the law of the Member State to whose jurisdiction the firm resulting from (Dobos, 2012).

Foreign Direct Investments

Despite many positive effects that cross-border M&A bring to involved companies, there are several crucial effects that are brought to the given economy or a country. Foreign Direct Investments includes cross-border mergers plus additional investments in a certain country, including “green-field” investments, received earnings by offshores subsidiaries and loans from parent firms to their foreign subsidiaries and as discussed earlier in this text, FDI effect increases exchange rates and their movements (Erel, Liao, Weisbach, 2012).

In the world of international capital flow, there is a distinction between credit transactions which brings loan capital without equity participation, a portfolio investment and FDI. The last two include the acquisition of shares. In the situation where the shares contribute with the control over an enterprise in abroad, the transaction is classified as FDI. Besides, focusing on a micro-economic level there are several potential benefits for investors. Acquisition can be partly responsible for better access to raw materials, for opening new markets or bringing a cost effectiveness. If, as a matter of principles, the inflow of capital into a country is stated as a positive thing, why government restrictions

and state preventions from purchasing domestic companies? The answer is that there can be a fear of cutting back on jobs or innovations that would be shifted elsewhere (Heinemann, 2012).

The Impact of M&As on Society

Takeovers appears to be the tensest way how to express a vision and strategy in the corporate world. The course of the company can be changed rather significantly only in few steps, the careers of the workers and managers can be negatively shifted or a value for shareholders can be created. The process of M&As influences not only the main engaged companies but the defensive strategies of potential victims also influence taxpayers, other employees, managers, workers of other firms, consumers and the speed of technological progress and change. When deals are formed, the decision to create only one board of directors instead of two, how it was common prior the acquisition concerns not only the CEOs but other employees as well. The deals of mergers and acquisitions have a profound impact not only on businesses but also social and political process and hence, purely economic ones. The study done by Schenk, 2000 showed that only one-third of mergers or acquisitions brought a positive outcome in a shareholder value for the buying company. The following Figure 8 shows a number of subjects that are directly impacted by mergers and acquisitions (Ghuri et al, 2015).

Figure 8: Subjects influenced by M&A

1. The acquiring company including its managers, workers and its shareholders
2. The acquired company including its managers, workers and its shareholders.
3. Potential acquirer's rivals and non-acquired companies.
4. In offshore mergers and acquisitions, the host country and source country (competitive environment) and welfare impacts.

(Source: Ghauri et al. 2015)

The impact on employment and technology

To what extend the cross-border mergers and acquisition affect employment is not clear. As Arndt and Mattes, 2010 stated, the average original effect of employment in multinationals cross-border M&A is inconsequential, but the effect of cross-border M&A on the productivity is conclusive and significant. Moreover, the merger can bring a positive effect in a form of fresh capital. Enhancing the effectiveness over new markets can actually increase domestic jobs. Concerns should be expressed in an opposite

direction, where domestic companies make direct investment in overseas which will partly transfer the value chain to the target's country and results in bringing over the production process also with the workers. Although, fear do not arise for a government in situations, where domestic company acquire other enterprises abroad. The unemployment situation of a country is more complex with the influence of many circumstances. Generally, if employment is unfavorable, the jobs will decrease regardless of whether there was an acquisition of a domestic company by foreign investor. The comparable statement may be regarding the technological transfer. However, the technology transfer is rarely one-way and the target company will benefit from the technologies brought into the acquiring firm. Even though, the worry from the government is more realistic in this case since the technology transfer may cause general spillover effect from which a third party could benefit from if the know-how, innovation fall into the wrong hands. (Heinemann, 2012)

After the research conducted by Siegfried and Sweeney (1981), their exact focus was on mergers and acquisitions specifically on market concentration, firm size, product diversification, and geographic dispersion and their overall effects on society. It brought interesting evidence such as an effect on workers, distribution of income and a community welfare. Franks and Mayer (1993) conducted a research examining the relationship between capital markets and corporate control. Their findings stressed regulation (company laws, competition policy, stock exchange rules, and labor laws) and showed extreme differences in control and ownership across countries, even among the states on the European Union. The EU's Competition Commissioner, a competition authority, is perceived by companies as encumber, unpredictable and overburdened with the process of decision making. The regulation of mergers in the EU has theoretically a clear slate in preventing mergers with hindering competition and lets on others to be able to progress. European mergers still require permission for an activity from several national authorities that are dealing with competition issues. However, the Merger Task Force, unit reviewing mergers, is under-resourced. In the European Union, there is not any regulatory organization, let alone a global one, hence, development of transaction costs of M&A. Notwithstanding, there are not that many mergers with unfair practices where European authorities acceded to veto, only 13 deals from 1500 in the decade of 1990. However, the constantly rising number of deals is putting pressure on regulatory authorities - especially the one in the EU which are examining even the smallest sized mergers and acquisitions. Particularly in Europe, organizations focusing on labor rights consider M&A a significant factor regarding social impact and since the human factor of failure in those deals is so high, it is a welcome possibly that the takeover control will be even more frequent. For instance, the International Labor Office (ILO) is lobbying for more dialogue between management and employees in the process of mergers and acquisitions in order to prevent the negative effects. The number of important authorities that contributes with merging deals

mushroomed over the years in the world. Reports of the deal between Coca-Cola and Cadbury-Schweppes proposed that their lawyers needed over 40 jurisdictions around the world in order to get the anti-trust approval. In the failed effort to merge, Alcan Aluminium of Canada, Pechiney of France and Algroup of Switzerland needed 35 lawyers from different firms in order to file for a regulatory approval in 16 jurisdictions and it needed to be filed in 8 languages. Hence, there is a necessity to develop a consensus among regulators, handling law competition which would make anti-trust laws more coherent. What is more, there is a prospect of a new international bureaucracy that is inspecting mergers. The USA has in recent years averted a European proposal to name the World Trade Organization (WTO) as a central pillar regarding mergers policy. Often happened in practice that companies decide to merge without considering law regulatory concerns. The restructuring in national, regional and cross-border mergers and acquisitions that had been done in Europe and conducted by the EU has resulted in many changes in corporate ownership. The biggest change was the enlarged acceptance of mergers and acquisitions all over the world despite the several mixed beliefs that took into the consideration the effect that mergers and acquisition bring on industrial concentration. The one group of people who consider cross-border M&As to be a good way how to positively affect competition is regarding in situations where foreign companies take over domestic ones since otherwise such company would have to be incited to leave the market because of various reasons or financial insolvency. Another positive effect is the possibility to change domestic companies into effective rivals (Ghauri et al. 2015).

Regulations of mergers and acquisition in The European Union and The United Kingdom

Similarly, to every other business procedure, mergers and acquisitions are managed by authorities who guarantee that the process is executed appropriately. The regulatory makers who oversee governance requirement towards entities relying upon their place of residence or activity and the legal type. By investigating the Third Council Directive 78/855/EEC it could be applied that from a lawful viewpoint, domestic takeovers are business structure where both organizations are linked by legal framework that is identical. However, when looking at the Tenth Council Directive it appears to be evident that if the involved organizations are integrated in different system, then the form is referred as a cross-border M&A. Choosing the appropriate legal system is crucial for the formation and also when the bid is materialized. Authorities of every country have different prerequisites that need full-filled so the contract is possible to approve and legitimate. It is necessary to all involved parties that are registered in different countries to demand a contract that is comprehensible with both legal systems. Moreover, when the acquiring process is formed, the liabilities and the target's sovereignty is lost and the acquirer obtains full power to decide alongside with the liabilities that comes from the target. However, during

a merger, the liabilities and rights are variously shared. In spite of the fact that governments usually do not get involve with the businesses for the reason of the free market possibilities, law is designed to serve the purpose of protecting national interest. And since government's responsibility is interested in public matters as well as the fair competition, they are involved in the nature of mergers and acquisition since by the process, new, bigger and sometimes stronger entities are established which could have negatively influenced the targeted market. However, the government's focus differs accordingly to the legal type. As Sudarsadan, 2003 expressed in his book, the biggest attention is on the public and listed organizations since their shares are on the market and thus, these firms are subject to more legal requirements than private company. Despite this, there is a high importance of the jurisdiction. Furthermore, the legislation and regulation for takeovers might be partly responsible for diversity in monetary power of domestic and cross-border acquisitions. There is a tight link between the success of transactions and how the legal system is formed in various countries. This impacts also the amount of earnings for the shareholders (Goergen and Renneboog, 2004; Kandilarov, 2015).

Over the last thirty years the European trends shift towards more market inclined (shareholder-valued) approach. The difficulty with the regulatory compliances in the company law area gained specific attention from other jurisdictions of the European Union when the internal market was finalized in 1992. Now, there are four compatible company law directives in relation to corporate reconstruction in the European Union: The Merger Directive with its purpose to regulate mergers between public firms; The Sixth Company law directive handling the regulation that covers the division of an already operating company into entities; the directive that takes responsibility over cross-border mergers and the Takeover Directive. Subsequently, the company law directive concerning M&A do not avert each Member State from employing its own company law (Dobos, 2012).

Directive on Cross-border Mergers:

Regarding the CBM, a fairly effective method of corporate restructuring that provides subsequently the strengthening of the international market exists. As said earlier, Merger Directive controls national mergers of public limited liability firms. However, it was not till 2005 when EU legal framework for CBM was established mainly because of a completely different approach to the topic. Many Member States (e.g. Germany, France) were fearful of possible evasion, other negative effects on their companies and employment law safeguards and thus, did not authorize cross-border mergers. If some company from abroad had decided to merge with a company from other state, various legislative restrictions had diminished the choice. This situation hampered considerably the methods of corporate restructuring available to EU companies and resulting in restricting freedom of business organizations under the EU Treaty. After the acceptance of the CBM Directive, mergers can be formed accordingly to the law of Member State with a free mobility in any Member State within the territory of the European Union.

Regarding the protection of creditors and shareholders they are also protected by the CBM Directive through regulations and formalities of national laws to which the engaging firms are subjected (Dobos, 2012).

Government regulations and Economic nationalism in Mergers and Acquisitions

Many countries around the globe had passed laws regarding mergers and acquisitions with the purpose to reform their takeover market. Such laws are developed to generate an equitable and transparent process of bidding during such transactions. M&A law contributes to design a clear legal framework that would oversight M&A transactions, make the law application intelligible with the connection of mergers or acquisitions transactions. By advocating the equitable and effective takeovers and reducing regulatory uncertainty, the merger and acquisition law strives to create capital markets and encourages an active market for corporate control (Nenova, 2006; Lel & Miller, 2015 cited in Glendening et al. 2016).

Since deals regarding the mergers and acquisitions are exposed to the government regulation, the government of majority of countries can decide to be involved in the process of such deals. As Gorton, Kahl, and Rosen 2009 proposed in work they have done, the questions starts with asking for who and how the monetary and economic benefit of takeovers' transactions is directed. Furthermore, who is the main beneficiary from the deal? The situation got worsen particularly in recent years considering the highly globalized economy (Carbo – Valverde et al, 2009). Specifically, such case can be seen in China where before the economic reform Chinese companies were fully controlled by the government and M&A were permitted by the government needs. In recent years the M&A deals increased, but the government still has the ultimate right and use such deals for stimulating and vitalizing companies that are owned by the state or are semi-state (Liu, Luo, Tian, 2015).

Anti-trust Authorities

Corporate mergers and acquisitions play a significant role in the market economy but what is the government reaction towards such attempts in the European Union? Large companies often enter the new market by acquiring a local firm. When mergers between firms from different countries appear, it results in integration of national economies (Dinc, Erel, 2013). One of the way how the government can regulate M&A operations are via anti-trust mechanisms. Matters connected with anti-trust policy have significant values for mergers and acquisitions transactions. Government antitrust enforcement can affect the timing of this activity, lead to the negotiation that will conclude that the buyer is acquiring less than it was planned or in some cases the M&A transaction will be threaten and results in termination (Hemli, Java, 2011). The European Commission is the major subject for handling anti-trust questions regarding M&A investigates. They duty is to investigate whether the proposed merger would excessively restrict competition in certain segments. (Conklin and Pocklington, 2010). Thus, the

main purpose of Anti-trust authorities is to enforce legal prevention against companies that would create anti-competitive setting and business agreements. Hence, the aim is to avoid creating cartels, and abusing dominant power on the market by establishing monopoly or oligopoly power. In order to prevent an abusive power, the legislation oversee the right plurality on the market so a sufficient competition that would be present on the market and in the particular sector is presented in order to create an efficiency business setting (Seely, 2016).

There is a negative prospect of monopolizing M&A especially when following situations occur:

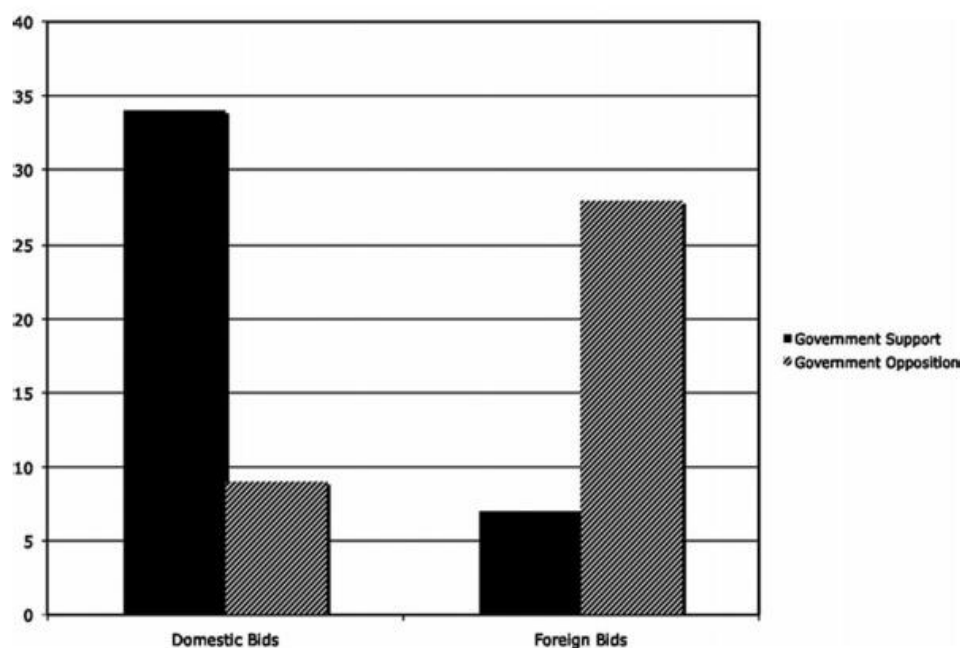
- The acquiring firm was exporting a large amount of their production to a market before the acquisition happened and the competing firm was purchased.
- If the non-domestic company already with established affiliates in the market acquires another player and thus acquiring a dominant or monopolistic market share.
- Some non-domestic company gains rights to a firm that is a market leader in the certain field to whom the company competed with in the past.
- When the intention of the future acquisition is to suppress rather than develop potential for competition of the acquired company.
- If an offshore company with established affiliates in a host country acquires a business in a third country that was however used as source of import in the market of the host country.
- Situation when two affiliates that came from abroad to the host country merged, however, their parents remained two separate entities, thus, competition is eliminated between those two businesses which leads to a dominant market position (Ghauri et al, 2015).

Preferred nationalism

Yet, for government, the worry of takeover attempts is centered on different concerns than competition. Particularly, the government restrictions often appear depending on the “nationality” of the acquiring company. Moreover, the nationalist interventions by home governments often include support towards local acquirers to create companies that would be strictly domestic and too big to be acquired by foreigners. This approach can be also seen in the comment by former minister of finance in France, Dominique Strauss-Cahn who in order to support merger of two French oil companies, expressed that the France merger will be almost on the same level as three biggest leaders in oil productions and hence protected from any possible takeover attempts by the UK Anglo Saxon or American company. (Dinc, Erel, 2013) This evidence gave a rise to a question whether the nationalistic behavior done by government is a reason for resisting M&A’s deals. If so, does government with its nationalism techniques hampers the capital flows and investments by averting attempts of mergers and acquisitions from foreign companies? Or do the government interventions influence premiums offered to target shareholders? From the study done by Dinc, Erel, 2013, government reaction was

examined from 1997 – 2006 on 15 European Union countries, including the UK. The results showed that home governments lean towards domestic acquires in a question of preferred support and are rather opposed towards overseas ones. Despite the fact that the EU Treaty do not dispose with any jurisdictions for governments in the M&A attempts on the basis of nationality. The outcome of the economic nationalism does not only negatively impact the result of the merger, but most significantly it affects future foreign bids and therefore also international investments and capital flow, of which the connection with the national interventions from government were none. Moreover, nationalist reactions also indirectly affect corporate mergers by impeding future foreign acquirers resulting in the negative effect of the market economy. Besides, the power of the interventions go hand in hand with the strength of economic and social impacts of the targeted country. Even though, the government interventions do not occur exclusively in Europe. The chosen focus for the European Union and large M&A attempts is chosen primarily because the EU provides a considerable number of cross-border mergers across its territory. Also, the European Commission is the anti-trust authority, not the government itself so it may be interesting to look closely for any potential collisions of these authorities since economic nationalism is shown in the M&A activities around EU. As it can be seen from the Figure 9, it pictures the reaction (support/opposition) of the target country's government to M&A bids. The Figure 9 supports the findings that shows how important factor is nationality for government, when deciding on the bids (Dinc, Erel, 2013).

Figure 9: Government support and opposition towards M&A bids



(Source: Dinc and Erel, 2013 p. 2479)

The answer for economic nationalism of mergers and acquisition is not that clear. One of the reason can be identified as a way how domestic government may protect public interest, however government in EU can block a merger only in limited cases after the thorough investigation by European Commission. Also, macroeconomics factors such as unemployment can make a decision. In order to support domestic bidders, home government often provides financial help to complete the acquisition in the form of public pension funds or lease from government-owned banks and by investing the merged company. Another effective option how to prevent any unwanted acquisitions is by finding White Knight (a friendly acquirer who take over another company in order to prevent a hostile takeover (Dinc, Erel, 2013).

Political reasons for public takeover control

Following up on the economic analysis, only a limited justification for FDI control mechanism can be advocated despite the growing number of such tools across the world. One way how to explain such paradox can be found in politician's behavior, and not just economic actors. Increasing personal utility by intending and taking measures that focus on maximization personal popularity and votes. In this view, using screening instruments for FDI, politicians think that they will be rewarded by voters for taking initiative behavior and that the expectation about the resentment against the sell-out of home economy is strong and there is rather willingness to accept 'made in China' than 'owned by China' by population. The resolute mobilization of votes can be also received through the job argument. Finally, lobbying may contribute in the field of investment control where by creating investment barriers, domestic companies will manage to keep foreign competitors at a distance. The general rule is that limitations on a free market often direct at protecting home companies against competitors from abroad. Nevertheless, what is good for domestic company do not necessary have to be also beneficial for domestic customers (Heinemann, 2012).

There are several options which would oppose those mechanisms. The classical method is to allocate the power of decision-making to independent authorities. This still would only work if the authority's decision would not be weakened by political interference. As a second step, the parliament should adopt the general rules and let administrative authorities applied them over the watch of the courts. A long-term mechanism would be a propagation and discussion regarding the advantages and disadvantages of international integration with the special focus on cross-border investments. Also, the recent development and corporate control show a considerable lack of transparency. While it is true that in order for an investor to be able to proceed with an acquisition, the notification to the competent authorities has to be made, when the acquisition of another company reaches a certain percentage, often only the name and the address of the investor has to be disclosed. Hence, a higher

level of transparency would definitely form an important step. It would be likewise beneficial to put more focus onto the general rules of competition law (Heinemann, 2012).

The role of government in hostile takeovers

According to Romano, 1988; Shleifer & Vishny, 1997, there is a significant connection between hostile takeover bids and openness to the takeover regulation conducted by the government. The takeover also emphasizes the conflicting interest of shareholders, managers and government. For the shareholders in the target company, the main interest is maximization of their return on investment. The managers from the target company focus on straightening their position and protecting their job position by using anti-takeover provisions (ATPs). The role of government is especially crucial since it is their role to define the playing field for hostile takeovers through takeover regulation. What is more, if the takeover would be corporate, the government can intervene directly. Thus, takeover regulation used during the hostile takeover can benefit to a national interest. Besides, there are two possibilities how government can influence the takeovers. There is either indirect way done by takeover regulations or direct way via active interventions. Moreover, another research done by M. Rowoldt and D. Starke, 2016 analyzed whether national takeover regulation could be used by a government as a mechanism to protect home companies against being acquired by foreigners. The results showed that direct government interventions are more often used in cases of foreign hostile takeovers, indicating to protectionist motives and support the findings provided by Dick and Erel, 2013. They moreover, backed the fact that beside protectionist motives, governments might mediate and follow populist motives in search for votes. Also, the arrangement of Anti-takeover provisions by management from the target company is related to takeover regulations. And hence, it might affect corporate governance. If takeover regulations authorize the option to use the Anti-takeover provisions to the target's management, they are likely to accomplish it. Focusing on the long-term effects, the empirical evidence demonstrates a negative relation between indices of Anti-takeover provisions and value of the company, long-term stock returns also a positive correlation with value destroying investments (Rowoldt and Starke, 2016).

Furthermore, hostile takeovers and takeover regulation provide important features of the system of corporate government. It has got many attributes that shareholders can benefit from, such as synergies and better allocation of resources. The threat that can be felt from hostile bids go towards managers and the necessity to align their interest with the ones of shareholders. Also, managers are likely to be removed in the wake of the acquisition. What is more, a successful hostile bid can improve the firm's performance. However, requires a disciplinary function. With this in mind, the legality of Anti-takeover provisions in takeover regulation has a severe importance. Their regulation might grow the openness of the domestic market for corporate control. Although, there are two hypotheses that

express their concern about the potential impact on corporate governance. According to the shareholder hypothesis, they can benefit from the Anti-takeover provision because the bargaining power will be higher and thus takeover premium will be higher as well. But, the management blocking hypothesis conclude that ATP's enable target's management to hinder or defeat hostile bids harming their disciplinary mechanisms. Consequently, the negative relation between Anti-takeover provisions in takeover regulation and firm value as well as long-term share value can be demonstrated and it can be stated that government interventions affect bid results. The study done by Rowoldt and Starke showed that the rate of success of takeover attempts is negatively correlated with government opposition (Rowoldt and Starke, 2016).

Mechanisms to protect own countries

In recent years, many European countries have adopted formal instruments to control takeovers from abroad. The research conducted by previous researchers showed that these mechanisms have a strong preventative effect. Large number of takeover projects that had been abandoned, were done so because of the expressed concerns by public authorities. The government policies have its origin in corporate and capital markets laws. The rules control the transferability of shares, the duties of target firms in the case of hostile takeover, or necessary control over the business of acquirer. Hence, such legislature may put shareholders from domestic companies in a position where they would need to defend themselves against a takeover from a foreign country. If these tools are accepted, attempts from abroad company will be often unsuccessful. Such possibility had been tried to restrict with the EU Takeover Directive (2004/25/EC) suggested by the European Commissioner for the Internal Market. They questioned whether too many Member States are averse to lift existing barriers and giving companies more power to hinder bids. Resulting in a domino effects on other countries and their application of protectionism. Putting cross-border M&A at risk where businesses launching takeover bids will be confronted by more and more barriers. The question is if countries are allowed to prevent investors from abroad to take over home companies. The principle of sovereignty grants states a sufficient scope in answering the question. However, the freedom of states can be limited by international treaties, such as bilateral investment treaties (BITs) (Heinemann, 2012). The purpose is to guarantee certain standards of treatment ensuring a level of protection of foreign investors outside the domestic juridical system. This is noticeable in developing countries where accepted restrictions of sovereignty were made in order to increase FDI, which is also the purpose of BITs (Neumayer, Spess, 2005). Other relevant organizations are OECD and WTO. After the authorization of a merger under the EU Merger Regulation governed by European Commission, the possibility to interfere with the merger deal by a Member State is limited. The measures that are allowed to be taken into the consideration are developed in order 'to protect' legitimate interests, compatible with the general principles and

other provisions of Community Law. Hence, The European merger control might be a hurdle to national anti-takeover measures but only if the EU Merger Regulation can be applicable. Subsequently, Member States are not ruled by the precedence of a European Commission decision resulting in a random impact on the legality of national investment control (Heinemann, 2012).

Regulation of takeovers in the United Kingdom

The jurisprudence of the Competition Appeal Tribunal (CAT) with the Court of Appeal has provided a substantial guidance and helped to the UK's administrative system of the takeover control. In this following part the clarification of the structure of M&A deals in the UK, including the jurisdiction and responsible organs has been made. It will also sum up the particular assessment of the limited number of acquisitions that might have raised public interest due the various issues. Similarly, as the system of M&A control in the European Union and majority of other EU Member States, also UK's merger control is an administrative process treated by independent agencies, namely the Office of Fair Trading (OFT), and the Competition Commission (CC). All are strictly supervised by the Competition Appeal Tribunal (CAT). This organ does not provide any decision by itself but review the legal side of the decision made by the OFT and the CC, both applying the merger provisions done by the Enterprise Act 2002 which made a significant change and improvement in the merger control of the UK. Before than it was not obligatory to rigorously follow the recommendation created by the CC (O'Regan, Jefferson, 2013).

The Office of Fair Trading: The Office of Fair Trading (OFT) is the first-stage agency with its purpose to review the proposals of mergers and acquisitions. Even though according to the Enterprise Act, there is no bond to notify a merger to the OFT, or to wait with an expectation for an authorization before the merger implementation. However, many mergers voluntarily notify its actions. It is in their power, actually a duty, of the OFT to review mergers that had not been notified to it, including mergers that are already accomplished and finished. If there is any suspicion that the reviewing merger can result in a substantial lessening of competition, the case will be further investigated for a second stage at the Competition Commission. If the findings of a competitiveness are positive, it will either appoint remedies or the merger will be prohibited. Thus, both of these independent competition agencies initiate the review and come to a conclusion. This is also the case of a merger that is already consummated. Also, from the year of 2014, the UK government decided to merge the OFT and Competition Commission and create a single entity although, the two-staged reviewing system will keep its form. Consequently, appeals of the OFT and the CC are heard by the Competition Appeal Tribunal and in some cases by the Court of Appeal and Supreme Court of the United Kingdom. In some cases that can be against a public interest, usually in defense or media sector, the UK government is involved in merger control, but only in specific public matters of interest, never in a question of competitiveness. Thus, the British system vary from the adversarial judicial process applied in the US

in where the anti-trust agency cannot itself banner a merger, but has to bring proceedings before court and hence, they are not a final decision maker (O'Regan, Jefferson, 2013).

The difference between the Office of Fair Trading as a first-stage reviewing agency in the UK, is in the obligation to notify the merger. Because in the case of the EU Merger Regulation, the notification is mandatory and it is prohibited to start any merger activity before the case is analyzed and the merger is approved. Also, with the power that the OFT has with the investigation of transaction that have not been notified, significant proportion of about 25% is investigated "additionally" on the basis of own-initiative from the OFT. Besides, the main point of the OFT is to investigate, under the jurisdiction of the Enterprise Act, whether a "relevant merger situation" exist. This would imply to the situation, where all jurisdictional thresholds are met. The link between the UK and EU merger control has been contemplated by the CAT and on appeal. Moreover, the Enterprise Act administer two jurisdictional thresholds. First, the turnover test is contented when the turnover of the company that is being acquired excel £70 mil., in the UK. Secondly, the share of supply test is sated if the amount of shared goods and service outdo together 25%, or more, in the UK. Additionally, the limit for the merger's investigation by the office of the Fair Trading must be finished within four months after the OFT was informed of the merger. At the end of the investigation process, the result can take one of four conclusions.

1. The merger cannot be qualified as a relevant merger situation.
2. The merger is unconditionally approved without remedies and thus, there is no requirement to be further analyzed by the Competition Commission.
3. The merger had been approved by the OFT, conditionally and can be subjected to remedies.
4. The merger is passed on to the Competition Commission. (O'Regan, Jefferson, 2013).

Competition Commission: As it was introduced earlier, the CC is a second-stage agency, their obligations are in reviewing mergers and further competition lies also in undertaking the market investigation, hearing regulatory references and appeals in various regulatory industries. All cases are referred to the CC from other agencies or government minister. The government is also the organ which select all members. Furthermore, once a case of a specific investigated merger is in hand of the CC, they are obliged to decide whether the merger has resulted, or might result in weakening the competition within any market in the United Kingdom for goods or services. If the results are confirming, the CC has to determine what actions need to be taken in order to prevent the lessening of competition. The results can be either to forbid the merger further process or allow it's subject to remedies. If there is no sign of diminishing of competition, the merger is unconditionally authorized (O'Regan, Jefferson, 2013).

Secretary of State (Public Interest Mergers): When a merger attracts attention of public, the Enterprise Act implies that the Secretary of State or a government minister is the final organ to decide. So far three “public interest” have been classified in the Enterprise Act (national security, media plurality and the alimant of the stability of the financial system) (House of Commons, Ninth Report 2009-2010). Secretary of State may also consider mergers that are a subject of a review by the European Commission as a public interest issues. In all of these situations the jurisdiction is still retained to the CC and the OFT when the competition issues are regarded. Also, Secretary of State may decide to refer any case that would be against public interest for reevaluating to the Competition Commission. After that a final decision has to be stated. So far, the CAT regulated the rights of Secretary of States in two merger cases that increased public interest issues. Those mergers were:

BSkyB and Virgin Media v. Competition Commission and Secretary of State for Business, Enterprise and Regulatory Reform (the concern in this activity was a media plurality and was further examined by the Court of Appeal and Merger Action Group v. Secretary of State for Business, Enterprise and Regulatory Reform (here the worry was in the financial spectrum). Generally, BskyB and Virgin media were related to a challenge by a third-party to oppose the decision by the Secretary of State that the merge did not obtain with any hostile effect on media plurality. A second case, the Merger Action Group involved a challenge by a pressure group to a conclusion by the Secretary of State to authorize the merger of two leading banks Lloyds TSB and HBSO that wanted to happen during the financial crisis. The reason behind this was to grant the United Kingdom a financial stability of their financial system despite the serious anticompetitive outcomes. Both applications of mergers turned out to be unsuccessful (O'Regan, Jefferson, 2013; House of Commons, Ninth Report 2009 – 2010).

Reform to the Review of mergers (Competition and Markets Authority)

An important reform appeared in 2012 which allowed to reform the system of competition administration especially change the system of merger control in the United Kingdom. All changes were effected from April 2014. Those changes got an existence to a new united agency for which the proficiency from the OFT and the CC is transferred with reassigned functions to the Competition and Markets Authority (CMA) which resulted in the dissolution of the CC since the CMA is now being responsible for handling all the competencies of the CC. Also, according to the jurisdiction for mergers, the CMA stays in charge of the two-stage review process. The matter of possible remedies or adjustments will be possible to negotiate once there is set up a ground for stage two (Phase II) review. Furthermore, because of the specific issues that have to be dealt with in every single industry, the British government recognized a necessity for additional regulations of anti-trust that would analyze takeover deals accordingly for a sector. This might bring certain concerns regarding uneven competition. Even though the CAT will hold its existing jurisdiction over mergers and contains

reviewing decision of the CMA, it may be possible to say that bringing a whole process of decision making of merger control to a single entity and remove the “second pair of eyes” as the Competition Commission, may potentially rise up the risk of procedural unfairness in substantial decision making (O’Regan and Jefferson, 2013).

Regulatory options

Regulators have number of tools that can be used by the British law when M&A deal is allowed but with certain adjustments or remedies. The most common options include:

Price cap: This tool sets a maximum allowed path for a price of a certain product. This happens in advance and is dependable on factors that are beyond the control of the company that is regulated. The aim of this tool is to limit abuse of market power in the UK (King, 1998).

Windfall taxes: Type of tax that is described as a one-off tax that is imposed on excessive profits of the privatized companies. In other words, companies are forced to re-invest their profit rather than pay enormous dividends to their shareholders (Chennells, 1997).

Unbundling the regulation and control: A company may be enforced by regulators to bring down barriers for another rival in order to be able to enter to the British market. Also, the company might be imposed to open infrastructure for competitors to use (Ferreira et al. 2015).

Short-term Shareholders

Over the years, general public is concerned about the lack of commitment that some shareholders give to the companies they own and their commitments towards long-term success and financial prosperity. This situation also contributes the fact, that shareholder oversight and regulation is lacking appropriate tools that would improve the circumstances. Especially in the UK, the short-termism is blamed for several weak points in the UK economies. Besides, shareholders who invest only with the purpose of gaining profit quickly are accused of shifting the decisions of corporate investments away from what the owners firstly anticipated, the long run growth. Short-termism can be partly blamed for the collapse of UK manufacturing that happened since the Second World War (Mayer, 2013 cited in Thanassoulis, 2014). The unstopping matter regarding short-term shareholders had been also a key concern for persistent change in regulatory interventions with an aim to stimulate long-term investments in shares (Thanassoulis, 2014).

Characteristics of short-termism and its causes

Recent experience especially in the UK shows that despite the financial crisis and rather aiming for a balance, long-term objectives had been overlooked and ignored and replaced by the focus on short-

term goals. Thus, the term short-termism was established and is characterized as a strong focus of those who are making decisions and are driven by the short-term goals, however, at the cost of long-term objectives. One could imply why there should be any focus paid for issues of short-termism, the legitimate answer could suggest to leave the company and the market do its job. But, the effect of short-termism does not include only corporation but involve also public regulators. If the short-termism is a dominant in the market, it might have negative consequences and adverse macroeconomics, influence the country growth, unemployment and impact the price dynamics. Particularly, short-term behavior can be detectable during the government elections. As a common move of government is to boost public expenditure right in time before the election in order to increase higher number of votes. However, such policy influences the long-term costs since the level of public debt increases, resulting in an economic slowdown. Subsequently, engaging in short-termism seems to harm the investment activity and reduces the company's ability to stay competitive on the market and be able to respond swiftly to various challenges (Olesiński et al. 2013).

In the capital market, the examples of short-termism can be found when dealing with equity markets that are characterized by the high frequency traders. Their understanding and measuring of time is usually classified in fractions of seconds. However, there is not an evidence that short-term behavior has a damaging power for British economy. What is harmful, is the outcome of short-termism not the process itself. Moreover, the rising activity of mergers and acquisitions supports the attention that is brought towards market issues. It is a duty for all directors of British businesses to guarantee and secure the well-being of the firm for the benefit of its people that is also granted by the Companies Act 2006 (Kay, 2012).

Short-termism by the target company

There are two options how an acquirer can gain shares of the UK business. It is possible to do it by a public common offer for the shares or a scheme of arrangement governed by the Companies Act 2006. Moreover, offers for the UK companies that are publicly listed as target companies are administered by the Takeover Code that is subjected to the Panel on Takeovers and Mergers (Panel). Takeover Panel can also apply defensive measures and prohibit the bid. If there is no use of such measures, the approach from the target board regarding the attitude towards the bid plays a crucial role in the outcome of the deal. Firstly, when the board's approach is first negative towards the offer, it can stimulate the bidder to make an improved, higher offer. Secondly, in some case, the financial resources might be limited for the case of bidder, if the bid is hostile. Lastly, the target's co-operation is important for an acquirer when the offer is done by the scheme of arrangement and the bidder wants to gain full control over the target company. UK takeover regulation functions of the premises of open market for corporate control. In recent years, few concerns relating to the matter regarding target boards feel more attracted and are more in favor towards only the financial interests that have short-term attributes. There are several variables that need to be taken into the consideration, since it can have a negative consequence (Wan, 2013, part 1).

Firstly, when considering the question in corporate law that relates to the directors and the preference of their interest over the value of stakeholder. At the end, the enlightened shareholder value was accepted as the preferred one by the UK Parliament. However, directors are obliged to form a list of non-exhaustive factors for the purpose to intensify the success of the firm for the sake of shareholders so that the company can benefit from as a whole entity. The list should include stakeholders (employees, customers or suppliers) as well, since it is those who contribute to the company well-being. Focusing only on the short-term financial interest and ignoring the stakeholders' interest (long-term) would be in contrary to the compelling justification. It can be implied that during takeover, huge influence of stakeholders, especially employees can feel the change most intensely. In fact, during the Cadbury and Kraft deal, the initial bid was characterized as a hostile one. However, shareholders got involved in the negotiation process which influenced the outcome. The whole case is analyzed further on in this paper. It is clear that regarding the relationship with employees, the contract is in majority of cases on the long-term bases. However, in situations, where a target company is acquired, new executives or managers are no legally obliged to honor those contracts and might even cut or reduce wages of workers. This has a direct impact for employees becoming unwilling to invest in company-specific human capital which that shows in a reduction of output levels. All in all, takeovers linked to the short-termism results in deals that are rent-seeking and not focusing to create value (Wan, 2013, part 1).

The consequences of short-termism.

There is number of possible channels which short-term investments can contribute on and have a harmful contribution on the economy. However, there are two main ones that affect the business's performance and are linked to the short termism the most. Figure 10 shows the direct symptoms of short-termism.

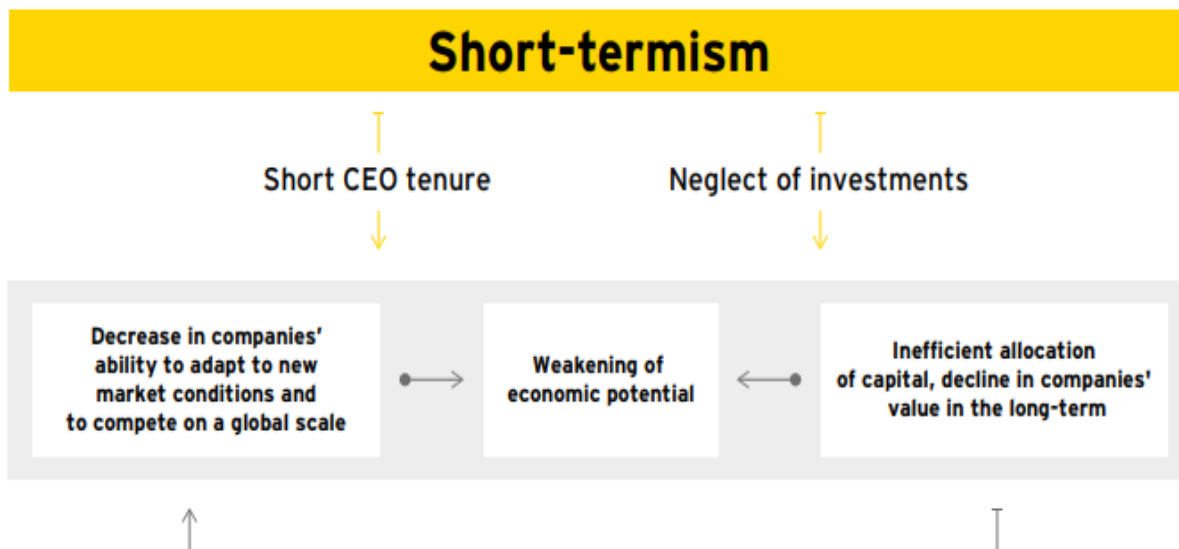
1. Disregard of investment activity

A decline in investment expenditure is classified as a possible attribute of the impact of short-term perspective mostly due to the capital that is invested. As such represents immediate costs for the company's financial position. On the other hand, the investment as a possible benefit is uncertain and takes time before it is noticeable. The weaker financial position also negatively influences the dividend policy which brings reduction of earnings for its shareholders. This is the reason why executives often do not engage in investment activity, mostly research and development activity, with a risk to be not able to deliver enough profit for its shareholders. However, in a long-time perspective, neglecting investment expenses contributes in the weaker competitive power and overall development of the company and is connected with and ineffective redistribution of funds by public firms. However, due to the market expectations the board of directors is reluctant to invest in an activity for long-term benefits. Consequently, as a study made by Bhojral et al, 2009 expressed, the earnings that are available in the short-term are often prevailed by long-term costs (Olesiński et al. 2013).

2. Neglect of human capital

Human capital as a crucial company's asset is another factor that is likely to be influenced by the short-termism the most. Executives driven by the motivation to deliver the best financial results often cut on the trainings of the staff or slim down the hiring process as a reason to decrease the company's costs. Such layoffs are particularly harmful for employees since the reduction in employment is often followed in the economic slowdown. When by neglecting the human capital, the board tries to avoid the disappointment of shareholders and it is the fastest way how to improve financial figures and boost cost savings which payoffs in the stock price grown in the short-term (Olesiński et al. 2013).

Figure 10: Symptoms that short-termism has on management



(Source: Own creation based on Olesiński et al. 2013)

According to the empirical findings, the pressure coming to the executives from outside to deliver results is also accompanied by the executives' tenure decreasing. All of the aspects discussed earlier undermines the long-term potential and fundamentally influence the performance of a specific firm. Upon the premise of a short CEO tenure, it is linked to the replacement of CEOs. Even though, that the experience is immensely important when developing a strategy for a long-time performance, the concern for a financial performance is mostly prioritized over long-term prospect and can be often replaced when not delivering satisfied financial results. Moreover, reduction of a capital outlays declines the market capitalization in the short-time. However, engagement in the investments would improve profitability of a business in the long-run and evolve the value itself. The focus on a short-term development also brings inability to adopt to a technological and global progress. The short-termism is not harmful only for the company but because of the lost potential of a company, the whole economy is affected which results in the macroeconomic imbalance and economic downturn (Olesiński et al. 2013).

Responsibility to company to maximize short-term market value?

It would be interesting to examine whether in takeovers, board of directors that operates in the target companies feel pressured to maximize the short-term value in order to provide good results for shareholders and their shares and whether there is any concern towards stakeholders. Such questions also had arisen during the Cadbury/Kraft offer, where the future production in the UK had been at the stake which cost several hundred or manufacturing jobs (Wan, 2013, part 1).

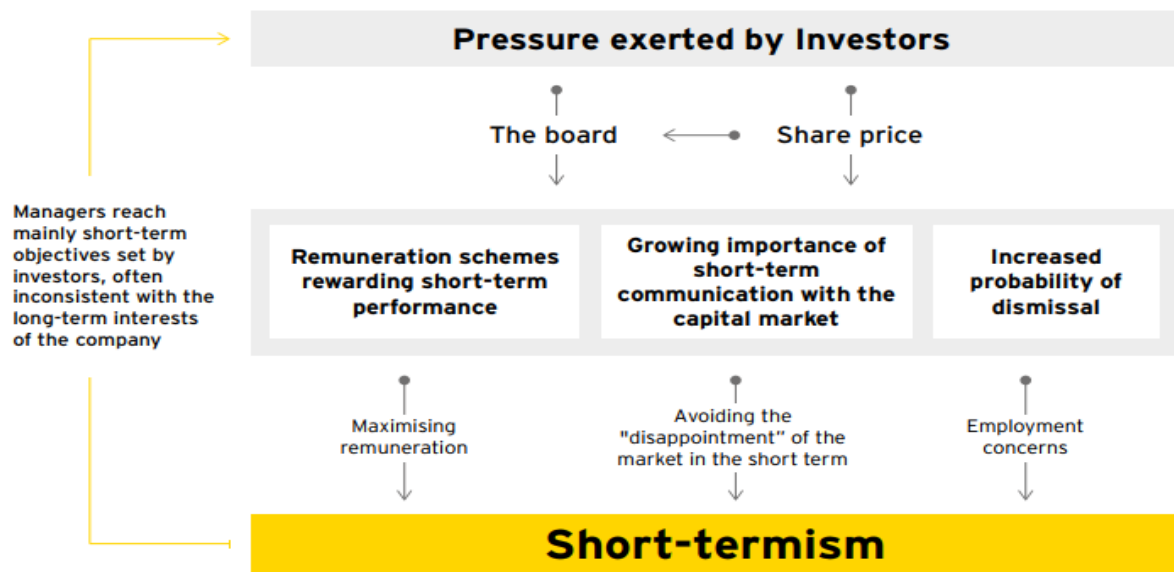
There are two scenarios open to discuss. The first one can occur when the board is deciding to sell the target to the only one bidder for the premium to the price on the market, or stay independent. Second possible scenario is to sell the target and choose one acquirer out of several competing bids. According to the UK regulation, the court gave a lot of independence to directors who are obliged to take actions which they consider to be in best interest for the target company. When board of directors give advice to shareholders how to decide over the bid, interest of stakeholders must be considered. In regards to the assessing the possible impact of the takeover and possible financial consequence for the whole company. However, in many cases shareholders are not able to prefer interest of stakeholders over their own. As it is defined in the common law, it is upon the directors to decide what forms the benefit of shareholders. It can either be determined by the short-term or long-term financial development of the specific firm. Considering the first possibility that is to either stay independent or be sold for a high premium for the shares. It can be concluded by the target board that choosing to stay self-sufficient, would bring improved long-term wealth and as such, it would be preferable for shareholders to not accept the acquirer's offer. If the offering premium would be very satisfying for shareholders, directors can experience a hard time to persuade shareholders to not give an acceptance for the offer. As the second scenario is considered, deciding for which bidder the target will be sold depends on the greater shareholder wealth that will be generated in the long-term (Wan, 2013, part 2).

According to Wan, 2013, neither Company law nor Takeover regulation order directors of the target company to prefer the financial investments with the short-term attributes over the long-term approach. The only exception lays when a certain company is sold for cash. In such cases, directors must gain the best price possible. However, when taking stakeholders in to the consideration, the biggest limitation in both Takeover Code and whole UK M&A regulation is that there is no efficient enforcement which would grant their best interest when a takeover is negotiated. The current setting put a question whether there might be a need for a fundamental reexamination of company law and takeover regulation. So far, there were few recommendation and suggestions from regulators which considered partial solution for the issues of short-termism in the UK businesses. It should involve an improved juridical scrutiny where the appropriate court should inspect more thoroughly the decision-

making process of how board of directors' plan to consider also interest of stakeholders and to inspect whether interest for shareholders are fair when following the short-term or long-term interests of shareholders. Moreover, one of the possible changes suggest that a board of shareholders of the target company should not obtain more power and develop drivers that would ensure the long-term financial strategy. Considering that currently merger's arbitrageurs have a great control in their hands once the bid is announced and thus can influence the result very easily. The recent evidence shows, that institutional investors in order to profit from the pre-bid price sell their investments and merger arbitrageurs buy the shares in the market. This behavior is applicable already from mid 1990s, where the plummeting number of hedge funds started to profit from engaging in the merger arbitrage. Also, in the acquisition of Cadbury, it was disclosed that more than 30% were in control by merger arbitrageurs during the time when the board were planning to approve the bid. The number increased by that time with more than 5% over the week. During that time, it was also assumed that either Kraft or another bidder would higher the offer for the target and as such, the investors were not buying the shares with the purpose to keep the investment for long-time purposes (Wan, 2013, part 2).

As it was implied before, there is a certain pressure that public companies feel in order to fulfill the results for investors whose expectations involve short-term outcomes. The reason why investors are fueled by this behavior is partly a reason of the fast development of new technologies, globalization of finance markets, or reduction of transaction costs which made it fairly easy for investors to allocate and shift their funds. Another trend in investments pursue the tendency of expecting results that come straight away. This is also due to the rapid development of various new types of media that deliver new information at any time. Also, another contribution of the development of the globalization of financial market influenced an increase of institutional investors and their role in the matter. The main importance for them is the volume of shares. This was also accompanied by the intense fluctuation in share prices. Upon this premise, market volatility makes hard for investors to be able to predict and analyze the potential of a company for a long-term horizon which again results in focus on the short-term and discourage the investors for long-term intentions. The Figure 11 pictures the pressure exerted by investors on CEOs (Olesiński et al. 2013).

Figure 11: The pressure exerted by investors on CEOs



Source: own creation based on Olesiński et al. 2013

Even though, that investors wield pressure on managers in companies in which they have invested in shares, the question is why executives' behavior is even influenced by shareholders and why the policy to maintain long-term goals does not outweigh the current setting. The answer lays in the instruments that can be applied by investors that help to execute their short-term expectations. Every country obtains variety of corporate governance and acquire own institutional setting that delegate the effectiveness of public businesses. It is common that every public company is represented by the board of directors that have the power to name and expel CEOs and represent shareholders' needs. Remuneration scheme usually in a monetary form, various bonuses, are a common tool how to influence CEOs. As such an increase in market capitalization, revenue growth and overall performance, are attributes on which the attention is most focused on. Another instrument that is used by shareholders is financial reporting and market communication. Since in many countries it is essential to issue financial reports every three months, it gives a great opportunity to shareholders to be able to see closely into the companies and monitor their goals (Olesiński et al. 2013).

Takeover process and short-termism in boardrooms

There are two ways how an acquisition in the United Kingdom can be structured. Either it can be done by the general offer for shares or it is done by an arrangement which is governed by the Companies Act 2006, Part 26. All offers with no difference how it was structured for British public target firms are being subjected to the Takeover Code (City Code on Takeovers and Mergers). The Code is supervised by the Panel on Takeovers and Mergers. However, despite its statutory foundation of both the Panel and the Code, the substance of the regulation is self-regulatory. According to the general offer, the

first necessary step that the bidder must do is to announce their intention to make a bid. The announcement is further documented and sent to the shareholders. Another way, a scheme of arrangement, demand an approval from a majority in value of shareholding which represents at least 75%. In particular, the offer can be either hostile or friendly but in the scheme of arrangement, the target board is the one organ that approves over the takeover. Regarding the general offer, the target directors, with its independent advice and recommendation share those with the target shareholders. The core objectiveness, according to the Takeover Code, is to grant shareholders the right to conclude and decide over the transaction. The board of directors in the target company is prevented to make steps that would frustrate the possible bid without the acceptance of shareholders (Wan, 2013, part 2).

Value Creation and short-term performance of cross-border takeovers

Among the business research, there had been a prolong discussion whether M&A combined enterprises create value or lack of it. Even though, that according to empirical finding the value is increased after takeover, mainly thanks to the achieved synergies, there are also theories that shows that value creation is not present in some situations. Firstly, when both engaged companies have already well-established operations, develop synergies that would increase the value is difficult especially in cases when the M&A only transfer capital from acquirer to target. When considering the target, the financial profitability is always positive at this side of a deal. However, the performance of the acquirer is much more difficult to generalize since it is influenced by several factors. It can be stated that in a long-run, the takeover shows a positive involvement after a successful post-acquisition implementation. Although, according to the Bruner (2002) acquiring companies have returns definitely lower almost negative compared to the targets (Zhu, Moeller, 2016).

The fact that the number of M&A deals have multiplied over the last twenty years has been already discussed. The reason behind it can be either integration of the world, or liberalization of regulatory control of international capital. Considering the positive effect of internalization, it could be assumed that the value of the bidder and the target firm, when combined, should be positive. The performance especially in the short-term is positive for the target particularly due to the paid premium to shareholders from the acquirer. It is done so in order to be able to gain a control rights of the targeting company. Thus, it is no surprise that the value is higher before the pre-bid stage. But mixed results are accompanied in the acquiring company. According to a conducted research on UK companies between 1987 and 2004, the returns were accumulated in a short-term between -2% to +2% compared to the value before the deal was materialized. Research findings by Golubov et al. 2012 and Puia 1995, showed that negative returns of acquiring companies in cross-border deals were followed after the business transactions were finalized. The drivers that can influence the short-run performance of

cross-border M&A activities has varied. Firstly, the choice of a payment plays an important role when discussing whether the bid will be compensated in cash, equity or mixed of these two options. Also, geographical origin is proven to have a relation on the outcome of a deal simultaneously with the market power that is beneficial for the value creation. Considering the payment method, Fuller and Glatzer 2003 expressed that when the payment of M&A is in cash, the created value is higher compared to share or mixed (Zhu, Moeller, 2016).

Economic Theories of Regulation

There are two perceptions regarding the economic theories of regulation. The first one states that regulators have enough information and power to implement rules which would allow them to effectively promote the public interest. Here, it is assumed that regulators are benevolent and their goal is to pursue public interest. There are also often called “public interest theories of regulation”. The other assumption regarding the second economic studies states that regulators do not determine adequate information with respect to cost, demand, quality and other dimensions of company behavior. Thus, they can only poorly advocate the public interest when controlling businesses. Furthermore, it is argued that economic agents such as legislators, voters, consumers, are concerned with their own benefits and their actions might or might not consider the public interest. Economic theories that share such assumptions are often called “private interest theories of regulation”. Crucial for public theories of regulation are a market failure and effective government intervention that increase social prosperity. Private interest theories characterize regulation using interest group behavior. These are: companies, consumers, regulators, legislators, unions and more. They suggest that such interest groups can often decrease social well-being and can turn into the theories of political actions (Hertog, 2010).

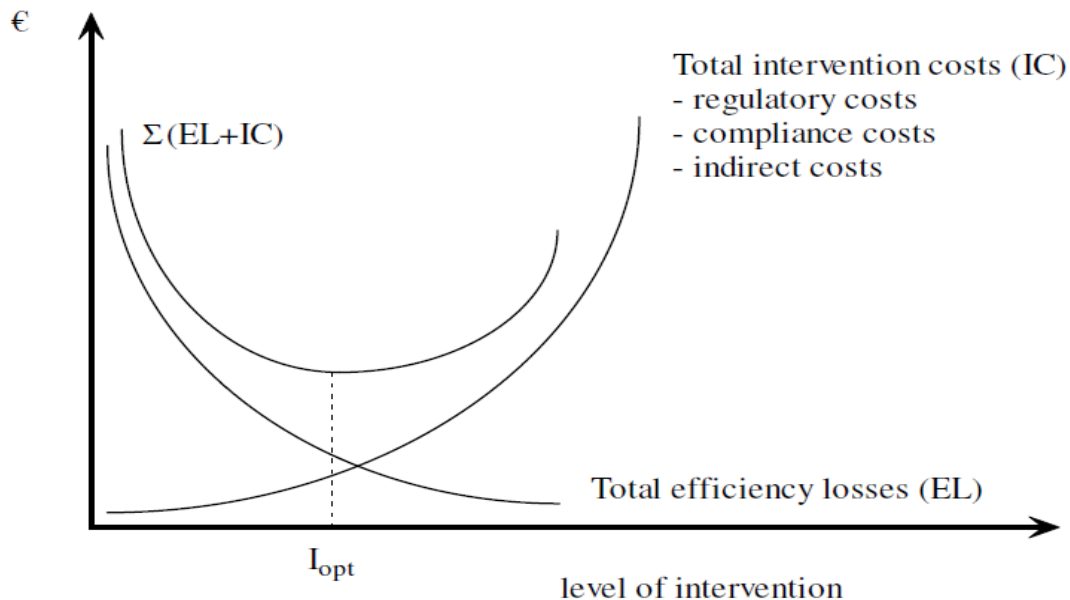
Public Interest Theories of Regulation

As already clarified, these theories put regulation on companies and other economic actors in order to endorse the public interest. Such public interest can be portrayed as the most ideal allocation of limited resources (goods and services) for individuals in the society. The allocation is coordinated by the market mechanisms and have a great importance in western economies. Because such conditions are hard to apply in practice, the quest for methods that would be improving the allocation of resources arise. The situation is called a market failure and is characterized by not putting scarce resources to their highest value uses (Hertog, 2010).

As determined by Arrow, 1970, Shubik, 1970, one of the method that attains effectiveness of resources allocation when a market failure is recognized is government regulation. This led to the development of public interest theory of regulation, referred as “New Haven” or “Progressive School” of Law and

Economics (Rose-Ackerman, 1988, Noll, 1983 cited in Hertog, 2010). It was suggested that the transaction cost of government regulation to form fair prices and fair rate of return are lower than the costs of unregulated competition. (Goldberg, 1979, cited in Hertog, 2010). The foundation of this framework is illustrated in the following figure, (Figure 12).

Figure 12: Optional Level of welfare loss control



Source: Adapted from Hertog, 2010

Imagining a natural monopoly that had not been regulated by the government and is supplying some sort of public service. Such company would make supernormal profits, charge various different prices to customers and would not offer any service to high-cost consumers in rural places. Without regulations, the costs would stay on the highest level and intervention results in the lowering of these welfare cost. Moreover, the level of the intervention costs rely on the level of regulator intervenes in the private businesses; the stronger level of regulation the higher level of intervention costs (IC). Subsequently, regulatory intervention affects private investments and making them less secure, mainly due to the investment lessening and lowering the economic growth. The optimal level of intervention (I_{opt}) indicates trading off resources that had been allocated to increase the level of regulation and lower the level of inefficient behavior of a company (Hertog, 2010).

Imperfect competition

The effective market mechanisms require specific rules and regulation in order to be fully established and working also know that freedom for making a contract exists and could be enforced. However, the contracts could be in a cooperation that in against effective and efficient market operation. The

agreement between companies to hold prices on a high level and low quantity supply will result in the price deviation. Thus, the Anti-monopoly legislation, whose goal is to keep the efficient market operation via merger regulation and by restricting anti-competitive agreements and behavior. Also, natural monopolies are examined from the state in order to promote a more efficient and fair allocation of resources (Hertog, 2010).

Regulation do not have to be not only for imperfect competition but is applicable in cases when there is a need to prevent or correct unwelcome market results. As was determined by Stiglitz, 1994, in a market economy that has a competitive character, the participants are rewarded in accordance with their contribution to the marginal productivity. This development might be unwanted for economic and other reasons (Hertog, 2010).

Criticism of Public Interest Theories of Regulation (Is regulation efficient and effective?)

Economic theories that are considering regulation as an effective tool to market deterioration, has received criticism from various angles. Those theories were claimed as incomplete mainly because of the characterization of public preferences and the interpretation of these interests into prosperity maximization. Hence, the original theory that declared that government regulation is effective and can be applied without any huge costs by Posner, 1974, had been criticized by both empirical and theoretical researchers (Hertog, 2010).

Private Interest Theories of Regulation

After the disgrace of the public interest theory, the private interest theory of regulation was developed. It happened mainly from the account of political science. This theory assumes that in the need of a regulation, it will begin to serve the interest of the industry involved. Besides, legislators dispose an industry to regulate if any trace of dominant position is presented. However, in the matter of time, other political priorities will appear that would have more importance and thus the agenda of monitoring the companies' position by legislators will become to be more relaxed. Furthermore, the agency will aim to avoid hurdles and problems with the company that is being regulated because it relies on the companies' information (Hertog, 2010).

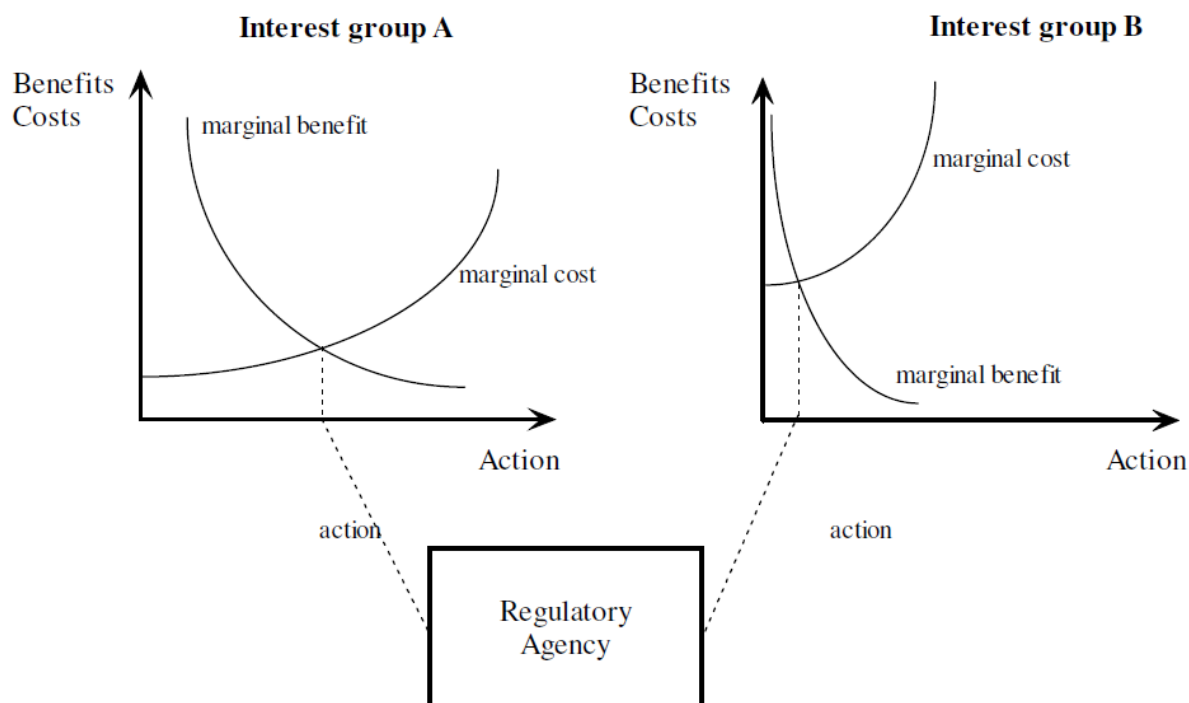
The Chicago Theory of Regulation

STIGLER

The Theory of Economic Regulation was established by George Stigler in 1971. The main idea by Stigler was that regulations, as a rule instrument, is attained by the industry and is created and driven essentially for its benefit. Thus, the government can authorize responsibility from anti-trust legislation, restrict an entry of competitors so the price level rises and grants subsidies. He argued that the government can keep the level of minimum prices and diminish entry mode easily than a cartel.

Secondly, demand will go up as a result of government regulation and industries will be able to exploit political decision-making for its own ends. Stigler's theory is captured below, in Figure 13.

Figure 13: Interest group representation depends on costs and benefits



Source: Adapted from Baron, 2000.

The Figure 13 shows how quantity of interest group action relies on the distribution of costs and benefits for the interest groups. As it can be seen from the Interest group A, the cost level of organization and mobilization of its members is low with a high benefits. The reason can be due to the size of the group (rather small). The Interest group B has significantly lower benefits and higher marginal costs. The reason behind this is again in the size of the group, bigger than in the group A, thus they have to be shared among more members (Hertog, 2010).

Extension to the Chicago Theory of Regulation

PELTZMAN

As a reaction to Stigler's theory, Peltzman (1976) provided an extension of the theory where he also took into the account the cross-subsidization. He also suggested that policy regulation will be chosen accordingly in order to maximize political support and hence, the regulations will not benefit industry excessively. Furthermore, the core obstacle of regulators is the necessity of making the regulation efficient. He questioned the level of price and to what level it should be settled in order to transfer the wealth accordingly and gain many voters. Unlike as Stigler implied, a regulation will not maximize the profit for the companies but the aim is to find an efficient price where it will not be possible to

implement any more of a political support by increasing price for the company. The most effective price will thus lay somewhere among profit maximizing price and welfare maximizing price and the level of voters who lost due to the price rise, will be levelled by the voters who won by the price increase. By extending the previous theory by Stigler, Peltzman furthermore suggested, which industries will be likely to be more regulated than others. These are especially the competitive branches and the monopolistic branches. The theory also predicts the different forms that can be used as a form of regulation, for example by quantity or price regulation to restrictions to market entry. (Hertog, 2010). The particular element of the Peltzman's theory appears to be an adjustment of the advantage from favoring two different masters: consumers and producers. However, there are no specifics of how those benefits are materialized since any of those two stakeholders are considered to be an active strategic player. Moreover, there is no explanation how can politicians equally depart from monopolistic or competitive pricing (Bó, 2006).

Another contribution regarding the Chicago theory of regulation was made by Becker in 1983 and 1985. His main focus was primarily on the competition between interests' groups.

By Stigler's and Peltzman's understanding, the competitive industries have much to obtain from regulation and share better position than consumers to bring advantageous regulation about. In a real world, such regulation would be hardly to see. The reason why, is found in the theory by Becker's, where he said that loss of welfare (profits and consumer surplus) is bigger where the elasticity of supply is greater. Additionally, the sectors with the level of high competition is also elasticity of supply bigger. Subsequently, the losses of welfare and change of possession of income associated with the regulation are so significant that the pressure to neutralize eliminates the investment in political influence. Becker further claims that certain level of competition among groups is beneficial and efficient (Hertog, 2010).

Empirical validity and testing of private interest theories of regulation

The empirical research started the theory of regulation by Stigler. He assumed that regulation is applied by the industry and is created and operated in their favor. Stigler considered politicians, suppliers of those regulations, to be driven by selfish motives in order to augment their power (Bó, 2006). This research has shown to be wrong about its claims, especially about the importance of the effect of regulation. However, it contributed with a new perspective on the effects of government regulation. The theory did not support any connection between regulation and price decrease even though there is (Hertog, 2010). However, Stigler's approach was very untypical for that time when it was published and affected a long ongoing debate on that topic (Bó, 2006).

The Chicago theory of regulation implies that interest groups govern the results of elections. This allegation had been also severely criticized from many quarters. In fact, the political process of

legislation obtains hardly any independent influence in the administrative process of regulation (Hertog, 2010).

Becker (1983) come up with an elegant solution discussing why market would neither adopt free trade nor autocracy. He implied that the degree of protection focused of the import, which is recognized as a competing sector, influences the rest of the economy and results from the monetary expenditures by lobbies. Each sector will invest energy, time and money on political pressure till the level between the expected additional costs and benefits will get balanced. From the logic, he associates that with the level of protection increases, which would tend to grant little benefits towards the favored sector in relation to the expenditures to the harmed sector. Resulting in decreasing the level of lobbying by the former relative to the degree of lobbying of the harmed one. This will moreover, ensure the level of equilibrium of protection. Lastly, Becker argues that if the press for political action is balanced then the political system will generate outcomes that are effective and more efficient (Kaempfer et al. 2002).

By putting the different theories of Stiger/Peltzman and Becker's theory of competition among interest groups together, we get reasonably a complete picture of recent regulatory experience. However, is it possible to get an explanation of government regulation of cross-border M&A and why the government applies such procedures? As we will see, it is very dependable on the industry patterns, interests and motivations of relations to the policy area in question. None of these three theories talked about cross-border companies in detail and it was obvious, that recent developments of internalization, globalization, fast-paced technological evolution and others were not taken into the consideration back in that day when the theories were established. The economic theory of regulation by Becker is the one with the most relevant opinions that could be also applied in today's times. The approach developed by Stigler/Peltzman is particularly recognized in situations where companies are motivated to shrink. Regarding the production quotas and different barriers to entry results in restricting productivity or competition in order to increase prices (Williams, 2004).

Conceptual Framework

The reason of this developed frameworks is to summarize the gathered theoretical knowledge which would together contribute on a developed scheme that outline the reasons for which government apply its control mechanisms with the reference to the issue of short-termism. The legal setting of the M&A in the UK is concerned, if the negotiating bid is in favor of the public interest and if the potential impact on people, industry, competition and the entire economy of the country is in the best interest and according to M&A rules. However, the lack of control over the short-term gains of shareholders

have a negative impact on stakeholders but is lacking any regulation that would be straightforward and direct.

As already clarified, the government interventions occur during the pre-deal stage of negotiation and thus the space for some adjustments is possible when different types of remedies can be applied in order to achieve the positive results. The regulatory bodies are The Panel on Takeovers and Mergers, Government Departments, European Commission and Other regulatory consents such as ministerial. (Slaughter, May, 2016). The approval or the disapproval are two possibilities of how the bid can be classified. As the government reasons for an intervention are concerned, there are two types; subjective and objective one. While the objective one has its foundation in the legal framework, the subjective one is determined by the feelings and assumptions of every single person who plays a key role in the decision.

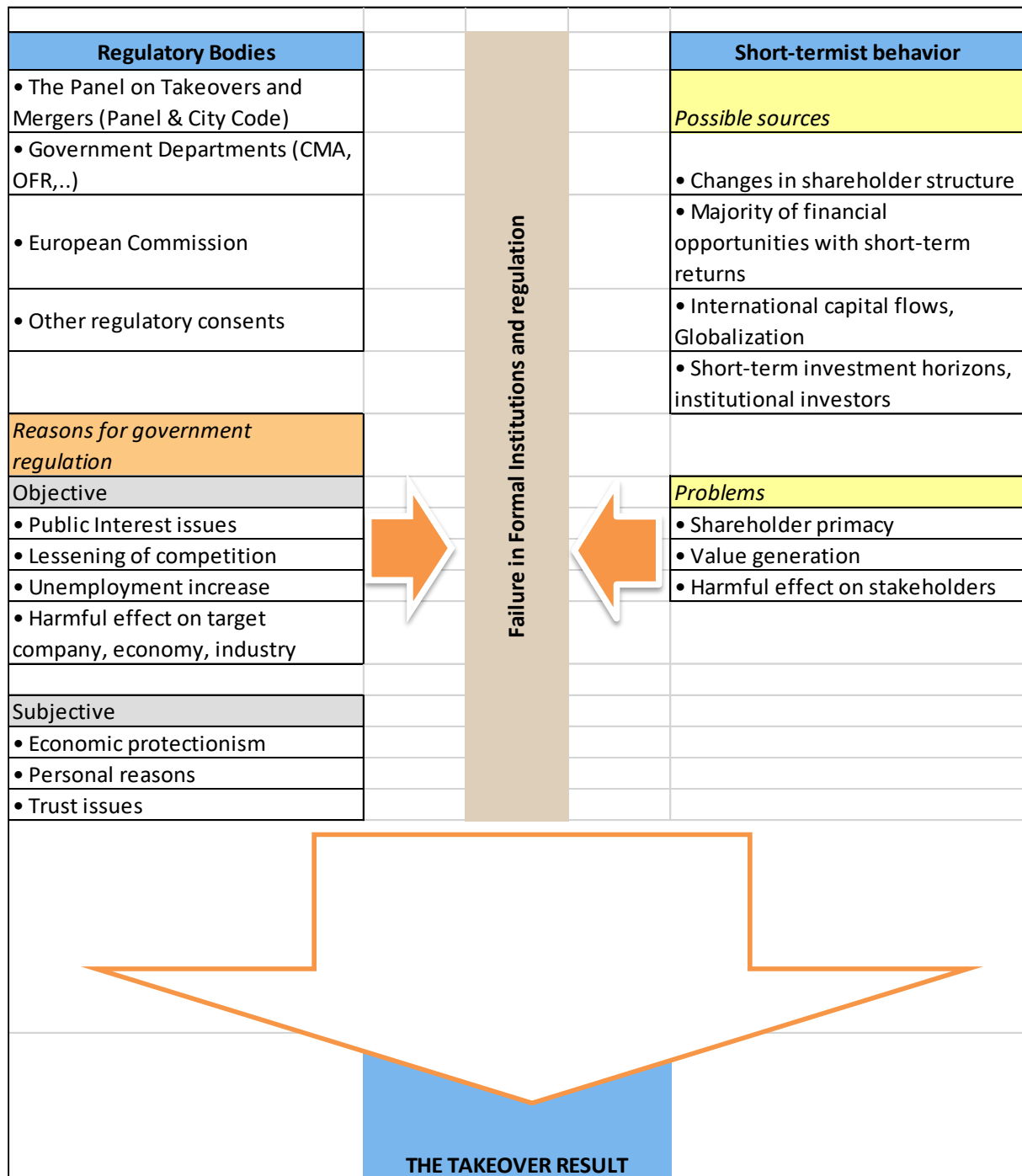
The government control has different power and volume. The sternest one is a complete blockage of the deal in which a company cannot do anything to change it. The second intervention is to administer changes in a large scale in regulations or the institutions which would contribute in changing the climate. As such, it would be less desirable to process with the bid or even very difficult to do so. Another way for a government to intervene is to ask the acquiring company for certain adjustments that would make the terms in the deal more in favor and thus easier to accept those conditions. The last possibility for interventions are made announcements from key government people who had been involved in the case. These people present the preliminary warning to acquiring companies and inform them that there is a possibility for more serious government intervention that could follow.

However, the company law and the takeover regulation might be partly responsible for short-term behavior in the target boardrooms. Considering the shareholders 'interest that is prioritized over the other non-shareholding stakeholders. This contributes on behavior that prefers short-term financial interest over the long ones. Besides, there is no applicable method currently that would enforce the consideration of short-term value despite the harmful consequences (Wan, 2013). Evaluating the takeover control and regulation in the UK, the issue of short-termism is growing, considering the possible sources that include the change of shareholder structure and over-all the attraction of quick profits in this highly globalized world. This raises a question whether there is not a problem of the current setting of British takeovers. The analytic part of this thesis will provide a practical understanding of the takeover environment in the UK and straighten the reason if a fundamental change in the takeover regulation should be appropriate.

Reviewing the legal characteristics of the European Union with a main focus that aimed towards the United Kingdom got an overview of the today's situation and different economic policies. The motives

and goals of every M&A deal show a lot about the actual deal and each country assumptions and understanding of cross-border mergers and acquisition. It appeared that a vast number of foreign bids regarding the M&A were opposed by government far more than bids from home companies. The reason behind it can be an assumption that foreign companies can harm the local one and thus have a negative effect of the industry and whole economy of the country. The approach and presumption of the general public thus shape the approach towards it as well. The Conceptual Framework for this thesis can be seen in the Figure 14.

Figure 14: Conceptual Framework



(Source: own creation)

4. The Case Study Analysis

In this chapter, the analysis of the takeover between British Cadbury and American Kraft has been analyzed with the purpose to disclose the impact which this deal had on employees and to see if there is a link between a short-term investments and shareholder value and how did it influence the acquisition further on. As for the reason why the Cadbury case was chosen for this master theses. Firstly, the takeover was characterized as a cross-border one since the acquirer was an American food conglomerate, Kraft. Secondly, the takeover was followed by the public outcry and went through a thorough government control and investigation. Also, the case included short-term nature when shareholder value is considered and as such, it fits the researched scope. Moreover, due to the time when the acquisition happened, it was interesting to see whether due to the unfortunate result of the bid for the British public, the UK government reflected on the takeover regime and made significant amendment to ensure the past would not happen again. Besides, since, the takeover was followed by the hundreds of employees who were made redundant due to the changes in the operations, it contributed in the research where matter between shareholders and stakeholders are handled differently and it aimed to put into the practice how shareholders needs are prioritized more over the non-shareholding stakeholders. Also, it stressed the implication that takeovers negatively influence the related job positions. Subsequently, Kraft offered a huge amount of money to acquire Cadbury and as such, it is a good example to analyze the behavior and motivation of shareholders when making the final decision over the deal.

Multinational Company Acquisition: Kraft Foods INC. (U.S.A.) / Cadbury P.L.C. (U.K.) Case

The acquisition of Cadbury is a great example of a Multinational Company (NMC) that is enlarging their international activity by purchasing a foreign company. Both engaged companies had obtained already a good reputation and a name while operating on a worldwide level. Kraft perceived that in order to generate additional growth, their activities must focus on emerging and developing markets. Hence, by acquiring Cadbury, they would manage to accomplish this task and implement their strategies while keeping it in the shortest possible time-frame (Downward, 2016). The following analysis gives a background information and the circumstances that followed a takeover of Cadbury that was completed in 2010 by Kraft Foods (L6-03 Case study: Kraft & Cadbury, 2011).

About Kraft:

Kraft was ranked as a second-largest company in the world in 2009, producing food and beverages. Their portfolio of products consists of snacks, beverages, cheeses, convenience meals and various types of packaged grocery products. They operated in over 160 countries and employed 97,000 employees worldwide, majority of them in the USA and Europe. Kraft's production served supermarket chains, wholesalers, distributors, gasoline stations, mass-merchandisers and many others. The company consisted of fifty brands that generated revenue exceeding \$40 billion. Namely, these are: Kraft cheeses, Philadelphia cream cheese, Oreo cookies, Milka chocolates, LU biscuits and many more.

The geographical segmentation of Kraft Foods is operating via two commercial units: Kraft North America and Kraft International. The North America unit produces to Canada and North America foodservice. Kraft International handles its divisions by geographic locations such as the European Union and developing markets (L6-03 Case study: Kraft & Cadbury, 2011).

History

The history of the company dates back to 1903 when James L. Kraft opened a wholesale cheese business in Chicago, Illinois. After eleven years later, in 1914, first plant was established and cheese manufacturing could have been produced. The company then enlarged its business base to Europe and made few mergers in the 30s and 50s mainly due to the successful growth and expansion. However, continued as a separate company. In 1988, Kraft with its food production was acquired by Philip Morris Companies which resulted in Kraft General Foods. In this time, Kraft engaged in several acquisitions, including Jacobs Suchard, Freia Marabou, Terry's of York, and ready-to-eat cereal company from RJR Nabisco in the US and Canada (L6-03 Case study: Kraft & Cadbury, 2011).

In late 90s the company experienced the fast growth and increase in their businesses. Kraft Foods kept acquiring several food businesses in Brazil, Ukraine and later also Danone's global biscuit business that enhanced the leading position in this fast-growing global segment. The history of Kraft Foods followed also numerous divestments in Germany, Austria, and Denmark. Besides, Kraft sold majority of its confectionery business to the Wm. Wrigley Company, a gum manufacturer and marketer. In 2001, Philip Morris Company publicly offered Kraft Foods, Inc. and by 2007 the separation was completed by spinning off Kraft. Kraft applied other methods of growth and in 2004, they got a distribution agreement with Tazo Tea that led to the strategic alliance formed with Starbucks Coffee Company (L6-03 Case study: Kraft & Cadbury, 2011).

Performance

Despite the diverse product portfolio with well-established brands, profitability started to suffer especially during the recession that resulted in cutting prices of their products (L6-03 Case study: Kraft & Cadbury, 2011). Revenues of Kraft Foods came from developed markets mainly in North America

(USA and Canada) and from Europe. This increased a problem since such markets are mature and their growth is very slow and thus, operating on such matured markets is very competitive. Resulted in decrease of Kraft's profit margin. The strategy of Kraft needed to be changed with a focus primarily put on the emerging markets that would improve their growth, find new sources and strengthen their market position. Before the Cadbury acquisition, Kraft attained a minor presence of the largest and strongest emerging markets around the world. The critical strategy to achieve for Kraft in that time was to gain access to these emerging markets and move towards a high growth snack food markets. (Downward, 2016)

About Cadbury

Cadbury is a global manufacturer of branded confectionery, according to their net revenues they represent a second largest confectionery company after Mars/Wrigley. They operate in more than 60 countries around the world. However, mostly in Europe, the US, Central and Southern America, Australia, and other parts of Asia Pacific. Cadbury employs over 45,000 employees.

One of Cadbury's strong side is their product range that consists of variety of diversified products. Also, their reach over the emerging markets business is the largest of any other confectionery firms in the world. Throughout their long history, their brands include Cadbury Dairy Milk, Crème Egg and Green & Black in chocolate; Trident, Halls, Cadbury Éclairs and others (L6-03 Case study: Kraft & Cadbury, 2011). A year before the acquisition, in 2009, the level of Cadbury's revenue reached £5.98 billion, 11% more than in 2008 (Ribeiro, 2013).

History

Cadbury, as a UK company has a 200 years long tradition and love from every British chocolate enthusiast. Despite their humble beginnings, the story dated back to 1824 when John Cadbury opened a grocer's shop selling tea and hot cocoa in Ball Street, Birmingham. From there, the company grew and secured a place as one of the world's most popular chocolate brands in history. In 1840s the company was joined by John's brother Benjamin and together they formed Cadbury Brothers. After moving to London to open an office, they got a Royal Warrant as manufacturers of chocolate and cocoa to Queen Victoria (L6-03 Case study: Kraft & Cadbury, 2011).

In 1969, Cadbury decided to merge with Schweppes and thus, Cadbury Schweppes was established with two streams of businesses: confectionery and beverages. In 2003, after another acquisition of the US Adam's chewing gum business, they became the world's biggest confectionery. However, in 2008 after nine years of segregation process, Schweppes and Cadbury separated their business activities which resulted in re-naming the US beverages operation to Dr. Pepper. The purpose of this split transaction was to empower Cadbury to focus only on the core business – confectionery. This positively

affected shareholder's value, maintain leadership position and straighten growth position while maximizing returns (Ribeiro, 2013).

Regarding the Cadbury's unique corporate culture, the company appeared as one of the best places to work for. The positive working environment and Cadbury's performance served as a great motivator for people to be happy in their workplace. It was one of the values of Cadbury's success, before the acquisition with Kraft Foods. Furthermore, Cadbury was one of those companies for which global corporate social responsibility was crucial. This was exemplified in July 2009, where the flag ship brand, Cadbury Dairy Milk, was certified with the Fairtrade logo (L6-03 Case study: Kraft & Cadbury, 2011).

Performance

The focus on their core product market that was chocolate and confectionary allowed them to focus on a business strategy that led to a production of a high-quality product that is both highly efficient and cost effective. Due to the production created in that manner, the company became one of the best performers amongst other competitors, with a gross margin consists of 45.6% in 2009; compared to Kraft's gross margin in 2009 on the level of 35%. Their characteristic devotion for focusing on one business properly, gave them the possibility to penetrate emerging markets with efficiency (44% of their revenues originated from emerging markets) (Downward, 2016).

Why to acquire Cadbury?

As already implied, the main strategy for Kraft was to firstly move into a high growth product market (in this case chocolate and confectionary) and secondly, position the brand to the high growth geographic markets (developing and mainly emerging markets). Another important element for Kraft was to do it in the shortest period of time and with the easiest way. So, the best strategy was to acquire a well-established company with a broad portfolio of products that has gotten also operation in emerging markets on higher level. As possible candidates, alongside with Cadbury were considered Hershey's, Mars and Nestle. Because of the sheer size of Mars and Nestle, both candidates were large and diversified conglomerates, as such, both candidates were secluded as not ideal for the process. Besides, in order to purchase such companies, a substantial capital would have needed to be released and subsequently, the worry of anti-trust law was also in the way. This left two last candidates, where Cadbury won over Hershey's just because of the presence in the emerging markets. The fact that India and South Africa belonged to the Commonwealth and hence, the penetration for Cadbury was easier, Kraft had no presence in India market and only insignificant presence in South Africa. So, the idea of having Cadbury with the access to 92% of Indian population to whom the product could have been sold was very appealing to Kraft (Downward, 2016).

When considering a takeover that consists of a multinational target, the biggest, most influential factor to consider is the effect of exchange rates on cash-flows to the parent firm. Away from the India and South Africa, both companies shared exposure to foreign currencies that were a very much alike. Furthermore, Kraft as same as Cadbury were enlisted in hedging foreign currency positions. An alliance of these two companies would diminish the net cash flow in some foreign markets. Ultimately resulting in a smaller foreign currency exposure and moreover, the need to hedge the exposure in the forward or future market would not been as dramatic.

After the thorough consideration, the decision made by Kraft to purchase Cadbury was made (Downward, 2016).

The Takeover

The negotiation process was characterized as a fairly long and dragging. From the first initial offer to the acceptance, it took four months till the final offer was accepted by the Cadbury board. In this time, because of the business, high level of growth and profit, Cadbury had every right to squeeze a much higher premium as a compensation for selling out to Kraft. (Downward, 2016)

The process started with a first attempt to acquire Cadbury when Irene Rosenfeld, Kraft's CEO met Cadbury's chairman, Roger Carr on August 28th, 2009. The purpose was to outline a takeover deal in cash and shares. During this first meeting. Rosenfeld's offer was made on the basis of a mixture of cash and percentage of Kraft's share for each of Cadbury's share. The offer valued each share with a price of 717 pence per share. The offer did not receive any support by the Board of Cadbury (The Telegraph: Cadbury-Kraft takeover timeline, 2011). However, Kraft was persistent with the offer and on September 7th, 2009 they went public with the bid, but this time the offer stand at £10.2 billion (\$16.7bn), which made 745 pence per share. Also, this offer was immediately rejected by Cadbury Board as 'derisory'. As Cadbury's chairman Roger Carr implied during one of his interview, the attempt to purchase Cadbury was on the cheap side (L6-03 Case study: Kraft & Cadbury, 2011). Even more, few days after the offer was announced to the target shareholders, the worth of one share lowered to 713 pence, compared to the 717 pence which was the first initial offer. However, shares in Cadbury were rising in the same time and were traded way above the amount of Kraft's first bid. The amount per one share of Cadbury was on the level of 819 pence. Also, the Cadbury boost of purchase pushed the level of Cadbury shares higher on the price that was offered by Kraft (Nyombi, 2015).

The cost that would had to be paid to Cadbury differed to the value of Cadbury's shareholders derive. The first risk for Kraft appeared in not knowing how much cash they would had to pay for each share. For instance, if shareholders from Cadbury would accepted shares as the only form of payment, Kraft would not have to face experience of any exchange rate fluctuations, as they would be disposing only

shares. However, if shareholders were not attracted in Kraft's shares and desired full payment only in cash, this would extremely expose Kraft to exchange rate fluctuations. If applying only standard deviation and using ten years of monthly UDS/GBP exchange rate, Kraft's costs of the offer would be increased by 1.5% in a month (Downward, 2016).

Shortly after this event, Carr wrote an open letter to Rosenfeld (Kraft CEO) expressing that Kraft is suggesting an unacceptable proposition and unappealing model for Cadbury where the company would be absorbed into Kraft's low growth and that Kraft's conglomerate business model does not match with Cadbury strategy of being purely a confectionery company (Moeller, 2012). Carr's word were also supported by the Cadbury COE Todd Stitzel, when during his presentation to investors, he accentuated Cadbury's worth, a unique position of their brands combination, market position, people in the company and long heritage. He further stated that destroying Cadbury's tradition would risk the whole existence of Cadbury and what makes it great. It was also implied that choosing Ferrero, Nestle or Hershey would make better cultural and strategic fit. However, according to Carr, the shareholders' interest was on top of the Cadbury's list of priorities. Thus, the value for the Cadbury shareholders was the key factor to consider (L6-03 Case study: Kraft & Cadbury, 2011).

So, with this active resistance in mind, Sir Robert Carr, already experienced with some takeover defense from past, brought together a strong defensive advisory team. Besides, Lord Mandelson, the UK's business secretary in that time, publicly expressed that government would prevent any buyer who would disrespect precious company (Moeller, 2012).

The intervention from Britain's Business Secretary that led to the warning the country's institutional investors against any short-termism and further declaring that British government will investigate extremely closely any foreign buyer to make sure that respect will be paid to Cadbury's proud heritage. This behavior also says plenty about the strength of British feelings towards Cadbury. Subsequently, also Kraft received some feedbacks and words of wisdom from his shareholders. The most significant one came from Warren Buffett, the second wealthiest person in the world, whose company Berkshire Hathaway was also a shareholder in Kraft Foods. He emphasized for Kraft to be careful and do not overpay for Cadbury, he also thought that Kraft's shares were undervalued. Other investors criticized Kraft's attempt since they did not want for their money to be wasted for the Cadbury chase. (L6-03 Case study: Kraft & Cadbury; 2011) Couple days later Cadbury contacted the UK Takeover Panel to claim a "put up or shut up" request to be addressed to Kraft (Reuters, 2009). Which meant that Kraft had to either increase the offer or step out from the bidding process for six months, which would however admit that Kraft does not have any intentions to acquire (The Telegraph: Cadbury-Kraft takeover timeline, 2011).

Another statement from Lord Peter Mandelson was publicly made in which he expressed his worry that foreign ownership of British businesses could devastate the country and that by making the acquisition of Cadbury possible, Cadbury will be the last great British company producing chocolate that will end up in the American hands (Poulter, 2009).

The drop in the value of Kraft's shares was mainly induced by the arbitrageurs who, in response to the Cadbury offer, started investing in Cadbury's shares since it was anticipated that the first offered bid by Kraft will be higher. Despite the advice not to overpay Cadbury which came from one of Kraft's biggest investor Warren Buffet, Kraft board sold some of its pizza business to Nestle. This action resulted in the Kraft's share rise. The earning was then used to add higher cash portion into the Cadbury's bid. The improved offer was discussed on January 19, 2010 which brought a fruitful outcome for Kraft. The board of Cadbury promised to push further the revised offer which was stated on 840 pence per share excluding special dividend of 10 pence per one share. The payout which each of Cadbury's shareholder would have got was hence 850 pence and as such the total value of the transaction was £ 11.9bn. From the previous offer the premium rose of 50% (£4bn) and by 10% from the offer that was made in the start. The final offer was formed by 40% of equity and 60% of cash. Despite the recommendation that came from Cadbury's board, there were still needed 50% of votes coming from shareholders in order to get a green light for the deal. In this time, the public statement from Rosenfeld came in which she re-assured the commitment that would Kraft keep in order to maintain the Cadbury's heritage. The softer approach towards Kraft's deal could have been also recognized in the behavior of the Cadbury's Chairman, Roger Carr. He implied that the deal represented a good value for the whole company and that the joined forces will contribute on the growth and success from which would benefit not only customers but also employees and the whole Cadbury. What is worth pointing out, in the time of three months, Carr came from scrutiny and criticism to paying support and respect to Kraft. The posture was mostly influenced by the great deal of share ownership that he obtained during the final bid. Two weeks after the final offer, over 70% of shareholders were for accepting the offer. Warren Buffett despite the result, believed that the price that was offered to Cadbury was extremely high and put Kraft into the risky situation. He expressed, that the deal was very pleasing for shareholders of the Cadbury side but very bad for Kraft side. With the fear of long-term prosperity, Buffett sold all his stake in Kraft, £31.5mil (Nyombi, 2015).

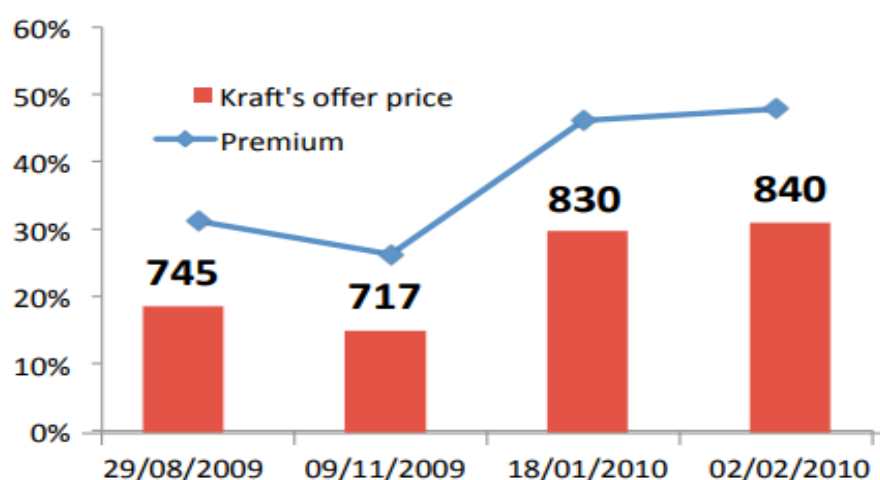
Interestingly, Royal Bank of Scotland (RBS) was the main financial subject who offered Kraft to back the bid and lent money to them for the hostile acquisition. The bank was severely criticized for such actions, blamed for supporting an overseas acquisition bid that could have a damaging effect on a long-term economy growth and impact job losses. Furthermore, the treasury spokesman Vince Cable, expressed that such behavior should not have come from a nationalized bank. (Sunderland, Steward,

2009). As a part-nationalized bank it did not protect the best interest of the UK economy and served as a financing source of Kraft Foods and thus the supporter of the bid. The bank was afterwards investigated by ministers to prevent taxpayers' funds to be used for financing Kraft and therefore prevent money that came from British people to be used against their own interest. The unions representing Cadbury's workers shared their discomfort with RBS's role in the case, since Kraft was known for its plant closures and many job losses. Also, the Prime Minister Gordon Brown expressed his indignation towards these events and admitted that Cadbury as a company has been extremely important for Britain (Inman, Moya, 2009).

Cadbury Takeover and the role of arbitrageurs in it

As Kahan and Rock (2007) implied, arbitrageurs are investors who aim to gain a fast profit in a short time frame preferable. Hence, when the premium of Cadbury was on the table, it was certain that shareholders would not to be asked twice to react. However, the way of how the status of the ownership changed set a lot of questions and implication towards commitment of shareholders of Cadbury. Particularly, the lack of interest towards employees or Cadbury's suppliers during the bidding process. Besides, prioritize the interest of shareholders resulted in recommending the Kraft's offer by the Cadbury's board. Moreover, the issue was also the spread of shareholders of Cadbury. In September 2009, only 28% of shareholders were registered as institutions based in the UK. Naturally, the result of the acquisition did not worry American shareholders as much as it worried the British side. Furthermore, as Carr expressed in one of his statement, the destruction laid in the shareholder register since when a company has only less than 30% of domestic funds who tend to be in majority long-term, the rest of short-term investors aim to sell. The following Figure 15 shows the premium that was offered by Kraft soared after the first bid for more than 40% (Nyombi, 2015).

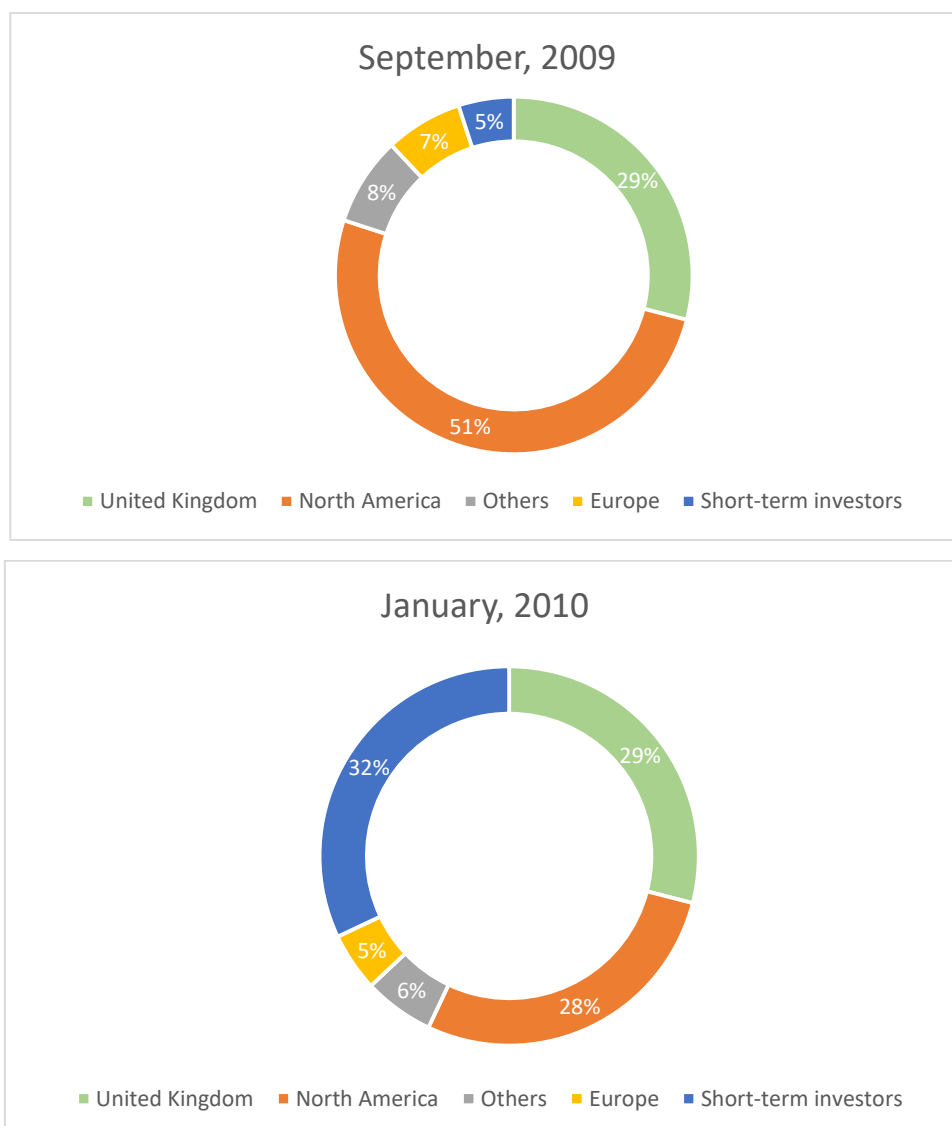
Figure 15: The progress of the offer over time



(Source: Addapted from Harbott et al, 2011)

The premium price was improving for the reason to attract the shareholders and seal the deal. Many shareholders saw a great chance to sell the shares and benefit from the premium. Thus, majority of bought shares came from short-term investors, who predicted the success of the deal and anticipated great returns. Moreover, by the end of 2009, short-term investors were purchasing shares with the price of 800 pence per one share. There was a high chance to profit from the exchange in a really short-time and this idea was very appealing for the arbitrageurs. However, a lot of shareholders were splitting the risk and started investing also in the Kraft's shares if the deal would end up other than with a success for them. The fatal outcome for the bid appeared to be the fact that by the time of the final bid, the ownership different than British, declined from 51% to 28% since only British shareholders stayed loyal, know the value of Cadbury and did not sell their share (Nyombi, 2015).

Figure 16: Cadbury's share ownership during the negotiation period



(Source: own creation adapted from Harbott et al, 2011)

As it can be seen from the Figure 16, the change of the share ownership layout changed completely between American shareholders who sold shares to short-term investors, arbitrageurs. In the timeframe of little more than five months, arbitrageurs jumped from owning 5% to owning 32%. This was a very good sign for Kraft since it was certain that all 32% will be willing to sell their shares in order to make a profit out of it. The only problem that Kraft had to deal with was to find the other 18% in order to gain the victory threshold of 50% shareholders willing to sell their ownership (Harbott et al, 2011).

In this time, the Cadbury board's only criteria to focus on was the ideal price for which they would recommend the deal. The aim was to gain at least 850 pence per one share and since this was the only thought they had, the long-term interest of Cadbury seemed to be pushed aside as the last priority alongside with the interest of stakeholders who did not own any stake in the company (Nyombi, 2015).

Valuation of Cadbury

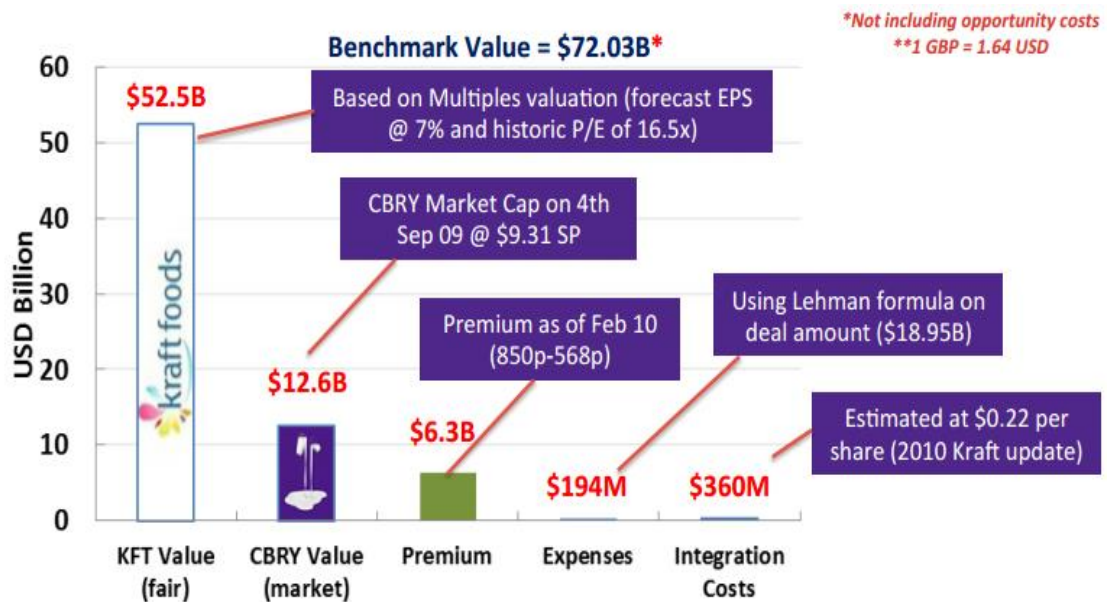
To conduct a full valuation is an essential factor in order to create a successful M&A process. Lack of valuation may contribute to overpaying the bidder or accept price that would be lower than the target's shareholders would accept. When two companies are about to be merged together, there is no surprise that not only shareholders but also employees, suppliers and other involved parties are driven by the value that should come from the strategic alliance. Value shows the amount of monetary contribution that the target is worth to the acquirer. When calculating the value, the formula consists of the initial price plus expenses that had been paid extra (e.g. costs of the deal and expenses that had been spend during the integration process) minus possible synergies (Moeller, Brady, 2014).

The value according to Kraft's perspective was mainly in the access to the higher growth markets, emerging countries, up to \$2bn in possible revenue made of synergies and cut in cost savings (Harbott et al, 2011).

Formula for measuring the value creation, (Harbott et al, 2011)

$$\Sigma (\text{Value Kraft} + \text{Cadbury}) > \text{Value Kraft} + \text{Value Cadbury} + \text{Premium} + \text{Expenses} + \text{Integration Cost}$$

Figure 17: Measuring the value creation of Kraft & Cadbury



(Source: Adapted from Harbott et al, 2011)

Total valuation £43.9 bn. = (\$72.03bn./1.64 USD)

The calculation according to the formula shows that the combined value of Cadbury and Kraft would need to be higher than £43.9bn in order for the Kraft's deal to create a value as it can be seen from the Figure 17.

Figure 18: The offer price and different value creations

In USD Million	Estimate	Scenario 1 @830p	Scenario 2 @745p
KFT Value (fair)	\$52,528	\$52,528	\$52,528
CBRY Value (market)	\$12,661	\$12,661	\$12,661
Premium	\$6,286	\$5,825	\$3,945
Expenses	\$194	\$190	\$171
Integration Costs	\$360	\$360	\$360
Opportunity Cost	???	???	???
VALUE	\$72,029	\$71,564	\$69,665
Value KFT/CBRY	\$67,300	\$71,907	\$71,907
Difference	-\$4,729	-\$122	\$2,242

Based on current KFT Market Cap (SP \$36.75) and 850p offer for CBRY

KFT Market Cap based on 12 Mo. Consensus Analyst Target Price (SP \$40) and 850p offer for CBRY

Forward looking KFT Market Cap if CBRY offer was 830p (Fair value of CBRY)

Forward looking KFT Market Cap if CBRY offer was 745p (1st offer)

(Source: Harbott et al, 2011)

According to the offer price and differences in value creation as it can be seen from the Figure 18. The difference of -\$4,729 mil was loss in the value that was based on the market capitalization of Kraft that happened 22 months after the deal was sealed. It can be concluded that the deal could have been classified as value destroying. The loss of -\$122 mil was based on the forward looking and could be classified as marginally unsuccessful (Harbott et al, 2011) What should have been done, according to the valuation, was to offer price that would have been on the level of 830 pence per one share or lower in order to generate a positive value creation. During the year of 2012, in the attempt to re-structuralize the company, a major split was done in which one business started focusing mainly on the food production in North America and was formed by the 55% of the conglomerate. The second half created a business called Mondelez, which is a global producer of snacks, for which Cadbury belongs. This move helped with the overall financial performances however, made it very difficult to conduct an assessment of both companies combined (Nyombi, 2015). So, the question remains whether the deal was actually successful since it is very hard to come to a conclusion when Kraft was split into two entities (Harbott et al, 2011).

The shareholders of Cadbury less than a month after they gave this deal their backing were positive about the good value of the deal. Subsequently, Carr also implied that the combined growth would help increase the success of the new business creation (cited in: L6-03 Case study: Kraft & Cadbury, 2011). The flow of events was also positively appreciated by Irene Rosenfield, who expressed that the deal was in a favor and a positive news for shareholders. She further clarified that Kraft have its biggest respect for Cadbury's brands, its heritage and people (L6-03 Case study: Kraft & Cadbury, 2011). This was further supported by a statement made from Michael Osanloo, executive vice president of strategy at Kraft Foods, who said that together they will create more new jobs in the UK (Poulter, 2009).

After the Cadbury Takeover

After announcing the Cadbury's acquisition, Cadbury announced that the three most influential people will be leaving the company. Roger Carr, the chairman of Cadbury, Todd Stitzel, the chief executive, left the company with £20m in cash and shares, and Andrew Bonfield, the chief financial officer (Moeller, 2012). Regarding Kraft, the debt burden of the company significantly increased after the acquisition. Solving it partly by selling some of the food businesses in the US. However, financial situation remained to be a concern. Also trades unions declared their concern over the takeover after closing down one of the brand, Terry's of York that was purchased in 1993 by Kraft despite Kraft's assurance to keep the company open. Moreover, hundreds of jobs were relocated to cheaper plants in Poland, Slovakia, Belgium and Sweden. Also, Cadbury's employees were worried about any redundancies knowing Kraft's history of cost-cutting exercise connected with job loosening. However,

Kraft made themselves clear and adamant about not closing Cadbury's British sites and expressed that the takeover would be in favor in terms of work opportunities. This promise also worked as a persuasive tool to the regulatory authorities. The authorities further stated that Kraft has the best intentions at its heart and the deal is overall beneficial for the company and the whole country. As The Guardian quoted in 2010: "The Takeover Panel's ruling was based on Kraft's promise in official stock market announcements that the UK would be a "net beneficiary in terms of jobs" (cited in Treanor, 2010). It was also stated that, if Kraft would have taken over Cadbury, it would be "in a position to continue to operate the Somerdale factory." (Treanor, 2010).

However, the decision to close the Somerdale factory, chocolate factory near Bristol, came seven days after the deal was sealed. The production was moved to Poland which was supported by the loss of 400 jobs. (L6-03 Case study: Kraft & Cadbury; 2011). This happened regardless the Kraft's statement in which they claimed: "We believe we would be in a position to continue to operate the Somerdale facility, thereby reserving UK manufacturing jobs." (Kraft's Takeover Proposal document, 7 September 2009, cited in House of Commons, Ninth Report 2009 – 2010, p. 7), (Duke, 2010). Regarding the job cuts, according to Unite - the UK's biggest union, the debt that Kraft operated skyrocketed from \$7.08 bn in 2006 to \$18.54 billion in 2008. Adding the debt that was taken in order to complete the purchase of Cadbury (up to £5.5 billion), the sum was estimated to £22 billion. This served as a concern for Unite. It was implied that if the Cadbury's acquisition would win through, it could have put at risk at least 30,000 jobs, including 7,000 jobs that were at Cadbury. Unite also considered the Kraft/Cadbury deal as a non-casual UK takeover, which later showed up to be the truth. Before the shareholder's decision happened, the union held a briefing to all Cadbury's investors in which they asked to lean towards the wider public interest implications of losing Cadbury's independence instead of the narrow problem of share price. Not only job positions were threatened by the enormous Kraft's debt but also investments which led to considerable out-sourcing. Between the years of 2004 and 2008, Kraft made redundant 19,000 people and closed 35 of its operational activities in order to narrow the debt which then increased for the enormous £22 billion. The Unite further appealed not only on shareholders, but also workers and everyone who was engaged to protect Cadbury as an independent company (Wachman, 2010).

The turn of event gained a strong public criticism towards the UK Takeover regulation authorities. Following the tedious probe, the findings of the Panel regarding the statement that had been made on the factory in Somerdale, was against the standards required by the Takeover Code. The Panel concluded that such statement should have never been made by Kraft (Duke, 2010).

The event was investigated by the House of Commons alongside with the takeover related issues. Also, Kraft CEO, Irene Rosenfeld was requested to come for the committee hearing by the House of Commons but excused herself due to the “other engagements” and Kraft send other three representatives instead to face the committee. Another person, responsible for the integration with Cadbury, Michael Osanloo, was also absent. This did not set the right tone to the committee and Kraft was criticized for the Somerdale incident especially since it was guaranteed by Kraft to continue with the Somerdale operations. It was also recognized that these actions had damaged UK reputation and alienated its relationship with Cadbury’s workers. From the Kraft’s point of view, the actions were done in a good will, saying that it was impossible to predict that Cadbury already spend tens of millions of pounds for fitting out a brand-new firm in Poland and thus, closing the Somerdale one was a natural outcome. Another factor that concerned British consumers was the signature taste of Cadbury’s chocolate. The critics of Kraft were afraid that the taste would not stay the same after the acquisition and that the formula will be altered to an American version to minimize outlays (L6-03 Case study: Kraft & Cadbury, 2011)

The changes after the acquisition

Kraft had decided to dispense \$1.3 billion and use them for restructuring costs since massive changes were needed to be done. A new senior management were about to be decided right at the time when also new board of managers should have been formed. Cadbury workers received the knowledge about the staff changes, saying that Kraft will try to pick out the best people both from Kraft and Cadbury and definitely keep them. Kraft was furthermore expected to create cost saving in the amount of \$675 million a year in the horizon of next three years. Such decision usually goes hand in hand with job cuts but is was again pledged by the executive vice president of strategy, Michael Osanloo, that the saving will be achieved by procurement savings and he claimed that most of the synergy savings will be obtained in a way that would not affect jobs (L6-03 Case study: Kraft & Cadbury, 2011).

Mainly because of the post-acquisition integration process, financial performance of Kraft and Cadbury were significantly affected. The decline of 24% in net profit was experienced by Kraft compared from the year before the takeover. Also, Cadbury sales were not as high as planned and were behind the sales grow of 5% which was achieved in 2009 while still a sovereign company. In 2011 Kraft decided to change the focus in their operations and shift their focus on developing markets primarily to India, which turned to be as a good strategy and brought 30% improvement in sales. Although, Cadbury was still not achieving the planned objectives in growth which made it difficult for Kraft to shorten its debt burden. Subsequently, it even increased between year 2010 and 2011 from £16.7bn to £17.1bn. Even though there was an attempt to averse the first bid, the location of shareholders and the interest in short-term profit appeared to have a crucial factor for the result of the takeover. To increase and

maximize the value for shareholders in Cadbury was the only possibility that The Cadbury Board focused on, thus the price negotiation was the main concern (Nyombi, 2015).

The government interventions during the acquisition

The Cadbury acquisition has put into the perspective, how public policy is formed and regulated towards takeovers and corporate governance. The deal was tainted mainly because the event over the Kraft's declaration regarding the future development of the Somerdale factory. The decision for closure elevated the public's feelings of apprehension towards Kraft. The House of Commons concluded that Kraft's behavior was irresponsible and unwise. Kraft's original statement was considered as a cynical ploy to recover its public image during the Cadbury's acquisition. In spite of this acquisition which was considered as damaging the UK character, the decision of the British Government and the Takeover Panel was to review the current rules and legislations of governing takeovers in the UK. The focus was primarily on the issues of how short-termism influences the decision making of the future ownership of the UK businesses. It was also emphasized that any review should not be a camouflage for protectionism towards foreign takeovers. The new regulation did not address only foreign companies but also the domestic ones with the purpose to conduct the best interest of the UK economy (House of Commons, Ninth report 2009-2010).

In order to prevent any similar behavior and learnt from Kraft/Cadbury broken promises, it was decided by House of Commons that rules regarding UK corporate takeovers regulation for hostile bids will be stricter and thus, ensure better protection to local companies and their workers (Hodge, 2010), (House of Commons, 2009-2010). It was further claimed by the Panel on Takeovers and Mergers that managers in the UK companies create an environment that is more benevolent for hostile bids to be successful and that short-term investors had way too many power to influence how the result will evolve (Armour, Skeel, 2006). As the new rules were set in the practice, the bidding firms are required to disclose much more details about their intention towards the target company's assets and employees. This will avoid failing promises. Also, bidders are required to publicly state how the bid is going to be financed and include details about cost savings intentions. Furthermore, the "put-up or shut-up" deadline was re-valid for a shorter period of time, it is required to make a formal bid in the time of four weeks. All this new rules and requirements were set in order to protect more the target companies and give better transparency to shareholders about the costs connected with the offer (Hodge, 2010), (House of Commons, Ninth report 2009-2010).

In order to encourage the long-termism among directors of companies, the UK Government already set up reforms in 2006 by the 2006 Companies Act that had been even signified after the acquisition in 2010. The reforms enhanced long-termism between company owners and especially shareholders.

The reforms should have prevented what happened in the case of Cadbury and Kraft, where the fate of the company with its long history and employees' future was decided by people (shareholders) who did not own Cadbury for a long time and most certainly had no motive to own it a couple weeks later. (House of Commons, Ninth report 2009-2010).

The takeover of Cadbury accentuated couple of important problems in respect of the way how foreign takeovers of UK businesses are managed. The situation was a catalyst for a debate involving both the Government and the population (House of Commons, Ninth report 2009-2010). The proposed reforms had been suggested by the Labor Party; so-called "Cadbury's Law" a desire of a new legislation that would manage to protect UK firms. For some it was a manifesto of a Labor Party during the elections in 2011 (O'Connell, 2010). However, during the review of "Cadbury Law" by the Takeover Panel, concerns about the new regime were expressed with the worry that they could have stiffen the healthy takeover market. Some of the regulations seemed to be overly restricted. A mandatory "Put Up or Shut Up" deadline of 28 days was part of the "Cadbury Law" and came into force in September 2011 (Ebrahimi, 2012). Another acceptable reform involved that at least $\frac{3}{4}$ of shareholders need to approve the takeover, from whom all $\frac{3}{4}$ have to be only long-term shareholders. Restrictions on the debt amount, acquirers are allowed to uncover their intentions up front (Riley, 2012). The bidder must also publish the offer document in which information regarding impact on employees, company's strategic plans must be clarified. Employee representatives are also able to express their opinion and have the right to have their voices heard (Ball, 2011).

Competition Concerns

The British chocolate confectionery sector's total value corresponds to approximately EUR 3.9 billion. The chocolate confectionery category exists in formats including chocolate bites (portion small in size), chocolate tablets (chocolate blocks consist of more than 59g), pralines and specialties (seasonal products). The parties in the UK produce in the market primarily tablets and pralines. Kraft's production is active mainly with brands such as Milka, Toblerone, Oreo and Trident. Cadbury on the other hand is active with Dairy Milk, Roses and Green & Black. The market share of the parties was in 2008 as described in the Figure 19. It can be seen, the level of market share sold at wholesale level and at the retail level by Cadbury and its competitors. Following the takeover, the new operational entity still keeps the Cadbury's leading position in the chocolate confectionery market. Besides, Kraft is not a powerful player in chocolate confectionery. Thus, the Competition Commission that examined the transaction came to a conclusion that the Cadbury/Kraft transaction would not result in any competition concerns (Case No COMP/M.5644 - KRAFT FOODS / CADBURY).

Figure 19: Market power in the UK by top players

	Wholesale level			Retail level		
	Chocolate confectionery	Tablets	Pralines	Chocolate confectionery	Tablets	Pralines
Cadbury	[30-40]%	[50-60]%	[20-30]%	[30-40]%	[40-50]%	[20-30]%
Kraft	[0-5]%	[5-10]%	[5-10]%	[0-5]%	[5-10]%	[5-10]%
Combined	[30-40]%	[60-70]%	[30-40]%	[30-40]%	[50-60]%	[30-40]%
Mars	[20-30]%	[10-20]%	[5-10]%	[20-30]%	[10-20]%	[5-10]%
Nestlé/Rowntree	[10-20]%	[5-10]%	[20-30]%	[10-20]%	[5-10]%	[10-20]%
Ferrero	[0-5]%	n/a	[5-10]%	[0-5]%	n/a	[5-10]%
Lindt	[0-5]%	[5-10]%	[5-10]%	[0-5]%	[5-10]%	[5-10]%
Thorntons	[0-5]%	[0-5]%	[5-10]%	[0-5]%	n/a	[5-10]%
Private labels	n/a	n/a	n/a	[5-10]%	[10-20]%	[10-20]%

(Source: Adapted from the Case No COMP/M.5644 - KRAFT FOODS / CADBURY, pp 10: original source AC Nielsen)

In any cross-border takeover, particularly when the acquired company is a well-known as Cadbury is, the transaction attracts a lot of publicity. In this case, the story was a front-page news for more than four months. However, even with the bitter taste that could be felt in majority of Brits, the deal did not have any issues regarding competitiveness or any sign of monopoly, otherwise those regulation could have been used for turning down the bid on the anti-trust level (Moeller, 2012).

5. Discussion of the Analyzed Case

Introduction

It can be implied that takeovers are recognized as an essential part of healthy capitalism (Fama 1980, Schleifer and Vishny, 1997). However, the recent existing literature put into a question the regime that overlooks the takeovers and the way how they tend to operate in the United Kingdom. (Davis et al, 2013). The trend in the UK is particularly characterized by takeovers which have a foreign acquirer (bidder) while well-known businesses have been the target. Cadbury belongs to such group. However, the Cadbury acquisition have a special place in UK M&A history since it was a highly public involving case that attracted a lot of attention from media and started a heated conversation about the possible adjustments of M&A regulation in the UK. Furthermore, the case was so influenced by the effect of short-termism that the possible regulatory discussion reform also involved the effect of shareholders on the outcome of a takeover. This master thesis contributes on the gaps in takeovers regulation when a British target company is approached by a foreign one and offers a possible reform's suggestions of

improvement. This chapter analyzes, whether concerns over short-term investors are rational and if the harmful impact of short-termism on the UK takeovers is so crucial that an improvement in the takeover law should be considered. The findings are discussed upon the premise of the Cadbury case and some findings from a literature review. The findings from this chapter will be utilized by possible reform proposal that will be found in the following chapter (Kershaw, 2007).

Reforming shareholder domination

One year after the result of Cadbury takeover, The Takeover Panel held a public gathering in which the main topic was a possible reform of the Takeover Code. The public consultation was a great possibility for businesses to express their opinions and possible improvements on how the shareholder authority is influential when takeovers are concerned. Another reason behind the gathering was also the concern that was coming from various sides of public. Also, government stating that the rights of gaining 50% boarder line of shareholders' rights in order to gain a full control of the results of the bid has become fairly easy for the acquirer side. The results of the bid, particularly if the transaction is considered to be a hostile takeover, has become extremely influenced by the arbitrageurs who are pursuing the short-term profits regardless the harmful effect of employees and other non-shareholding stakeholders. But, it was stressed from a very beginning by the UK Takeover Panel that selling shares of a company that is in a pre-acquisition stage is a normal occurrence and was classified as a justifiable commercial activity that is unlikely to be changed despite the impact. (The Takeover Panel, 2010, Nyombi, 2015).

It was declared by Cadbury's former Chairman, Carr, who blamed short-term investors for the results and stated his discomfort in giving power into shareholders 'hands whose stake is registered outside of the United Kingdom and lack of domestic funds that are likely to be long-term oriented (Carr, Said Business School, 2010 cited in Nyombi, 2015).

Despite the strong opposition from politicians towards current set of the Takeover Panel in regards to the hostile takeovers and shareholder's short-term investments, not much had been improved and the likelihood of a reform that would also involve the Takeover Code is very unlikely in a near future. There was an overwhelmingly strong disagreement towards the possibility to limit shareholder's decision making during mergers and acquisitions deals. The association that secures rights of the investment industry in the UK, blocked the possibility to lower the voting rights of shareholders with the statements which declared that it is extremely difficult to distinguish right intentions from wrong and say who is and who is not a "bad shareholder". Besides, the Investment Management Association turned down those changes and recognized them as unnecessary. Also, there was a worry that such adjustments would give a wrong impulse towards shareholder's democracy and their rights. Implying

that the competence to sell its share stake during an offer period is within the rights of every shareholder and is authorized by the UK company law. As such, the majority of the public consultants were opposite to the changes in a reduction of shareholder's primacy regardless of the concerns that were present during the Cadbury takeover and the actions which were caused by the short-term arbitrageurs. Thus, implication whether the decision was rightful and justified has been the core question in the following analysis. The empirical understanding of the takeover reform is characterized by the strong link between the shareholders and board of directors while utilizing the shareholder's interests (Nyombi, 2015).

Takeover resistance during the negotiation period

According to the General Principle appointed by the Takeover Code, the target is not allowed to hinder a takeover bid. This is also what was applicable during the Cadbury takeover where the board did not come up with any moves that would frustrate the first bid and deny the shareholder's interest. However, in the case of Cadbury's behavior, there were three possible scenarios, legally grounded, which had the possibility to impair the bid. The first used method was the issued justification document which both companies exchanged in order to provide information outlook for shareholders of both businesses. The defense document contributed with the information about the bid and the acquirer's company (Kraft). As the two rejections are concerned when it comes to the Cadbury. The document was used as a form to express their position that the Cadbury Board represented towards Kraft's bid and reject them. Using expressions such as "derisory" and "unappealing". The actions towards rejection of the deal and give an advice to shareholders about not accepting the bid were to no use. Mainly it was caused by the large number of profit seekers who prefer the short-term returns over long-term financial value (Davies, 2012).

Hence, the power to convince the target company were very limited considering the arbitrageurs who became involved in Cadbury. As the second method, the Cadbury Board had an option to summon applicable competition authorities whose purpose would be to examine the takeover for the possible competition concerns and thus, Public interest test could have been utilized. However, it was difficult to come to a resolute conclusion since Kraft expressed publicly the desire and attempt to preserve the well-established heritage and work position of Cadbury at all costs and Cadbury's willingness to sell the shares at the certain price level were not supporting the board's effort. The last possibility how to prevent the bid was to find a White Knight. A possible friendly acquirer who would create more competitive environment where better terms over the bid with Kraft could have been achieved. This option was considered by the Board, however, the issue was in not finding any suitable candidate who would create the bidding war against Kraft. The possible competitors to Kraft including Nestlé and Hershey did not come into the realization. Consequently, due to the lack of other rival bidders,

shareholders at Cadbury could only gain a 10% increase from the first bid offer. Hence, it can be concluded that there is a direct and positive link between the competitive bidders who are trying to acquire and level of premium price for target's shareholders. Moreover, it can be implied that the process when the acquire express publicly the attempt for a bid, the target's shares go through a certain process of an auction with the aim to receive the best price possible for the shareholders and secure their benefit. This is also authorized by the Takeover Code 2013 where within 21 days, the offer for a bid is open for other possible bidders (Nyombi, 2015).

Takeovers and the influence of Short-termism

In general, the time slot between the first and the last bid offer can be concluded as profit bringing for the target company. It can be also noticeable during the Cadbury acquisition. However, the time period offers a chance for short-term arbitrageurs who have an opportunity to invest in shares that are rising and make a speed profit before the bid is finalized. Due to the possible risk of unsuccessful merger, long-term shareholders of Cadbury could have felt that the risk is too big and the result is unpredictable and decided to sell their shares to arbitrageurs. As a result of the sell from the long-term investors, the share price was plummeting down to the level prior the announcement. With this in mind, the short-term investors were willing to deal with the risk that the transaction could brought with a vision for a somewhat gained profit.

The better illustration of how the power of short-termism can influence the result of a deal is illustrated in the Figure 20. In the Cadbury case, the price of share before the pre-acquisition stage was 570 pence. However, the price started rising up significantly within the next six months to 900 pence. The offer made by Kraft for equity and cash brought the increase in 40% for Cadbury's shares, although contributed to the share decrease at Kraft. The drop meant that the value of equity that Kraft offered was lower than it was intended before the public proposition. Also, another caused for the decrease were Kraft's significant debts which they took for the undetermined and risky acquisition. The long-term investors who did not sell their shares and kept them throughout the whole acquisition process gain 50% premium. On the other hand, the short-term arbitrageurs who bought the augmented shares received only 10% premium since majority of them sold their investment share after the first bid was announced. However, if the deal would not have gone through, the average lost would be around 24% since the shares would decrease to 600 pence. Despite the high risk of the transaction that the short-term investors were willing to bear with the vision of an even small profit, was there even a small change to prevent the takeover after the arbitrageurs had become a part of the deciding element? Taking the acquisition of Cadbury as a great example serving to answer the question. Right after the bid was publicly acknowledge, several investors who had hold shares at Cadbury for a long time had left. This led to an approximate 5% increase in short-term investors in September 2009. But, for months

later the percentage of arbitrageurs further increased for 27% more. By that time the Chairman of Cadbury argued that the independence of Cadbury is long gone with the primal focus of obtaining the best price for shareholders. Moreover, the “inflow” of the 32% of short-term investors made it particularly accessible for Kraft to obtain another 18% and thus gain a full control of Cadbury. And as the Rule 9 of the Takeover Code argues, the minimum vote for a takeover to be successful is at least 50% plus one vote. Subsequently, those shareholders who did not welcome the offer stayed in the company and kept their position as minority shareholders (Nyombi, 2015).

Figure 20: Increase of a share value in Kraft during the presence of short-termism

CADBURY	
Public Announcement of the bid	August 30, 2009 with Cadbury shares trading at 570 pence
Date of a first offer	Cadbury was trading above the value of the first bid
The value of a first offer	Cadbury was trading above the value of the first bid
Other bidding companies	Not one
Reaction towards other bidders	No formal bid, but possible offers from Nestlé and Hershey. Resulted in the putting pressure to Kraft to make an improved offer
Risk of short-term investors in case of banned bid	25% loss compared to the first offer. Stock value on 600 pence for one share
Final offer	850 pence for one share
Profit made between the announcement and finalization	50%
Difference between the first offer and last (the improvement)	10%

(Source: own creation)

The Cadbury takeover showed up to be a valuable example of a case where large number of short-term investors purchase target's shares during the takeover period which authorized them to give a yes for the future takeover materialization and have the freedom to walk away after few weeks with

their investments plus gained premium without as much as a thought for possible harmful causes which the target company had to deal afterwards.

Causes and Consequences of short-term investments

Few months after the result of the Cadbury takeover another conference took place in the UK. This time it was held by the Department for Business, Innovation and Skills. The purpose was to provide a summative explanation to the result of the Cadbury bid in 2010. The findings showed that the role of board has a very difficult position towards the shareholders, their profits and recommendation of the bid. Particularly, when the bidding offer is high enough. Serving to the shareholder's needs, board is in majority cases pushed into blocking the needs of employees and long-term interest of a company (Nyombi, 2015).

As Robinson, 2012 points out, one of the possible drivers for a short-termism is an occurrence and a threat of hostile bids. (Robinson, 2012). The reason is simple. Starting with a hostile bid where the board came to a conclusion not to recommend the deal to shareholders. The acquirer can however propose his offer to shareholders directly. With the realization of higher earnings, investors focus on fast profits and are willing to sell the shares and accept the hostile type of a deal. Also, in friendly takeovers, the shareholders are open for selling despite the lack of recommendation that comes from the board. It can be therefore concluded that the shareholders are those who held a fate of a company and stakeholders in their hand and it is guided by a chance of short-term earnings.

This is also a reason why hostile takeovers are an often-used way how to get a desired target company on board since shareholders' concern is focused on a monetary provision and not social. Also despite the lack of recommendation from the target's board, shareholders are inclined to accept nevertheless. The current setting also makes an intense pressure for board who, in an attempt to averse a possible future offer from hostile bidders, are trying to preserve a higher price of shares. This can be often achieved by focusing on a short-term time frames instead of investing to an improved research and development and secure stability of a company and have a priority long-term goals (Kiarie, 2006).

When talking about research and development, a research analyzing this topic conducted by previous scholars disclosed that businesses that appoint long-term investments including R&D are also those who are more likely to develop a defensive protective mechanism against takeovers (Baums, 1993). Another study came to the findings that emerged from researching one hundred most profitable companies in the UK. From those over 25% revealed that they do not pursue interests including research and development since it increases spending on forthcoming investments of a company and lowers the short-term earnings to shareholders who moreover, would not agree with such doing (Grinier, 1998).

Summing it up, preserving high share prices to please shareholders has a negative effect on R&D spending and forces managers to endorse short-term approach which hinder their focus from long-term activities which would contributed for the long-term success.

The economics of short-termism

The reason behind short-term investing supported a research done by Loughran and Vijh, 1997 who argued that arbitrageur's investors due to the shorter time of their stakes are likely to obtain higher earnings to those who decide to stay in the company throughout the whole acquiring process and planning to invest for long-term benefits (Loughran and Vijh, 1997). The difference of earnings between those two groups is rather substantial since the lost value of shares during the M&A process is caused by the uncertainty of the outcome of a deal and further company's operations and financial health (Kandilarov, 2015). Another factor influencing the possible long-term company's achievements is a level of a debt. The amount that had to be borrowed by Kraft in order to be able to make a move for Cadbury has even risen over the time which had the possibility to harm the post-acquisition financial stability and their performance. With this in mind, it can be argued that the short-term behavior of Cadbury's shareholders was opinionated and justified. With the lower share value after the takeover, shareholders were afraid of experiencing negative financial earnings in the distant future and rather preferred to enjoy high returns in the short haul. However, the question here tackles the moral aspect of the situation and whether it is correct to prefer shareholder's needs over others who are also involved (Nyombi, 2015).

Even though the long-term shareholders had been promised to the growing value of Cadbury considering the leading position in the market of confectionery products and wide distribution net of operations in the emerging markets, the loan that had to be taken by Kraft with the value of £7bn was further increased by the decreased share value of Kraft so the total debt after takeover which was £16.7bn, contributed to the first years financial suffering and unfulfilled expectations (Farrell, 2010).

The possibility of deterioration of stock value is not the only driver of short-termism. The role that institutional shareholders have to preserve, is to be able to provide the best possible earnings for the fund owners. In order to be able to do it, institutional shareholders including hedge funds investors have to move around the portfolio in order to maintain the results (Kahan, Rock, 2007 cited in Nyombi, 2015).

Subsequently, it was no surprise that arbitrageurs in Cadbury would not want to stay for a long-time value and reject the high premium. However, an empirical research conducted in the past showed an opposite result. The research involved German and Japanese businesses, and brought results that highlighted a positive impact on long-term gain and support a high shareholder value when adapting

programs for rewarding long-time human capital and their performance which as a result had a positive impact on increased value for shareholders (Kang & Shivdasani, 1996). Because of the lack of studies that would examine the profit that is obtained by short-term investors when the M&A is materialized and the amount of earning of those investors who were loyal and remained in the company for a long-run, it cannot be conclude how the financial performance would have developed if the short-term investors did not decide to sell Cadbury to Kraft (Nyombi, 2015).

Interestingly, in the following part there would be an examination of Cadbury board and their approach and legal duty towards investors who are aiming to gain returns in a short-time and to see if the system was preferred by the board.

Role of board during the short-termism

The role of a target's company board is an important one but not particularly with that many powers in their sleeves. It is partially cause by the Rule 21 in the Takeover Code. It can be said that the board is something like gatekeepers whose negative position toward the acquirer's offer can contribute in improvement of the previous bid. Focusing on the annual report that was developed by the Takeover Panel in the year of the Cadbury's takeover finalizing, the percentage of bidding companies for whom the cooperation of targets is important, was several times higher than those for who cooperation between both engaged sides were not important (Takeover Panel, Annual Report, 2010). The necessity to improve (increase) the bid in order to succeed with the deal is financially more demanding for the bidding company. This was also experienced during the first bid made by Kraft when Cadbury's board refused to support the offer and shareholders demanded higher price. The acceptance from a board is also important to the acquirer when lacking to obtain enough financing since hostile bids require to keep higher premium which again is financially difficult (Begum, 2005 cited in Nyombi 2015).

As already introduces earlier, the interests of shareholders are prioritized by the target's board. In majority of causes the board can be pushed into acting so by the shareholders themselves. The same doing was also followed in Cadbury, where shareholder's interests won over the stakeholders' one and the only thing left to negotiate was the price offered by Kraft. So, the behavior of short-termism arises three crucial problems. Firstly, according to the enlightened shareholder value, which primal purpose is to maintain long-term prosperity protection, the short-term shareholders' approach goes the other direction and thus, it is in contrary to the procedure. Besides, as the Companies Act 2006 authorize, directors are compelled to consider non-exhaustive aspects in order to advocate best interests of a company. Hence, factors including well-being of employees, suppliers are registered to be recognized during the takeover. Consequently, prioritize the short-termism is against the policy and was presented also in the Cadbury takeover, when closing down the Somerdale factory brought a negative impact to

employees and senior management. Considering the employees interest, their contracts in the company usually have a long-term character (annual benefits, pension supplementary insurance). In majority of situations, such benefits are not legally binding and thus, after the change of the management, there is only a moral obligation to preserve the past set-up or to fulfill it. But what happens very often is that the contracts with employees are either reduced or wages are cut down. As such, short-termism is harmful for employees because due to the factors mentioned above. Lastly, in consonance with the implications stated in the Takeover Code, company's directors need to consider best interests of the business as a whole entity. However, on the other side, opposite to the General Principle, Rule 21 allows to grant a power to shareholder's hands and decide the status of the deal. In cases, when the target company is approached only by single bidder, the target's board is not obliged to approve the bid to the shareholders in situations when the company value for a long-haul could be somehow at stake. The opposite happened if the target has other competing bidders to consider from. In such cases the only task for the board that is to be considered is a duty by the case law which says to negotiate the best possible price (Nyombi, 2015).

Despite the Takeover law regulation, including General Principle, there is not one settled approach that would indicate whether the company's board is obliged to utilize interest of shareholders or act of interest for the company as one whole entity and as such, consider also all non-shareholders. According to the view of Takeover law, the interests of a firm equals the interest of shareholders which allows to bring a shareholder primacy when it comes to the deciding process as it could have been seen in Cadbury. Even though, the Takeover law does not have any support in neither Case law nor Company law, the principle is commonly accepted. But, despite the facilitation of maximizing the share price, target's board is, in general, not bounded to promote the maximizing of short-term value of shareholders. Regardless of the "promoting success of a company as a whole" that is grounded in the Companies Act 2006, the power of decision making is authorized by the shareholders so it is them, who have the last word. Takeover law made it a bit confusing by developing the enlightened shareholder value but simultaneously allow to decide to shareholders and not the company's board. This left shareholders during the takeover process with limiting power and often with no other choice than to support the short-term approach of shareholders. However, this question the understanding of promoting the success of all engaged members in the takeover as a whole, since shareholders, with the power, will always prefer the earnings of the high premium that is offered during the negotiating process (Nyombi, 2015).

Short-term investors – new evidence

The reason why vast majority of takeovers registered in the United Kingdom are successful after the negotiation stage is mostly due to the growing number of institutional investors who are allowed to act

by the short-term approach that grant them more secure earnings. Opposite to the long-term approach that tend to be unpredictable and thus, riskier. As the Cadbury case disclosed, the hedge funds or other short-term value seekers buy stock mostly from long-term holders and significantly benefit from the available premium price that the possible acquirer offers. As the verified evidence found by previous researchers showed, the bigger return is granted if the bid is accompanied by more than one bidder. This was also found to be a key aspect of the level of the negotiated price. If Cadbury had more than one active bid, the earning that could have been gained from the deal would be improved. The empirical evidence further found that the level of stock of an acquirer is often negatively influenced by the takeover. This factor was also present during the Kraft acquisition where level of share price went down and Kraft's stock lost its value. In order for the takeover to generate a value, the combined value of both companies had to be greater than £43.93bn. Although, for Kraft it was a very difficult task since operational improvement were difficult to find since Cadbury was already well-running established company. Subsequently, after the valuation created in the previous chapter, it was shown that 22 months after the takeover the deal did not brought any value but rather resulted in a loss. (Nyombi, 2015). But, if Kraft would not have increased its offer and the deal would be accepted by the first offer, in time of less than two years, the takeover would create a value. The result of the decreased value of the acquirer is also concluded from the empirical research made in past. The research aimed for the companies mostly in the UK and the US and examined share prices six months before and after the takeover for both acquirer and target (Koulouridas, 2008). The findings showed that while the share value of the acquiring company lowered in comparison to the time before the acquisition was announced, the opposite happened to the side of the bidding company. The target's shareholders gained a hefty premium of their investments. Besides, the shareholders from the bidder were also "locked" in the company since selling the shares would mirror on the lost profit considering the reduction on its value and thus, they were unwilling to sell their investments until the situation would reverse and improve (Nyombi, 2015).

The analysis alongside with the Cadbury case showed that the issue of short-termism brings investors who prey on bidding companies and due to the anticipated deal, invest in the shares with an expectation of receiving takeover premium. The finding also disclosed that despite no legal duty to prefer short-term investors, the target board is often urged into maintain the profit and respect to oblige the shareholders' interest and thus is required to go alongside the short-termism. And since the shareholders are the key fragment who have the power over the result of the deal, board of directors do not obtain with much power over the protection of stakeholders in the companies during takeovers. There is only one possible case where interests of non-shareholding investors can be prioritized and it

is in situation that by promoting stakeholders, the benefit of shareholders will be greater and brings more benefit to them.

Summary

In order to be able to summarize the chapter, it is advisable to highlight the key finding of the analysis. It can be concluded that maintaining the short-term investment approach during takeovers significantly influences the long-term interest of companies and position of non-shareholding stakeholders, mostly employees.

Even though, that according to the Companies Act 2006, it is obligatory for the board to take long-term interest of the company and also stakeholders into the consideration, such doing cannot interfere with the interest of shareholders (Nyombi, 2015). Upon the premise of the finding, a question arises asking whether it would be advisable and recommended to reform the current outlay of Takeover law and its applicable organizations. It would be done in order to maintain more control over the future of the company and place limits which would unable short-term investors to have such an influential power. The harmful effect that hostile takeovers have due to the shareholder primacy, is positive and require more attention from politicians.

6. Proposition of a Regulatory Reform

The result of the Cadbury takeover and the finding in the discussion chapter showed that the way how the UK takeovers are authorized and legally shield brings few gaps that could have been reformed in the future. It was concluded by previous researchers that majority of British takeovers share a similar characteristic, which is a hostile form of the bid. The deal is often recommended due to the capitulation from the target's board of directors who are overpowered by the investors who then make a deal based on the best possible earnings. Such behavior, during the offer period is seen from the arbitrageurs, hedge funds investors and others who strive for short-term value. Despite the fact that investing in shares and selling a stake in the company is legally bounded common practice, the result often puts some members into the sensitive position. It is not a surprise that every modern business operations should follow a trend that show a social responsibility. In order to lower the possible negative effect on the economy and society, government obtain activities that by applying them the impact on the society can be minimized. Despite the clear economic benefit that takeovers can bring to the economy, the number of job losses which can follow after the deal is materialized is significant. Using those regulations also promote better transparency and lower the risk of autonomy. Since the level of profit is the key factor when deciding the result of a takeover, it is very unlikely that short-term investors would refuse to accept the offer that brings substantial value for shareholders and prefer to

promote long-term interest than is very risky during and after the deal. Furthermore, short-termism also contributes to a situation where companies are very easily taken over. The premise of this findings, give rise of a question to whether there should be a reform of the current legislation mastering the takeover legislation. The reason for this would be to bring a more protection to the whole UK economy and non-shareholding parties (Nyombi, 2015).

Evidence from the practice shows that the way how the takeovers are regulated is not particularly adequate, applying the authority by current institutions and regulatory regimes. The following part therefore suggests few ideas that could be introduced and applied in order to grant an improved and more beneficial body of a regulatory regimes (Davis et al, 2013).

Four pathways to reform

Figure 21: Proposal of the possible reforms

1. Minimal change on a self-regulatory basis: i.e., encouraging greater self-regulatory measures that encompass wider public interest concerns and acknowledge other stakeholders;
2. A 'more grit in the machine' approach with a series of measures that forcibly redirect and incentivize those involved in the takeover process, with the amount of grit used varying considerably;
3. The application of a broader public interest test in certain takeover scenarios, with either government or an independent body rigorously applying these;
4. A more extensive overhaul of company and finance law and regulation that reconstitutes the balance and relationship between finance, industry and the state;

(Source: Own creation, based on Davis et al, 2013)

Minimal changes

Leaving the Takeover law with minimal changes is what has been promoted especially by the Conservative Party. They support the idea that no great reform is necessary to develop. However, the growing number of an evidence from the practice says the exact opposite. The idea is to some extent supported because of the monetary inflow for the Conservative party and the fact that many of their campaigns had been funded by hedge funds, private equity firms and their managers (Hutton, 2010 cited in the Davis et al, 2013). Support the idea of no change at all is in the author's opinion not possible and considerably wrong move. It would be better to develop measures that would encompass wider public interest concerns and acknowledge other stakeholders (Davis et al, 2013).

A 'more grit in the machine' approach

Another possibility would be to put in practice tools which aim is to redirect behavior in the market environment however, do not require to use extensively regulation from the government or other applicable institutions. The benefit of such regulation allows to not engage some questionable behavior from politicians and lobbyists. These types of regulatory levers had been successfully introduced in the continental Europe (e.g. Germany, France) where stakeholders 'interest is more protected (Davis et al, 2013). Cox, 2013, proposed in his conducted review regarding this matter, the following measures:

- a) Better explanation and transparency regarding the bid financing;
- b) Grant a power to decide also for shareholders from bidding company, not only the target company;
- c) Limit the rights for those who bought shares in the phase after announcement of the bid;
- d) Increase voting thresholds for a successful bid to two thirds rather than a half;
- e) Shareholder voting strength rising the longer shares are held;
- f) Strengthen the power of the board in the target company; (Davis et al, 2013).

Despite the fact that the better clarification of sources for takeover financing is already in practice to some extent, especially regarding more available transparency to information. The question remains how these "improvement" should contribute to the issue of short-termism (Davis et al, 2013).

Reviving a broader public interest test

In order to develop a greater public interest to some mergers and acquisitions, the broadening of a public interest test would seem as another way to reform a takeover regulation in the UK. However, since public interest is in a close relation to the national interest, broadening it could be considered in today's environment as part of a protectionism mechanisms. A good implication of how a more severe and exact test could have been developed, comes from the Companies Act 2006. In the section 172, which needs to be tested by the court yet, the Act forms the directors of the company as a statutory organ to codify duties. Furthermore, the section 172 argues the following:

Figure 22: Companies Act 2006, Section 172(1) provides:

'A director of a business operation has to act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole, and in doing so have regard (amongst other matters) to:

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- a) The likely consequences of any decision in the long term,
 - b) The interests of the company's employees,
 - c) The need to foster the company's business relationships with suppliers, customers and others,
 - d) The impact of the company's operations on the community and the environment,
 - e) The desirability of the company maintaining a reputation for high standards of business conduct, and
 - f) The need to act fairly as between members of the company.'
-

(Source: cited in Davis et al, 2013, p. 16)

Overhaul of company and finance law

Reviews about improving the financial machine that would work in favor for the UK industry had been a favorite topic of journalists or critics. The purpose in applying such measures would be to rebalance the British economy. One of the possible, more particular, that would also helped fight against the short-termism would include tax system. In order to stimulate the long-term investments, a reduction of capital tax earnings and dividend tax for every year that the shares would be hold. Furthermore, another possibility would be to develop a much stronger scheme that would encourage system of employee share ownership. Implementing such measures could contribute with effectiveness of takeovers and also bring positive impact of finance- industry relations. Furthermore, in order to protect employees, a revision of a stronger representation of employees should be up to a consideration. However, this would probably also include a reform of company's structure and improved scope of obligations that can board use (Davis et al, 2013).

Developing a long-term approach instead of reform in takeover regime

Despite the public criticism over the development of Kraft/Cadbury takeover, little had been done by the authorities which would bring a radical change over the Takeover Panel and Takeover law in the UK. Including the opposition that had been expressed over the reduction of control that shareholders obtain to inability to change (limit) rights for short-term investors.

The following two proposals could serve as a possible alternative for the takeover regulations which would help with the addressing the discussed problem. First, grant long-term shareholding investors voting right or reduce the right to vote for those investors whose purchase of shares was recent (short-term oriented). Second, act and thinking according to the long-term value (Wan, part 2, 2013).

1) Giving more power to long-term shareholders

When talking about possible reform of the Takeover Code, there was a proposition done by the Takeover Panel, which was also immediately rejected, to suppress short-term investors, particularly those who invest in the target company post-announcement of the bid. The proposition consists of a two-level voting model where the long-term holders of shares had more power over the result of the bid and monopolize the voting, see it from a long-term perspective (Wan, part 2, 2013). Besides, the suggestion went opposite to the main concept of the Takeover Code which stresses that all shareholders are equal to one another and thus, have same rights (Nyombi, 2015). However, there are more issues connected to the disenfranchising of short-term investors. Starting with the inconsistent structure of the purpose behind the investment. It would have to be assumed that investors who buy shares in the offer time period are all driven by the premium offer and their aim is to sell right after the deal is materialized. Second, all long-term shareholders would prefer long-term value over the premium gain and thus, all long-term shareholders would be loyal to the company. But, not always are these assumptions clear and can be easily justified. Subsequently, it could have been seen in Cadbury as well, when some of the long-term investors sold their stake in order to avoid the uncertainty of the future and the risk with the financial lost. It would have to also be taken into the consideration those investors who plan on keeping the shares and believing in the long-term value despite purchasing it post-announcement of the bid (Wan, part 2, 2013).

2) Orientation towards long-term value

The solution can perhaps be in the right stimulus which would manage to motivate shareholders, including head fund investors, to consider and act long-term. There is only a limiting power to except from the board of directors and their dedication towards long-term approach since the investors who elected the board and can also remove them are mostly leaning towards the short-termism. However, what is clear is the need for a change since according the statistics, the holding period of shares in the United Kingdom severely shortened. In the mid-1960s the approximate holding time was estimated for more than five years following by two years in 1980s and only seven months in 2007. This decreasing trend does not indicate that shareholders are committed towards long-term value of a company. The situation requires more straight-forward method that would aim directly towards fund managers and which would employ court sanctions. One possible method which could foster long-

term goals is the Stewardship Code 2012. It is a list of necessities that had to be taken into consideration by fund managers. Managers are obliged to publicly disclose how they attempt to discharge their responsibilities and how they plan to vote their shares. This would bring a reduction in determining the financial performance of short-term shareholders on short-term results (Wan, part 2, 2013).

7. Conclusion

The purpose of this investigation was to find out what are government's reasons for getting involved in M&A agreements and to comprehend, how far they may go. Furthermore, the aim was to ascertain how the negotiations may be impacted and ultimately suggest to businesses planning to undertake a merger or acquisition, so as to assist them in avoiding likely problems due to government regulation and control. Furthermore, the thesis also pointed out the impact of shareholders during the takeovers and their influence over the result while focusing on their short-term driven motivations. Furthermore, the lack of regulation in this matter and the role of shareholder primacy play a crucial role for stakeholders whose protection is not granted during the takeovers.

As the subject was complex, as was the research's magnitude, this thesis had to be focused. It was decided to study only cross-border M&A and the British government's involvement, all in the current years. To attain the aims of this thesis, wide-ranging research was undertaken on publications, previous research on this subject, plus applicable legal and governing features. Subsequently, one significant M&A example at the negotiation level in the United Kingdom was shown and carefully analyzed. The occurrences in the analyzed case study between Kraft and Cadbury was investigated from the viewpoint of the government's involvement in the case and shareholders' interest short-term returns.

Certain indicators of government involvement were found during the analysis of the example. Putting together the previously collected information from the publications reviewed, lead to the assembly of general explanations of the matters of interest for this study. Following defining feasible explanations and types of government involvement, plus its impact of short-term shareholders' behavior during the M&A agreements' discussions, a framework has been established. It not only aimed to outline a detailed elucidation of the matter of government participation, but also to show the link between the M&A situation and the gaps in the takeover reform in the UK. The connection with the short-termism mostly from the shareholders calls for the regulatory improvement alongside with the revision of the Takeover Code. Ultimately, it has been established that the explanations for a government's involvement in M&A are linked to the results and impacts of the agreement on the bidding company.

The role of the government regarding a takeover intervention also depends on the type of the deal since hostile takeovers may ignite directly government involvement compared to the friendly merger or an acquisition (Rowoldt, Starke, 2016). It was also expressed, that bids that are cross-border obtain

more obstructions that the deals that are home-based. It has been shown that government involvement in an M&A can involve negative pronouncements and statements by ministers, parliamentarians and other significant government characters. These pronouncements show an antagonism from the government and can predict more dire actions before the transaction is concluded.

Regarding the effect of short-termism during the takeover, the findings shown that the shareholders' interest are preferred and favored over the interest of other non-shareholding stakeholders. It was disclosed that the company law put shareholders' interest above anyone else. Also, despite the fact that board of directors is no legally bounded to maximize short-term returns over the long-term returns, due to the pressure from the shareholders, short-term approach is often utilized. Moreover, the short-termism significantly influences the outcome of the acquisition deal considering the type of investments that short-term investors including institutional investors such as hedge funds arbitrageurs and investors from various other funds pursue. They purchase inflated target shares mainly from the individual shareholders who are afraid of the unknown result and a high risk. However, in recent history also the institutional investors are selling their shares to arbitrageurs particularly those who are registered abroad which can have a harmful effect on the economy and whole society considering short-term investors are driven by the earning and fast profit and are not concern over the moral consciousness.

It has been made clear that the finding from the literature review and from the practical case study highlighted the meaningful problem of how the mergers and acquisitions are allow to operate in the United Kingdom. Since takeovers there are more often to occur, are classified as a hostile bid and are likely to be successful than in any other world leading economy. What is more, the empirical research showed that the UK takeover regime is not beneficial for the long-term shareholder value creation, economy, and society and overall contributed to the decrease of UK industry in the last ten years. (Davis et al, 2013) Arguably, it can be say that the current takeover regulatory setting needs a change and a proper focus from the government and appropriate regulatory organs.

8. Limitation and Future Research

Every project where a research is presented comes with certain limitations, this master thesis follows the same theme. Starting with the limitation in the methodology part, where the system approach had been clarified as the most ideal for this kind of research and analyzed topic. Despite the advantages of the chosen approach, particularly in its broad and its universal standpoint, it was found to hold some restrictions in its use as well. Secondly, factors and elements that coming into the system from outside are difficult to research and examine and thus, the final picture has its flaws and imperfections. It was desired to consider every significant element that has an effect on government control and its intervention when cross-border M&A are examined but since the topic influences not only economic aspects but also legal, social and others, there are elements that were not taken in to the consideration.

Another limitation is considered to be a static system of this specific investigation. Since the external elements are all dependent on external actors, in this case the British government and shareholders, the finding can differ when some changes come in the future. In practice, it means that the newly elected government can change the related legislation, make the conditions to enter the UK market stricter or decide on different rules, thus the finding in this paper will lead to be rather subjective findings when considering the new macro or possibly the global environment. Nevertheless, it would be interesting to have a look on papers that examine the similar or same topic in the next couple of years to see if any significant changes occur and what the phenomena will be like.

Another limitation was the lack of the reliable sources and literature since the topic has not yet been researched thoroughly by scholars in the past and few valuable sources are used on repeat in order to be able to answer the research question and fill the literature gaps. Also since the topic has focused on pre-stage deal, another problem occurred with source unavailability when real cases were concerned. The companies tend to keep the unsuccessful transaction for themselves and thus a certain asymmetry of information exists. Moreover, the specificity of the case study was a restriction as well. Hence, using only a single case study. Another limitation alongside with using a single case study was the fact that only secondary data were used as a main source for the analytical part and thus generalization of findings was difficult to develop.

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