

What makes the UK Takeover Panel tick, is its model exportable and do its recent moves to assist target corporations presage a change of emphasis?



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UK PANEL: HISTORY AND BASICS

- Problems in the 1960s
- Status: independent and self-funding regulator which is not a quango, a part of the civil service or accountable to the Financial Services Authority, Parliament or the Government
- No role in judging commercial or financial merits of transactions and neutral as to outcomes
- Objectives: fair shareholder treatment, an orderly framework and market integrity
- Jurisdiction set by target company: public companies incorporated in the UK and listed or centrally managed in the UK
- In 44 years it has regulated over 8,300 bids



UK PANEL: STRUCTURE AND MEMBERSHIP

- Membership: investors, industry and practitioners (investment banks, stockbrokers and accountants)
- Hearings Committee
- Code Committee
- Executive
- Takeover Appeal Board



UK PANEL: PRINCIPLES-BASED REGULATION

- Ability to cope with change
- Spirit must be observed
- High standards with wide discretion for dispensations
- Dealing with new techniques and practices



UK PANEL: SANCTIONS AND POWERS

- Private reprimand
- Public censure
- “Cold-shouldering”
- Statutory powers:
 - demands for information/documents
 - compensation orders
 - Court enforcement of rulings



UK PANEL: EXECUTIVE OPERATION

- Flexibility: 16,000 precedents
- Secondment system
- Consultation
- 24/7 commitment: swift guidance and rulings
- Market surveillance
- Policy and rule revision



UK PANEL: APPEALS AND JUDICIAL REVIEW

- Hearings Committee
- Takeover Appeal Board
- Judicial review: Datafin (1986)
- Expro (2008)
- No tactical litigation



UK PANEL: GENERAL PRINCIPLES

- Shareholder equality and fair treatment (e.g. acquisition of corporate control triggers a mandatory offer obligation)
- Prevention of target company frustrating action (no poison pills!)
- Orderly framework and protection of target company from perpetual siege
- Bidder is committed once a firm offer is announced
- Shareholders should have information/advice of a high standard and sufficient time to make decisions
- Maintenance of fair and clean securities markets during bids (e.g. extensive dealing and position disclosure regime)



UK PANEL: MODEL OR THINKING EXPORTABLE?

- Specific thinking and approaches
- EU Takeovers Directive (2006)
- Former pink bits of the globe
- Emerging economies



UK PANEL: POST-CADBURY CONCERNS

- Kraft/Cadbury angst:
 - target companies too easily put “in play”
 - “virtual bid” periods too long
 - transaction outcomes influenced by “short-term investors”
- Panel conclusions in 2010 Fall:
 - recent hostile bidders had obtained a tactical advantage over the target company
 - playing field should be levelled to reset the bidder/target company balance
- New “put up or shut up” regime:
 - obligation to name potential bidders
 - fixed deadline of 4 weeks to announce a firm offer or no intention to bid
- New ban on inducement fees and deal protection measures



UK PANEL: CONCLUSIONS

- UK politics
- Keys to Panel success
- Fit for export?
- Recent rule changes: evolution not revolution

