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MERCHANT BANKS AND CORPORATE ACQUISITIONS

(Vol. 1)

A Survey of the Organisation, Role, And Approaches to Contested Bids of the Major UK Merchant Banks

ROBERT CHIA K.G.

PhD Thesis

THE CITY UNIVERSITY BUSINESS SCHOOL

LONDON

This Thesis is Submitted for the Degree of Doctor of Philosophy in Management Studies

February 1982

For

My Dearest Father, Mother, Brothers,
Sisters & H.C.

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DECLARATION

I grant powers of discretion to the University Librarian to allow this thesis (Volume 1 only) to be copied in whole or in part without further reference to me. This permission covers only single copies made for study purposes, subject to normal conditions of acknowledgement.

Chia Kay Guan

A B S T R A C T

The aim of this dissertation is to provide a comprehensive analysis of how British merchant banks organise and approach contested bids within the institutional framework of the City.

To this end, a number of exploratory hypotheses were derived from a pilot study with five merchant banks in the City as well as discussions with the project supervisor. Interviews were then carried out with 30 leading UK merchant banks belonging to either the Accepting or Issuing houses associations regarding their role, organisational structure, approaches to bidding and defensive issues related to contested bids. The main perceptions and empirical findings from this major survey are then compared with results of analysis of 30 case studies spanning the 1979-81 period (supported by analysis of another 10 cases with respect to some issues)and the results are then discussed and analysed in chapters 8 and 9. To obtain an overview of how self-regulation prescribes bid behaviour and practices, interviews were also held with various City bodies.

Volume 1 of this dissertation is divided into 5 parts. Part I outlines the research objectives, methodology and literature survey. Part II then examines the results of a survey of opinion of merchant bankers. In Part III, main results of the literature survey and merchant banking field work are compared with evidence derived from the case studies. Important research findings pertaining to organisational structure of leading UK merchant banks, approaches to strategies and related issues are then identified and highlighted. Contemporary takeover issues which became apparent during this research project are then analysed and possible reforms suggested (Part IV). The final section i.e. Part V considers some current trends in merchant banking and their implications for corporate advisory work relating to

takeovers in the 1980s. In the discussion, details of both the survey of merchant banking and the 40 case studies are used to illustrate the main trends.

Volume 2, which is not to be generally available to readers gives a cross section of transcripts of the interviews held with more than 90 merchant bankers, stockbrokers, takeover specialists, American investment bankers, merchant banking analysts, authors, foreign merchant bankers, officials of self-regulatory bodies as well as relevant financial and non-financial data of the merchant banks interviewed during this survey.

Findings of this study are numerous and it has demonstrated the fact that UK merchant banks approached their takeover assignments through team work with a minimum of 2, a favoured norm of 3 and the maximum team size is dependent on the size, time factor and complexity of the transaction itself. Their approach to contested bids which are invariably multi-disciplinary and complicated should not be viewed purely from the financial perspective alone. In both bidding and defending capacities, the merchant bankers subscribe to the hypotheses that while there are general financial and non-financial principles guiding their approaches, flexibility and creativity are essential. Although the bidder has more control over timing in springing the takeover bid, however, the findings of this survey have shown that in a fair number of cases, this factor may not always favour the buyer because of the emergence of rival bidders. Moreover, timing is but one element of a bidding/ offensive strategy.

In essence, the defensive posture is necessarily a response appropriate to the offensive strategy. The share ownership structure of the defending company plays a crucial role in the final outcome of the bid. Generally, the merchant banks perceive that it is relatively easier to defend a client when there are no institutional holders, i.e. when the ownership is spread amongst the small investors who

are thought to be more loyal to their boards. This is particularly important, for the main defensive thrust is often an appeal to shareholders' loyalty. This is but one aspect of defensive strategies for, although the literature of corporate finance tends to dwell on only a few defensive strategies, this study finds that their range is wide.

Another important finding was the fact that UK stockbrokers (as agents) work very closely with the merchant banks (as principals) in advising on contested bids. The former are normally consulted for their market expertise. One of the leading stockbroking firms interviewed served 8 of the 17 AHC (Accepting Houses Committee) members. Owing to this special relationship between these two types of financial institutions and possibly their lack of financial power comparable to that of the merchant banks, the stockbrokers are generally constrained from acting as principal advisers in takeover situations. However, with the impending structural changes in the stockbroking business in the mid-1980s, there is a possibility that either the merchant bank or stockbroking firm assuming dual capacity.

Finally, UK merchant banks in the 1980s will be characterised by a trend towards conglomeracy and the development of fee-based international merchant banking activities especially in the USA and the Asia/Pacific regions in view of the constriction and competition in domestic corporate financial advisory activities.

NOTE ON DEFINITIONS

This study endeavours to knit together two quite distinct but related components viz., merchant banking and corporate acquisitions. From the literature survey and wide reading on this subject, it became clear that both terms are rather ambiguous and they generally give rise to confusion. Thus, before proceeding further, it is critically important to clarify both terms as used in the context of this study.

Of the two terms mentioned, 'merchant banking' is the more imprecise. The late Sir Edward Reid cautioned against taking a purist approach to defining its meaning because the term, "'merchant banking' is sometimes applied to banks who are not merchants, sometimes to merchants who are not banks and sometimes to houses who are neither merchants nor banks."* This academic dissertation does not pretend to proffer any precise definition to an age-old enigma but rather, attempts to delineate the criteria for the selection of merchant banks to represent the population sample. The criteria delineating the term, 'merchant bank' in the context of this study are:

1) The merchant bank must be in the UK,
2) The merchant bank must be based in London,
3) It must either belong to the Accepting Houses Committee or the Issuing Houses Association, and finally,
4) It must have a corporate finance division dealing with corporate financial advisory services including mergers and acquisitions.

The term, "takeover," is frequently used inter-changeably with "bid" and "acquisition" in this

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* Sir Edward Reid, "The Role of Merchant Banks Today," (Presidential address to the Institute of Bankers, London) 15th May, 1963.

study. However, within the framework demarcated for this research, a distinction is drawn between "takeover" and the term, "merger". According to the Licensed Dealers' Rules, a "takeover" may be defined as a transaction or series of transactions whereby a person (individual, group of individuals or company) acquires control over the assets of a company, either directly by becoming the owner of those assets or indirectly by obtaining control of the management of the company.

On the other hand, Weinberg et.al., defines "merger" as an arrangement whereby the assets of the two companies becomes vested in, or under the control of one company (which may or may not be one of the original two companies), which has as its shareholders all, or substantially all, the shareholders of the two companies. A merger is effected by the shareholder of one or both of the merging companies exchanging their shares (either voluntarily or as a result of a legal operation) for shares in the other or a third company. The distinction between a 'takeover' and a 'merger' is that in a takeover, the direct or indirect control over the assets of the acquired company passes to the acquirer; in a merger, the shareholding in the combined enterprise will be apportioned between the shareholders/investors of the two business entities.**

A contested takeover in the context of this study is defined as a situation where the biddee company actively resisted an attempt by the buyer (bidder) to acquire corporate control on the grounds of price or independence.

** M.A. Weinberg et.al., "Takeovers & Mergers," London, Sweet & Maxwell, 1979 (see Part One, Chapter 1).

ABBREVIATIONS

(Chapter 1 - Postscript)

AHC = Accepting Houses Committee
C.A. = Companies Act
CSI = Council for the Securities Industry
CGT = Capital Gains Tax
C.F. = Corporate Finance
C.B. = Clearing Banks (Clearers)
DoT = Department of Trade
EGM = Emergency General Meeting
EPS = Earnings Per Share
FMB = Foreign Merchant Bank (encoded)
F.T. = Financial Times
HKSB = Hong Kong & Shanghai Banking Corporation
IHA = Issuing Houses Association
ISC = Institutional Shareholders Committee
IPC = Institutional Protection Committee
ICFC = Industrial & Commercial Finance Corporation
LBI = Lloyds Bank International
LSE = London Stock Exchange
MMC = Monopolies & Mergers Commission
M&A = Merger & Acquisition
M.B. = Merchant Bank (encoded)
N.I.C. = Newly Industrialised Countries
N.A.V. = Net Asset Value
NYSE = New York Stock Exchange
O.F.T. = Office of Fair Trading
PICA = Private Investment Capital for Asia
PERNAS = National Equity Corporation (Malaysia)
PER = Price Earnings Ratio or P/E Multiple
RBS = Royal Bank of Scotland
S. = Section
STK = Stockbroker (encoded)
SRB = Self-Regulatory Body (encoded)
SCB = Standard & Chartered Bank
SCMB = Standard & Chartered Merchant Bank
SEC = Securities & Exchange Commission
SoA = Scheme of Arrangement
T.C. = Takeover (City) Code
T.P. = Takeover Panel

ABBREVIATIONS

(Case Studies)

ALP = Allied London Property
BP = Burns Philp
BTR = British Tyre & Rubber Company
BSC = British Sugar Corporation
CPR = Cambridge Petroleum Royalty
CRC = Cambridge Royalty Corporation
CMT = Central Manufacturing & Trading
EPC = English Property Corporation
FI = Francis Industries
GM = Grand Metropolitan
HL = Hawthorn Leslie
HT = Hanson Trust
HoF = House of Fraser
HQ = Harris Queensway
HKSB = Hong Kong & Shanghai Bank
HD = Highland Distilleries
HW = Hiram Walker
HG = Hunting Gibson
KIO = Kuwaiti Investment Office
LS = Laurence Scott
M&M = Marsh & McLennan
MS = Mining Supplies
NI = News International
O&Y = Olympia & York
PL = Provincial Laundries
PHW = Proprietor of Hay's Wharf
RBS = Royal Bank of Scotland
RHI = Redman Heenan International
RHM = Rank Hovis McDougall
SCB = Standard & Chartered Bank
Sime = Sime Darby
SMI = St.Martin's Industrial
SUITS = Scottish Universal & Investment Trusts
SL = Stag Line
TS = Turnbull Scott
THF = Trust House Forte
TDG = Transport Development Group
TH = Tunnel Holdings
W&G = Waring & Gillow
WEC = Wellman Engineering Corporation
WC = William Collins
YC = Yule Catto

CHAPTER 1

RESEARCH OBJECTIVES, METHODOLOGY AND PROCEDURES

1.0 Background and Broad Objectives

In the UK, because of the unique set of historical factors governing the growth of English merchant banks, today, they still exercise a prominent role in the City of London, the country as well as on the global scale where they have their overseas operations. In general, contested mergers and takeovers in the UK involve merchant banks acting in their capacity as financial advisers to both acquiring and defending companies. However, academic research and literature dwelling on this particular subset of merchant banking activities is slight although there have been some attempts by writers like Moon (1971)(19), Arnfield (1967)(3), Prof. Pickering (1979)(22) and Weinberg (1979)(28) to bridge this gap (see the review of literature in chapter 2). This may probably be explained by the various constraints facing the would be researcher from undertaking this task, namely:

i) While managerial and academic texts on mergers and takeovers are quite extensive, published data on merchant banking and their work on company takeovers is deficient owing to the fact that merchant banking in general is a 'closed door' industry and the bankers in the City are normally tight-lipped about their activities and so there is very little publication by the practitioners.

ii) Contested offers, the subject of this research, are inclined to be highly controversial due to the intense resistance put up by the target company in defending its independence as well as

the *modus operandi* adopted by both parties.

iii) Secrecy is important because of tactical considerations and sensitivity of price-related information.

iv) More important still, there are many complex rules and regulations governing the conduct and practices of takeovers supervised by City bodies ranging from the Takeover Panel (TP) to the Council for the Securities Industry (CSI). The regulations and operations of these non-statutory institutions are generally not well known to non-City professionals.

v) There is a lack of relevant data in business schools and public libraries on actual bid documentation due to its restricted publication and circulation.

Perhaps for these reasons, the empirical research work in the UK has been orientated mostly to the financial aspects, managerial approach and economic performance related to mergers and takeovers. Thus, very little attention was paid to the approaches adopted by the financial advisers (i.e. the merchant banks) in structuring and conducting takeovers on behalf of their corporate clients apart from the conference organised by the "Financial Times" in 1967 on this matter which attracted the participation of a few leading houses as well as providing the non-merchant banking practitioner with a rare insight into how some merchant banks proceeded with their takeover assignments. An extensive literature search has failed to uncover works of similar nature. So, the aims of this study are:

1) To fill the gap in this lightly researched area of company takeovers. The main thrust is to examine how merchant banks organise themselves in connection with contested bid situations and the factors influencing their decision-making on key issues of bidding and defence.

2) To examine how self-regulatory framework prescribes or contrains the conduct and practices of financial advisers in contested deals. This aspect is often neglected by other researchers.

3) To develop a conceptualised framework to explain the bidding and defensive strategies adopted by financial advisers in contested takeovers.

4) To explain how the internal organisation within merchant banks deals with contested bids.

1.1 Broad Hypotheses Drawn from Literature and Discussions as Initial Focus of Study

In particular, this research is addressed to certain key questions :-

a) How do merchant banks organise their corporate advisory functions pertaining to contested bids and to what extent are certain features common to London merchant banks?

b) In view of the importance of reputation to merchant banking, what factors influence their client selection process?

c) Having been given the mandate to acquire a biddee company, how does the merchant banker goes about the acquisition task? What tactical, qualitative and non-qualitative factors influence the bidding strategies like timing, appropriate terms of consideration, bid premium level and advanced purchase of the biddee's equity holding? What advantages and institutional constraints determine the merchant bank's policy regarding

approach to the board of the defending company and its key shareholders?

d) What is emphasised in bid circulars?

e) What factors influence the successful outcome of a contested bid?

f) How do merchant banks view some of the defensive strategies advocated by the literature of corporate finance?

g) How are profit forecasts used in defence and what difficulties and problems confront the merchant banks regarding this issue, especially deviant forecasts and litigations brought against them by dissatisfied clients?

h) Do merchant banks and stockbrokers collaborate or compete in the takeover business? How do the merchant bankers view other professionals in the City who are involved with them in various degrees in contested deals?

i) What are the main attributes which enable merchant banks to retain their supremacy as merger and takeover specialists?

Because the literature on the subject of contested bids is limited, it was necessary to focus this study initially by means of only very general hypotheses. These were based in part on observations, discussions and a pilot study, viz:

a) That, within a merchant bank, advice and guidance to its clients is undertaken by a team of specialists rather than an individual.

b) That for contested bids, merchant banks in general consider timing to be a crucial element in their acquisition planning.

c) That merchant banks perceive that they do not suffer from any disadvantages when they are subsidiaries of larger organisations.

d) That in general, merchant banks favour soliciting the prior recommendation from the board of directors of the biddee company before the announcement of formal bids.

e) That although the literature of corporate finance tends to be restrictive or confine itself to a subset of defensive strategies, in reality, financial advisers tend to adopt a multitude of defensive tactical manoeuvres and counter-measures in the defence of their clients.

f) That in the rendering of corporate advisory services to their clients, merchant banks perceive that they can provide more efficiently such integrated in-house specialist services relating to takeovers vis-a-vis other professional advisers like stockbrokers, corporate lawyers, etc.

1.2 The Concept of Four Inter-Related Phases

The main thrust of this study hinges crucially on the concept of 4 inter-related phases:

1) of merchant bankers.
2) of stockbrokers.
3) of case studies in a 3 year period.
4) in-depth studies to capture the more unique and creative aspects of a contested bid.

This approach allows comparison of perceptions revealed by (1) and (2) i.e. the merchant banks and stockbrokers and the interpretative frames are then compared with those of (3) and (4) i.e. the two groups of case studies as illustrated more clearly in the schematic Diagram 1.0 on the next page.

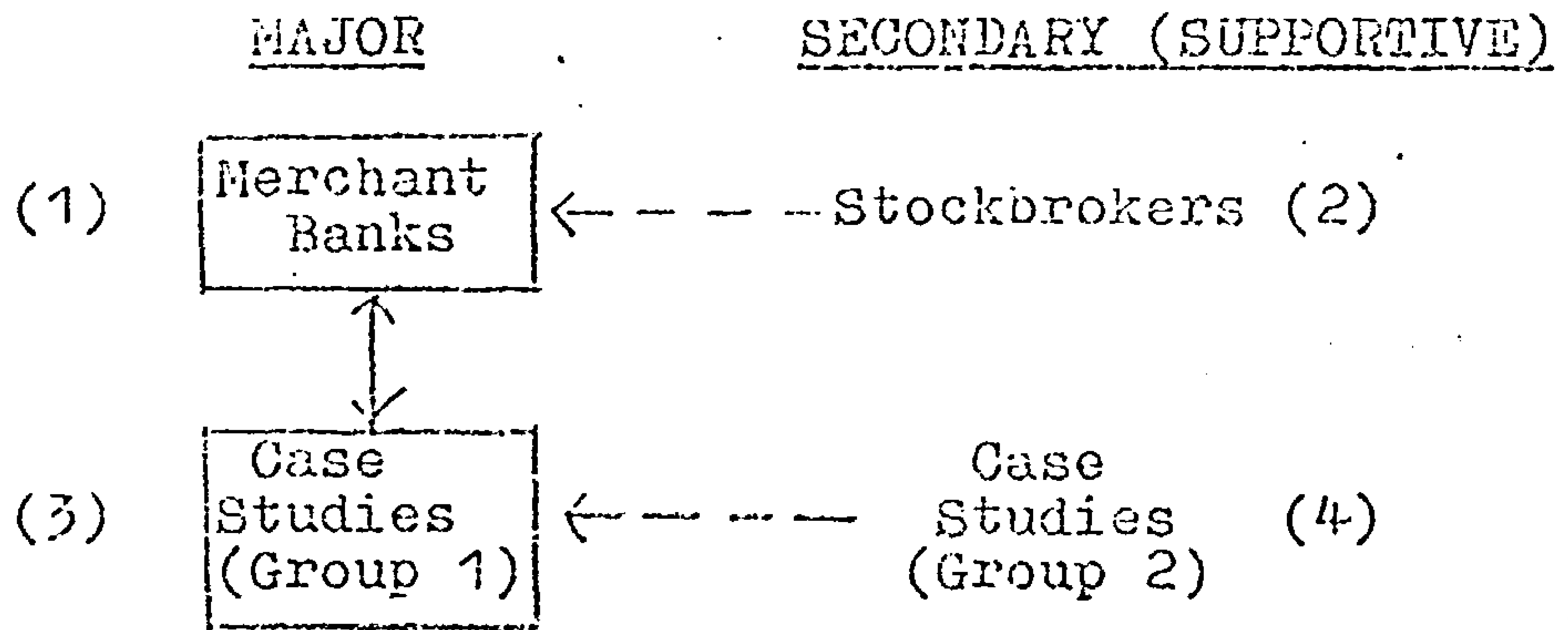

Diagram 1.0: The Concept of Four Inter-related Phases

Fundamentally, the objective is to create two major interpretative frames (1) and (3) for comparison supported by their respective ancillary frames i.e. the stockbroking survey (2) and group two case studies (4). These two smaller frames have to be incorporated into this study (the reason will become apparent later) because firstly, stockbrokers act as supportive service as agents in takeover transactions and hence there is a need to discover the nature of its working relationship with the City's merchant banks. Secondly, from the findings of (1) and (2), it was felt that the explanatory process would be complete if in-depth studies i.e. (4) were additionally incorporated to capture the more unique and creative dimensions of a contested takeover.

(A) Phase 1: Methodology Adopted in the Survey of Merchant Bankers

i) The Sample Frame

In selecting the sample frame of merchant banks for this survey, the fact that the term "merchant bank" lacks precise definition should be underlined. Another unique aspect of UK merchant banking is that it is a relatively small community dominated by a few big names like Kleinwort Benson, Morgan Grenfell, Lazards, Warburgs, Hill Samuel, Rothschilds and Schroder Wagg. An extensive review

of merchant banking literature and other published sources, for example, the financial media suggests that bid activities are conducted mainly by the corporate finance divisions of the various houses belonging to the Accepting Houses Committee. This small number of merchant banks in London at the same time serves a very large cross-section of the 3,000 listed companies in the London Stock Exchange. The concentration of this 'wholesale' banking business in the hands of a few banking institutions is reflected in the choice of merchant banks by a large cross-section of leading UK companies (700 as constituted in the survey). With the exception of Noble Grossart, which is a Scottish merchant bank, the 19 merchant banks nominated in Table 1.0 on the next page constituted a substantial proportion of the sample selected for this study.

For this research, the criteria for identifying and demarcating the sample frame is derived from these sources:

1) The Banker periodical.
2) Crawford's Directory of City Connections.
3) The City Directory.
4) The "Financial Times."
5) The pilot survey.

From the above sources, 30 UK merchant banks were identified as appropriate subjects for this study on the following basis:

a) The merchant bank must be UK incorporated and London-based,

b) It must either belong to the Accepting Houses Committee or the Issuing Houses Association or,

c) It must be an operating subsidiary of a British clearing or overseas bank,

d) It must have a corporate finance division dealing with mergers and acquisitions and

Table 1.0: The Top Twenty Merchant Bank Ranking As Advisers by 700 UK Companies

	MERCHANT BANK	ACCEPTING HOUSES BALANCE SHEET 1978 (£m)
1)	Schroder Wagg	1,543
2)	Hill Samuel	1,303
3)	S.G.Warburg	764
4)	Morgan Grenfell	1,048
5)	Kleinwort Benson	1,603
6)	Lazard Brothers	641
7)	Baring Brothers	386
8)	N.M.Rothschild & Co.	527
9)	Hambros	1,423
10)	Samuel Montagu	1,156
11)	Robert Fleming	n/a
12)	County Bank	n/a
13)	Charterhouse Japhet	152
14)	Singer & Friedlander	241
15)	ICFC Corporate Finance	n/a
16)	Keyser Ullmann	n/a
17)	Rea Brothers	93
18)	Noble Grossart*	n/a
19)	Brown Shipley	221
20)	Barclays Merchant Bank	n/a

* Scottish merchant bank
Table adapted from, "Investors Chronicle Survey," 31st August, 1979, pp584-585.

Table 1.1: The Comparison of Merchant Banking Category Against its Principal Professional Affiliation

Merchant Banking category	Selected	% of Total selected	Total No. In each affiliation	Selected Banks as % of affiliation
Accepting houses	17	57	17	100
Issuing houses*	9	30	42	21
Clearer-owned	4	13	4	100
Total	30	100	63	-

*Note: There are altogether 65 members in the Issuing Houses Association (IHA) out of which 17 members also belong to the Accepting Houses Committee (AHC).

finally,

e) It must be visible as a merchant bank in reports by the leading financial media.

Table 1.1 on the previous page lists details of these merchant banks categorised according to their professional banking affiliations. The relatively "low" percentage (21%) representation from the Issuing Houses Association is slightly misleading because all the Accepting Houses members are automatic members of the Issuing Houses Association as well. If these were to be reclassified as the Issuing Houses members, the level of Issuing Houses representation would accelerate to 47%. An additional factor to be taken into account is that many of the 65 Issuing Houses Association members do not meet the criteria listed, and hence, they were excluded from the survey. In view of the small number constituting the sample frame, it was decided that all the 30 merchant banks meeting the criteria delimited should be incorporated in this study.

(ii) <u>Design of Questionnaire</u>

The use of mailed questionnaire normally restricts the quality or depth of information and quantity that can be extracted and the response rate may be low. In view of the fact that the merchant banking population size is uniquely small owing to the nature of the industry, a low response would certainly compound the problems confronted with a study of this nature. Furthermore, according to Erdos[1], Moser and Galton[2], mailed questionnaires are inappropriate when:-

1) the questionnaire is too long.
2) the questionnaire is too difficult.

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1. Erdos P.L., "Professional Mail Surveys," USA, McGraw-Hill, 1970.
2. See also, C.Moser et.al., "Survey Methods in Social Investigation," London, Heinnemann, 1975.

3) the information required is confidential.
4) the available budget is inadequate, and
5) the available time is insufficient.

With hindsight gained from the pilot survey, it was decided that the shortcomings associated with questionnaire could be minimised by adopting a questionnaire and personal interview approach.

(iii) The Pilot Survey

Five interviews were conducted in a pilot survey to provide the researcher with an initial insight into the intricacies of merchant banking and also to familiarise him with the subject matter. In addition to the more general discussion, the interviewees commented on the weaknesses of the draft questionnaire and gave constructive suggestions on the format most likely to solicit the information needed. Details of those interviewed in the pilot study are listed in Table 1.2 below:

Table 1.2 : The Pilot Study Designated by Banking Type, Number & Professional Status of Respondents

BANKING TYPE	NUMBER	PROFESSIONAL STATUS
Arab merchant bank	1	merchant banker
British merchant bank	1	director
British clearing bank	1	director
American bank	1	head (loans division)
Far Eastern bank	1	chief executive
Total	5	-

(iv) Redesign of Questionnaire to Use Open-ended Questions More Fully

From the pilot study, it became apparent that:

1) Close-ended questions and pre-conceived answers were inappropriate.

2) Open-ended questions solicited warmer participation and a fuller communication of relevant information.

3) Open-ended questions within an informal interview permitted the interviewees to choose more fully the aspects they thought important.

(v) Reference to Questionnaire Structure And Appendix

The questionnaire was divided into 5 sections, viz., organisational structure, bidding strategies, defensive strategies, profit forecasts and general questions arranged in a sequential basis so that one section follows through the logic of the participant's response to previous sections. Basically, the questionnaire design was effected through a series of steps. Initially, a draft questionnaire was produced with the assistance of the project supervisor. This was then circulated and tested with the respondents of the pilot study. As a result of comments and feedback, a revised questionnaire was then drafted. Owing to the very positive and encouraging response received from the first group of participants, the results were then analysed and where there appears to be ambiguities, certain questions were deleted or redesigned and some additional questions were inserted to add more depth to the whole survey itself. A specimen copy of the questionnaire is incorporated in Appendix Table C.1.

(vi) Access to Respondents

a) Method

In view of the geographical concentration of the merchant banks in the City, the respondents were contacted either by mail or phone. Once an appointment was fixed,

the interview was held at the premise of the merchant bank concerned.

b) Response Rate

It was anticipated at the outset of the research that many merchant banks might decline to be interviewed owing to:

a) the secrecy of merchant banking in general.

b) the sentivity and confidentiality surrounding contested bids, and,

c) the nature of the research topic itself.

However, in the event, all houses approached took part in the survey. The reasons for this abnormal response rate may be attributable to:

- Contact And Accessibility

Access to the participants was probably improved because personal contacts were frequently used in the initial approach. Thus, the approach was:

1) by direct approach to the institutions.
2) via contacts of the Business School.
3) via personal contacts in the City
4) via contacts of the project supervisor.

- Timing and Line of Approach Adopted

1) The timing of the project in relation to the interests generated regarding the Wilson Committee's investigation into the financial activities of the City.

2) The perceived practical value of this study.

3) The paucity of research projects carried out

on this aspect of merchant banking.

4) The research orientation, i.e. focusing on how merchant banks conduct takeovers rather than on the economic rationale or profitability of mergers, an area well covered by empirical research.

In the early part of the survey, two merchant banks declined to participate in this programme but gave their full co-operation later following the intervention of other contacts and a fuller statement on the potential value of the research. This brought the response rate to 100% as illustrated in Table 1.3 on the next page.

(vii) Method of Collecting Information in Interviews

Most merchant banks were prepared to meet for a session of about two hours each (the shortest being an hour, the longest, 3½ hours). The respondents were asked if they would agree to the interviews being taped to save time and assurances were given to all participants that once transcribed, the tapes will immediately be destroyed. This request was most readily granted in almost all instances (with the exception of 3 merchant banks). The interview took a semi-structured form in which the researcher approached the questions in a sequence which followed most naturally the line of the answers to avoid disrupting the flow and thought of the interviewee more than necessary.

(viii) Encoding of Responses to Protect Confidentiality

Confidentiality of information collected during the interviews is important because of;

a) the sensitivity of merchant banking in general and its high attachment to

MERCHANT BANK (encoded)	1st RESPONDENT	2nd RESPONDENT
MB1	director	-
MB2	director	-
MB3	ex-chairman	director
MB4	head	-
MB5	manager	-
MB6	director	-
MB7	executive	-
MB8	director	director
MB9	head	-
MB10	manager	-
MB11	manager	-
MB12	vice-chairman	-
MB13	manager	director
MB14	director	-
MB15	manager	-
MB16	director	-
MB17	director	-
MB18	director	-
MB19	director	-
MB20	head	director
MB21	director	-
MB22	director	director
MB23	director	-
MB24	manager	-
MB25	vice-chairman	head
MB26	head	-
MB27	director	manager
MB28	head	manager
MB29	director	-
MB30	ex-chairman	director
Sub-total	30	9
Grand total	39	

Table 1.3: The 30 Major UK Merchant Banks Involved In This Study & the Professional Status of the Respondents Interviewed.

corporate reputation,

b) the confidentiality surrounding certain mechanics of contested bids,

c) the need to comply with the wishes of the majority of the respondents for secrecy and anonymity, and,

d) the high ranking status of many of the participants ranging from vice-chairmen of leading houses to senior officials of professional and self-regulatory bodies.

Consequently, the names of merchant banks and other respondents interviewed have been classified by use of a coding system, details of which are available only to the project supervisor and the external examiner. This code is used throughout volume 1 of the dissertation which contains the main substance of the thesis. Volume 2 which embraces essentially other merchant banking and technical data on bids and selective transcripts of interviews is not encoded in order to facilitate easy reading and quick cross-references for the three individuals concerned. Thus, after much deliberation, in view of the circumstances described, it has been decided that a strict embargo on accessibility to this volume should be imposed.

(B) Phase 2: Methodology Adopted in the Survey of Stockbrokers

(i) Choice of Sample Frame

As a secondary objective of this study is to discern the degree of collaboration or competition principally between the merchant banks and the stockbroking community in advising contested bids, it was decided to incorporate a small sample of stockbrokers as an ancillary extension of the main merchant banking survey. The 10 stockbroking firms were randomly selected from the "City

Directory" and the details of the status of the various participants are listed in Table 1.4 below:

Table 1.4 : Professional Status of Respondents Interviewed from both the Merchant Banking & Stockbroking Surveys

MERCHANT BANKS			STOCKBROKERS			
Title of respondents	No.	% of total sample	Stockbroker (encoded)	Respondent 1	Respondent 2	Total interviewed
Head (C.F.)	6	17	stk 1	head (c.f.)*	partner	2
			stk 2	-	partner	1
Directors	19	54	stk 3	head (c.f.)	-	1
			stk 4	analyst	partner	2
Managers	8	23	stk 5	-	partner	1
			stk 6	-	partner	1
Executives	2	6	stk 7	-	partner	1
			stk 8	-	partner	1
			stk 9	-	partner	1
			stk10	head (c.f.)	-	1
Total	35	100	Total	4	8	12

* c.f. = corporate finance

(ii) Design of Stockbroking Questionnaire

The approach and methodology of the questionnaire design for the stockbroking firms chosen for this survey were very similar to those adopted for the merchant banking survey. In essence, the questions adhere very closely to that of the merchant banking study but focused selectively on areas designed to elicit data on the relationship aspects of both types of financial institutions.

(iii) Pilot Study

With the aid of this questionnaire, a pilot study was held with two of the 10 stockbroking firms. Likewise, the respondents commented on the draft questionnaire and gave their constructive suggestions on the format.

(iv) Redesign to Use Open-ended Questions More Fully

From the pilot study, some of the questions were redesigned and in essence, open-ended questions constituted the main feature in the actual questionnaire.

(v) Reference to Structure and Appendix

Unlike the merchant banking survey, the questions were not divided into sections but followed the same format in which the questions were arranged in a sequential basis. A specimen copy of the questionnaire is incorporated in Appendix Table C.2.

(vi) Access to Respondents

a) Method

The fact that all the stockbroking firms chosen for this survey were also located in the City greatly facilitated accessibility to them. The respondents were contacted either by phone or mail and once an appointment was fixed, the interview was held at the premises of the broking firm concerned.

b) Response Rate

The interviews with the 10 stockbroking firms also achieved a 100% response rate. The possible reasons for this achievement are also similar to those attributed to the success rate of the merchant banking survey itself.

(vii) Method of Collecting Information in Interviews

Most stockbrokers were amenable to an interview of slightly over an hour. Interviews were also taped with the same assurances given to the respondents.

(viii) Encoding of Responses to Protect Confidentiality

Like the main survey, the names of the stock-broking firms have been classified by the use of a coding system, details of which are only available to the project supervisor and the examiner. Coding was also resorted to in this particular instance because of confidentiality of information acquired and also the fact that most of the stockbrokers interviewed work very closely with the merchant banking community selected for this study.

(C) Phase 3: Case Studies in a 3 Year Period (Group 1)

• Choice of Sample Frame

In order to allow the comparison of perceptions derived from the interpretative frames revealed by Phase 1 (the merchant banking study), two groups of case studies were compiled. In the process of the compilation of these case studies, it should be noted that precise figures relating to annual number of contested bids are difficult to obtain as most of the official publications do not reflect a breakdown of the types of mergers and acquisitions. This difficulty is compounded further by the fact that in some instances, contested bids may become recommended mergers. The most reliable source i.e. the annual report of the Takeover Panel also fails to reflect the breakdown of acquisition data. So, in order to identify and delimit the approximate sample frame of contested bids in the UK, the researcher extracted data on this subject from the "Financial Times" and the "Investors Chronicle". In all, 75 contested bids spanning a 3 year period (commencing in August 1978 and terminating in August 1981) were identified. From this number, a random sample of 40 cases of contested takeovers was drawn (see Table 1.5) representing 53.3% of the population identified were chosen to constitute the sample size.

Table 1.5 : Sample & Population Sizes of Contested Bids

YEAR	CASE STUDIES METHOD 1 NO.	CASE STUDIES METHOD 2 NO.	SAMPLE SIZE NO.	POPULATION SIZE NO.
Aug 1978/Aug 1979	12	0	12	21
Aug 1979/Aug 1980	12	2	14	24
Aug 1980/Aug 1981	6	8	14	30
Total	30	10	40	75

(D) Phase 4: Case Studies (Group 2)

These 10 case studies were also derived from the 75 contested bids (the total population size) which spanned the same three year period. The need to create a smaller group of case studies with a slightly different orientation arises as a result of new perceptions gained from the field work conducted with financial advisers as well as consistent monitoring of contested bids over the research period. According to the majority of the respondents, each contested bid is unique and the approach developed depends exactly upon situational factors rather than a rigid set of principles. This merchant banking philosophy emerges very distinctly from the summarised comments highlighted in both volumes of the dissertation. Thus, a cluster of 10 case studies spanning the same period were randomly selected to reinforce this salient hypothesis. So, instead of sieving through these cases for qualitative and quantitative data, the prime focus here is to highlight the distinctive innovative features characterising each transaction with regards to either acquisition strategies, defensive strategies or a combination of both and the underlying circumstances favouring the adoption of the appropriate strategies and tactical moves.

1.3 Outline of the Stages of Research: A Summary

In essence, there were 5 stages related to this research:

(i) <u>Literature Survey</u>

Academic, managerial texts, cuttings from the financial press, for instance, the "Financial Times," and other macro-economic data were collected and compiled.

(ii) <u>Pilot Survey</u>

Preliminary interviews were held with some foreign merchant banks and a British clearing bank to gain an initial insight into merchant banking industry and corporate finance advisory services to enable the formulation of some initial research hypotheses.

(iii) <u>Survey of Merchant Banks (30)</u>

Interviews were undertaken with key merchant bankers of 30 houses in the City to obtain information on corporate finance organisations and salient issues in approach to bidding and defensive activities. As a result, this survey identified beliefs/perceptions widely held amongst the merchant banking community in London. These beliefs were compared with observed realities i.e., the 2 groups of case studies.

(iv) <u>An Analysis of 40 Case Studies</u>

40 case studies were created and analysed to determine whether the beliefs and views expressed by the merchant bankers in stage (iii) were reflected in merchant banking behaviour during contested takeovers.

(v) <u>The Establishment of An Integrated Framework</u>

The results of the 2 surveys were then drawn upon to produce an integrated framework re-

flecting key behavourial patterns and practices of the City merchant bankers in contested bids.

1.4 Classification of Responses According to Frequencies of Expressions & Summarised Comments

As stated earlier, many of the questions in the survey of merchant bankers as well as stockbrokers were open-ended giving the interviewees an opportunity to elaborate. This approach proved rewarding for it revealed beliefs that would not always have been elicited by close-ended questions. The responses were then classified into:

a) Categories according to frequencies of expression.

b) Summarised comments, for example, "What we do is to constitute each team of 3 under a director for a particular client..."(the response to the question on team approach provided by a merchant banker).

Thus (a) provided a basis for both qualitative and quantitative analysis while (b) ensured that the full meaning of the key answers was retained.

1.5 Research Constraints and Ramifications On Approach

This study is a submission for a doctoral dissertation and the researcher faces the following constraints:-

1) Ambiguities related to the concepts of merchant banking and takeover.

2) Lack of sufficient data in the areas chosen for research and hence new data had to be created and tested.

3) Time constraint. The pilot study and the main field survey involved interviews with more than 85 participants ranging from vice-chairmen of prominent merchant banks to senior civil servants. This took about 1 year due to the large number of respondents and the need to transcribe the recorded interviews and arrange, code and classify the data received.

4) The case studies made a heavy demand on time. Press cuttings were assembled and other documents collected as each case was followed through from its inception to its conclusion. Wherever possible, the complete documentation associated with each case study was collected. This entailed numerous journeys and phone calls from the Business School to the merchant banking premises to collect the relevant circulars concerned. In some instances, where information could not be obtained in other ways, it was kindly supplied by the merchant bankers themselves and the specialist libraries of some of the leading houses. All in, the collection and compilation of 40 case studies involving 80 companies took a full man year.

5) Funding constraint. The researcher is a private overseas postgraduate student and travel expenses linked with the field work, procurement of a cassette-recorder and numerous taping cassettes as well as the higher imposition of postgraduate fees for foreign students constitute severe funding constraints on the researcher.

To a large extent then, the resultant approach adopted is a consequence of these mixture of factors.

1.6 Secondary Interviews With 10 Merchant Banks

Analysis of the data collected during survey of merchant bankers raised further questions. Fortunately, as some of the respondents interviewed during the first meeting had expressed their willingness to participate in a second interview if the need arose, a second meeting was then set up with 10 merchant banks. For the second merchant banking survey, no questionnaire was used but the questions were raised in an informal discussion.

1.7 Interviews With Other Specialists in the City

In tandem with the merchant banking survey, interviews were also held with other professionals and specialists in the City like American investment bankers, leading merchant banking analysts, takeover specialists, merger broker, management consultant, accountants, authors on merchant banking, etc.,to enable the researcher to gain an overview of this complex research area. Rather than structured formal approach, informal discussions were held with all these professionals (see Tables 1.6 and 1.7 on page 24). Additionally, the abridged transcripts of the interviews held with some of these participants are incorporated in Volume 2 of this dissertation.

Table 1.6: Other Financial Advisers Interviewed Classified by Business, Professional Status & Number

BUSINESS	OCCUPATIONAL STATUS	NUMBER
Stockbroking firm	merchant banking analysts	2
Legal firm	corporate lawyer	1
Accounting firm	accountants	2
University	legal expert	1
Management consultants	divisional director	2
Market research firm	director	1
Merger broking firm	chairman	1
Licenced dealer	chairman	1
Grand Total	-	11

Table 1.7: Total Number, Types of Institutions, Professionals & Number of Respondents Interviewed

Category	Institutions or professionals (No.)	No. of Participants interviewed	Questionnaire
Foreign merchant banks	5	6	-
Stockbrokers and analysts	11	13	/
Other professionals (e.g. legal expert)	8	9	-
Self-regulatory bodies	5	7	-
Professional bodies	1	2	-
Takeover specialists	3	3	-
Authors on merchant banking	3*	3	-
Sub-total (A)	33	43	-
UK merchant banking survey	30	39	/
Pilot study (merchant banking)	5	5	-
Sub-total (B)	35	44	-
GRAND TOTAL (A)+(B)	68	87	2

* Due to double counting, this category is excluded from the aggregation.

Table 1.8: Types of Self-Regulatory, Quasi-Judicial & Professional Bodies & Status of Participants Interviewed

Institutions (encoded)	First Respondent	Second Respondent	Total
SRB1	deputy director-general	secretary	2
SRB2	secretary	-	1
SRB3	head	-	1
SRB4	secretary	economist	2
SRB5	senior-executive officer	-	1
SRB6	director-general	director-general (ex)	2

1.8 Regulatory Bodies

Furthermore, to obtain a more balanced view of the regulations relating to acquisition conduct and practices, interviews were also conducted with very senior officials and executives of the various quasi-judicial bodies in the City (see Table 1.8 on page 24).

1.9 Takeover Specialists

During the course of the survey, the names of a few prominent merchant bankers were frequently cited by their colleagues. They seemed to be acknowledged as experts in devising both offensive and defensive strategies. As a result, interviews were held with some of those mentioned and the abridged transcript of the interview with one of them can be found in Chapter 3, Volume 2. It should be pointed out that the selection of merchant bankers under this category is subjective rather than objective and the broad criteria in which they were chosen are:

1) The association of their names with prominent cases of contested bids.
2) Their individual standing and reputation in the merchant banking community in UK.
3) The exposure given to them by the leading financial media.

1.10 The Methodology of Data Evaluation

From the outset, it was realised that the number of merchant banks and case studies selected for

this research would be small (less than or equal to 30) owing to the size of the merchant banking community and relatively limited number of contested bids respectively. It was particularly gratifying, therefore, that all of the merchant banks finally gave interviews and the stockbrokers approached did likewise. A 100% response was thus attained in both sets of field work. Since the whole population of merchant banks was covered, it was unnecessary to use the usual statistical techniques for determining whether the sample statistically significantly represented the population.

However, at various stages, the significance of differences between subsets of merchant banks is tested, and 2 statistical tests were used for this purpose. The first was the Chi-Square Test, which measures the discrepancy between observed and theoretical frequencies, gives us a rough test for significance of the relationship. With a Chi-Square test, we test the hypothesis that the principles of classification are independent. If the hypothesis is rejected at a certain level of significance, then we can conclude there is a meaningful or positive linkage between the 2 variables.

Secondly, where differences in percentages or proportions were involved, the activity sampling formula was used, this test being based on the Binomial distribution.

At various stages of the analysis, data were correlated. Because of doubts as to the normality of the underlying distributions, it was decided not to use Pearson's Product-Moment Coefficient, but instead, to use Spearman's Rank Correlation-Coefficient. This specific statistical tool is a measure of the correlation that exists between 2 set of ranks, a measure of the degree of association between the variables that we would not have been able to calculate otherwise.

The significance level selected throughout, was the 5% level, the figure most commonly used in statistical testing. No matter which correlational techniques was used, both have certain common characteristics.

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CHAPTER 2

LITERATURE SURVEY

2.0 Introduction

The aim of this study is to present the main literature on the way in which UK merchant banks proceed to conduct contested bids within a prescribed self-regulatory system. This literature may be divided into 2 distinct but related categories, merchant banking and corporate acquisitions or takeovers.

2.1 Literature on Merchant Banking

The literature on merchant banking tends to be non-empirical, descriptive and focussed on its historical-evolutionary aspects. The literature under this category includes Morton (18)(1964), Wechsberg (29)(1966), Kellet (15)(1967) and Kathleen Wain (27)(1979). However, as Sandra Mason (16)(1976) pointed out, "relatively little has been written about merchant banking. Such studies as exist have tended to be largely historical in character, emphasising the development of individual banks and on the personalities and families involved. Even the more recently published books on the subject are essentially discriptive in approach."

To date, the major contributions on merchant banking organisational structure and strategy are by Sandra Mason and Derek Robinson (23)(1976). Sandra Mason advanced the view that although all merchant banks claimed to cover all the basic activities of merchant banking, not

all elements in their financial packages are of equal importance to each individual bank. However, she perceived that their role as financial advisers to industry in the post-war period has been one of the prime sources of merchant banking development. She also detected that increasingly, merchant banks have tended to recruit both graduates and professionals, especially accountants and lawyers. Miss Mason and D.Robinson stressed the prime strength of the few elitist UK Accepting Houses as being the ability to create and innovate within an informal environment in which professionals are readily available. These factors have enabled the merchant banks to preserve their dual capacity as innovators in financial developments as well as solvers of complex financial problems. The presence of a multiplicity of in-house skills is vital especially in huge fee-earning activities pertaining to bids where the emphasis is on team work rather than individual approach. This hypothesis was advanced by D.F.Channon _et.al._(5)(1975) in their study of Slater Walker Securities (SWS), the merchant banking arm of the now defunct Slater Walker Group. J.Wechsberg also drew attention to this important aspect in his study of how Warburgs, the leading City merchant bank serviced their industrial clients by asserting that "...many big corporations are badly managed. When they are faced with serious financial problems, their boards are utterly helpless and often make the wrong decisions. We offer a thinking service, acting as a group of advisers. Often, we move in as a team, sit down with the management, diagnose the problems, try to find solutions."[1] So, from these literary sources, we can hypothesise that team work is very much an integral part of merchant banking approach to corporate advisory services.

2.2 Literature on Mergers and Acquisitions

The literature falling under this

1. J.Wechsberg, "_op.cit._," pp208-209.

classification would include the works of Alberts (2)(1966), Rose and Newbould (24)(1967), Arnfield (3)(1967), Newbould (20)(1970), Moon (19)(1959), Singh (26)(1971), Ansoff (1), (1971), Doctoroff (6)(1972), Samuels (25)(1972), Kuehn (14) (1975), Firth (9)(1976), Meeks (17)(1977), Weinberg *et.al.* (28)(1979) and Prof.J.F.Pickering (22)(1979). Of these, the empirical research works of Newbould, Kuehn, Singh, Meeks and Michael Firth are primarily connected with the theme of profitability or stock market efficiency of mergers and acquisitions. Their relevance to this study is relatively marginal owing to the different approach and objectives used in this study. The study by Prof.Ansoff and his associates is different in perspective in that he focussed on planning. One of the main conclusions was that companies perform better when they plan their acquisitions. However, since its focus is upon company planning rather than either the process of acquisition or the role of merchant banks, the relevance of this study is again limited. Hypotheses tested are therefore drawn principally from the remaining literature such as Weinberg, Arnfield, Moon, Samuels, Doctoroff and Pickering. Their individual bearing on the 5 major research areas i.e.,merchant banking, bidding strategies, defensive strategies (inclusive of profit forecast) and inter-related aspects delimited for this dissertation is discussed in greater detail in the various sections in this chapter.

2.3 Literature Pertaining to Bidding Strategies

The empirical survey undertaken by John Kitching (13)(1973) of European acquisitions effected between 1965-70 has an indirect bearing on this study although the research orientation is different. Kitching examined the pre-acquisition planning, the bidding strate-

gies, the implementation and post-takeover integration processes of European corporate acquisitions by interviewing more than 90 senior executives of major corporations who made acquisitions during this period. From the results of his survey (especially those related to bidding strategies) he found that executives attached considerable significance to bid timing.

In a more recent study, Professor J.F. Pickering (22)(1979) employed a somewhat similar approach but with a smaller population sample of 20 UK mergers involved in takeover programmes by interviewing the key corporate executives involved in the acquisition transactions. Like Kitching, he found that in the formulation of their bidding strategies too, the key decision-makers attached considerable importance to the timing element and some of the interviewees believe that as a rule of thumb, a 20% bid premium or more was crucial in influencing the outcome of corporate takeovers. Philip Shelbourne (3)(1967), a former prominent merchant banker also suggested that the bid premium level should be 20% above the current market price to ensure success of acquisition outcome, but he cautioned against too rigid an adherence to this premium level.[2] In a merger/acquisition conference organised by the "Financial Times" in 1967 (conference papers edited by R.V.Arnfield) Philip Shelbourne (3)(1967), then attached to the famous house of Rothschilds, gave a highly professional exposition on bidding strategies and he stressed that the key to successful acquisition is flexibility, mobility, originality and and the capacity to move fast within given principles which encompassed the following:

(1) that the bidder or client should do his "homework" well and should know the rationale of his acquisition;

(2) that the biddee's share composition (public, institutional, board or family-controlled)

2. P.Shelbourne, 'Acquiring Public Companies - Bidding Strategies' in R.V.Arnfield (edit.), "op.cit." pp3.1-4.1.

should be taken into account in his formulation of bidding strategies;

(3) the the bid pricing/financing should allow for such factors as Capital Gains Tax (CGT) liability, the shareholders' wishes, the control consideration, the re-investment option, the underwriting element, the stock market reaction to the takeover and the simplicity underlying the structuring of the offer itself;

(4) that most mergers go through by agreement;

(5) that speed and timing are important elements in contested bids;

(6) that it is desirable to keep something up one's sleeve to overcome a stubborn defence;

(7) that acquisition strategies should be related to defensive strategies - to illustrate, a revised increased bid is determined by the merits of the defence, the response of the target company to the merger and the reaction of the press;

(8) that merchant banks are adverse to partial bids because they are difficult, controversial and unethical.

Many of these hypotheses postulated by Philip Shelbourne on bidding strategies were later tested with his colleagues in the merchant banking community sited in the City.

2.4 Literature Pertaining to Defensive Strategies

The empirical work of R.W.Moon (19)

(1959) provides one of the earliest insights into defences against unwelcome bids in the UK. It should be emphasised ed that Moon's work was written before the creation of the Takeover Panel in 1969 whose quasi-judicial rulings have since radically changed many aspects of bidding and defensive strategies, practices and approaches. In 1971, Moon took the opportunity to update his work in alignment with the evolving circumstances as a consequence of the establishment of voluntary self-regulations prescribing bid practices in the City.[3] Essentially, Moon observed that there were 3 defensive moves that a biddee company could resort to, to prevent a bid from materialising, namely:

(1) Freehold properties could be revalued and... possibly, surplus property could be sold or a sale-and-leaseback transaction effected thereby forestalling the designs of the bid altogether;

(2) The issued capital could be brought into line with the capital employed in the business by issuing bonus shares;

(3) The dividend could be stepped up on the ordinary capital.

The 1967 "Financial Times" Conference mentioned earlier serves as a focal point for the non-merchant banking practitioner to observe the modus operandi favoured by a leading merchant banking house in countering hostile takeovers as well as the array of defensive strategies that could be deployed and exploited.[4] The key in defence, according to F.S.Smith of the traditional house of Warburgs is that, "...one must realise that each case

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3. In addition, please also refer to Moon's article, entitled 'Marshalling the Defence' in G.M.Dickinson and J.E.Lewis, "Financial Management Handbook" Kluwer-Harrap Handbooks, London, 1977.

4. See also Prof.J.F.Pickering's "The Causes and Consequences of Abandoned Mergers," Occasional Paper 7906, UMIST, 1979.

must be defended on its merits, and these are unlikely to be similar in any two cases. Basically, one needs to establish points of strength in the defender's situation and mobilise resources around these."[5]

Another more contemporary useful work on defence against unwelcome bids is that of Weinberg et.al. who broke defensive measures into 2 broad categories, namely:

(1) Defensive measures adopted before a bid.
(2) Defensive measures adopted during a bid.[6]

In the former category, the authors listed 9 counter-measures while in the second, they discerned 8. Dr.F.Wooldridge[7](32)(1974) clarified defensive measures in the same manner. In the first category, he included:

(1) Cross-holding of shares
(2) Issue of new shares
(3) Use of voteless shares
(4) Put big assets outside the control of shareholders
(5) Giving directors long term service agreements.

Defensive techniques advocated by him during the currency of a bid are:

(1) Disclosure of favourable information
(2) Criticise the offer or offeror
(3) Increase dividend or capitalisation issue
(4) Alteration of capital structure
(5) Appeals to loyalty

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5. F.S.Smith, 'Resisting the Takeover Bid - Defensive Strategies' in R.V.Arnfield (edit.), "op.cit." pp4,1-5.1.
6. See M.A.Weinberg et.al.,"op.cit.," (Chapter 24, pp575-627).
7. It is evident that Dr.Wooldridge's opinion on this matter has been heavily influenced by Weinberg's earlier work on acquisition (1963). This is apparent by his frequent citations of this piece of work by Weinberg.

(6) Profit forecasts
(7) Asset revaluation.

Like their European counterparts, 2 American writers, S.L.Hayes and P.L.Taussig (10)(1967) asserted that when confronted with an unwelcome bid, a victim company could fall back on such defensive actions as splitting the stock, raising the dividend, repurchasing the company's equity capital, secure outside assistance, launch a publicity campaign, start legal action, make a counter bid, and undertake a defensive merger. It should be underlined however, that owing to the different banking/financial structures, different regulations and institutional framework controlling both mergers and acquisitions, caution should be exercised when drawing on American bid experiences and techniques.

Many of the main observations/hypotheses on defence listed by Weinberg, Wooldridge, Smith and Pickering in this section were tested with the empirical findings of the merchant banking survey (see Chapter 6).

2.5 Literature Pertaining to Profit Forecasts

Merchant banks are not responsible *for* making profit forecasts, rather, they are obliged by the Takeover Panel to review and endorse them when used in merger and acquisition situations. The starting point in the literature survey here has to be the Takeover Panel which is responsible for prescribing the broad principles regarding the treatment of forecasts as well as responsible for monitoring it. The Panel found that in general, in the early 1970s, profit forecasts had a fairly high degree of accuracy (80.9%) in bid situations,[8] but since then, it has ceased publishing data on profit forecasts although it still maintains a watching brief.

8. The Panel recorded that 170 profit forecasts were achieved within a margin of ±20% out of the total of 210 examined ("Annual Report," 31st March 1971).

The sensitive issue of deviant profit forecasts again became a central point of attention in the late 1970s as reflected in the evidence submitted by the Takeover Panel to the Wilson Committee. Under cross-examination, Lord Shawcross (former Chairman of the Takeover Panel) submitted that:

"It was originally the Panel's practice to monitor the outcome of all profit forecasts made in bid situations. This was discontinued some years ago through lack of any evidence that this area of the Code was creating any particular problems and the efforts being put into the total monitoring process did not seem to be justified.. ..The occurence of a number of apparent profit forecast failures has, however, prompted the Panel to....revert to its earlier practice if there was evidence to suggest that this would be worthwhile."

(Panel on Takeovers & Mergers, "Committee to Review the Functioning of Financial Institutions," (second stage evidence) vol.4, Jan. 1979, pp50-51).

In his study of 95 companies making profit forecasts associated with normal business transactions, Platt(21)(1979) suggested that the evidence on the whole seems to show that profit forecasts are borne out by the results in a sufficient number of instances. At the same time, he strongly stressed the fact that, "The usefulness of profit forecasts to shareholders...must be accepted as subjected to limitations, since forecasts for even 6 months is fraught with difficulties - and with dangers unless the inherent shortcomings are appreciated."

In yet another study with a much smaller sample of 31 firms engaged in profit forecasts in propectuses for the new issue of capital, K.R.Ferris (8)(1975) attributed forecast deviations to intentional over-optimism and under-estimation of the forecasts and the failure of environmental assumptions to hold.

From these sources of literature, it is possible to distinguish 3 main features characterising

profit forecasts, viz.,

(1) Danger of litigation arising from deviant forecasts.

(2) It is subject to limitations.

(3) Deviations are a consequence of managerial under/over estimation and also partly to non-valid underlying assumptions.

It is perhaps timely, in view of the revived interests reported that this survey mentioned in this thesis set out to establish views of merchant bankers on profit forecasts as an important aspect of contested bids.

2.6 Literature Pertaining to General Questions

This final section of the survey of literature relates to the final subset of the questionnaire which concerns the claim by UK merchant bankers to distinction as merger cum takeover specialists. As example of such claims, 2 former merchant bankers, viz., Clay and Wheble (4)(1976) asserted "...a takeover or merger can be subject to considerable financial, technical and administrative complications, on all of which a company will require expert advice and assistance if it is to achieve whatever is in its best interests. Furthermore, it is an area of business which by its nature rarely proceeds smoothly. Accepting houses have an experience and an expertise which it is not normally the client's business to possess and which enables them to make a unique contribution."

Similarly, Vaughan, Grinyer and Birley (33)(1977), in their analysis of newly floated public com-

panies, found that in general, merchant bankers were the most popular source of corporate financial advice regarding flotations. Again, Clay and Wheble (4)(1976) and Wechsberg (29)(1967), on this aspect of merchant banking industry, strongly argued that the corporate reputation of many traditional houses was built on the quality and distinction of their corporate advisory services (relating to bids) as well as their organisational and co-ordinating capabilities.

The core of the literature surveyed in this Chapter has been selected because of their direct bearings and relevance to the aims and main thrust of this academic dissertation. Three sources, particularly, Weinberg et.al.(28)(1979), Arnfield (3)(1967) and Prof.J. F.Pickering (22)(1979) provide the main foundations from which the various assumptions and hypotheses were derived to be evaluated with the empirical data drawn from the merchant banking community in the City and also the case studies selected for this research.

CHAPTER 3

THE CITY CODE ON TAKEOVER PRACTICE: A PERSPECTIVE ON CURRENT INSTITUTIONAL FRAMEWORK PRESCRIBING THE CONDUCT AND PRACTICE OF MERGERS & ACQUISITIONS IN THE UNITED KINGDOM

3.0 Background

Corporate mergers and takeovers in the UK are conducted within the framework of the self-regulatory rules of the City Code On Takeovers and Mergers. Those in breach of the rules and principles and spirit of the City Code are liable to be censured by the Panel on Takeovers and Mergers (or commonly known as the "Takeover Panel").

Due to lack of control and supervision in the 1950s and 1960s, the conduct, procedure and modus operandi of some financial advisers and their corporate clients received severe criticisms in the City and in the financial press.[1] As a result, at the behest of the Bank of England, the City Code on Takeovers and Mergers came into being in March 1968 encompassing 10 General Principles and 35 Rules. Since then, it has been revised many times, the last during 1976.[2] As it stands, it consists of 14 General Principles and 39 Rules supplemented by a set of Practice Notes incorporated in the particular section of the Code to which they refer. It should be emphasised

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1. See A.Johnston, "The City Takeover Code", Oxford, Oxford University Press, 1980.
2. A revised code to be published in 1981 is currently being reviewed by the CSI as a result of criticisms and pressures regarding the repetitive breaching of the regulations and 'spirit' of the Code exemplified by the market raid, concert party acquisition of shares by De Beers in the Consolidated Gold Fields ("CGF") incident as well as the controversial breaching of Rule 34 by St.Piran. The changes being looked into embrace advertisements, market raid and concert party practice.

that the City Code or the Takeover Code has no statutory power and does not possess the force of law nor legal sanction but rather, it represents the collective will and opinion of professional advisers, financial institutions (especially the merchant banks), professional dealers in the securities market and key corporate executives of UK companies. In brief, all the professionals who are associated with mergers and takeovers. Another point to bear in mind is that the Panel does not assume a pre-conceived posture, i.e.it does not pass judgement on the commercial logic, accruements or disbenefits associated with acquisitions. This remains the purview of the board and its shareholders.

Owing to the esoteric and multi-disciplinary nature of corporate acquisitions compounded by technical, legal and financial complexities, it is not possible for the Code to be all comprehensive covering all contingencies and loopholes and the Code strives to cover these shortcoming by declaring that:

> "It is impractical to devise rules in such detail as to cover all the various circumstances which arise in takeover or merger transactions. Accordingly, persons engaged in such transactions should be aware that the spirit as well as the preciding wording of these General Principles and of the ensuing Rules must be observed. Moreover, it must be accepted that the General Principles and the spirit of the Code will apply in areas or circumstances not explicitly covered by any Rule."
>
> (General Principle 1)

3.1 Merchant Banks and Other Professionals As Advisers

From interviews with merchant bankers and other financial advisers as well as examining a cross-section of bid circulars, it is quite evident that a substantial portion of them are issued in the name of merchant banks on behalf of their clients. To a certain extent, this is largely attributable to the

Prevention of Fraud (Investments) Act, 1958 which requisites that any offer for equity capital or other securities must be effected through the intermediary of an exempted dealer (merchant bank and relevant financial institution) or a licensed dealer.[3] If the offeror chooses to issue its own bid document, it must receive the prior sanction of the Department of Trade.

In general, most public companies would retain the corporate financial advisory services of established merchant banks in the City to assist in the implementation of their merger and takeover activities. This tendency is largely attributed to the corporate reputation of some of the famous merchant banks, in-house expertise of their corporate finance personnel and their frequent exposure to this specialised and complex business as well as their ability to underwrite the cash option due to their large financial resources compared to the other financial advisers.

Although the principal advisers and agents of client companies, the merchant banks considered the services of other financial advisers, in particular, stockbrokers (who provide market expertise and also submit takeover documentation to the Quotations Department of the Stock Exchange), corporate lawyers (who provide legal expertise, the drafting of bid documents and legal protection) and the accountants (who screen potential acquisition candidates and audit profit forecasts) to be important and work very closely with them in contested bid situations.

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3. A licensed dealer is governed by the requirements of the Stock Exchange, the City Takeover Code as well as the Licensed Dealers (Conduct of Business) Rules, 1960.

3.2 The Control Consideration

At the outset, before a formal bid is made, the financial advisers should endeavour to fully explain the control consideration to its client who is embarking on an acquisition course. Failure to do so would raise many problems later on and severely affect the acquisition objective and success of the client.

M.A.Weinberg in his updated work has written that the control of a company in the legal sense is very difficult to define and what precisely constitutes 'effective control' of a company "...and the very lack of definition, created inevitable uncertainty and difficulty".[4] Professor Clive Schmitthoff, a leading authority on international business law and editor of the "Journal of Business Law" agrees with Weinberg and points out that:

"Control is very difficult to define.. ..I think, it is impossible to say that a definite figure constitutes control. It very much depends on the individual company. There is one thing which is certain that we distinguish in law between positive and negative control; if you have more than 25% of the equity share capital, you can create a passing of a special resolution and that constitutes negative control, and then, what constitutes positive control depends on the financial position of every company. The figure of 30% in the Takeover Code is quite arbitrary. It is a general measure and does not quite apply to all cases and 29.9% does in my view constitutes positive control."

(Transcript of Interview with Prof. Clive Schmitthoff)

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4. M.A.Weinberg et.al., "Takeovers & Mergers," Sweet & Maxwell, London, 1979, p117.

Rule 34 in the Code is the most important rule relating to the control factor. A formal bid is mandatory when:

1) Any person acquires, whether by a series of transactions over a period of time or not, shares which (together with shares acquired by persons acting in concert with him) carrying 30% or more of the voting rights of a company, or

2) Any person who, together with persons acting in concert, holds not less than 30% but not more than 50% of the voting rights and such person, together with persons acting in concert, acquires in any period of 12 months additional shares increasing such percentage of the voting rights by more than 2%.

The control factor is pertinent because a takeover bid is effected conditional on acceptances in relation of a stated proportion of the share capital. Thus, if the offeror's objective is to obtain complete ownership or effective control of the target company, then all the shares of all classes will have to be procured. Within this context then, it is normal for an offer to be explicitly declared as conditional upon acceptances being received in respect of not less than 90% of the shares. This 90% ruling is favoured as it enables the bidder to compulsorily acquire the minority stake to give it the desired 100% control objective.[5]

If acceptances received by the bidding company fall between 50.1% and 90%, then the offeror has 3 options:

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5. Section 209 of the Companies Act, 1948, provides for the bidder to compulsorily acquire the outstanding shares on the same terms where the bid has been accepted by the holders of at least 90% of the shares involved. If the bidder does not exercise its rights of compulsory acquisition, the minority shareholders can serve notice on the offeror to acquire their shares at the same price as the original offer within 3 months.

a) Let the offer lapse,
b) To extend the bid without going unconditional immediately,
c) To declare the bid unconditional but leave the door open.

Voting control is conferred on the bidder if it successfully acquired more than 51% of the equity capital.[6] The offer will lapse if acceptances are below 50%.

It is pertinent to note that a 75% majority of the voting rights exercised at a meeting on a resolution can:

- Subject to Court's approval, reduce the capital,
- Liquidate the company,
- Alter the Articles of Association
- Under Section 206, Companies Act (1948) effect a reconstruction of the company.

3.3 Negotiation and Approach

Within this framework in mind, the next stage is for the financial advisers representing its client to approach the biddee as the onus lies on the bidder to make the solicitation. For obvious reasons this is normally done in secrecy (Rule 7). Like a battle, time is on the side of the bidder once an offensive is mounted and the financial advisers will try to sustain the initiative and not let it be passed on to the other party. To ensure the future

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6. Ownership or control of 10% or more of the share capital of another company is regarded as the test of associate status.

viability of the merged entity and also to avoid adverse publicity associated with contested acquisitions, most clients and their advisers favour recommended offer and amicable negotiation. If the proposed takeover is not well received by the target company, it can quickly consult its financial advisers and mobilise counter-strategies to fend off the predator or even cause the buyer to pay a higher premium. If the victim company is suspected to be stalling for time to build up its defences or if the negotiation breaks down, the offer is then quickly effected by appealing directly to the company's shareholders.

3.4 Formal Declaration of the Bid Attempt

For the protection of the shareholders, when Rule 34 is triggered off or "When any firm intention to make an offer is notified to a Board from a serious source (irrespective of whether the Board views the offer as favourable or otherwise), shareholders must be informed without delay by Press notice. The Press notice should normally be followed as soon as possible by a circular" (Rule 5). After the press announcement, a press notice or circular informing shareholders of the offer must be despatched promptly within 28 days of the announcement of the terms of the offer to the offeree's shareholders (Rule 10). The offer must remain open for at least 21 days and if it is revised, it must stay open for a further 14 days. The offer may remain open for a maximum of 60 days with the Panel's approval if a rival bid emerges (Rule 22). Once an offer is declared unconditional, it must remain for at least 14 days (Rule 23). Thus, it can be seen that the mechanics of an offer within the framework prescribed by the Code is discernible in defined phases.

3.5 The Contents of the Offer Document

In general, most bid documents tend to incorporate the following features:

a) The chairman's letter,
b) "The offer" i.e. the financial consideration, financial effects of acceptance and tax implications,
c) Corporate intentions relating to management and employees,
d) Procedure for acceptance,
e) Information regarding both parties, and
f) General information relating to disclosure of interests, board's service agreements, market quotations of both companies prior to the bid, material contracts, litigation and miscellaneous information.

3.6 Contesting Against An Unwelcome Bid

Directors may refuse to recommend acceptances if the interests of the shareholders is compromised and affected by the loss of the company's independence, or if the bid is wholly inadequate or if the intention of the bidder is highly suspect (for example, asset-stripping). In such circumstances, it is paramount for their financial advisers to stress to them that "...they shall always in advising their shareholders, act only in their capacity as directors and not having regard to their personal or family shareholders or their personal relationships with the companies. It is the shareholders' interests taken as a whole, together with those of employees and creditors, which should be considered." (General Principle 10). At the same time, the Panel and the Stock Exchange stress that the greatest care must be shown in any profit forecast emanating from either party especially with respect to the assumptions on which the forecast is based,

The onus for making the forecast rests with the board of directors but the accounting bases and calculations must be examined and reported upon by the auditors or consulting accountants and endorsed by the merchant bank or other financial advisers. In the same vein, corporate re-valuation of assets must also reflect a high standard and care and must be reported and endorsed by independent professional advisers (Practice Note 3 to 5).

CHAPTER 4

BACKGROUND AND STRUCTURE OF THE 30 MAJOR UK MERCHANT BANKS

4.0 Introduction

This chapter delves into the background and organisational structure of the 30 London based merchant banks chosen for this study. It is focused in particular on the corporate finance set-up and the manner in which it is organised for fee-earning activities pertaining especially to corporate mergers and takeovers, the historical background of the various merchant banks concerned, their ownership structure, the date of creation of their corporate finance divisions, the range of services offered to clients, the span of control and the staffing characteristics of the corporate finance divisions are reviewed. It also examines the screening process adopted by merchant banks regarding new clientele as well as the profile of clients who are involved with the merchant bankers in contested bid situations.

4.1 Establishment of UK Merchant Banks

In order to gain an insight into how UK merchant banks conduct their corporate financial advisory activities/services relating to mergers and acquisitions, it is important to understand their origin and structure. The merchant bank is an unique financial institution peculiar to the UK (the nearest equivalent of this being the American investment banks) and most of the leading traditional houses were founded before the beginning of this century as illustrated by Table 4.0 on the next page.

Merchant Bank (encoded)	Date Founded	Merchant Banking Category
MB 1	1894	principal
MB 2	1833	principal
MB 3	1972	subsidiary
MB 4	1763	principal
MB 5	1810	principal
MB 6	1880	subsidiary
MB 7	1862	principal
MB 8	1920	subsidiary
MB 9	1865	subsidiary
MB10	1808	subsidiary
MB11	1805	subsidiary
MB12	1836	subsidiary
MB13	1959	principal
MB14	1839	principal
MB15	1830	principal
MB16	1946	subsidiary
MB17	1792	principal
MB18	1868	principal
MB19	1870	subsidiary
MB20	1765	subsidiary
MB21	1838	principal
MB22	1966	subsidiary
MB23	1932	principal
MB24	1917	principal
MB25	1804	principal
MB26	1907	subsidiary
MB27	1853	subsidiary
MB28	1973	subsidiary
MB29	1804	principal
MB30	1934	principal

Table 4.0: Date of Establishment and the Merchant Banking Category of the 30 UK Merchant Banks Participating in this Survey.

Century	No.	%
1700 - 1800	3	10
1800 - 1900	16	53
1900 - 1981	11	37
Total	30	100

Table 4.1: Establishment of Merchant Banks in the Sample Categorised by Century.

From Table 4.1 on the previous page, it can be seen that over 53% of the merchant banks in this study were established in the 19th century. Prominent houses created at this period include banks like MB15, MB19, MB25 and MB21 while houses like MB30 and MB16 were established in this century (see master code for decipherment)

In terms of operating structure and ownership pattern, broadly speaking, they may be categorised as follows:

1) 'Pure' traditional houses which operate as principal or independent units, for instance, MB15 and MB25.
2) Wholly owned operating merchant banking subsidiaries of clearing banks, for example, MB3, MB28, MB27.
3) Operating subsidiaries of non-banking parents like MB19 and MB26.

However, for this study, the UK merchant banks are divided into 2 broad categories, viz., those operating as principal/independent units and those which are subsidiaries of larger banking or industrial conglomerate organisations (see Table 4.0). From the outset, it should be pointed out that the distinction as to what constitutes a principal merchant banking unit and what constitutes a subsidiary is quite blurred because all the houses in the former category are affiliated or are controlled by some form of parent or holding company (for instance, Morgan Grenfell Holdings is the parent company of Morgan Grenfell Limited, the merchant bank). So, allocation to one or other of the banking categories was based on first, the general perceptions of the City and the general public, and secondly, whether the parent company is engaged in merchant banking activities. To illustrate the first criterion, banks like Rothschilds (Rothschilds Continuation) and Barings (Baring Foundation) are well known, easily identifiable and generally perceived as principal merchant banks in the UK and worldwide

but their parental affiliation (listed in the brackets) is seldom common knowledge. Secondly, their respective parent company functions as holding/administrative machinery and do not undertake any merchant banking functions at all. On the other hand, merchant banks like Barclays Merchant Bank (Barclays Bank Limited) and Samuel Montagu (Midland Bank Limited) are generally recognised as the opetating arms of the leading UK clearing banks and the distinction between the parent and subsidiary operations is accentuated by the fact that the former is engaged in 'retail banking' while the latter, 'wholesale banking'. For a fuller account of ownership status, please refer to Appendix Table 5.3, Volume 2. For other organisational and financial details on the 30 UK merchant banks, consult Volume 2, chapter 1 (merchant banking history/current developments) as well as Table 5.1 (financial performance) and Table 5.2 (financial highlights of the members of the Accepting Houses Committee).

4.2 Advantages of Larger Parental Affiliation

Respondents were asked to indicate the advantages accruing to association with larger parents. Their answers are summarised and analysed in Tables 4.2/4.3 (next page). Prime advantages were given as financial strength, banking reputation, wider contacts, new business opportunities, a ready made client base and quality of service. If the figures are broken down further according to merchant banking categorisation (see Tables 4.2 and 4.3), it is interesting to note that in the subsidiary merchant banks, factors like banking reputation and wider expertise (staff) are more widely stressed than in the principal banking units.

In order to discern the differences in perceptions between the independent and affiliated merchant banks on this particular organisational issue, the

where ΣR = total reading of each observation
N = total number of observations
K = 2 (95% level of confidence)
P = percentage of occurence in a particular activity
L = limit of error

* For a clearer explanation of the interpretation of activity sampling tool, please refer to page 56.

Advantage	$\Sigma(r)$	N	K	P%	L	P (max)	P (min)	Comparison of P value with affiliated m.b.
financial strength	13	15	2	87	17	104	70	100
reputation	12	15	2	80	21	101	59	53
wider contacts	9	15	2	60	25	85	36	40
new business oppor.	6	15	2	40	25	65	15	33
quality of service	4	15	2	27	21	48	6	13
wider expertise	3	15	2	20	21	41	0	53
ready made client base	3	15	2	20	21	41	0	40
worldwide capability	2	15	2	13	17	30	0	7
service multinationals	1	15	2	7	13	20	0	0
access(capital markets)	1	15	2	7	13	20	0	0
worldwide coverage	1	15	2	7	13	20	0	0
cross-fertilisation	1	15	2	7	13	20	0	7
economy of scale	0	15	2	0	0	0	0	7
contact with industries	0	15	2	0	0	0	0	7

K = 2 (5% significant level)   m.b. = merchant bank

Table 4.2: Advantages (Real or Potential) Perceived by Independent Merchant Banks Regarding Affiliation to Larger Grouping Analysed by Activity Sampling Method.

where ΣR = total reading of each observation
N = total number of observations
K = 2 (95% level of confidence)
P = percentage of occurence in a particular activity
L = limit of error

* For a clearer explanation of the interpretation of activity sampling tool, please refer to page 56.

Advantage	$\Sigma(r)$	N	K	P%	L	P (max)	P (min)	Comparison of P value with ind. m.b.
financial strength	15	15	2	100	0	100	100	87
banking reputation	8	15	2	53	26	79	27	80
wider contacts	6	15	2	40	25	65	15	60
new business oppor.	5	15	2	33	24	57	9	40
quality of service	2	15	2	13	17	30	0	27
wider expertise	8	15	2	53	26	79	27	20
ready made client base	6	15	2	40	25	65	15	20
worldwide capability	1	15	2	7	13	20	0	13
service multinationals	0	15	2	0	0	0	0	7
access (capital markets)	0	15	2	0	0	0	0	7
worldwide coverage	0	15	2	0	0	0	0	7
cross-fertilisation	1	15	2	7	13	20	0	7
economy of scale	1	15	2	7	13	20	0	0
contact with industries	1	15	2	7	13	20	0	0

K = 2 (5% significant level) m.b. = merchant bank

Table 4.3: Advantages (Real or Potential) Perceived by Subsidiary Merchant Banks Regarding Affiliation to Larger Grouping Analysed by Activity Sampling Method.

activity sampling statistical technique was chosen. In essence, the operating formula for activity sampling is:

$$L = \pm K \sqrt{\frac{P\ (100-P)}{N}}$$

N = total number of observations
K = 1 (68% level of confidence)
2 (95% level of confidence)
3 (99.7% level of confidence)
P = percentage of occurence in a particular activity
L = limit of error[1]

From the evidence[2] in Tables 4.2 and 4.3 on pages 54 and 55, it would appear that both independent and affiliated merchant banks placed important emphasis on banking reputation and wider professional expertise. For the independent merchant banks, cultivating a good reputation was seen to be essential to their growth and survival. Consequently, these banks placed greater emphasis on this attribute than the affiliated merchant banks. The evidence also suggests that affiliated merchant banks recognised their significant advantage, in being able to provide a wider range of expertise as a consequence of their affiliation to large financial organisations.

Commenting on the salient advantages arising from larger affiliations, a corporate finance manager emphasised that, "there is no doubt about it that we

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1. J.A.Larkin, "Work Study: Theory & Practice," London, McGraw Hill, 1969.
2. Look at the P value for both merchant banking categories. Take independent merchant banks, for instance. For each attribute/factor, observe the corresponding P value set beside it. If the comparative P value lies outside the range as indicated by P max and P min, then that specific factor in question is significant.

have the financial muscle. Some merchant banks don't have that anymore. The very best of corporate finance will survive, I am sure, but there is evidence that unless you have the financial muscle, you are not going to survive as easily as you have in the past."

His view is also shared by a senior director of MB16 who suscribed to the view that:

"The larger the organisation, the greater is its number of customers and therefore, the bigger the potential there is for business...but apart from that, I don't think there are any other advantages. Organisations like Barings, Morgan Grenfell and Lazards - they exist very happily without being part of a larger organisation."

The significance attached by UK merchant banks to being a member of the elitist Accepting Houses Committee (AHC) is also not to be discounted lightly. The corporate finance head of MB26, a member of the Accepting Houses, puts forward his arguments in this manner:

"An accepting house, in the legal sense, is thought by the financial community to be under-written by the Bank of England and thus, depositors feel confident even in times of colossal banking crisis. Once you are in the Accepting Houses Committee, it doesn't matter whether you are a subsidiary of anything larger, but, if you are not an Accepting Houses member, even under the banking statute of the Bank of England...you are in a different category, and if you have to compete in the money market for deposits, you are at a disadvantage compared to an Accepting House."

4.3 Disadvantages Of Being Part Of A Larger Organisation

Partly attributable to the lucrative value of merchant banking and the need to diversify from their narrow 'retail' banking base, today, all the major UK clearing banks i.e., Barclays, Midland Bank, National Westminster, Lloyds, Grindlays, Standard & Chartered Bank, and

the Hong Kong and Shanghai Bank have their own merchant banking operations here in the UK (the last two mentioned although British-owned are not normally regarded in the City as British Banks, due partly to historical reason and partly to their domicile and banking operations overseas). Section 4.2 lists the advantages perceived to be conferred by membership of such a larger financial group. However, disadvantages are also perceived within the merchant banks. These are reported in Tables 4.4 and 4.5 on pages 59 and 60. The main items are conflicts of interest, lack of independence, loss of flexibility, lack of specialist image and parental interference. Here again, it can be deduced that factors like the lack of independence, conflicts of interest and loss of organisational flexibility are views more universally held by the affiliated merchant banks than the independent banks. The operating merchant banking arm (MB11) of a UK multinational bank saw the organisational dysfunctions in this light:

> "The lack of independence. In corporate finance, you may have a superior officer within the Group who had a lending cum banking background and who, in fact, doesn't appreciate how a fee-earning corporate finance department operates. But, what is more important is the loss of corporate prestige due to bad losses at one stage and also the mere fact that we are no longer in the Accepting Houses Committee, and if you are controlled elsewhere, this is a problem."

Using activity sampling, here again, we can discern that both independent and affiliated merchant banks attached considerable significance to conflicts of interest and lack of independence arising from affiliation. The subsidiary merchant banks perceive both these factors with greater degree of concern than the former category of merchant bank. This demonstrate that in operational context, independent merchant banks owing to their existing _status quo_ face lesser incidence of conflicts and enjoy greater leeway in their decision-making process. Subsidiary merchant banks (perhaps due to the excessive dominance of their parent companies) also felt it was difficult for them to develop a specialist image for their individual bank whereas independent merchant banks did not perceive

Disadvantage	$\sum(r)$	N	K	P%	L	P (max)	P (min)	Comparison of P value with affil.m.b.
conflict of interest	7	15	2	47	26	73	0	93
lack of independence	4	15	2	27	23	50	7	60
loss of objectivity	2	15	2	13	17	30	0	7
parental interference	2	15	2	13	17	30	0	7
loss of specialist image	0	15	2	0	0	0	0	33
loss of entrepreneur appch.	1	15	2	7	13	20	0	33
subsumed by parent co.	0	15	2	0	0	0	0	7
insular.attitude(Clearers)	0	15	2	0	0	0	0	7
hard to attain excellence	1	15	2	7	13	20	0	0
decision-making affected	0	15	2	0	0	0	0	7
loss of flexibility	1	15	2	7	13	20	0	33
loss of autonomy(recruitment)	0	15	2	0	0	0	0	7
affect merchant bank status	0	15	2	0	0	0	0	7

k = 2 (5% significant level)   m.b. = merchant bank

Table 4.4: Disadvantages (Real or Potential) Perceived by Independent Merchant Banks Regarding Affiliation to Larger Grouping Analysed by Activity Sampling Method.

where R = total reading of each observation
N = total number of observations
K = 2 (95% level of confidence)
P = percentage of occurence in a particular activity
L = limit of error

* For a clearer explanation of the interpretation of activity sampling tool, please refer to page 56.

Disadvantage	$\Sigma(r)$	N	K	P%	L	P (max)	P (min)	Comparison of P value with indep.m.b.
conflict of interest	14	15	2	93	13	106	80	47
lack of independence	9	15	2	60	25	85	35	27
loss of objectivity	1	15	2	7	13	20	0	13
parental interference	1	15	2	7	13	20	0	13
loss of specialist image	5	15	2	33	24	57	9	0
loss of entrepreneur approach	5	15	2	33	24	57	9	7
subsumed by parent company	1	15	2	7	13	20	0	0
insular attitude (Clearers)	1	15	2	7	13	20	0	0
hard to attain excellence	0	15	2	0	0	0	0	7
decision-making affected	1	15	2	7	13	20	0	0
loss of flexibility	5	15	2	33	24	57	9	7
loss of autonomy(recruitment)	1	15	2	0	0	0	0	0
affect merchant banking status	1	15	2	0	0	0	0	0

k = 2 (5% significant level)   m.b. = merchant bank

Table 4.5: Disadvantages (Real or Potential) Perceived by Subsidiary Merchant Banks Regarding Affiliation to Larger Grouping Analysed by Activity Sampling Method.

where ΣR = total reading of each observation
N = total number of observations
K = 2 (95% level of confidence)
P = percentage of occurence in a particular activity
L = limit of error

* For a clearer explanation of the interpretation of activity sampling tool, please refer to page 56.

this to be a constraint. The evidence from Tables 4.4 and 4.5 also reveals that both groups of merchant banks perceived that entrepreneurial approach to corporate advice is adversely affected when they are affiliated to larger groups. This may be ascribed to the fact that corporate finance is a "people business" and findings from this study have strongly indicated that the merchant banking community, in general, subscribe to flexible and innovative approach when providing corporate financial advice to the wide range of clientele.

4.4 Evolution of Corporate Finance Activities Within the Merchant Banking Industry in the UK

In most UK merchant banks, corporate mergers and takeovers are generally conducted within the ambit of the corporate finance division/department of the bank. The name of this particular unit sometimes differs somewhat slightly but the label, "Corporate Finance" is the most popular name used by the Accepting and Issuing Houses to denote their corporate finance advisory services as evident in Table 4.6 on the next page.

As there is a close functional affinity between the stockbroking firms and merchant banks in the City, a smaller survey was conducted with 10 stockbroking firms in London who are active in corporate finance activities and from this survey, it can be seen that the stockbrokers too favour the "Corporate Finance" label as evident in Table 4.7 on page 62.

Earlier on, we noted that most of the UK merchant banks were established in the 19th century but corporate finance (in the strict modern context of the term) was not the domain of merchant banking activities

Merchant Bank (encoded)	Title of Corporate Finance Unit	Year Corp.Fin. Unit Founded
MB 1	corporate finance department	n/a
MB 2	corporate services department	1968
MB 3	corporate advisory division	1972
MB 4	corporate finance group	n/a
MB 5	corporate finance department	1970
MB 6	corporate finance department	1960s
MB 7	corporate advisory division	1969
MB 8	corporate finance department	1960s
MB 9	corporate finance department	1973
MB10	corporate finance department	n/a
MB11	corporate finance department	n/a
MB12	corporate finance department	1971
MB13	corporate finance department	1970s
MB14	corporate finance department	1965
MB15	corporate services department	1960s
MB16	corporate finance	1950s
MB17	corporate finance division	1961
MB18	corporate finance department	1960
MB19	corporate finance department	n/a
MB20	corporate finance division	1978
MB21	corporate finance division	1960
MB22	corporate finance department	1969
MB23	corporate finance department	1969
MB24	corporate finance department	1960s
MB25	corporate finance department	n/a
MB26	corporate finance department	1956
MB27	corporate finance department	1950
MB28	corporate finance division	1973
MB29	company finance department	1957
MB30	corporate finance department	n/a

Table 4.6: Titles Assigned to Corporate Finance Units and Dates of Their Creation of the 30 UK Merchant Banks.

Stockbroker (encoded) Firm	Title of Unit
STK 1	corporate finance dept
STK 2	corporate finance dept
STK 3	corporate finance dept
STK 4	corporate finance dept
STK 5	corporate finance dept
STK 6	corporate finance dept
STK 7	corporate finance dept
STK 8	corporate finance dept
STK 9	corporate finance dept
STK10	new issues department

Table 4.7: Titles Assigned to the Corporate Finance Units of the 10 UK Stockbroking Firms Participating in this Study.

then, rather, it was merchanting and international trade. Corporate financial advisory services, especially those related to mergers and acquisitions, evolved gradually after the Second World War with the rehabilitation of the economy.[3] Unlike the dates of establishment of the various houses which can easily be verified, a substantial number of respondents have problems in recalling the exact period when their corporate finance operations came into being and as such, some of the dates given in Table 4.6 should be treated in the relative rather than absolute context.

4.5 Scope of Corporate Finance Activities Defined

The corporate finance activities performed by the London merchant banks today are very diverse and extensive, and by no means, merely confined to mergers and acquisitions. In a sense, their growth as an offshoot of 'wholesale' banking grew in tandem with the ascendency of London as the global financial centre as well as the fact that merchant banks were becoming increasingly recognised by European and overseas clientele as consultant and investment bankers due to their accumulated experience, professional expertise and worldwide network.[4]

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3. For a fuller account of the growth of corporate finance activities at this period, see J.B.Tabb, "Reasons for the Emergence of Contested Company Takeovers in the 1950s," in Accounting & Business Research, vol.11, no.44, August 1981, pp323-330. The Green Paper, "A Review of Monopolies & Mergers Policy,"HMSO (Cmnd. 7198) 1978, also provides a useful account regarding merger activity from the 1950s to the 1970s which bears directly on the growth of this corporate advisory services of UK merchant banks.

4. See the British Bankers' Association, "London As An International Banking Centre," London, B.B.A., 1977 and also CLCB, "The London Clearing Banks," CLCB, London, Nov.,1977 (refer to Chapters 10, 11 and Appendix E).

As a result, they gradually evolve from the traditional specialist role of merchant venturer in international trade to a wider role manifested in the image of an Accepting House.[5] Today, the scope and breadth of merchant banking activities have extended beyond discounting the bills of exchange and international trade (the traditional "bread and butter" of merchant banking in the UK). In line with the role of London as one of the world's leading financial centres, the London-based British merchant banks (many of them multinational in nature) are able to provide banking services such as corporate financial advisory services, underwriting, investment management, pension and unit trusts management, foreign exchange, Eurocurrency Certificate of Deposits (CDs), gold and commodities dealings, insurance broking, leasing, factoring, international financial activities and consultant advisers to foreign governments - a reflection of their abilities to adapt with changing circumstances and "living by their wits rather than deposits."

As this research addresses itself to contested bids which is under the purview of corporate finance division within a merchant bank, it is crucial to understand the main functions performed by this specific division located in the merchant bank. Analysis of compiled questionnaires and the annual accounts of merchant banks indicated the following corporate finance functions of the 30 banks selected for this study.

1) Capital raising (medium/long term): e.g. offer for sale, placing, introduction, rights issue, loan stock issue.

2) General financial advice: on relations with shareholders, taxation, shares option scheme, dividend policy, company law, joint-ventures.

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5. The Accepting Houses Committee (the AHC), representing the 17 traditional houses was formed in 1914, and by the end of the War, it became an important forum for discussions on merchant banking matters.

3) Mergers and acquisitions.
4) Corporate disposals/divestments.
5) Corporate reconstructions and schemes of arrangement.
6) Project finance.
7) Underwriting.
8) Stock Exchange listing.
9) Corporate strategic planning (business development analysis).
10) Direct investment.
11) International finance (corporate).
12) Leasing and factoring.

Fuller descriptions are given for the 30 merchant banks studied in Table 4.8 on the next page (see also Appendix Tables 5.4, 5.5 in Volume 2).

In the same vein, the corporate finance divisions of the stockbroking firms chosen for this study perform somewhat parallel functions but, because of their late entry into corporate finance activities and limited capital base, they lack the depth and extent of corporate financial services that are being provided by their merchant banking competitors in the City (see Table 4.9, page 67).

Again, each specific activity may be broken down into more detailed operations. In the case of acquisition activities, the merchant bank may, again according to circumstances assist with:-

- definition of corporate objectives
- formulation of bid strategies
- devising form of financial consideration
- approach and negotiation
- defence against hostile bid
- documentation and implementation of bid transaction

Table 4.8: The Corporate Finance Functions of the 30 UK Merchant Banks Participating in this Survey

FUNCTION / BANKS (encoded)	M1	M2	M3	M4	M5	M6	M7	M8	M9	M10	M11	M12
Corporate planning		✓		✓								
Direct investment				✓		✓				✓		✓
Disposals (Corporate)			✓	✓		✓				✓	✓	✓
Fund raising	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
General financial advice		✓	✓	✓	✓	✓	✓	✓	✓	✓		✓
International activities		✓		✓	✓	✓	✓			✓	✓	✓
Leasing				✓						✓		
Mergers and acquisitions	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Project finance				✓		✓						✓
Reconstructions	✓	✓		✓					✓			
Stock Exchange listing	✓			✓		✓				✓		✓

FUNCTION / BANKS (encoded)	M13	M14	M15	M16	M17	M18	M19	M20	M21	M21	M22	M23	M24	M25	M26	M27	M28	M29	M30
Corporate planning					✓							✓						✓	✓
Direct investment																			
Disposals (Corporate)			✓		✓				✓	✓		✓		✓	✓	✓	✓	✓	✓
Fund raising	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
General financial advice	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓
International activities			✓		✓		✓		✓	✓		✓		✓		✓	✓	✓	✓
Leasing					✓												✓		✓
Mergers and acquisitions	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Project finance		✓	✓		✓		✓	✓	✓	✓				✓		✓		✓	✓
Reconstructions	✓	✓	✓		✓		✓		✓	✓			✓	✓	✓	✓		✓	✓
Stock Exchange listing		✓	✓	✓	✓		✓		✓	✓		✓		✓	✓	✓		✓	✓

Sources: Questionnaire and Annual Accounts/Reports

STOCK-BROKERS (encoded)	CORPORATE FINANCE FUNCTIONS
STK 1	- providing corporate advice to 200 companies - advice on market reaction to annual/interim results - arrange for institutional visits
STK 2	- corporate advice - raising money - mergers and takeovers - dividend policy
STK 3	- advice on major transactions (money raising, mergers, disposals, etc) - advice on presentation of company news - communication with investors - general information (lookout for takeovers and disposal opportunities, monitor share prices,etc)
STK 4*	- liaison between the stock market, the company and its shareholders
STK 5	- fund raising - advice on annual report compilation - mergers and acquisitions
STK 6	- fund raising - act in market and advice on takeovers - arrange new issues for unquoted companies (UK and overseas)
STK 7	- to provide corporate financial advice to clients as required
STK 8	- advice on fund raising in capital markets - advice on mergers and takeovers - advice on capital reconstruction
STK 9	- to provide corporate financial advice to 300 corporate clients
STK 10	- acting as broker to existing quoted companies - general corporate advice - capital raising including flotations, rights issue, etc.

* Now in liquidation.

Table 4.9: Corporate Finance Functions Performed by the 10 Major UK Stockbroking Firms.

The framework of this survey is very much moulded by the sequential outline of these activities just described linked with contested bids.

4.6 Headship of Corporate Finance Divisions

Typically, the head of the corporate finance division is a senior merchant banking director and often carried a title such as, "Head of Corporate Finance" or "Director of Corporate Finance." In some houses, however, the corporate finance division came under the aegis of the company chairman (3%), vice-chairman (7%), deputy chief executive (3%) or the managing director (10%). The stockbrokers, on the other hand, due to their unlimited liability have partners (60%) rather than directors heading their corporate finance units as evident in Table 4.10.

MERCHANT BANKS			STOCKBROKERS		
Headship	No.	%	Headship	No.	%
Head	10	33	Partner	6	60
Director	10	33	Head	3	30
Managing Director	3	10	Director	1	10
Vice Chairman	2	7	Manager.	1	10
Executive Director	2	7			
Chairman	1	3			
Deputy Chief Executive	1	3			
Assistant M.Director	1	3			

Table 4.10: Headship Titles of Merchant Banks & Stockbrokers.

4.7 Line of Reporting (Span of Control) of Corporate Finance

According to J.B.Baxley,[6] committees are used more widely in banking as a whole than in any

6. J.B.Baxley, "Banking Management," Gulf Publishing Co., Texas, 1978, pp41-47.

other industry and this observation was constantly consistent with the practice of merchant banks chosen for this survey. Table 4.11 below shows the person or body to which the head of corporate finance reports. In the majority of the merchant banks, he is responsible to the board or a committee.

Line of Reporting	No.	%
board	9	30
executive committee	9	30
chairman/chief executive	8	27
managing director	4	13
Total	30	100

Table 4.11: Reporting System of Corporate Finance Divisions of UK Merchant Banks.

The committee, which is usually the executive committee, is the most powerful body in the bank and it normally includes the chairman and several key directors and its main function is to review the performance of other banking committees. On the other hand, the board represents the shareholders' interests and legally has power over the management of the bank; its key functions encompass the establishment of merchant banking policies, the systematic review of the bank's operations (inclusive of budget and capital expenditures), the selection, promotion and dismissals of banking executives.

4.8 Corporate Finance Staffing Characteristics

Owing to the complexities, multi-disciplinary and esoteric nature of corporate finance activities, there is a practical need for a multiplicity of professional skills to cope with the analytical and existing demands of private and corporate clients in day-to-day

operations as well as with transactions (especially take-overs) which may involve considerable banking manpower, time and resources. The skilful harnessing and cross-fertilisation of these diverse talents and expertise is vital in many instances, for example, the outcome of contested bids. From the empirical findings (Table 4.12 below), it can be discerned that there is a convergence towards 3 main streams of professionals in both the merchant banking and stockbroking samples, namely:

1) Accountants
2) Lawyers
3) Business School Graduates

In the merchant banks, all the corporate finance divisions have accountants and lawyers but only 50% of the latter are found in the stockbroking firms.

MERCHANT BANKS			STOCKBROKERS		
Type of Staff	No.	%	Type of Staff	No.	%
accountant	30	100	accountant	10	100
lawyer	30	100	business graduate	6	60
business graduate	23	77	lawyer	5	50
generalist	10	33	financial analyst	4	40
financial analyst	9	30	stockbroker	3	30
research analyst	6	20	actuary	1	10
banker	4	13	banker	1	10
tax specialist	2	6	research analyst	1	10

Table 4.12: Staffing Characteristics of Corporate Finance Divisions of Leading UK Merchant Banks & Stockbroking Firms.

The necessity to have multi-disciplinary and professional talents within these financial bodies is vividly reflected in the submission of evidence of the Industrial & Commercial Finance Corporation (ICFC) to the Wilson Committee on its staffing policy:

"The aim of ICFC is to have adequate staff available to deal with whatever volume of business it is possible to generate. Recruitment for the general field staff is from the universities...including the business schools, from the accountancy and other professions and from those with experience of management in industry. Specia-

lists are recruited as required for technical departments. Well over 90% of present executives and trainees are graduates or have recognised professional qualifications."

(Finance for Industry, "History & Business of FFI," evidence to the Wilson Committee, 1st August 1977, p 9).

4.9 Team Work

The reputation of many leading UK merchant banks domestically and internationally is seen by them to be linked with the flair and skills they display in their conduct of takeover transactions. In their capacity as financial advisers to many types of clients in company takeovers, the merchant banks are deeply involved in the many complicated phases of contested bids ranging from the evaluation of company data to negotiations and documentation, and all these steps have to be executed within the rules prescribed by the City's self-regulatory bodies like the Takeover Panel, the Stock Exchange, the Council for the Securities Industry, etc, and tight time constraints. Clearly, this task is beyond the capability of a single executive and more than one writer[7] has drawn attention to the importance of team work. For instance, Gordon Bing, an American takeover specialist, pointed out that:[8]

"Seldom are all essential acquisition functions under the direct management of one individual. The executive who is assigned responsibility for the acquisition programme must persuade, cajole or coax his counterparts to provide the necessary missing services. An acquisition programme is a complex affair involving a variety of activities and people who must be closely coordinated and managed if success is to result."

Associated with this issue, the question asked during the interview was; "Do your specialists work indi-

7. J.Wechsberg, "op.cit."(see, "Warburgs: The Non-Conformist") pp164-227.

8. G.Bing, "Corporate Acquisitions," Gulf, Texas, 1980,p45.

vidually or in teams when providing corporate finance advice pertaining to takeovers?"

The response was unanimous and according to all the respondents, team work constituted the key organisational approach to mergers and acquisitions as evident in Table 4.13 below.

Approach	Merchant Banks		Stockbrokers	
	No.	%	No.	%
team work	30	100	10	100
individual	0	0	0	0
Total	30	100	10	100

Table 4.13: Organisational Approach to Corporate Advisory Activities (Bid Situations) Adopted by UK Merchant Banks & Stockbrokers.

Although the stockbrokers too favour use of teams in bid transactions, it was pointed out to the researcher that owing to restricted corporate finance manpower, the nature of stockbroking specialism and their degree of involvement with the principals i.e., the merchant banks, they do sometimes work individually influenced by circumstances such as:

(1) "We are not a big enough department to work in teams. Obviously, we try to divide the work up in a sensible manner but we are small enough for me as the head of the department to know what is going on...I suppose, it all boils down to dealing with the more important clients and the less important ones."

(Head, Corporate Finance, STK3)

(2) "We are mainly involved in the market related aspects of corporate finance and we see ourselves as part of the team with the company's merchant bank to advise on the market related aspect of a takeover...Normally, the merchant bank with its much bigger team of people would have done more detailed work; drawing up the bid documents, organising the time-table, meetings, negotiations ...and our role is really a less time-consuming one and it doesn't really require

a big team spending a long time on a bid assignment compared to a merchant bank."

(Partner, STK7)

The modus operandi of the merchant banks and stockbrokers may be illustrated by some of the statements made by these interviewees:

1) "We have 3 teams and each has an investment of 15 people and each team works under 1 director. The individual transaction that we advised on varies and people are taken out of these 3 team groups according to whether they are available. Typically, a team of 3 or 4 people could be assembled for a particular job under a director ...Sometimes, there may be 5 or 6 people on each team."

(Director, MB30)

2) "When a client comes in and wants to talk about the raising of funds or making a takeover, we will establish a team of 3, quite often, a director, an assistant director or manager and a young recruit."

(Director, MB27)

3) "We have the director, manager and the executive or, a director, assistant director and an executive. More often than not, we work effectively in pairs together rather than threes, but certainly, that is the theory of it. In practice, you have a team which is involved with a particular client but that team may not necessarily work on the assignment if the assignment arises.. We may do nothing for a client for 2 years and then work very hard for 3 months and because of that, we can't afford a team just assigned to that particular client."

(Director, MB6)

4) "There is no rigid structure...but basically, what happens is that we have a director and an executive every time. We would also have a back-up, a second director, a second executive in case at the same time either one goes on holiday or are terribly involved in some other job. For administration, we actually have 3 groups within the department...but we don't have any particular director in charge so that each member of the department will work for different clientele and

different directors."

(Manager, MB4)

5) "...our team will be 1 partner and 1 assistant. We are able to arrange for a back-up if one executive is out, the other one deals with the problems that arise."

(Partner, STK7)

From the above, it can broadly be established that in a takeover transaction, a merchant bank will create a team with a minimum of 2 executives while 3 seems to be the favoured norm. There is a need for merchant banks to adopt a flexible stance regarding teamwork. The team sometimes expands to 5 or even 6 executives when the transaction in question is very large, complex, has overseas involvement, entails a short time horizon, hence there is a need for continuity and back-up or a need to draw on other specialists to see the job to its successful fruition.

4.10 Working Relationships With Clientele and Other Professionals

As financial advisers and consultant bankers to a wide spectrum of companies locally and worldwide, the London merchant banks (especially the multinational ones) have a working relationship with many levels of professionals and executives running UK companies and industrial conglomerates. From Table 4.14 on the next page, it can be discerned that during the process of mergers and contested bids, the prime recipients of corporate advice and those drawn into the bid activity are people like company chairmen, finance directors, corporate planners, etc.

Although stockbrokers do compete with merchant banks in some aspects of corporate finance, they

Rank	Status	No.	%
1.	company chairman/chief executive	26	87
2.	company finance director	24	80
3.	managing director	22	73
4.	corporate planner	19	63
5.	lawyer	13	43
6.	accountant	11	37
7.	company secretary	9	30
8.	stockbroker	9	30
9.	company banker	5	17

Table 4.14: Profile of Professionals Interacting With Merchant Banks During Bids.

Corporate Finance Services			Mergers & Acquisitions		
Involvement	No.	%	Involvement	No.	%
very involved	8	80	very involved	5	50
quite involved	1	10	quite involved	4	40
involved	1	10	involved	1	10
not at all	0	0	not at all	0	0
Total	10	100	Total	10	100

Table 4.15: Working Relationship of Stockbrokers With Merchant Banks in General Corporate Advisory Services & Specialist Merger & Acquisition Transactions.

also work closely with them as indicated in Table 4.15 on page 75. This may be due in part to the more limited range of professional competence at their disposal but may may also be attributable to their dependence on merchant banks for a large proportion of their stockbroking business. This emerges from the answers of some of the respondents:

- "...discuss and advice on takeover suitability, financial terms and consequences for existing shareholders."
- "...advice on the preparation of documentation and liaison over underwriting, pricing, timing and so on."
- "The trend is towards closer collaboration. Matters relating to pricing of issues, assessment of market reaction are particularly important."
- "...varies from case to case. Sometimes, we have been virtually an extension of the merchant bank particularly in the preparation of bid circulars."
- "Of the 17 Accepting Houses, or better still, of the 8 largest merchant banks, we are the actual brokers to 7 of them."

4.11 Criteria Adopted for New Clientele

Corporate finance within the ambit of merchant banking is a fee-earning business and as such, the houses are always on the lookout for new customers to supplement their existing clientele. It is true to say that of all the merchant banking activities, it is merger and takeover activities within the purview of corporate finance that the bank received the maximum exposure and consequently, the reputation of a house is considerably

enhanced by a successful operation. Conversely, its image can be easily blemished by incompetence, professional negligence and adverse publicity. Consequently, it tends to select and screen its new clients with due care before it commit itself to be its advisers and accept the acquisition mandate. Of the numerous factors that govern its policy on this matter (see Table 4.16 below), the most frequently cited is potential conflicts of interest (87%). This being regarded as a paramount consideration when deciding on the suitability of a potential client. Other factors which were cited include the ability of the merchant bank to acquaint itself with the client's business (67%) and its corporate objectives (60%), the quality of its management (50%), whether the company is financially sound (40%) and interestingly enough, the motive for abandoning its former financial advisers (30%).

Factor	No.	%
conflicts of interest	26	87
whether conversant with the client's business	20	67
whether conversant with its corporate objectives	18	60
need to be conversant with its management ability	15	50
whether the company is financially sound	12	40
soundness of recommendation	10	33
rationale for deserting its ex-financial advisers	9	30
the public standing of the company	7	23
reputation of its former merchant banking advisor	6	20
need to be conversant with its key shareholders	1	3
character reference (entrepreneur type of client)	1	3
whether bank has expertise to serve client's needs	1	3

Table 4.16: Screening Process and Criteria for Acceptance of Acquisition Mandate Adopted by UK Merchant Banks Regarding New Clients.

Like their merchant banking counterparts, the stockbrokers too adopt certain criteria like financial performance, background information, possible conflicts of interest, etc., before committing themselves as financial advisers to new customers (see Table 4.17 on the next page).

Screening Factor	No.	%
whether client is financially sound	10	100
background information	10	100
possible conflicts of interest	10	100
whether worthwhile business	10	100
management capability	8	80

Table 4.17: Screening Process Adopted by Some Leading UK Stockbroking Firms Regarding New Clients.

Some of the procedures and practices adopted by UK merchant banking and stockbroking houses regarding new clients are detailed below in order to provide the reader with a deeper perception as to how financial advisers in the City approach this organisational issue:

(1) "If it is a public company as many of them are, then the information is already available. If, it is a private company (we do get a lot of private companies) they often come with the recommendations of our parent company. But, if there is a suspicion that this is not the sort of person for whom we would like to act, then we would decline to act because the major thing that we have is reputation and goodwill and you can lose that very easily."

(Head, Corporate Finance, MB20)

(2) "The directors, the 5 of us meet each Wednesday and review every proposition we have been offered but we have quite a large number which we look at and say, 'No. We can't.' on the basis we feel that either that we do not like the deal or, the chances of success are so limited or, we are unhappy about the quality of the management."

(Director, MB3)

(3) "We first of all check whether there are any possible conflicts of interest with our existing clients. We would also be influenced by the way in which the company came to us...We then look at the company and the type of business it is involved to see whether it makes sense from the company's point of view to look at MB30 for advice."

(Director, MB30)

(4) "Before we take on a company as our corporate client, it has to be approved by our management

> board and all the partners...We have had a number of instances of companies which were not financially sound coming to us...So, the fact that a company has problems is no reason that we shouldn't advise them provided that we believe that it is worth our business and it has honourable and capable people running it."
>
> (Partner, STK7)

4.12 Dealing With Anonymous Clients

In view of the high visibility and standing of many merchant banks in the City and internationally, they may be expected to be particularly careful to ensure that they serve as agents of truly reputable clients. The rationale cited for their strong reluctance to be involved with anonymous clients included possible conflicts of interest and the need to preserve their banking reputation. The hidden dangers of representing anonymous clients far outweigh any financial consideration and this was seen by some merchant bankers in this perspective:

(1) "First of all, neither we nor any of the merchant bank would act for any person who comes in straight from the street. You know, we want to make sure for a start that we are acting for a man of principle...as there are one or two operators in the City whose money is from suspect sources. We have to safeguard our reputation."

(Head, Corporate Finance, MB9)

(2) "We have occasionally people on the phone who say, 'We can't tell you on the telephone but we are interested in making a bid for a public company. Could you help?' Our first question will be, who are our principals? With whom are we potentially dealing with? Partly, because they are people whom we may not wish to work for or we may run the risks of a very dangerous conflict of interest arising."

(Director, MB22)

(3) "We certainly get introductions from people who say at an early stage that they cannot reveal the names of their clients. We would give them general help but if it got to anything specific, we would not be prepared to act unless they reveal their clients."

(Director, MB14)

4.13 Summary/Review

More than 63% of the merchant banks surveyed have a long history dating back to the 18th or the 19th century. On the whole, the merchant banks perceive the advantages arising from parental affiliation to be financial power, banking reputation and wider contacts. On the other hand, they also visualise organisational dysfunctions created by such an affiliation, the salient ones being conflicts of interest and lack of independence. In terms of fee-earning activities revolving around the corporate finance divisions, the range is very diverse and varies from mergers and acquisitions to international merchant banking. The staffing of the corporate finance divisions is characterised by a predominance of professionals from accountancy, law and to quite a large extent, those with business school qualifications. More important still is the fact that team work is the banking norm adopted by the whole merchant banking community regarding contested takeover deals. Both these marked features of corporate finance underlined the multi-disciplinary and complex nature of contested bids itself. Owing to the vital contribution of bid activity to the corporate reputation of UK merchant banks, it is normal practice for them to administer a thorough screening process before accepting new clientele to prevent possible conflicts of interest and also, the crucial need to preserve their merchant banking reputation.

Having examined the corporate finance organisational structure and strategy of the 30 leading UK merchant banking houses, we now come to the acquisition and strategy formulation process which is discussed in the next chapter.

CHAPTER 5

BIDDING STRATEGIES

5.0 Introduction

In the previous chapter, we discussed and examined how the merchant banks organised themselves for corporate advisory services. In this section, we are starting with the premise that the client has already identified its potential acquisition target and we now proceed to examine and analyse issues involved in the planning and implementation of a contested takeover. Factors discussed include the acquisition evaluation technique used, bid timing, building a pre-bid stake, 'sighting shot', level of bid premium desired, terms of consideration, accessing key shareholders, enlisting board's recommendation for the merger and finally, the main determinants influencing the decisive outcome of a contested bid.

5.1 Nurturing of Acquisition Idea

The generation of an acquisition idea, spontaneous or otherwise, is the first step towards a bid. Although this idea may sometimes originate from the merchant bank, it may frequently comes from the client organisation (see Table 5.0a & 5.0b).

Sources of Acquisition Idea	No.
idea emanating from own client	17
idea emanating from merchant bank	14
mixed acquisition idea	11
undecided	5

Table 5.0a Sources of Acquisition Idea

Merchant Bank (encoded)	Acquisition Idea				TOTAL
	Clientele	Merchant Bank	Mixed	Undecided	
MB 1				✓	1
MB 2	✓		✓		2
MB 3	✓	✓			2
MB 4	✓		✓		2
MB 5				✓	1
MB 6		✓			1
MB 7			✓		1
MB 8		✓	✓		2
MB 9			✓		1
MB10	✓				1
MB11		✓	✓		2
MB12	✓				1
MB13	✓	✓			2
MB14	✓				1
MB15	✓	✓			2
MB16				✓	1
MB17	✓		✓		2
MB18				✓	1
MB19	✓		✓		2
MB20		✓			1
MB21		✓	✓		2
MB22				✓	1
MB23	✓	✓			2
MB24	✓		✓		2
MB25	✓	✓			2
MB26		✓	✓		2
MB27	✓	✓			2
MB28	✓				1
MB29	✓	✓			2
MB30	✓	✓			2
TOTAL	17	14	11	5	47

Table 5.0b: Sources of Acquisition Idea Analysed by Individual Merchant Bank's Perception.

This is a situation which merchant bankers said they prefer as:

(1) "It is not beyond the capability of the client to know what he wants to acquire but the question is: 'How to do it?' In fact, some of the bigger clients have their own corporate set-up - they do their own research, they investigate companies, they investigate markets, they look to see where opportunities may be and the role of some of the larger merchant banks comes down to almost a rubber stamp."

(Director, MB2)

(2) "I prefer the client to come with committed acquisition ideas...mainly because it is more authentic and more successful business is done that way."

(Director, MB21)

(3) "I think at the end of the day, we try and put up a lot of suggestions but 9 out of 10 things that actually happened, comes from the clients."

(Director, MB14)

(4) "We run a merger and acquisition unit which comprises about 10 people or so and their sole function is to find acquisitions or to find people to buy disposals from other companies. They are always looking for tips in various places and talking to clients...I think, it is fair to say that sometimes, we suggest idea, but in the main, companies themselves know who they are interested because they are operating not only in the market here in the UK but overseas as well."

(Director, MB17)

Respondents in the survey suggested that an acquisition idea could arise from:

A) <u>Opportunistic Developments</u>

- merchant bank or agents in the City hear of opportunities.
- client hears of opportunities.

B) Situational Developments

- triggered off by rival building up a creeping stake, or
- triggered off by rival springing a formal takeover bid.

According to some of the merchant banking respondents, the bid criteria that they received from their clients could either be "fixed" or "free" and depending on the client's wishes, the resultant execution would depend on whether it is:

1) A joint-venture.
2) Disposal or Corporate Divestment.
3) Corporate Diversification.
4) Domestic Acquisition.
5) International Acquisition.

So, contributions of the financial advisers would entail the clarification of takeover objectives and adopting a constructive approach, and in some instances, even dissuading the client if the acquisition idea was unsound.

5.2 Acquisition Study and Evaluation

Having been given the acquisition mandate (assuming the merchant bank is happy with any client), the merchant bank then proceeds to the acquisition planning stage in which acting as financial advisor, it involves itself in the assessment and evaluation of the potential bid candidate. This process involves the house looking into a wide spectrum of financial and non-financial factors associated with bid. It delves into the history of the biddee

company, investigates the market and industry in which the business is located, undertakes a financial appraisal and evaluates its management capability as well as the synergistic implications of the merger and the possibility of advanced market purchase (of the biddee's equity) in order to facilitate the bid outcome especially it it is an aggressive one and other issues listed in Table 5.1 below.

Aspects Investigated	No.	%
history of the biddee company	30	100
investigation into the market and industry	30	100
financial appraisal (extracted/extrapolated data)	30	100
management structure and capability	25	83
synergy of merger	10	33
client's resources	9	30
commercial/industrial logic	9	30
possibility of advanced market share purchase	8	27
investigation into the stock market	7	23
evaluate share ownership pattern/composition	7	23
investigation into future prospects	6	20
evaluate "product fit"	5	17
state of the economy	1	3
computer simulation	0	0

Table 5.1: Acquisition Study and Evaluation Approach Adopted by the 30 UK Merchant Banks Involved in this Study.

Aspects Investigated	No.	%
history of the company	10	100
stock market rating	9	90
financial appraisal	9	90
management capability/quality	8	80
analysis of comparable companies	5	50
computer simulation	2	20

Table 5.2: Acquisition Study and Evaluation Approach Adopted by the 10 UK Stockbroking Firms Involved in this Study.

The factors examined by the stockbrokers in evaluating a bid candidate do not diverge very much from that adopted by the merchant banks and they include looking into the history of the biddee company, its stock market rating, its management capability and the analysis and comparison with similar companies

(see Table 5.2).

The determinants of the line of approach of both types of financial advisers regarding the investigation of acquisition targets may be amplified by the following selective extracts from the interviews conducted with the merchant bankers and stockbrokers:

(a) "More often than not, the client identifies the target but, provided the criteria are reasonably well specified, we will undertake an acquisition study. Where it is likely to be an opposed bid, the best one can do is to look at the last return accounts and the major share movements."

(Director, MB27)

(b) "...the first thing is an investigation into the company, its history, its industry, its future prospects, the stock market position of the company - in the sense, running searches on the shareholders seeing whether major blocks of shares is widely held or whether it is family controlled and in the light of that investigatory work, we move on to an analysis with the client company."

(Director, MB22)

(c) "Don't forget, we have 2,800 companies in the MB16 portfolio where MB16 invested in. We have got those for a start; all categorised into industries the type of industrial locations and so on. So, we can immediately sort out the likely people we want to investigate further. This is extremely important."

(Director, MB16)

(d) "...we have got 80 or 100 companies that we are official brokers to and as a firm of stockbrokers, we have got a research department which specialises in investigation and reporting of the number of industrial sectors. In all these sectors, we, as a firm probably know all the companies involved because our analysts are talking to them all the time, we have got contacts there, we know what they are doing, we know their acquisition programmes...So, there are special cases where we are experts in a particular industry and where we may be able to initiate some mergers or acquisitions."

(Partner, STK7)

In the collection and compilation of acquisition data, the merchant banks usually turn to a variety of sources and channels of information like Companies House, credit agencies, trade publications, stockbrokers' circulars, market surveys, banking links overseas, City contacts(like lawyers, stockbrokers, accountants, etc) internal banking staff, in-house research library, and in big merchant banks like MB12, it can draw on the specialist services of its merger/acquisition unit sited within the corporate finance department.

5.3 Acquisition Checklist

Some writers like Kitching (13)(1973), D.F.Channon, J.M.Stopford et.al.(5)(1975) and P.J.Herbert[1] have focused on the relevance of acquisition checklists as management tools for corporate decision-makers. In this study, 80% of the respondents cited that they possess some form of pre-acquisition checklist to assist them in their bid planning. From Table 5.3 below, it can be discerned that this acquisition tool is universal to both categories of merchant banks.

Acquisition checklist status	Independent merchant bank	Affiliated merchant bank	Total No.	Total %
with checklist	12	12	24	80
no checklist	3	3	6	20
Total	15	15	30	100

Table 5.3: Ownership of Pre-Acquisition Checklist of the 30 UK Merchant Banks Categorised by Groupings.

Effectiveness of a checklist depends not only on its comprehensiveness but rather on the user's ability to interprete its items flexibly to suit each circumstance surrounding a bid. A MB17 director describes the manner in which a checklist should be used, "..it is more

1. P.J.Herbert et.al., "Corporate Strategy & Acquisition Policy," Journal of General Management, vol.6, no.3, 1981.

of an outline structure but it has to be adapted for each particular acquisition. We have in this famous house a basic checklist which covers all the important points but then it might be added to in certain circumstances or subtracted from." On the other hand, drawing from their past experience, some of the merchant bankers also drew attention to the pitfalls linked with over-emphasis on pre-bid checklist. Their main objections being:

a) "We think that checklists are bad as they tend to become stereotype. We do everything here on its merits. It is far better to approach each assignment fresh."

(Director, MB16)

b) "...We take the view that each situation should be looked at in its own merits. I think probably the most important thing to do at the start is to get away from the financial figures, checklist and the legal side and to look at the broader issues whether the business as a whole is the right business. This can be quite useful as things can become very mechanical if you are not careful."

(Director, MB11)

5.4 Loan Facilitation

One of the main advantages that merchant banks has over the other financial advisers like stockbrokers, for instance, is the "wholesale" nature of their overall banking activities supported by their vast financial strength (dependent on the parental affiliation of the individual merchant bank concerned). As such, the merchant banks not only advise on acquisition matters but also are able to assist their clients with the necessary credits or loans to complete the takeover transactions.

All the respondents mentioned that lending is an integral part of overall merchant banking activities but at the same time, in unison, they pointed out that lending does not come under the purview of the corporate finance division, rather, it is the function and jurisdiction of the banking department and their working relationship and approach to the question of loan financing can be seen in this light:

(a) "This does not come under the corporate finance department. For merger and takeover situations...we would allow our banking people to apply the normal banking criteria and do the necessary investigation as to whether we should assist with a loan."

(Manager, MB4)

(b) "We would cover an acquisition either with a loan from our banking department or we work with ____ Ltd. It depends from case to case. Or, in certain circumstances, we have been part of a syndication of bankers which have put together the necessary loan financing."

(Firector, MB3)

(c) "We have a credit committee and that is the committee that approves all loans on which I sit...and obviusly, for financing an acquisition for which we are acting as advisers, the decision is undertaken by the banking side. We, in the corporate finance, acts as liaison."

(Director; MB23)

Thus, in the arena of merchant banking, from this empirical study, it is evident that loan financing is a separate banking function, distinct from corporate finance activities. With data on loan financing extracted from the case studies of 30 contested bids supplemented by those involving conglomerate takeovers of American oil companies, it is possible to get a notion of the degree of help given by merchant banks to assist their clients in bid transactions (see Chapter 8).

5.5 Bid Timing

During the course of the numerous interviews conducted with the merchant banks in the City, contested bids have been compared very frequently to military warfare and like a strategist planning a military offensive, timing is of the essence if a satisfactory outcome is to be achieved. In an empirical study conducted by Professor Pickering[2] on acquisitive firms embarking on takeovers, he too mentioned that this factor was taken into account by the corporate executives involved in formulating the bidding strategies. This survey reveals that with the exception of one traditional house, 97% of the respondents mentioned that timing is a strategic factor, an integral element of the overall bid strategy. The rationale influencing the merchant banks on this issue is highlighted below:

(a) "...one times the offer at the nadir of the company's fortune and from then on, things are going with you and the market is going with you as well."

(Manager, MB10)

(b) "From our investigation and it seems to us that the timing is not ripe, we would make our views well known. In the end, I guess, we would abide by the wishes of our clients unless we think it is so patently wrong... I think our advice should be on a whole range of strategic aspects and timing is one of the factors."

(Director, MB22)

(c) "I think it is very critical...critical in the the strategic sense. Most target companies are acquired when they are in some form of difficulties; may be because it is low yield, lack of liquidity, their growth pattern has run out, they are looking less attractive and their P/E multiple has fallen dramatically."

(Director, MB14)

(d) "The best time is when the target company has produced a poor interim figure or forecast.

2. J.F.Pickering, "The Causes and Consequences of Abandoned Mergers," Occasional Paper 7906, UMIST, 1979.

> So, when a target is down and out and committed publicly for saying how difficult things are...you put in a bid and there is not very much more that one can say. If, you are acting for a very large company, even though the thing goes slightly wrong, all that it means is that they have spent £X too much. It is not going to affect the company overall. But, if it was going to be a company of almost equal size, obviously, prudence is very important because the company can be ruined by bad acquisitions."
>
> (Director, MB25)

The merchant banker holding the slightly divergent notion regarding the essence of timing based his arguments on these grounds:

> "Quite often, it is worth going in before the results are published because then, at least you know where you are. Sometimes, if you go in after the results are ananounced, they are already 3 months out of date (or more) and you are in blind territory. It is never the right time to make a bid because sometimes it is not that much cheaper in the sense that it is never the right time ever to make an issue because market conditions are not right. There is always a better time to do it and so, in fact, mainly if you want to do it and if there is no major impediment, you do it."
>
> (Director MB2)

From the answers given, it is possible to divide the rationale influencing the timing factor into 2 broad classifications:

1) More immediate/opportunistic timing consideration.

2) Broad issues of timing consideration.

From the evidence provided by Table 5.4 on page 91 from the tactical point of view, a great majority of the merchant bankers favour initiating their bids coinciding with poor financial performances of their target compa-

nies (80%). Sometimes, this consideration may not be paramount if a rival offeror bids for the same target company (60%) for under this circumstance, an immediate response is needed to prevent the victim from falling into the competitor's hands. As this study dwells on contested bids rather than mergers, it should be emphasised that all of the considerations and rationale mentioned here are more applicable in the context of aggressive takeovers. If the proposed takeover is a recommended one, then the timing element becomes less crucial.

In Chapter 8, an attempt is made to correlate this perception (launching the bid to coincide with the publications of depressed corporate results) with the data provided by the 30 case studies to see whether in practice, merchant banks subscribe to what they advocate in theory.

Strategic Timing Considerations	No.	%
(a) More Immediate/Opportunistic Timing Consideration		
poor interim or annual results (tactical aspect)	24	80
presence of rival bidder(s)	18	60
execute transaction according to client's wishes	10	33
coincide with poor profit forecasts	7	23
coincide with market reaction to corporate results	4	13
coincide with press reaction to corporate results	2	7
availability of large blocks of shares	1	3
bid when target is 'digesting' its acquisition	1	3
(b) Broad Issues of Takeover Timing		
how well you know the target company	7	23
nature of bid (if recommended, timing insignificant)	6	20
life cycle of the biddee company	5	17
dependent on strengths/weaknesses of both companies	4	13
biddee's stock market performance and cycle	1	3
client's financial/forecast calender	1	3
how biddee is going to change	1	3
when share undervaluation is not apparent to the biddee	1	3

Table 5.4: Timing Consideration As An Integral Part of Bidding Strategy.

5.6 The "Sighting Shot" Strategy

During the course of the survey, the views of some 10 merchant banking respondents (the second merchant banking survey) were taken with regard to the "sighting shot" strategy. Their responses highlighted, viz.,

a) Tactical advantages related to "sighting shot."
b) Tactical disadvantages related to "sighting shot."
c) Determinants underlying its application.

The interviewees, in general, were in favour of the "sighting shot" strategy but they recognised its shortcomings. A veteran director of MB3 believes that, "There is a tendency for some merchant banks to go in too low with the consequence that it doesn't work and also, you give people the chance to rally their defences more effectively. I can remember one famous fight where, with hindsight, had the bidder go in with a higher price, I don't think it would have failed."

Table 5.5: Determinants and Application of the "Sighting Shot" Strategy In Aggressive Takeovers.

(a) Tactical Advantages	No.	%
to extract data from biddee to estimate its worth	7	70
to entice a major shareholder to accept	5	50
to draw out a rival bidder	4	40
to identify the potential highest bidder	3	30
the possibility of getting away with it	1	10
(b) Tactical Disadvantages		
generate adverse relation from shareholders	3	30
if bid is too low, it strengthens the defence	2	20
dependent upon market conditions (success in one situation and failure in another)	2	20
(c) Determinants Underlying Its Bid Application		
share ownership structure (biddee company)	5	50
nature of the bid i.e. whether controversial	3	30
depends on who is the opposition	3	30
adopt 'one shot' approach in depressed market	1	10
dependent on bidding philosophy of client company	1	10

This strategy, it should again be emphasised, is normally used in conjunction with a hostile bid or in circumstances where the bidder and its financial advisers lacked sufficient financial data about the biddee or is tactically motivated by the desire to entice a major shareholder to accept or, even draw out a rival bidder in the market (see Table 5.5 on page 92). This strategy should also be flexible enough to enable the bidder to inflate the price if needed.

5.7 Acquisition Financing (Terms of Consideration)

Generally, acquisition financing can be divided into 2 main types, namely:

1) Cash financing.
2) Equity ("Paper") financing

Devising the right terms of consideration is a critical part of acquisition planning. This section endeavours to examine some of the basic factors guiding the merchant bankers in their choice of selection regarding takeover financing. Thus, the question asked was: "In making a bid, what factors influence the form of bid consideration or acquisition financing?" The answers given by the interviewees can generally be segmented into 8 sub-headings, viz.,

1) The bidder's position.
2) The biddee's position.
3) Rationales for using cash.
4) Rationale for using shares.
5) Financial consideration.

6) Tax consideration.
7) Stock market factors.
8) General factors.

From Table 5.6 (see pages 95 and 96), it can be seen that in devising the terms of consideration (sometimes called "financial packaging") to suit a particular bid, the merchant banks will examine and evaluate a wide range of financial and non-financial factors. The determinants influencing the selection of either cash or equity or a mixture of both instruments are attributable to such considerations as the liquidity position of the client (47%), the control threshold desired by the client (40%), the ability to get a good deal for the bidder (30%), the need to accommodate the biddee's wishes (87%), tax deferment benefits (77%), the need to mitigate potential earnings per share dilution (70%), gearing consideration (63%) and other factors listed in the interpretative frame of Table 5.6.

Additionally, the merchant banks will also take into account, factors like the cost of funds to its clients, possible constraints imposed by the bidder's own Articles of Association, the market reputation of its client, the current interest rates and the ability to underwrite new equities. From the interviews, some merchant bankers implied that cash seems to be a more popular acquisition medium and in Chapter 8, an attempt is made to examine the validity of this observation with the [illegible] national figures for acquisition financing over the last 5 years as well as with the empirical data drawn from the case studies of contested bids spanning the 1979-81 period.

To amplify on the determinants associated with acquisition pricing a cross-section of the merchant bankers' observations is outlined below:

i) "It depends on the requirements of both com-

Table 5.6: Determinants of Terms of Consideration Evaluated by UK Merchant Banks in Bid Pricing.

	No.	%
(A) The Bidder's Position		
Liquidity and balance sheet of the bidder	14	47
Control position desired	12	40
Solicit best terms for the client company	9	30
Relationship with the company's banker	6	20
How cheaply can the bidder acquire target company	6	20
Articles of association determinant	4	13
Cost of funds to client	2	7
Dependent on the corporate size of the bidder	2	7
Bidder's business reputation	1	3
Effect on the bidder's working capital	1	3
(B) The Biddee's Position		
Dependent on biddee's wishes	26	87
Desirability to retain some degree of control	8	27
(C) Financial Consideration		
Dilution of EPS	21	70
P/E multiple	19	63
Consolidated gearing position	13	43
Contributions of earnings and assets	9	30
(D) Tax Consideration		
CGT liability (deferment through share exchange)	23	77
Preference for cash by some wealthy vendors	1	3
(E) Stock Market Factors		
Stock market ratings of both parties	16	53
Issue equity if bidder has high market rating	10	33
Issue equity if stock market is buoyant	1	3
Issue cash if stock market is uncertain	1	3
(F) General Considerations		
Question of negotiation	17	57
Relative growth prospects	10	33
Control position of biddee shareholders	7	23
Interest rates prevailing	7	23
Whether acquiring assets or earnings	6	20
Ability to underwrite	3	10
Question of relative size	3	10

(F) General Considerations		
Goodwill factor	1	3
Exchange control implications	1	3
Share placing	1	3
Whether assets are sited overseas	1	3
(G) Rationale for Using Cash		
Easily assessed by the small investors	18	60
It is a relatively cheap medium	15	50
Issue cash if there is surplus cash	3	10
Issue cash if the target is relatively large	1	3
Minimal dilution in earnings	1	3
Issue cash in recession	1	3
(H) Rationale for Using Shares		
Tax advantage (deferment from CGT)	20	67
Attractive form of investment	7	23
Preference of institutions to retain quality shares	5	15
Deferred shares attractive to high tax payers	1	3
Debentures unpopular with high interest rates	1	3

panies concerned...some vendor companies will often require consideration in cash because that gives them flexibility. Because of Capital Gains Tax, vendors can defer payments of capital gains by accepting some form of paper, either shares or loan stocks."

(Director, MB24)

(2) "This will depend on the situation. Thus, if a client has excess cash, cash will likely to be offered while a client's high share price would encourage the use of shares."

(Director, MB25)

(3) "I think, one would normally prefer a cash to a share exchange, and again, it depends on the size of the company that one is taking over. It depends on a number of other factors like what is the government of the day or how are they treating shareholders in the form of Capital Gains Tax...The whole of the approach has to be very flexible."

(Manager, MB10)

(4) "You really have to look at the pattern of the interest rates, the pattern of the stock market, the control position of the shareholders, the position of the vendors and buyer, their ability as well as relationship with their bankers to give credit for this sort of dealing."

(Director, MB16)

(5) "Obviously, family-controlled business are very concerned about control and depending on the size of the acquisition, they may prefer cash and less shares."

(Director, MB17)

(6) "If for example, you are going after a company which in all honesty, its paper could come under attack but you have got to bid shares, the sensible answer is the underwriting of shares."

(Director, MB3)

(7) "In a bullish market, you tend to have high share prices thus it makes it easier to issue shares and in a recession, people are worried about their borrowings, then you can resort to the cash instrument."

(Manager, MB4)

The stockbrokers' views on acquisition financing adhere closely to those of the merchant bankers. This is not surprising in view of the fact that they work very closely with their merchant banking counter-parts in contested bid transactions and as the head of the corporate finance department of a leading UK international stockbroking firm sees it;

"It depends on circumstances. In any trading position between 2 parties, it depends on who wants to do the deal and who really is dictating and controlling the terms of the deal. If the offeror has a good market rating and is a well known listed company, then I see no reason why the offeree shouldn't take the paper of the offeror company. The better the standing and the market rating of the offeror, the more likely one will be able to recommend its paper as acceptable currency. Again, another factor which often comes into calculations and judgement is Capital Gains Tax."

(Head, Corporate Finance, STK10)

5.8 Determinants of Premium Pricing

Devising a suitable premium over the market price is probably one of the most important acquisition functions to be formulated by a financial advisor devising an aggressive takeover as this factor plays a decisive role in influencing the outcome of an unrecommended takeover bid. Hayes and Taussig (10)(1967) suggest that some experts, as a rough guide, have advocated an opening premium of 20% and this could further be inflated according to circumstances. On this particular aspect of bidding strategy, this study attempts to determine:

i) Factors influencing the formulation of bid premium.

ii) Level or size of opening premium favoured.

(i) Factors Influencing the Formulation of Bid Premium

In many ways, the logic, concepts and tactical considerations related to premium pricing are similar to those governing bid pricing (see Table 5.7 page 100) Broadly speaking, they can be segmented into 3 areas of considerations, viz.,

a) Financial/Market factors:

Here again, factors like the biddee's real worth, its PER, net asset backing, the market value of comparable shares, bidder's own market rating, return on investment, liquidity of client and the anticipated synergy from the merger are taken into account by the merchant bankers.

b) General Factors

In addition, factors like the commercial logic of the proposed merger, client's corporate objectives, relative growth prospects, shareholders' reaction to the takeover and revalation of vital trade/commercial data by the biddee will also be incorporated in the formulation of premium pricing by the advisers.

c) Tactical Ploys

The takeover specialists like their military counterparts, create and design tactical ploys to be used in hostile takeovers in order to camouflage a crucial move or objective or confuse its victim,

	No.	%
(A) Financial/Market Factors		
The biddee's worth	25	83
The price earning ratio	21	70
Net asset value	20	67
Market valuation of comparable shares	19	63
The market rating of the bidder	18	60
The return on investment	14	47
Liquidity of the bidder	13	43
Synergy from the proposed merger	11	37
Profits of both companies	11	37
Historical market performance of the biddee	9	30
Profit forecasts history of the biddee	7	23
Premium paid for similar takeover	7	23
Going concern valuation	4	13
Dividend payout	1	3
Biddee's earning power	1	3
Whether shares (biddee) widely or thinly traded	1	3
(B) Tactical Factors		
To entice a controlling block of shares	16	53
To fob off a rival bidder (use high premium)	14	47
Whether real or sighting shot bid attempt	13	43
High premium (for tightly held shares)	11	37
Whether buying assets	11	37
Whether contested or recommended	9	30
Small premium when stock market is bullish	1	3
(C) General Factors		
Commercial/industrial logic of the merger	24	80
The bidder's corporate objectives	11	37
Relative growth prospects of both parties	11	37
Dependent on anticipated shareholder's reaction	10	33
Revelation of substantial trading information	7	23
Dependent on anticipated press reaction	3	10
Biddee's potential as an independent company	3	10
Nature of the bid (i.e.whether controversial or not)	1	3
Dependent on negotiation	1	3
Biddee's share value in relation to asset value	1	3

Table 5.7: Factors Influencing Premium Pricing.

shareholders, stock market and financial advisers in the opposing side. Likewise, a premium may serve to entice a substantial or key shareholder or, even sometimes, to deter a would be competitor from entering the contest.

(ii) Level/Size of Premium Desired

In discussion, it was stressed by the interviewees again and again that although there are fundamental principles guiding approaches to bids, each situation is unique and demands a flexible, individual approach. Likewise, on the level of opening premium associated with aggressive takeovers, the various houses caution against subscribing rigidly to a fixed criterion.

Activity sampling technique indicates that there is broad consensus of opinion of both independent and affiliated merchant banks on this issue (see Table 5.8 and Table 5.9 on the next page). It is significant to note that more independent merchant banks subscribed to the belief that it was impossible to be precise about the level of bid premium than affiliated merchant banks. Possibly, this was because of their longer exposure to corporate advisory work and as such, they could see the difficulties related to this acquisition issue more distinctly than their competitors. This is not surprising if we recall that Mr.Philip Shelbourne (formerly with Rothschilds and Samuel Montagu) cautioned against adopting an absolutist view on this matter.

5.9 Pre-bid Stake

In a second interview conducted with some merchant banking respondents, the bankers were asked:

Table 5.8: Views of 30 UK Merchant Banks Regarding the Level of Premium Pricing Analysed by Activity Sampling Method (Independent Category)

Opinion	ΣR	N	K	P%	L	P (max)	P (min)	Comparison of P value with that of affil.m.b. *
more than 20%	4	15	2	26	23	49	3	40
less than 20%	3	15	2	20	21	41	0	33
impossible to answer	6	15	2	40	25	65	15	7
undecided	2	15	2	13	17	30	0	20

K = 2 (5% significant level)

Opinion	ΣR	N	K	P%	L	P (max)	P (min)	Comparison of P value with that of indep.m.b.**
more than 20%	6	15	2	40	25	65	15	26
less than 20%	5	15	2	33	24	57	9	20
impossible to answer	1	15	2	7	13	20	0	40
undecided	3	15	2	20	21	41	0	13

K = 2 (5% significant level)

Table 5.9: Views of 30 UK Merchant Banks Regarding the Level of Premium Pricing Analysed by Activity Sampling Method (Affiliated Merchant Banking Category)

* Affiliated merchant banks

** Independent merchant banks

where ΣR = total reading of each observation
N = total number of observations
K = 2 (95% level of confidence)
P = percentage of occurence in a particular activity
L = limit of error

* For a clearer explanation of the interpretation of activity sampling tool, please refer to page 56.

"Is a pre-bid stake crucial to your acquisition strategy?" Again, the answers hinge on the merits of each bid transaction. Whilst in theory, it is wholly logical, rational and tactically feasible based on the premise that a strong pre-bid controlling position would enable the offeror to gain a vital foothold which act as a springboard for the eventual takeover of the target company (and hence, the decisive outcome of the battle), in practice, however, the application of this strategy is dependent upon 2 sets of factors as evident in Table 5.10 below.

Pre-bid Share Acquisition Determinants	No.	%
(a) The Market Factors		
Move price (market) against the bidder	4	40
Dependent on whether it is a widely/thinly traded share on the stock market	2	20
(b) The Shareholding Factors		
Dependent upon who holds the vital share component	4	40
Sellout possibility by some unhappy investors	1	10
Action facilitated by freely held shares i.e. no major shareholders	1	10

Table 5.10: Tactical Considerations Related to Pre-bid Share Acquisition Strategy Evaluated By UK Merchant Banks.

The principal issue in building a pre-bid stake is whether it moves the market price significantly against the bidder. An executive of MB7 stressed this aspect:

"It varies from case to case. In some cases, it is a positive disadvantage and those would be where you would be bidding for a market where the shares are fairly limited. I mean, I can think of one or two instances where you go and try and buy more than 10,000 shares, say in a company with 100,000 shares issued, you will move the market against you and therefore, you are bidding up the price that you eventually have to pay."

It should also be pointed out that in the

UK, under the City Takeover Code, the bidder can only build up his stake to the 29.9% threshold. At the 30% level, he officially triggers off Rule 34 which makes it mandatory for him to effect a formal offer for the target company. Companies that have acquired more than 30% of other companies' shares without subsequently launching full bids for them are deemed to be in breach of Rule 34 of the Takeover Code (the Code is quasi-judicial in nature and has no force of law) and once detected, can be expected to be sanctioned and reprimanded by the City watchdog bodies like the Takeover Panel, the Council for the Securities Industry, the Stock Exchange and even face an investigation by the inspectors appointed by the Department of Trade under Section 165 (b) and Section 172 of the Companies Act, 1948. The 2 most notorious cases currently involving the flouting of Rule 34 involved 2 foreign companies buying and 'warehousing' overseas more than 30% of the equity capital of two British quoted companies, i.e. St.Piran and Dunlop (see Chapter 10 and also Appendix B, Group 2 Case Studies).

From the data on pre-bid stake extracted from the 30 case studies, it is possible to detect whether in actual contested takeovers, merchant banks are inclined towards this practice of acquiring in advance (together with their clients) a substantial pre-bid controlling position and additionally, whether this holding contributed towards the resultant outcome of the takeover attempt (see Chapter 8).

5.10 Improved Offer

In devising the price associated with aggressive bids, the tactical manoeuvres open to the financial advisers hinge on two possible options, namely:

(1) Start with an opening price but with flexibility for revision (for instance, the entry of a rival bidder normally necessitates such a revision).

(2) Start with an opening price which is to be the final price as well (for example, where the bidder is able to exert a powerful leverage owing to the financial and trading difficulties of the biddee).

The situation becomes more acute if a rival bidder comes into the contest and the takeover bid evolves into an auction. At this juncture, the decision to improve or revise the original bid price is determined by a multitude of considerations which can be discerned from Table 5.11 below.

Determinants of Improved Offer	No.	%
(a) The Bidder's Position		
commercial logic (credibility of the merger)	28	93
dependent upon client's wishes	25	83
justification for increase (based on biddee's worth)	20	67
dependent upon client's financial resources	19	63
synergy arising from the proposed merger	8	27
(b) The Biddee's Position		
asset revaluation undertaken by the biddee	22	73
new information emanating e.g. profit forecast	19	63
attitude of the biddee to the takeover	19	63
line of defence adopted by the target company	17	57
biddee's shareholders' reaction to the offer	10	33
(c) General Considerations		
possibility of a counter bid	26	87
the market response to the first bid	23	77
whether there are irrevocable acceptances	15	30
the initial acceptances level	10	33
recommendation by key shareholders	10	33
the press reaction to the takeover bid	10	33

Table 5.11: Factors Influencing the Merchant Bankers' Decision to Improve their Bid Price.

From the above empirical evidence, during a hostile bid, the merchant bank's decision to escalate or inflate the bid price is influenced by a variety of factors such as the commercial logic of the proposed merger (93%), the emergence of a rival bidder (87%), the need

to adhere to the client's wishes (83%), the market response to the original offer (77%), asset revaluation undertaken by the target (73%), the true worth of the biddee (67%), the attitude adopted by the biddee (63%) and the line of defence/arguments deployed by the biddee and its financial advisers (57%).

The strategic decision to initiate an aggressive bid based on either a "sighting shot" approach or a "one shot" strategy, would obviously differ from case to case as, "The bank's advice will depend on tactical considerations. For instance, if it is expected that the bid will be opposed by the target company, an initial bid price will frequently be made at a level allowing for an increase should the target company after the initial bid make public, facts such as the revaluation of property or a profit forecast which would justify an increase in the bid price." (Director, MB27).

From the data provided by the case studies on contested bids spanning the 1979-81 period, it is possible to evaluate the inclination of merchant banks towards both bidding approaches i.e. the "sighting shot" or "one shot" offer (please see Appendix Table C.3).

5.11 Enlisting the Board's (Biddee Company) Recommendation

We now come to the stage where the biddee and its financial advisers endeavour to approach the target company to open negotiation and try to induce the vendor to sell and recommend the merger to its shareholders. The establishment of a dialogue between the 2 companies (involving perhaps many levels of organisational authority and professionals) commences with the first informal meeting and is normally followed through until negotiations

fail and are terminated, in which case a bid may be launched over the heads of the board to the shareholders, or an agreement is attained and a merger occurs. However, the salient objective of the whole exercise is to avoid bitter, protracted and costly takeover battles and to strive for a mutually beneficial merger in the interests of the company and shareholders at large. 93% of the merchant bankers interviewed were in favour of soliciting and enlisting the support of the board of directors of the target company before launching a takeover while the remaining 7% took the qualified stance that in cases where it is considered to be counter-productive or impractical to do so, then no approach should be made (see Table 5.12 below).

Bankers' Perception	No.	%
Yes	28	93
Qualified Yes	2	7
Total	30	100

Table 5.12: Views of UK Merchant Banks Regarding the Solicitation of the Biddee's Board Approval Prior to the Formal Takeover Bid.

The rationale which underpinned the importance of accessing the board is stated by a director of MB23 in this light; "Basically, we would always try...In these days, the Office of Fair Trading, political pressures and whatever, I think it will become more difficult for contested bids to succeed. It is always worthwhile to get them on your side."

5.12 Accessing Major Shareholders of the Target Company

A critical determinant in the outcome of a closely contested takeover is the availability of

large blocks of shares held by dissident shareholders. If a bidder initiates a bid with a 29.9% platform and in the course of the acquisition, manages to enlist the support of some key shareholders to give him the critical 50.1% majority voting control, then the bid outcome is almost always decided in his favour. Although approaching the biddee's board to solicit a recommendation is a clear cut process, it is not so with regards to accessing key shareholders (who may be private investors or institutional shareholders like pension funds, unit trusts, investment trusts) owing to the dangers of possible leakage of price-sensitive information, the creation of a false market, insider trading and unequal treatment of shareholders. Additionally, the Panel imposes a quite stringent rule i.e., General Practice No.10 regarding this matter.[3] In the light, there were mixed responses from the interviewees of this bid factor with 33% assenting and another 30% ascribing to a more circumstantial stance ("sometimes"). On the other hand, 27% felt it was too risky and were not in favour of this practice leaving a small minority undecided (10%) as reflected in Tables 5.13 and 5.14 (page 109).

Activity sampling technique (see results in Tables 5.13 and 5.14) indicates that overall, there is general consensus of opinion of both groups of merchant banks on this issue with the exception that the affiliated merchant banks exhibited a greater degree of indecisiveness over this matter possibly attributable to the fact that they lacked wider exposure and experience in corporate advisory work related to contested deals.

To get a better insight into the rationale of the merchant banking advisers on this important acquisition issue, a cross-section of their views is given on page 110.

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3. "During the course of a takeover or merger transaction or when such is in contemplation, neither the offeror, the offeree company nor any of their respective advisers shall furnish information to some shareholders which is not made available to all other shareholders." (Takeover Code GP.10)

Table 5.13: Views of Independent Merchant Banks Regarding Accessing Key Shareholders Before A Takeover.

Opinion	≤R	N	K	P%	L	P (max)	P (min)	Comparison of P value with affil.m.b.
Yes	6	15	2	40	25	85	15	27
Sometimes	6	15	2	40	25	65	15	20
No	3	15	2	20	21	41	0	33
Undecided	0	15	2	0	0	0	0	20

K = 2 (5% significant level)

Opinion	≤R	N	K	P%	L	P (max)	P (min)	Comparison of P value with indep.m.b.
Yes	4	15	2	27	23	50	27	40
Sometimes	3	15	2	20	21	41	0	40
No	5	15	2	33	24	57	9	20
Undecided	3	15	2	20	21	41	0	0

K = 2 (5% significant level)

Table 5.14: Views of Affiliated Merchant Banks Regarding Accessing Key Shareholders Before A Takeover

where ≤R = total reading of each observation
N = total number of observations
K = 2 (95% level of confidence)
P = percentage of occurence in a particular activity
L = limit of error

* For a clearer explanation of the interpretation of activity sampling tool, please refer to page 56.

(1) "There are all sorts of restraints talking to people in their capacity as substantial shareholders and there is also danger of losing security and starting rumours. Whilst in theory, it is always desirable, however, it is not always practical."

(Head, Corporate Finance, MB26)

(2) "There was at one stage, the practice of holding meetings with selective shareholders i.e. the large institutional shareholders which would place them as insiders and obviously, people will be more careful about this kind of thing after the 1980 Companies Act."

(Manager, MB7)

(3) "...the corporate finance department is liable to be in possession of a certain amount of privileged and sensitive information. Here, one should consult the Takeover Code and the rules in it are deliberately drafted so that they leave a lot of scope for the Panel to give discretion."

(Director, MB23)

5.13 Documentation and "Draft Meetings"

Once the bidding and tactical moves have been devised by the corporate finance team involved and agreed to by the client at the highest level, the drafting of the documents comes into the forefront. The documentation process as practised in all the Accepting and Issuing Houses is done by the corporate finance team usually in conjunction with a firm of established City lawyers eminent in corporate law. At a later stage of the survey, some of the interviewees were asked to describe the background work and meetings involved in the drafting of bid documents and some of their experience and observations are detailed below.

(a) "What happens is that we, as the offeror's advisers, organise and arrange the drawing up of the documents. We draw up ourselves usually in the house the first draft and that will be done by somebody like myself

and a director. We then have it circulated. We also have as many draft meetings as required with our client at which we have the representatives of the offeree and the offeror in a non-contested situation (you only have the offeror in a contested acquisition) plus their legal advisers. We always use a leading client firm of solicitors who specialise in this work to help us out with the documentation."

(Manager, MB4)

(b) "...we have always drawn up our own offer documents. Again, it is relatively flexible. We would draw up an offer document in its crude form and then call in our corporate lawyers to assist. If it is a contested offer you have only one client so you will have less proofs. The interesting thing about acquisition is that no one transaction is ever identical from another one."

(Director, MB17)

(c) "Well, in my experience, most offer documents frighten the life out of the board of directors of the client company. This is quite rightly so because they tend to be very complicated and they also need to pay attention to the multiplicity of the requirements of the Companies Act, the Prevention of Frauds Act, the Stock Exchange Listing requirements, the City Takeover Code...the board is not familiar with it because it is a fairly esoteric subject."

(Director, MB2)

(d) "Some of my colleagues spent a lot of time drafting the documents. These draft meetings, you know, can go on all day with 15 people or more in the boardroom of the merchant bank picking over one mere paragraph for about 2 hours before coming to some form of agreement."

(Director, MB18)

5.14 Emphasis in the Offer Documents

We have seen that the merchant bankers together with other professionals devote a great deal of effort and time in "draft meetings" and the documentation

process due to the rigid requirements of the various City bodies on this matter. From sieving through a substantial cross-section of bid documents from 1978 to 1981, it can be deduced that a takeover circular is not just merely a financial prospectus as it also reflects the line of approach and bidding strategies connected with the takeover itself and as such, the merchant banks were asked what they would emphasise in their bid circulars. For convenience, their observations can be examined under 3 headings, namely:

(a) The line of emphasis and strategy regarding the bidder's position.

(b) The line of emphasis and strategy regarding the biddee's position.

(c) Tactical and other considerations.

Factors relating to the bidder's position that merchant banks said that they might emphasise in the document were the industrial logic of the merger (93%), its control position of the target company (77%), its superior management (50%), its strong performance (50%) and the anticipated synergy to be derived from the merger (30%). Obviously, such factors are stressed to influence shareholders and the press in favour of the bidder. It is hoped that such arguments would establish the biddee's shareholders' confidence in their potentially new investment. At the same time, the takeover tactician seeks to undermine the shareholders' confidence in the biddee in both financial (poor performance, lack of profit forecast, for instance) and non-financial terms (for example, weak management).

This "pincer" approach may be fortified by a series of tactical and other takeover ploys designed to discredit the offeree and cause the shareholders to switch allegiance through persuasive arguments revolving around the progress of both companies, the attractiveness

of the bid premium and the general benefits to be gained from acceptances (see Table 5.15 on page 114). This is illustrated by extracts from some of the interviews:

(a) "Obviously, you try to emphasise on the advantages to the other shareholders. You spell out the financial advantages...you try to spell out the deficiencies as you see them in the management of the company you are trying to acquire. You have got to create a lovely story for yourself and you have got to criticise the other side."

(Director, MB14)

(b) "If you have got a handsome premium that obviously is an advantage. As for the past record of the offeree, if the company has a bad history of either making losses or making profits that aren't met, then that again, makes it more likely that you will win the support of the shareholders because they may not trust their board so much."

(Director, MB6)

(c) "The document has become so long, anyway, and people don't read it. So, what you have got to do is to spell out what the offer is and you try to explain and emphasise the logic of the merger and also the increase in capital value."

(Director, MB18)

It should be pointed out again that, although the emphasis and line of approach adopted in the bid circulars may conform to a general framework, its substance, style and arguments should be highly flexible and adaptable to allow for possible arguments and counter-attacks from the opposing party. The second circular and subsequent bid documents are to a very large extent dictated by the nature of defence put up by the biddee and its financial advisers. So, there is a tendency for both the offeror and offeree to pace their documents according to evolving circumstances with initial documentation being patchy, i.e. brief in substance and form, with the stronger emphasis and arguments reserved for the later stage when the outcome is most crucial. For a clearer

	No.	%
(A) The Bidder's Position		
The industrial/commercial logic of the merger	28	93
The bidder's prebid controlling position	23	77
The bidder's management strength	15	50
The good performance of the bidder	15	50
Stress synergy	9	30
Emphasise good profit forecasts	3	10
(B) The Biddee's Position		
The lack of profit forecasts	21	70
Offeree's weak management	17	57
Offeree's poor performance	15	50
Poor profit forecasts record	9	30
Poor acquisition record	6	20
Low return on assets	2	7
(C) Tactical & Other Considerations		
Attractive premium	23	77
Discredit the biddee whenever possible	19	63
Assurances on employees future	17	57
Benefits (financial/non-financial) from accepting	14	47
Increase in capital value	14	47
Support by biddee's board or key shareholders	13	43
Determined by the biddee's situation	13	43
It is a fair and reasonable offer	10	33
Contrast progress of the two companies	8	27
Increase in income value	8	27
Determined by how controversial is the deal	1	3
Opportunity cost of biddee's investment	1	3

Table 5.15: Emphasis In Offer Documents and Its Determinants

perspective of this matter, please refer to Appendix A, Group 1 Case Studies. To get a deeper insight on this issue the reader should also consult the 10 case studies (Appendix B).

5.15 The Press In Takeover Situations

The reason why some would be bidders shunned away from aggressive takeovers is because of the wide publicity given by the financial media to controversial acquisitions. There is also the fear of its image being tarnished as a "corporate predator." For the merchant banks, acting in their capacity as financial advisers (either in bid or defence), wide coverage and exposure by the leading press of their role is vital to their domestic and international merchant banking reputation especially if the transaction is ingeniously devised and executed in their clients' favour. Undoubtedly then, the main financial press exercise considerable influence in the decision-making and bid/defence approach of the City merchant banks and other financial advisers.

In 1968, possibly the first ever survey was undertaken by J.W.Thompson to assess the relative importance of the various factors which influenced the decisions of private investors, institutional shareholders, and stockbrokers as well as financial advisers in the GEC/AEI battle. A primary aim of this survey was to evaluate the effectiveness of media advertising used during bids. In 1979, the "Financial Times" commissioned a somewhat parallel study, this time regarding the Sime Darby/Guthrie takeover. This recent survey reveals that the following sources of media information were used by the City merchant banks, stockbrokers and institutional investors (see Table

5.16 below)

Media Publication	Investors & Advisers Choice	
	No.	% (n = 46)
Financial Times	44	96
The Daily Telegraph	25	54
Investors Chronicle	15	33
Daily Mail	12	26
Sunday Telegraph	9	20
The Economist	9	20
Financial Weekly	3	7
The Observer	2	4
Evening Standard	1	2
Evening News	1	2
Guardian	1	2

Table 5.16: Media Sources Used by UK Financial Advisers During Mergers/Acquisitions.

Source: adapted from Financial Times "A Case Study: Takeovers" F.T.,London, 1979, p19.

The question asked by the "Financial Times" survey was, "Which publications (or journalists) in particular would you take notice of?" As opposed to this during the second survey, the researcher asked, "How crucial is the press in times of mergers and contested bids?"

As a whole, the interviewees said that they take into consideration the influence exerted by the media during the acquisition process and according to the view put forward by the house of MB4:

"Certainly, institutional investors are influenced by what they read in the influential press especially in the 'Lex Column' in 'Financial Times' than what you see in the small newspapers. I think public relations which includes the press is very important and we certainly make an effort to make sure that the press understands what is happening and we are always ready to talk to the press. Usually again, it depends on personalities and particular circumstances. We normally encourage our clients to talk and brief the press."

This view is also closely held by a veteran merchant bankers who feels "...particularly in defence (I suppose, the offeror as well), it probably pays to keep

the top financial press in tune with your thoughts. In other words, if you are making or defending an offer, before you send out your documents, it would be as well to have along, if you like, the top 3 or 4 financial editors just to inform them of the background of your defence or revised offer...Undoubtedly, the 'Financial Times' and 'The Daily Telegraph' carry the most weight."

(Head, Corporate Finance, MB9)

From the data derived from the case studies, in Chapter 8, the press and editorial comments related to some of the more controversial bids are analysed and highlighted to discern the degree/extent in which the press influences the strategic thought process of the UK merchant banks in contested bid situations.

5.16 Determinants of Success

Once a hostile bid is mounted and the whole machinery set in motion, if stiff resistance is encountered, then, depending on the size of the takeover, the line of approach adopted, the image of the bidder, the stature of the financial advisor, etc, the event is usually well covered by the leading financial media particularly if the bid is highly controversial like that of the Lonhro's bid for SUITS and the House of Fraser. The interaction of so many internal and external factors makes it sometimes fairly difficult to pinpoint precisely the main determinant which effectively decided the outcome of the contested deal. As such, the interviewees were asked; "What are the most important factors in determining whether a contested bid is successful or not?" At this juncture, it should be noted that "success" as used here should be interpretated as attaining effective corporate control in the takeover bid

and not whether it is a good bid or not.

Determinants of Success	No.	%
price adequacy (fairness and good premium)	24	80
industrial/commercial logic	20	67
bidder's performance (market rating/image)	17	57
support from key shareholders	17	57
tactics/arguments employed by both bidder/biddee	16	53
recommendation from board of directors	13	43
level of pre-bid stake	11	37
assurances regarding management, employees, etc	11	37
past record of target company	9	30
press comments	9	30
the general stock market conditions prevailing	6	20

Table 5.17: Determinants of Success in Contested Bids As Perceived by the Merchant Bankers Participating in this Survey.

The prime determinants perceived by the merchant banks which contribute to the success of a contested offer are factors like price adequacy, i.e. a fair and reasonable offer supplemented by a handsome premium while the non-financial determinants would embrace such considerations as the commercial logic behind the bid, approval and support from key investors, recommendation from the board of directors and other attributes listed in Table 5.17 above.

In the evaluation of success in an aggressive takeover, according to a senior MB30 director of corporate finance:

"Price will be a very important consideration. The institutional shareholders' perceptions and the industrial logic are rated very high and in certain cases, institutions let it be known that unless there is industrial logic even though the price may exceed what they would hope for their shares to stand in the market place for a certain number of years, they would not without recommendation from the biddee's board accept such a demand."

This perception is given further credibility by a director of MB27 who feels that "...the important factors are to put together a financial package attractive to the recipient shareholder to persuade him that the

bidder is at least good, if not superior in various aspects, for instance, in product mix, in its activities, its management...The bid is sometimes regarded as successful if it gets to 51%, in other cases, depending on the structure of the group, it is necessary to get 100%."

The factors which contributed to the positive outcome of contested bids are analysed and discussed more fully in Chapter 8 (see also the detailed discussions of the 40 case studies contained in Appendices A and B).

5.17 Summary/Review

Bidding strategies as we have noted are deeply inter-related with various financial and non-financial factors. The merchant bankers in their capacity as financial advisers generally prefer their clients to identify their acquisition targets in order to ensure a firmer commitment and also, a higher degree of bid success. Timing constitutes an integral part of the overall acquisition strategy and as far as possible, merchant banks like their takeover bids to coincide with poor financial performance of the target company, for obvious reasons but, this is not always possible due to the intervention of rival bidders. An opening premium of about 20% was widely quoted as reasonable and the terms of consideration are basically influenced by 6 principal factors, viz., the client's position, the aggressor's capability, the financial rationale, tax considerations, stock market performance and general factors. The merchant banks also favour soliciting the board's recommendation for the merger but there was less general agreement on pre-bid approach to key shareholders because of institutional and non-institutional constraints on such a practice.

In general, the offensive strategies are devised within broad principles but not at the sacrifice of flexibility. The approach taken is generally strongly influenced by the position and condition of the client, the preformance of the biddee as well as capitalising on the vulnerability and weaknesses of the target company.

From the merchant banker's viewpoint, pricing, industrial logic, the strangth of the bidder, the support from key shareholders are salient factors which determine the final outcome of a contested bid.

In the next chapter, we shall be examining how merchant banks go about contesting an unwelcome takeover bid as well as studying the main tactical issues related to defensive strategies.

CHAPTER 6

DEFENSIVE STRATEGIES

6.0 Introduction

In their role as financial advisers to a multiciplicty of clients, the merchant banks also have to service their clients by defending them against hostile or unwanted takeovers. In assuming the role of a defender, likewise, the merchant bank and its supporting services in the City (example, the stockbrokers, lawyers, accountants) have to react swiftly by planning, devising, co-ordinating and pacing their defensive moves in order to win maximum shareholders support for their cause. This section then endeavours to focus on certain important defensive issues. It examines how merchant banks would react to a hostile bid, their reactions to defensive strategies suggested in the literature, the rationale behind their choice of defensive strategies, the tactical implications of the distribution of shares,(example between the board of directors/ families, institutions and the public), the main emphasis to be placed in defence circulars, the different interests to be taken into account and also the non-price determinants taken into consideration in their decision-making process.

Additionally, owing to the significance of profit forecasts to defence and the controversy surrounding its usage, its influence on shareholders' views as perceived by the financial advisers themselves is discussed. Because of the Panel's ruling that when used in takeover situations, it has to be vetted by financial advisers, an attempt is also made to ascertain the problems and difficulties encountered by the merchant banks in reviewing forecasts as well as their

views on deviant forecasts in view of the current trend towards litigation by dissatisfied clients over this issue.

Essentially, the approach taken throughout the defence is affected by:

(a) Whether the client is agreeable but want to contest the takeover on the ground of price, or

(b) The client rejects the bid totally and wants to defend its independence.

6.1 Factors Influencing the Formulation of Defensive Strategies

During the second survey, the respondents were asked; "How do you go about devising your defensive strategies?" Overwhelmingly, the respondents cited that speed was essential in countering the unwanted takeover to prevent the initiative from remaining in the bidder's hands. Normally, this was done by writing to the company's shareholders and telling them to do nothing and not to react to the unsolicited bid (see specimen of a 'typical' holding statement issued by Guthrie Corporation in Appendix Table C.4.1, p438 as well as other circulars related to mergers and acquisitions in Appendix C).

Fundamentally, the merchant bank tends to determine its line of defence with reference to:

1) Timing of the bid,
2) Nature of the bid,
3) The bidder's position,
4) The biddee's position, and
5) Tactical and general considerations.

From Table 6.0 on the next page, it can be

Factors	No.	%
(A) Timing		
In relation to the client's performance	4	40
Client's ability to forecast	1	10
Expected or unexpected?	1	10
(B) Nature of the Bid		
Whether offering cash or equity	3	30
Whether the bid is fair	2	20
Whether a low bid with marginal prebid stake	2	20
Kind of P/E multiple offered	1	10
(C) Tactical Considerations		
Defence adheres to the line of attack	7	70
Dependent on the 'firepower' of the bidder	3	30
Pace the defence and conserve core strategies	1	10
Dependent on the length of the takeover	1	10
Exploit bidder's weaknesses	1	10
(D) Bidder's Objectives		
Whether same line of business or diversification	2	20
Whether inclined on asset-stripping	1	10
(E) Client's Attitude & Performance		
Attitude of client to the takeover attempt	6	60
Where defences are and types of defences available	5	50
Whether the merger is logical to client's business	3	30
How is client expected to perform	3	30
Whether there are any dominant shareholders	2	20
Is it in shareholders' interest?	2	20
Performance of client's shares in the market	2	20
Whether new or existing client	1	10
Why is the company attractive?	1	10
Client's viability as an independent company	1	10

Table 6.0: Factors Influencing the UK Merchant Bankers Formulation of Defensive Strategies to a Hostile Bid.

seen that the defence is adapted to the approach of the takeover (70%). The line of counter-attack will also be determined to a large extent by the attitude of the client company to the offer (50%). Having weighed these factors, the merchant banks then proceed to evaluate and examine what defences are available and where they are located (50%). Other factors taken into consideration will also include aspects of the time in which the bid was initiated (40%), the terms of consideration offered (30%), the rationale behind the takeover (30%), shareholders interest (30%)and the composition of shareholding of the client company (30%). From the tactical viewpoint, the defender will also try to anticipate the length of the contested battle, the bidder's "firepower" (i.e.his financial capability to improve the offer) and equally important, to capitalise on any weaknesses displayed by the bidder.

These points are both illustrated and amplified in the following verbatim reports of statements made by merchant bankers during interviews:-

1) "You react very fast. There are a number of strategies like asset revaluation, dividend increase, profit forecasts and the commercial rationale.... You work out your tactics and strategies as to how to defend the company at the same time making sure that you are able to hopefully keep the share prices above the figure of the bid."

(Director, MB10)

2) "Two things you need consider. Profitability - have they struck you on a bad year? The second thing which is equally useful is in fact the added value because you can always say to shareholders; 'It is not worth accepting X because if we remain independent tomorrow, you can have Y'. This is very effective because it forces the offeror either to abandon the case or to have some market value rather nearer the asset value."

(Head, Corporate Finance, MB9)

3) "...it depends on the circumstances of the case. You have got to look at the whole series of fac-

tors; How the biddee company has performed? How it is expected to perform? How the share prices have performed over the last few months? What kind of P/E multiple the bidder is offering? Perhaps, more fundamental, what is the attitude of the offeree company to being acquired? I mean, the defence will vary according to the nature of the offeree and the offeror company, whether they are in the same line of business or completely different."

(Director, MB21)

4) "The first thing you do is to write to your own shareholders and say, 'Don't do anything until you have heard from us.' Then you start. You of course look to the strengths of your own business and if you look to the weaknesses of their business, you ask yourself, what are they offering? How can we persuade shareholders that you are actually worth a bit more. Strategies again depend on the year end. How are you doing as a company? How you think the other company is doing? You contact your own established public relations firm, you get the views of the stockbrokers, you analyse the share register and you try all you can to discredit the offeror."

(Director, MB16)

6.2 Defensive Strategies

We saw earlier on the literature survey pertaining to defensive measures in chapter 2 that this subset of contested takeover has been relatively neglected by writers and researchers. With this in mind, in order to generate new data on this area and to widen our knowledge about the relative utility of particular defensive tools, we then asked the merchant banks and stockbrokers to rate some selective counter-measures advocated by writers like Moon (19)(1959), Wooldridge (32)(1974), Taussig and Hayes (10)(1967) and Weinberg <u>et.al.</u>(28) (1979). The perceptions of both groups of financial advisers are listed in Table 6.1 on the next page. Defensive techniques like property revaluation (100%), dividend increase (100%), profit forecast (100%) and

	Defensive Tool	Merchant Bank(No.)	% (n=30)	Stock-brokers(No.)	% (n=10)
1.	asset revaluation	30	100	10	100
2.	sale of assets	13	43	2	20
3.	capital reconstruction	7	23	0	0
4.	dividend increase	30	100	10	100
5.	bonus/scrips issue	2	7	2	20
6.	profit forecast	30	100	10	100
7.	legal action	11	37	5	50
8.	appeal for loyalty	30	100	9	90
9.	placing	21	70	6	60
10.	effect an acquisition	16	53	3	30
11.	acquire bidder's shares	0	0	1	10

Table 6.1: Perceptions of 30 Leading UK Merchant Banks & Stockbrokers Regarding the Functional Applicability of Some Common Defensive Measures Advocated by Literature of Corporate Finance.

Other Defensive Tool	No.	%
commercial logic	17	57
"white knight"*	16	53
market operation (driving up the market price)	13	43
enlisting trade union support	9	30
lobbying the M.M.C.for a reference	9	30
enlisting the support of employees	8	27
enlisting the aid of the media	4	13
discredit the offeror	4	13
exploit any dissent on the bidder's board	1	3
emphasise on new products	1	3

Table 6.2: Other Defensive Measures Advocated by the 30 Merchant Banks Selected for this Study.

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* White Knight may be defined as a buyer preferred by the target company to the original bidder.

appealing to shareholders' loyalty seem to be highly regarded by the City's leading financial advisers. Besides the listed defensive strategies, the merchant bankers were also asked whether there were other strategies which they favoured using in the defence of their clients. Their answers are shown on Table 6.2 in the previous page.

Throughout the defence, choice of combination of moves is very much a matter of judgement as is the case with tactics by the bidder. This is brought out strongly in verbatim excerpts from the record of some of the interviews:-

i) "The great thing about this is that each case is different. If you are going to defend a company which has no money, then it is vital that you fight on the asset basis. So, when you are defending a bid, you are defending on the fact that people are not offering enough for your company or also if the papers say that the bid is bad. So, if your company has a bad run and not making money but has enormous assets, then your defence will be to revalue your assets and point out that you can do all sorts of things to make profit come up."

(Director, MB3)

ii) "'White knight' is a possibility... Making oneself indigestable...the prime consideration of making a bid for another company should be justifiable in its own terms rather than just making sure that you are not taken over yourself although sometimes it is very difficult to make a clear distinction between the two...Again, if the bid motive was entirely financial and if they have no industrial logic you should also emphasise that."

(Director, MB30)

iii) "Dividend is always important because one of the factors that the bidder will always play on is the higher income that he will be offering and after that will inevitably provoke the biddee to increase his dividend to match what the aggressor was offering. I don't think bonus issue can fool anybody, but occasionally, it can generate very mild confiden-

ce. On the other hand, legal action is very rare unless you have the EEC or the American connotations but this practice is beginning to creep in. Appealing to shareholders' loyalty is often called the 'Roast beef and Union Jack defence'- when all else have failed, you then wave the Union Jack and shout, 'Roast beef and Yorkshire pudding!' and it is always amazingly successful. As to lodging shares with friendly factions, to a limited extent, the old defensive strategy used to be to resort to acquiring something from your friendly company for shares thereby issuing new shares to the friendly company but again, that is one of those things that the Panel outlawed but occasionally, you can find someone who is prepared to come into the market and buy your shares."

(Director, MB14)

iv) "When I was defending _____ & _____ a long time ago, it has a number of feminine shareholders. Now, we wrote to them with a good over-pouring of emotions and it was authentic. It is not going to win the battle against the institutions but it makes the difference. The other factor which is important in defending your business is to extol your virtue...The strengths of a good corporate finance department is to work with your lawyers, your accountants and your stockbrokers in developing and refining your tactics. In defence, it is like politics. You don't win this thing. You wait for others to make mistakes and then capitalise on them. You try to lay traps for them but you have got to keep the initiative all the time and the Sime takeover failed because of tactical blunder. They were so close on price but they didn't leave themselves the flexibility to tip the scale."

(Vice-chairman, MB12)

v) "Again, X and Y, we conducted an extremely successful campaign to get that bid referred and it was referred. Whereas in appealing to shareholders' loyalty, you have got 3 types of shareholders; the board and their families, the big institutions and the small investors and it all depends on the pattern of ownership...the small investors and institutions tend to be loyal to their boards. That is why I say that not many bids go through against the board's wishes."

(Director, MB6)

vi) "Revaluation of the corporate assets is important but you will find that the offeror is basing his offer on what he thinks is the up-to-date value of the offeree's assets. Therefore, I think you will not often be getting much mileage out of the revaluation of the asset because there is a sporting chance that this up-to-date value will be taken into account by either the market or the offeror when he makes the takeover bid. He may be trying to get the company on the cheap but my instinctive feeling is that you will only get some mileage out of the revalued assets."

(Head,Corporate Finance, STK3)

The 11 defensive strategies listed in this section are compared against those used in situational context of the 30 case studies to discern whether in practice, defensive measures are only confined to these mentioned few or whether, defensive techniques are indeed diverse and comprehensive in range as opposed to the fundamental ones normally mentioned by the literature of corporate finance (see Chapter 9 and Appendices A and B pertaining to the 40 case studies).

6.3 Share Ownership Pattern and Influences on Tactical Approaches in Defence

Table 6.3: Share Composition and its Influence on Defensive Thinking & Tactical Moves of Merchant Banks.

		No.	%
(A)	Ownership Vested with Board/Family		
	easier to defend (if control is deeply entrenched)	26	87
	influences the bidder to negotiate	19	63
(B)	Ownership Vested with Institutions		
	influence by financial calculation ('cold-blooded')	17	57
	more reasonable and reliable	14	47
	possible to canvass their views	8	27
	constitutes an effective block to the bidder	6	20
	dilemma if there is cross holdings in bidder/biddee	5	17
	easier to defend	5	17
	some holders tend to be loyal to the board	3	10
(c)	Ownership Vested with the Public Investors		
	more loyal to the board i.e.easier to defend	20	67
	high accessibility	11	37

From Table 6.3 on the previous page, it can be discerned that the merchant banks do perceive that their defensive task is greatly facilitated if the board of directors or the family holds the dominant stake and voting control (87%). On the other hand, there is widespread belief amongst the merchant banking community that institutional holders are more "calculating" or "cold-blooded" as their decision-making process is ultimately determined by their investment strategy (57%). However, 17% took the view that institutional shareholders can display strong loyalty to the board and another 20% expressed confidence that a concentration of voting power in institutional hands would effectively block an unsolicited bid attempt. Yet a substantial number of merchant banks (67%) felt that, relative to other shareholders, independent investors tend to be very loyal to their board irrespective of financial performance.

The influence of ownership structure on the defence is illustrated by the following cross-section of comments by merchant bankers interviewed.

a) "If the proportion of the shares held by the board is substantial, it is easier to defend. Similarly, if a large proportion is held by the institutions, but ultimately, institutions will sell when the price is irresistable. The private investors are less easier to get to and there are many individuals and there are many reasons for buying and selling but they have more lasting loyalty to their board."

(Director, MB22)

b) "The critical factor is the number held by the board. If you have got boardroom control and a united board, then you have no problem although you have to take the interest of the other shareholders into account...the trend is for the general public to be loyal to the board, but for institutions, they are persuaded more by financial arguments..than the general public."

(Director, MB6)

c) "Some institutions have a reputation of always supporting the board and do not sell out without the board's recommendation. For the small shareholders, the best thing is to appeal to loyalty and some form of jingoistic flag waving approach. Very often, for large significant shareholders, the only approach is to talk to them personally."

(Head, Corporate Finance, MB20)

d) "If the board of directors hold 51% you need nt worry. With our institutional clients, we, with with our stockbrokers do keep in touch with them very closely and we certainly do cultivate our institutional shareholders. If a lot of shares are held by the members of the general public, our defence circulars will tend to appeal to shareholders' loyalty more so than institutions."

(Director, MB23)

e) "If the board of directors own 40% of the company, then that company is in a much stronger position to defend an unwelcome bid. But, what the directors must do is to consider their position not as individuals but in the light of the shareholders as a whole. As for the institutional shareholders, their power is immense ...A company which has no institutional shareholders is in a much stronger position to fight off an unwelcome predator than a company where institutions own 20%, 30% or 50% of the share capital."

(Director, MB21)

In a recent study commissioned by the Institute of Chartered Accountants (ICAEW), Prof.R.J. Briston and R.Dobbins surveyed the growth and concentration in the ownership of British industry by various financial institutions. They discovered that the ownership of ordinary shares of UK listed companies by various institutions had grown substantially since 1966 and by 1975, the combined financial institutions had already owned 43% of the publicly quoted shares.[1] Similarly, in 1971, in the USA, the SEC instituted a major survey into the growth and ramifications of institutional capitalism and the subsequent findings in

1. R.J. Briston & R.Dobbins, "Growth & Impact of Institutional Investors," London, ICAEW, 1978 (chapter 7).

Table 6.4 (refer to page 133) shows that by the mid-1970s, American institutions had gradually increased their ownership level of the total shareholdings in the New York Stock Exchange.

In view of the strong significance attached to share composition by the merchant bankers interviewed, its influence on success or failure of the defence in the case studies is analysed in Chapter 9. Also, the implications of rising institutional shareholdings for future takeover bids are discussed and evaluated in Chapter 10.

6.4 Choice of Defensive Strategy

Following discussion of the various types of defensive strategies isolated for testing, the merchant bankers were asked; "What factors bear upon the choice of defensive strategies?" From the responses tabulated in Table 6.5 on the next page, it can be seen that the merchant banks focus on the shareholders' interest, the basis for contesting the offer and the performance of the client itself. Other factors taken into account include actual market reaction to the bid, press reaction, shareholding structure, asset situation (for example, the availability of surplus assets), the ability to forecast, industrial logic and the bid price. These factors are taken into account wholly or selectively by the defending merchant bank.

To reinforce the above observations, verbatim reports of some of the answers given by interviewees are given below:

1) "It depends on the company. If the company's prospects are superb, then the emphasis is on the prospects. If the bidder is out to strip

Table 6.4: Estimated Holdings of NYSE Stocks (1949-75)

Year	Institutions	Other Holders	Total (%)
1949	14.5	85.5	100
1965	22.7	77.3	100
1973	31.8	68.2	100
1974	33.4	66.6	100
1975	33.6	66.4	100

Source: adapted from R.J.Briston & R.Dobbins, "ibid," p206.

Factors	No.	%
(A) Financial Performance		
History and state of the biddee	24	80
Its ability to forecast	17	57
Profit forecasts record	13	43
Bidder's weaknesses	12	40
Prospect for dividend increase	11	37
Future earnings	11	37
(B) Market Factors		
Market reaction to the takeover	22	73
Offer price	16	53
Market conditions	8	27
(C) Shareholders' Position		
Whether shareholders are better/worse off	25	83
(D) Basis for Contesting the Bid		
Price consideration	19	63
Industrial logic	17	57
Independence	4	13
(E) Miscellaneous Factors		
Press reaction to the bid	21	70
Share pattern of client company	19	63
Asset situation	19	63
Shareholders reaction to the offer	16	53
Whether it is an asset-stripping situation	10	3
Type of industry of both parties	1	3

Table 6.5: Factors Bearing Upon the Merchant Banks' Choice of Defensive Strategy.

assets, then you look at the assets and a revaluation of the balance sheet. It entirely depends on the circumstances."

(Director, MB3)

b) "Well, the forecast where the offeror based his arguments and his latest published information. If you are in a position to forecast better profits then you obviously capitalise on that. Where he has used your balance sheet value and appears to be considerably out of date, then you lay your major emphasis on your asset revaluation."

(Director, MB27)

c) "In corporate finance and in defence, things don't fall into black and white and the idea that you can sort of plug all the information into a sort of computer and come out with the right corporate advice just isn't right. This is not how it works. It is feel and flair."

(Director, MB24)

d) "The main thrust depends on what the basis of your defence is...depends on the basis that you do not wish to be taken over or on the basis of every company has its price and that the price offered has to be a fair price and the emphasis will be as strong as circumstances allow. Some circumstances, you have got a number of defensive features which you can incorporate. Some will require very minor emphasis whereas in other defensive situation, it might be a very major emphasis because you haven't got a lot of ammunitions."

(Director, MB10)

e) "It depends on what the state of the economy is. Where the bidder is trying to buy them? And, if you feel that they are trying to buy you at the low point in your profitability and therefore, you can't increase your dividend or make a forecast, you have then got to turn to the other defensive options, for example, asset revaluation. The other thing of course is the 'white knight' strategy. This is the ultimate strategy if all else fails."

(Director, MB14)

6.5 Line of Emphasis in Defence Circulars

Circulars to shareholders and the press are an important part of the defence in all contested takeovers. Consequently, the merchant bankers were asked asked; "What salient information do you normally incorporate in your defence documents?" Their replies are analysed in Table 6.6 below.

INFORMATION & EMPHASIS	No.	%
(a) Financial Factors		
net asset value	24	80
performance of client (profitability/forecast)	21	70
inadequacy of offer (low P/E offered)	18	60
future dividend policy	17	57
under-valuation of assets	14	47
trading and earning propects	14	47
contrasts track record of both companies	11	37
contrasts share performance	5	17
(b) Non-Financial Emphasis		
reasons for shareholders to retain investment	24	80
the board's rejection of the merger attempt	23	77
benefits arising from independence	19	63
property revaluation	19	63
commercial arguments	17	57
shareholders loyalty	16	53
lack of synergy arising from merger	13	43
strong management of client company	8	27
support of key investors	6	20
self-glorification	6	20
discredit the bidder	5	17
highlight valuable contracts	2	7
highlight valuable products	1	3
emphasise on the stable labour force	1	3

Table 6.6: Salient Information Emphasised in Defence Circulars Favoured by the 30 UK Merchant Banks.

Perhaps rather obviously, most merchant bankers attempt to adduce reasons why shareholders should retain investment in the company (80%). The net asset value, the performance of the client, low PER offered, future dividend policy and the undervaluation of assets are the other salient factors frequently cited by the merchant bankers.

A cross-section of the perceptions of the merchant banks on this issue is presented below:

1) "Obviously, it is the equity in that it is to those people that you have to appeal to save yourself from being acquired. It is really what is applicable for that particular operation. If the board holds large equity holding, then their stake becomes critical. As for institutions, they have their own criteria for assessing performance and are more likely to be interested in the short term premium than the required allegiance. The onus, therefore, is on the client company to show why the premium shouldn't be received by the shareholders in a bid situation."

(Director, MB30)

2) "...state of the company including the history and where relevant, future profitability. Information which is felt that the shareholders need in order to come to an appropriate decision as to whether to accept the offer or not. Some of this information is laid down in the London Stock Exchange Regulations. Where appropriate, discredit the offeror."

(Director MB25)

3) "It depends. In a defence document you are really writing a letter to your shareholders and you can only nail it down to three things; one is the current profitability and dividend, the second is assets and the third is prospects. Defending yourself on prospects is a very dangerous thing to do because, the better your prospects are, the more attractive you will be and the more reason for the predator to get a crack at you! The classical defence and line of emphasis is 'Up with the dividends and look at our assets.'"

(Head, Corporate Finance, MB26)

4) "It all depends on anyone of the factors that we have talked about earlier, i.e. profit performance, asset revaluation and the attitude of the board of directors and if you know that you have got a big institution which is against the offer, then you might get his permission to quote his views as well."

(Director, MB14)

5) "I think one of the things you can say, I don't think that is that secretive anymore is that what you have got to incorporate in your defence document would depend on your strategy. You never have one defence circular unless the bidder goes away. I mean, what happens is that the offeror makes an offer which you reject and then he sends out his offer document and you send out yours to your shareholders. You know, then he may increase his offer and you don't want to have everything in your first defensive document because you won't have any room to manoeuvre in the second."

(Manager, MB4)

This last comment is particularly interesting in that it reflects a widespread view that a good number of persuasive points should be held back from the first defensive circular for subsequent use. For a more comprehensive insight into information listed in defence documentation, please refer to the two groups of case studies listed in Appendices A and B which delve extensively into the counter arguments and line of defence employed against unwanted takeovers.

6.6 Sectional Interests Evaluated by Financial Advisers Before Recommendation for Merger

A defending merchant bank is its capacity as a financial advisor to a client company in a contested bid situation is invariably confronted with a multitude of considerations in coming to a decision as to whether it should recommend the terms offered. This is important because UK companies operate within a very complex and sometimes ambiguous legal, commercial and institutional framework. In view of this, the respondents were asked; "What interests do you take into account in advising your client's board to accept the terms offered?"

Interest Evaluated	No.	%
Shareholders interest	30	100
Employees interest	30	100
Reputation (merchant banking) in the City	22	73
Interest of the board of directors	11	37
Interest of the local community	7	23
National interest	5	17

Table 6.7: Interests Evaluated by Merchant Banks Before Recommending Acceptance of a Bid.

It is evident from Table 6.7 above that merchant banks lay heavy emphasis on the interests of the shareholders and employees above all others as both a matter of principle and to protect their merchant banking reputation. Reputation was cited frequently during the survey as of importance to visibility and survival. Its protection then is clearly an important determinant of actions taken. The merchant banks attached secondary importance to the interests of the board of directors, the community or national interest based on the premise that:

"...it is very tempting for a board of directors who don't have any shares in the business to provide their recommendations to shareholders to accept an offer if they are given promises of wonderful service contracts, pensions, perks and all the rest of it. I think one has got to be very careful in advising the board as to how far its interest lay with its shareholders can diverge...With the employees, you have an obligation to ensure that their rights are not impaired as to the terms of their employment, wages and pension rights. I think, it is unrealistic to believe that we financial advisers would accept significantly lower price for shareholders if the price of doing that is to fund a large amount of somebody else's pension rights. Our own reputation in the City is very important because it is the only way we can get our business and if people question our integrity, well, we have lost our principal asset. So, I think you are hired by the shareholders to do the best you can for them in so far it does not conflict with our own views of what is right and wrong.. Nobody pays a damn to national interest although they pretend to."

(Head, Corporate Finance, MB26)

6.7 Non-Price Determinants Influencing Bid Acceptance

We have just examined the interests that a defending merchant bank has to take into account in advising the acceptance of a hostile bid. Likewise, from the pilot study, it soon became apparent that there were other factors besides price that influenced a merchant bank in making its decision process. Consequently, the respondents were asked: "What other conditions apart from price would you advise a corporate client to take into account when deciding whether or not to accept an initial or a final offer?"

For convenience, the non-price determinants influencing the defending merchant bank's decision-making process may be divided into 6 sub-groups:

1) Interests of shareholders, employees, management and the community's interest other than price
2) Offeror's image cum capability
3) Future implications for client's business
4) Line of approach adopted by the bidder
5) Reactions to the bid
6) Other considerations

From the tabulated evidence in Table 6.8 on the next page, it is apparent that the interests of those involved with the client again assume prime importance in the eyes of the merchant banks. Other factors evaluated taken into account included the possibility of a counter-bidder or a 'white knight' coming to the rescue, the general reaction of the leading financial media, the line of approach adopted by the offeror (i.e. whether the bid greatly undervalued assets or earnings), trading prospects, suitability of the bidder, the strong desire of the client to remain independant and the ability of the bidder to improve his bid price.

Non-Price Factor	No.	%
(A) Interests		
Interest of shareholders	23	77
Treatment of employees	20	67
Preservation of management	15	50
Community's interest	1	3
(B) Offeror's Image/Capability		
Suitability of the bidder	8	27
Ability to pay more	6	20
(C) Reaction to Bid		
General press reaction	16	53
Erosion of shareholders' loyalty	7	23
Level of acceptances to initial bid	5	17
Level of acceptances to revised bid	3	10
(D) Line of Approach Adopted by the Bidder		
Undervaluation of assets	13	43
Undervaluation of potential earnings	9	30
(E) Long Term Implications for Client's Business		
Trading prospects	11	37
Future development of business	10	33
Desire to remain independent	6	20
Effect on biddee's business	3	10
Benefits of increased financial backing	3	10
Future price of new products	1	3
(F) Other Factors		
Possibility of other bids emerging	7	23
Basis for justifying future by rejecting bid	5	17

Table 6.8: Non-Price Factors Evaluated by UK Merchant Banks Before Bid Recommendation

To amplify these points, four of the replies to the question are reported verbatim below:

1) "There are so many factors. If the client wants to reject the offer, why? Is it because management is too comfortable preserving its own little niche? Does it undervalue the company in asset terms? What will happen has become increasingly important to the client's employees and in fact, the new Companies Act focus on this aspect."

(Director, MB2)

2) " Well, there again, it is a question of judgement. How much do you think you would get out of the bidder? How much do you actually want to do a deal with him and to shut out other bidders or contenders? There again, it is one thing that an advisor has to be very careful of because, if you do a 'closed deal' with the first chap that comes along, you have got to get the board's backing."

(Head, Corporate Finance, MB26)

3) "It depends basically on whether you feel you are going to be able to justify the future for the company at a higher price than the ones that you have been offered. If, it is in the interests of the shareholders and employees, then you should do something positive for them rather than preserve your own position and fight bitterly to the end."

(Director, MB30)

4) "I think if there is a good price but if the intention towards the employees is appalling, then you have got to take a stand here and fight on that basis."

(Director, MB23)

6.8 Profit Forecasts In Contested Situations

Although profit forecasts are not mandatory during a contested takeover, this factor is advocated as a defensive measure by, for instance, Weinberg et.al.(28)(1979), Hayes and Taussig (10)(1967),

Pickering (22)(1979) and Arnfield (3)(1967). A great majority of the merchant bankers interviewed were conscious of the importance of profit forecasts in a defence. Contributions of forecasts were seen from 3 perspectives:

i) Financial,
ii) Tactical, and
iii) The merchant bank's.

Perspective	No.	%
(A) Financial Perspective		
indicator of a company's profit	26	87
it measures the value of a company's business	18	60
it provides a picture of current performance	13	43
it is a reflection of trading prospects	9	30
indicator of management record	7	23
value the company on future earnings stream	7	23
reflection of growth potential	4	13
it is relevant when a company is making a loss	1	3
assists in the market rating of the client	1	3
(B) Tactical Perspective		
it induces the bidder to pay more	21	70
influences the level of dividend increase	10	33
generate greater shareholders loyalty/confidence	5	17
one of the main planks of defence	2	7
(C) Merchant Bank's Individual Perspective		
afford advisers to meet other client's executives	1	3
influences willingness to undertake the defence		

Table 6.9: Perceived Accruements of Profit Forecasts to Shareholders In Contested Bid Situations.

From Table 6.9 above, it may be seen that most of the merchant banks value profit forecasts as important barometers of the company's profitability (87%). Furthermore, a profit forecast serves as a measure of the value of the company's business (60%), provides a picture of current performance (43%) as well as influences the dividend level. As such, a good profit forecast may induce the bidder to pay more for the client company. For these reasons, as long as good results can be forecast, the merchant bankers customarily use profit forecasts in

meeting hostile bids.

The importance and utility of a profit forecast is illuminated by the following extracts from the views of the merchant banks:

1) "If I am a shareholder, I will look to my directors to tell me enough so that I can make a judgement. If they are three-quarter of the way through in a year, an average company director ought to tell me what the year's end is going to be, the results, I mean. They certainly have that greater knowledge than I do and I will certainly want that information. They are vital in formulating one's decision - whether one accepts or rejects a bid. Certainly, when you get three-quarter of the year ahead of you, a company is under pressure. When you don't make a profit forecast, shareholders are going to assume that you are not making one because the company is not doing very well."

(Head, Corporate Finance, MB20)

2) "In general terms, it is desirable to have a profit forecast so that shareholders when called upon to decide to accept an offer or not, know or have some idea of what the company is currently earning or what the company is likely to earn. However, it is not easy to achieve a forecast when a company, for instance has just announced its results for the year. As such, it is very difficult to forecast 12 months in advance that quickly depending upon the nature of the company's business. You have to ask yourself whether it is better for the shareholders to have no forecast or whether they have a forecast which is not reliable."

(Director, MB21)

3) "It gives people an idea of what is the value of their own company. In general terms, you look at the prospects of the company and see the way it is going...assuming that you are into the financial year in which the shareholder has no financial information, it could be a highly relevant factor if the company is going to make a substantial loss for that year and that could be extremely relevant."

(Executive, MB15)

4) "...the extent of which it can influence shareholders' opinion would depend, I suppose, partly on the past record of the company and partly on the historical pattern of profitability. If it is a consistent forecast, people would probably take the forecast for granted, but if the profits have gone down the last 5 years and in your forecast, you say that profit is going to double the next year, people might take it seriously."

(Director, MB6)

6.9 Difficulties Related to Forecasting

A profit forecast can be defined as an estimate of future profitability or earnings based upon given assumptions. In view of the fact that it is only an estimate, it is significant that the investing public should have reasonable confidence in its accuracy. Perhaps for this reason, when used in mergers and contested acquisitions, the Panel requires the financial advisers to examine formally, endorse and report the forecast. This places a heavy burden of responsibility on the merchant banks who are sometimes unhappy about the way in which this exposes them given the difficulties frequently encountered (see Table 6.10 below).

Difficulties Related to Forecasting	No.	%
Most clients refuse to provide informative assumptions	15	50
Tendency for the board to exhibit over-optimism	13	43
Difficult to forecast ahead if results were just out	8	27
Underlying assumptions are more difficult to formulate	7	23
Constrained by Panel rulings	4	12
Tendency for clients to focus on general trends	3	10
Constrained by patchy data in some annual accounts	3	10
Sometimes, have to screen the forecast in a day	1	3
Sometimes, inquiries are not translated into orders	1	3
Acutely dependent on auditors (case of new clients)	1	3
Determined by the quality of information and people	1	3
Acutely dependent on the bank-client relationship	1	3
Dilemma of no forecast or providing a bad forecast	1	3

Table 6.10: Difficulties Related to Profit Forecasts As Perceived by the 30 Major UK Merchant Banks.

Half of the respondents interviewed cited that perhaps the greatest difficulty associated with screening profit forecasts is the reluctance of their clients to provide informative or meaningful assumptions (50%). This problem is further compounded by the general inclination for most boards to exhibit over-optimism in forecasting (43%). The forecasting calender too may constitute a problem area particularly if the results have just been published (27%). These difficulties confronted by merchant banks in reviewing forecasts are illustrated by the following replies during the survey:

1) "It basically is difficult because we go out and vet the forecast in a day whereas the client may be spending a couple of months compiling it and the auditors, a few weeks auditing it. We do it in a day! So, it is very easy to miss the whole blatant thing."

(Director, MB13)

2) "One of the sad problems with the regulatory authorities is that the Panel said that in any sort of defence conducted in a takeover, if the chairman has made previous remarks about future profits they have to be reported on and this has significantly inhibited company chairmen from making remarks about future profitability because they are frightened that if they are not careful, they get taken up by the Takeover Panel."

(Director, MB24)

3) "...it is very difficult to forecast 12 months in advance that quickly depending upon the nature of the company's business. Certain business for example, have an order period of next to nothing - in heavy engineering, they might have an order book which stretches for 9 months while other businesses have order books which last perhaps for a week...and there are circumstances which is extremely difficult to forecast accurately."

(Director, MB21)

4) "I think it all depends on how up to date the published information of the company is. What one is up against is whether it is wise for some directors to expose themselves to

making that particular profit forecast where it is difficult to make a forecast. As you know, there is no prize for a forecast going the other direction."

(Vice-chairman, MB12)

5) "Most companies are unwilling to provide informative assumptions. Nine times out of ten, they give assumptions that the unexpected doesn't happen and are not prepared to say openly that 'Our profit margins will be £X and our turnover will be £Y.' Instead, they focus on general trends and no unforeseen circumstances...So, at the end of the day, you almost get a mass of meaningless assumptions."

(Director, MB14)

In a close-ended question, the respondents were also asked what they perceived to be the main problems in forecasting itself. Their responses are tabulated in Table 6.11.

Problem	No.	%
Unreliable forecasting tool	23	77
Insufficient time	19	63
Nature of the business	14	47
Unreliable accounting methods	7	23
Limited market data	6	20

Table 6.11: Main Problems Perceived by Merchant Banks In Conjunction With Profit Forecasts.

6.10 Monitoring of Profit Forecasts

Only 30% of the respondents made an effort to monitor the profit forecasts where they were involved in the screening and the endorsement of it. The majority of the respondents does not indulge in such a practice as it is time consuming and partly it is done by the Takeover Panel. The role of the Panel in monitoring forecasts in bid situations will be discussed in Chapter 9.

6.11 Deviant Forecasts

During the course of this research spanning the 1979-1981 period, the press reported several law suits brought against merchant banks over inaccurate profit forecasts. Consequently, it was an opportune time to monitor the views of the various merchant bankers on this crucial but sensitive issue.

Factor	No.	%
(A) Perceived Liabilities		
all parties are equally liable	19	63
board of directors are liable if a forecast is fraudulent	16	30
advisers are innocent if assumptions are reasonable	10	30
obligation to explain deviations to the Panel	8	27
grounds exist for client's recourse to litigation	5	17
(B) Implications Arising from Deviant Forecasts		
it affects the merchant banking reputation	16	53
directors obligation to redress a deviant forecast	3	10
advisers incur a moral responsibility towards client	3	10
danger of inducing or creating a false market	1	3
lessons to be drawn for all parties involved	1	3

Table 6.12: Perceived Liabilities and Implications Arising From Deviant Profit Forecasts.

According to some merchant banks, a possible cause of a deviant forecast may be that the biddee never attained its full financial year due to the transfer and integration of its business into that of the buyer. From the evidence apparent in Table 6.12, quite a number of merchant banks (63%) felt that the liabilities arising from inaccurate forecasts should be equally blamed on all parties involved. As opposed to this view, 33% of the respondents felt that they are innocent and there should not be any basis for litigation if the underlying assumptions of the forecasts were reasonable.

Generally, the merchant banks perceived that the most serious implication arising from a poor forecast is the adverse publicity and its effect on their

banking reputation (53%). It was also pointed out by some of the interviewees that the board of directors should take immediate action to correct a bad forecast the moment it becames apparent that it had been over-optimistic.

These views are amplified in a cross-section of the responses by the merchant bankers:

a) "Lonhro is contemplating legal action against Morgan Grenfell, and Pentos, against Singer & Friedlander around some acquisitions. The law is not clear on this. You can say that the directors are wholly responsible for this but this isn't what the law is developing. So, we are very sensitive about profit forecasts and we trust that they are going to be fulfilled. Very frequently, the profit never see the light of day anyway because the bidder integrates the whole thing, charges huge costs to its acquisition and that is the end of it. The company never gets to the end of the year because their business is transferred to the bidder so that their forecast is never proved right or wrong."

(Director, MB23)

b) "The merchant bank is asked to use a certain degree of commercial common sense in expressing a view on the assumptions behind the forecast. Although I would hate to find this coming back to haunt me, I suppose, if the forecast proves to be wrong and that is because one of the assumptions made is quite ludicrous, then the merchant bank ought to have some degree of responsibility as it suggests that someone didn't bother to make sure that he understood the nature of the business and the basis on which the forecast was made."

(Director, MB22)

c) "I think you will find (I am not allowed to mention names) that there could be a course for redress for the company. I think there could possibly be legal actions against the financial advisers if they were negligent. So far, none has succeeded but I think the principle lies against the company as they are the ones preparing the forecast."

(Director, MB21)

d) "I think there is a liability for all parties involved in the profit forecast but, having said that, I still think that it is the company and the directors who must bear the responsibility for

deviant forecasts. Otherwise, it is difficult to see from the practical point of view, how many accountants or merchant banks would be happy to put their seal of approval to a profit forecast."

(Manager, MB11)

Some of the threatened litigations against against financial advisers over deviant forecasts are discussed in Chapter 9.

6.12 Summary/Review

In summary, in devising suitable defences against hostile bids, the merchant banks will usually take into account such factors as the timing of the bid, the nature of the takeover, the tactical considerations and the strengths and weaknesses of both the bidder and the target company. Key defences include asset revaluation, dividend increase, profit forecasts and appealing to the loyalty of the shareholders, however, the tactics adopted are strongly influenced by the client's share composition and the reaction of the major press towards the takeover. Non-price determinants too exercise a material influence. For example, sectional interests, the bidder's capability to see the bid through (or sustain the acquisition attempt) and the long term ramifications for the client's business are carefully evaluated by the merchant banks. Equally important is the fact that defensive measures are planned, paced and implemented in the light of the opposition's line of approach and emphasis. It should be emphasised that the merchant bankers stressed repeatedly the need for a flexible response to competitive moves. They also perceived creativity and judgement as being critical to success.

The next chapter studies the nature of the

relationships between the merchant bankers and their supportive financial advisers in the City (i.e. chiefly the stockbroking firms), their clients and the degree of their interaction with the Takeover Panel, the main 'watch-dog' body in the City.

CHAPTER 7

THE DISTINCTIVE ROLE OF MERCHANT BANKS AND THEIR RELATIONSHIP WITH OTHER SPECIALIST ADVISERS AND REGULATORY BODIES

7.0 Introduction

This final section on the results of the field survey considers some aspects of the relationships between merchant banks and other financial advisers (or corporate finance specialists) especially the stockbrokers, the factors that give merchant banks the distinction as merger and takeover specialists, the financial advisers involvement with the self-regulatory bodies (particularly the Takeover Panel) and how they view their business relationship with their corporate clients.

7.1 Merchant Bankers' Perceptions of Their Role in Mergers And Acquisitions

In general, the merchant banks saw themselves as having a distinctive role as takeover specialists. Their perceived contributions are listed in Table 7.0 below:

ROLE	NO.	%
Takeover specialists (expertise in devising complex deals)	25	83
Expert co-ordinator (the "orchestral leader")	20	67
High visibility (reputation)	16	53
High grade professionalism in corporate finance	11	37
Advisory services backed by financial power	11	37

Table 7.0 : Merchant Banks' Perceptions of their Role As Merger & Acquisition Specialists.

They saw both their orientation and expertise as quite different to that of stockbrokers who also provide a corporate advisory service to companies involved in takeovers, albeit on a much smaller scale. Perhaps more obviously, they also regarded the role of the lawyers as quite separate from their own. This emerges strongly from replies reported verbatim below:

a) "Stockbrokers look at corporate finance in a different way. They are more of a service organisation and market related in orientation. As such, most stockbrokers will not hold themselves up to be corporate finance experts because they don't have the capability and financial standing. For example, Cazenove gets a lot of business from Warburgs and it would be counter-productive if Cazenove starts making inroads in bids and deals."

(Vice-chairman, MB12)

b) "Well, stockbrokers' loyalty are to their customers really, to people who buy and sell shares and not to companies one is talking about. A merchant bank in the corporate sense...our customers are the corporations that come to us for advice as opposed to the shareholders or investors who may buy or sell in the market. Lawyers have a special skill which is required in special circumstances."

(Head, Corporate Finance, MB26)

c) "The stockbrokers corporate finance departments do not do what we are essentially doing. A firm like Cazenove, for instance, with a large corporate finance department tends to act for their clients in conjunction with a merchant bank. Lawyers are lawyers. They do not have the commercial or financial expertise. If the lawyers poached into our territory...they would be very foolish. I don't think they would get too much work from us in the future."

(Director, MB16)

d) "I think the answer goes back to what I have said earlier as the conductor of the orchestra. The lawyers have their own lines, the stockbrokers their own market expertise and the merchant bank is the jack-of-all-trade but master of none."

(Managing Director, MB2)

e) "Well, in this thing, we like to be leaders, the co-ordinator of all these professionals and we call on them on their separate bits of expertise. We also have what none of the others have i.e. money to back our judgement."

(Director, MB23)

These views were largely mirrored in those of stockbrokers interviewed on role in takeovers:

- "We think that merchant banks are principals and we believe we are agents."
- "We normally work very closely with a merchant bank in a particular situation concerning takeover .."
- "most listed companies have a broker and a merchant banker who work together on any issues, takeover, etc."
- "...varies from case to case. Sometimes, we have been virtually an extension of the bank particularly in the preparation of circulars."

7.2 Degree of Involvement With Stockbrokers

Overwhelmingly, the merchant banks asserted the fact that they have a very strong working relationship with their stockbrokers in this field but they saw them (and other advisers or experts) as supportive services and not as serious competition. The stockbrokers are mainly consulted for their stock market expertise while the lawyers handle the legal

intricacies of the individual deal. From Table 7.1 below, it is apparent that the stockbrokers held reciprocal view with those of their principals.

Table 7.1 : Perceptions of Stockbrokers Regarding Their Involvement With Merchant Banks In Both Advisory Services & Contested Bid Transactions.

CORPORATE ADVISORY SERVICES (INVOLVEMENT)	No.	%	CORPORATE ACQUISITIONS (INVOLVEMENT) No.	%
Very involved	8	80	5	50
Quite involved	1	10	4	40
Involved	1	10	1	10
Not closely involved	0	0	0	0
TOTAL	10	100	10	100

The importance of this symbiotic relationship is underlined by the assertion by one of the stockbrokers interviewed that his firm alone acts as a broker to nearly half of the members of the prestigious Accepting Houses Committee. Other stockbrokers too perceived a close association with the merchant banks saying:

- "Very closely. The only reason we would n't work closely may be perhaps if the client is too small to involve a merchant bank."
- "It depends on whether our specialist expertise is required or desired."
- "Of the 17 Accepting Houses Committee members, or better still, of the eight largest merchant banks, we are actual brokers to seven of them."
- "The trend is towards closer collaboration. Matters relating to pricing of issues, assessment of market reaction to hostile bids are particularly important."

7.3 Reasons for the Distinction As Merger & Acquisition Specialists

Merchant bankers were asked for their distinctive role as corporate advisers in mergers and acquisitions. Their answers are tabulated in Table Table 7.2 below:

REASONS	NO.	%
Reputation and track record in mergers/acquisitions	26	87
Financial power	24	80
Experience and daily exposure to corporate finance	21	70
Co-ordinating ability	21	70
Creative, innovative and flexible	21	70
Team work and professional approach to transactions	19	63
Multi-skills institution ("one-stop bank")	18	60
Personal involvement	11	37
High analytical skills	9	30
Broad specialisations and general knowledge	5	17
Impartiality	1	3
Wide corporate contacts in UK and worldwide	1	3

Table 7.2 : Reasons Given by UK Merchant Banks for Their Distinction As Merger & Acquisition Specialists.

They regard their reputation as the most important factor (87%). This, they consider to be based on their financial power (80%), experience, expertise and daily exposure to corporate finance work (73%). Furthermore, their ability to co-ordinate other professionals in devising and implementing the deals (70%) supported by a flair for creativity (70%) and teamwork approach (63%) operating within the "one-stop bank" umbrella, greatly enhanced their distinction and market share in this lucrative fee-earning activity.

The merchant banking community's claims are illustrated from answers given in the field survey:

1) "We have the financial muscle. I am two desks away from the chairman and deputy chairman, so we can move very, very quickly. In terms of communication, we have the speed of manoeuvre. So, perhaps we have the best of both worlds..."
(Director, MB23)

2) "The Corporate Finance Division of a merchant bank has specialist expertise which is not collected in any other profession."

(Director, MB25)

3) "We are adaptable and flexible. We move at no notice and hopefully can come up with innovative ideas on how companies should do whatever it wants to do. I think a lot has to do with the expertise and if it wasn't for the expertise,I don't think we have much of a continuing business."

(Director, MB21)

4) "I suppose, it is experience which is the most important. We have under one roof a range of skills relevant to our type of work and the relative lack of these within alternative organisations. We are able to deal with a multitude of companies and providing a whole range of services. We have the ability to give professional qualitative advice."

(Managing Director MB2)

5) "Well, I think you start with the accumulation of considerable experience...It must mean a lot to the long established merchant banks. They have handled many, many deals of different types and of different situations. They have got a large staff and diverse experience, different experts who work on different deals. So, you are employing a very significant body of experience and knowledge and it is just a historical fact that accountants, lawyers or stockbrokers do not have that history."

(Director, MB22)

As opposed to this, the stockbroking community interviewed saw their distinction as corporate finance specialists as follows:

- "The merchant banks are competent but they have a different sort of competence and that is why we have to work closely together. We stockbrokers are more conscious of the market factors...I think, we would tend to know institutional holders better than merchant banks."

- "We have a knowledge of the market, of the institutions and how they react to particular situations how the stock market reacts to particular developments and trends."
- "One needs both. We advise in the relative valuation of the financial securities offered in takeovers."
- "...we have an edge over the merchant banks in relation to the smaller companies and particularly to the possible growth of the Unlisted Securities Market."
- "No. I don't think there is any because we don't act as a corporate advisor without a merchant bank."

In chapter 9, this self-centred merchant banking hypothesis that they are UK's leading merger and acquisition specialists is tested by reference to their market share of this business reflected in the case studies.

7.4 Involvement With the Takeover Panel

From the outset, we already stated that the Takeover Panel, the main self-regulatory body, supported by the Council of Securities Industry, the Stock Exchange and other financial institutions lays down guidelines for and control of takeover behaviour in the UK. Consequently, interviews were conducted with (SRB1)[1] and various other self-regulatory bodies to gain insight into the institutional framework of self-regulation as practised in the City. In the course of this survey, SRB1 and SRB2 indicated to the resear-

1. Encoded. Consult master code for details(SRB = self-regulatory body)

cher that they have a close working relationship with the financial advisers in the City and because of their informal organisational structures and communication systems, they were highly accessible to the merchant banks and other professionals at a short moment notice (see interviews with SRB1 and SRB2 in Chapter 4, Volume 2).

During the follow-up interviews with merchant bankers, they unanimously declared that they worked closely with the Takeover Panel and often consulted it on acquisition matters. As one merchant banker explained:

> "Oh, my personal relationship with the Panel is excellent. I know them all...I find them extremely capable and actually very helpful because our position here as I see it is quite interesting, because here, we often have very large stakes in companies and if we actually advise those companies you could say there is conflict of interests. There is conflict of interest on our investment side as opposed to the advice side and we have agreed with the Panel that if our merchant bank itself owns more than 20% of the company, we would not be allowed to act for the company if it was being taken over because of the conflict of interests situation as the Panel would surely ask, 'You may want the bid to succeed wearing the investment hat but are you going to give totally unbiased advice?' It is a fair point, a fair point. So, questions like this we have to go and consult the Panel."
>
> (Director, MB16)

In chapter 9, using the case studies as a basis for comparison, we will attempt to discern the degree of involvement between the merchant banks and the Panel regarding contested bids.

7.5 Working Relationships With Corporate Clients

On this subject, the merchant banks unanimously claimed that they all favoured a long term

working relationship with their corporate clients for obvious business reasons. This was especially so where the merchant bank advised companies seeking acquisitions and making bids rather than defending against them. Merchant banks advising acquisitive clients like Grand Metropolitan, Thomas Tilling, Hanson Trust, must clearly generate a high and regular income from fees. However, when acting in a defensive capacity, particularly for a new client, the need for a relationship is removed by success and the independent existence of the client is terminated on failure (when he is taken over).

Given the variety of corporate philosophies, styles and temperaments of their clients, it is to be expected that merchant bankers' relationship with them will sometimes be in discordance. This is particularly so when the advice is related to contested bids where emotional and time pressures may be high. We shall return to this issue in further details in chapter 9.

7.6 Summary/Review

We can draw certain empirical conclusions from the evidence presented here. First, there is strong relationship between merchant banks and stockbrokers, the latter providing specialist support to the former on pricing and other aspects related to the stock market. Due to this special relationship, the brokers seldom advise clients directly on contested offers for fear of offending their merchant banking clients. Moreover, they often see the merchant banks as having greater expertise in corporate finance. Second, owing to the complex nature of contested bids and relevant institutional framework, there is frequent communication between the financial advisers and self-regulatory bodies. Despite cases such as St.Piran in

the UK over the last 3 years, the merchant banks strongly reaffirmed their faith in this relatively efficient, informal and economical system of self-regulation over that of an expensive and bureaucratic American SEC (Securities & Exchange Commission) model. Third, merchant banks prefer continuing relationships with clients though this may not always be possible and existing relationships may be disrupted by disagreements exacerbated by the highly charged atmosphere in which takeover bid is conducted.

Having examined the various aspects of the relationships between merchant banks and stockbrokers, between merchant banks and self-regulatory bodies, and finally, between merchant banks and their clients, we shall now proceed to chapters 8 and 9 which dwell on the comparative results and behaviour derived from the empirical data gleaned from the field survey and case studies.

CHAPTER 8

COMPARATIVE ANALYSIS OF EMPIRICAL FINDINGS: MERCHANT BANKING ORGANISATIONAL STRUCTURE & BIDDING STRATEGIES

8.0 Introduction

Chapters 4, 5, 6 and 7 reported views of the merchant bankers and to a smaller degree the stock-broking community. To test these, 40 contested bids occu-ring between 1979-1981 were analysed in detail using press reports, offer and defence documents and other reports as the sources of information. Using this evidence, hypothe-ses are tested on the benefits of affiliation to larger financial groups, dysfunctions arising from such an associa-tion, loan facilitation, timing of the bid, opening premium, terms of consideration, inclination towards pre-bid control, the influence of the media on takeovers, and finally, fac-tors which determine the decisive outcome of a contested bid.

8.1 Advantages of Affiliation

The prime advantage regarding affilia-tion with large parents according to most merchant banks surveyed is financial strength. This hypothesis is given strong credibility when we compare the balance sheets of the 30 merchant banks and their parent organisations (see Appendix Table 5.6 in volume 2). As can be discerned from this table, merchant banks such as MB3, MB7, MB10, MB11, MB20, MB22, MB27 and MB28 have large parental backing with total assets amounting to over £2 billion or more.

Undoubtedly, these merchant banks can draw on the huge capital base of their parent companies who are either large clearing banks or British-controlled overseas banks.

8.2 Organisational Dysfunctions

The disadvantages of association with a larger parent cited most frequently by merchant banks was that of conflicts of interest and lack of independence.

In the context of this study, conflicts of interest denote a situation in which two or more interests are legitimately present but opposing. In the UK, many of the senior merchant banking directors are also non-executive directors of numerous companies. As such, the merchant banker caught in this situation is potentially torn between responsibilities to his bank, to the client company and to the shareholders of many other companies involved of which he is the director. Additional responsibility to a parent company further complicates this pattern of sometimes complicated roles. This may occur, for instance, when giving advice to clientele who are clients of the commercial bank of which the merchant bank is a subsidiary. In such circumstances, the merchant bank not only needs to adopt an impartial approach but may have to convince its clients of the independence of its specialist advice.

However, with the rapid expansion and diversifications of many of the leading UK clearing banks internationally and into merchant banking in the 1970s and the 1980s, the line between 'wholesale' and 'retail' banking is becoming increasingly blurred. This accelerated

convergence and overlap are likely sources of conflicts particularly in terms of the allocation of banking functions. Conflicts of interest may also be accentuated by the differences in the corporate structures and strategy of both types of UK banking systems. A well known case illustrating this problem involved Sir Charles Ball who refused to cede the medium-term lending business of Barclays Merchant Bank to its parent company, Barclays Bank, and was removed from his post as chairman.

Another example arose from a conflict of interest between Midland Bank and Samuel Montagu, its highly established merchant banking subsidiary. In October 1980, its former chairman, Mr.Philip Shelbourne resigned to become the chairman of British National Oil Corporation (BNOC). Instead of allowing Samuel Montagu to appoint its own replacement, Midland Bank deliberately bypassed the board of its merchant bank by bringing in an outside appointment to replace Mr.Shelbourne and not consulting the board over this important appointment. The press had speculated that Mr.John Gillum, the deputy chairman of Samuel Montagu was the natural successor to the ex-chairman. Commenting on the high-handedness of Midland's action, "The Times" newspaper stated:

> "This was no way to treat the management of a merchant bank whose membership of the Accepting Houses Committee implies independence from its parent. The pity is that at Montagu, it has set about it in a way which can raise doubts about how independent its merchant bank actually is...Not surprisingly, it has caused bitterness within Montagu."
>
> ("The Times," 10th October 1980)

In this particular incident, it is pertinent to recall that when Midland Bank acquired control of Samuel Montagu in 1973, it had to give an undertaking to the Accepting Houses Committee that Samuel Montagu will have the chance to develop as an independent merchant bank within the Midland Group. However, this incident has illustrated that Midland's banking policy towards its sub-

sidiary had changed and that it did not adhere to the spirit of the earlier undertaking.

Owing to the international operations of both clearing and merchant banks, potential conflicts also emerged in this area of operation. For instance, Midland Bank and Samuel Montagu again clashed over the functions of their Singapore incorporated merchant banking subsidiary (49% stake held by Midland Bank and Samuel Montagu with the rest being retained by its Singapore partners) Midland Montagu Merchant Bank which was created in 1980. The top management of Midland wanted "MMMB" (Midland Montagu) as a vehicle for large syndicated loans in order to exploit the generous tax concessions of Singapore, a major Asian offshore financial centre. Samuel Montagu, on the other hand, favoured developing it into a fee-based and gold-bullion trading type merchant bank reflecting its own forte. An impasse thus emerged as a consequence of irreconcilable differences on operational role.

A merchant banking subsidiary's position can also become compromised when its parent company is been acquired by some other organisation. If the bidder was a foreign company, then the merchant bank's Accepting Houses status quo will be rendered vulnerable. It should be emphasised that both the Bank of England and the Accepting Houses Committee do not encourage foreign ownership of British merchant banks. In fact, in 1980, the Accepting Houses Committee expelled Antony Gibbs, one of its oldest members, following its acquisition by the Hong Kong & Shanghai Bank because the new parent bank was regarded as a foreign bank, Antony Gibbs was not deemed suitable to retain its Accepting Houses status. Similarly, when Marsh & McLennan acquired control of C.T.Bowring, the status of Singer & Friedlander, its merchant banking subsidiary became compromised, again, due to the foreign nature of its new American parent company. In order to preserve Singer & Friedlander's membership within the Accepting Houses Committee and also to facilitate its takeover of Bowring, Marsh & McLennan then carried out its undertaking to the

Accepting Houses Committee by selling the merchant bank to European Ferries, a company more amenable to the Accepting Houses Committee.

8.3 Loan Facilitation

Ensuring the availability of a loan to enable the bidder to complete the takeover transaction is an integral part of acquisition planning. This is particularly important if the bidder's resources are limited and it is making an acquisition of a target company of considerable size. The emergence of a counter-bidder can also inflate the bid price and make recourse to external funding necessary. From the survey, all the respondents stated that they would assist their clients with the necessary credit facility in takeover transactions but emphasised that such a facility does not come under the purview of the corporate finance department, rather, it is a function of the banking division. It is interesting to test this declared willingness of merchant banks to assist their clients with loan facilities by examining data from the case studies.

Loan Facility	(a) Success in bid No.	(b) Failure in bid No.	(c) Failure rate (b) as % of(d)	(d) Loans given No.	(e) (d) as % of case studies n = 30
No loan facility used	9	7	44%	16	53%
Loan facility used	12	2	14%	14	47%
Total	21	9	-	30	100%

Chi-square = 3.085, critical value = 3.84, degrees of freedom = 1 (5% level of significance)

Table 8.0: Bids Effected With and Without Credit Facility And Their Outcome.

From the evidence given in Table 8.0 above, it can be discerned that there is almost a balance

between bidders embarking on takeovers with loan facility and those proceeding without. However, chi-square test has shown that there is no difference in bid success between those effected with credit facility and those without, implying that credit facility, whilst important in assisting the bidder in his acquisition programme, does not necessarily ensure the successful outcome of a takeover attempt.

Although data on loans for takeovers is not available for merchant banks in the UK, there is evidence of the scale of support in the USA with major takeovers where the bidders or potential buyers arranged huge lines of credit with their banks as shown by Table 8.1 below.

Borrower	Amount ($ bil.)	Lead Bank
Mobil Oil	6.0	Citibank
Gulf Oil	6.0	Bankers Trust and National Westminster
Texaco	5.5	Chase Manhattan
Marathon Oil	5.0	Chase Manhattan
Du Pont	4.0	Chase Manhattan
Seagram	3.9	Citibank and Manufacturers Hanover Bank
Conoco	3.0	Morgan Guaranty, Chase, Bank of America
Allied Corp.	3.0	n/a
Pennzoil	2.5	Citibank

Table 8.1: Financing Arrangements on July 1981 for Major American Corporations Embarking on Takeovers.

Source: adapted from the "Financial Times," (14/7/81 and 28/7/81).

Within the comparable period in the UK, no such instances of credit facility of this size has been detected or arranged for such gigantic acquisitions.

8.4 Bid Timing

In Chapter 5, the empirical evidence from the field survey suggested that in general, merchant banks believe that as part of their acquisition strategy, timing was a crucial factor but at the same time, they pointed

out that they have also to take into account many other factors which impinge on their corporate decision-making process. None the less, it was generally agreed that the financial performance of the target company is an important determinant of the time of the bid. It was possible to test this hypothesis using the financial data extracted from the case studies (Group 1) by discerning the time the takeover was initiated with regards to the financial performance of the biddee companies. It is possible to divide the takeover timing mechanism into 3 prime categories:

Timing in Relation to Target Company	Bid No.	% of Total Bids	Failure to Acquire	Failure Rate %
TL (PP)	12	40%	3	25%
TL (NP)	10	33%	4	40%
TL (IP)	8	27%	2	25%
Total	30	100%	9	-

Chi-square = 0.711, critical value = 5.99, degrees of freedom = 2 (5% significant level).

Table 8.2: The Timing Mechanism of the 30 Case Studies

Key

TL(PP) = takeover launched by the bidder coinciding with the positive performance of the biddee company.

TL(NP) = takeover launched by the bidder coinciding with the negative performance of the biddee

TL(IP) = takeover launched irrespective of the biddee's performance i.e.when the timing mechanism is upset by a counter-bidder.

The evidence from Table 8.2 above indicates that the number of bids effected coinciding with good corporate performance of the biddee marginally exceeded those when the target's performance was depressed. Although it would be logical to infer that it would be relatively simple to acquire a victim company characterised by bad results, the evidence above conveys a different message.

This observation is reinforced by the results of the chi-square statistical test which illuminated the fact that good bid timing does not necessarily generate a correspondingly high level of acquisition success. This empirical finding may be explained by taking a mixture of these circumstances into account. Firstly, bids initiated in conjunction with depressed corporate results of the biddee company are normally opportunistic by nature and as such, the defender can capitalise on this factor. Secondly, in some instances where the bidders attempted to discount heavily on assets (Cambridge Royalty Corporation/Cambridge Petroleum Royalty and the Francis Industries/Evered case studies), the key shareholders resisted strongly and successfully defeated the takeover attempts structured along this line. Finally, owing to the inevitable controversies surrounding contested takeovers and the change in the Government's official policy to merger (from "favourable" to "neutral" posture), they are now more vulnerable to a reference by the Office of Fair Trading (Lonhro/SUITS, Lonhro/House of Fraser and the Hong Kong & Shanghai Bank/Standard Chartered Bank/Royal Bank of Scotland case studies). So, although the timing mechanism from the bidder's point of view may be 'correct' this study has shown that success is not necessarily requisite nor ensured as the outcome of a strongly contested bid is dependent on a multitude of factors.

8.5 Terms of Consideration

Acquisition financing and devising terms of consideration entail a broad understanding of both financial and non-financial aspects. An earlier chapter (5) has shown that merchant bankers take many diverse factors into account when deciding on the cash or equity terms of a bid. During the course of the merchant banking

survey, many of the respondents pointed out that over the last few years, acquisition financing has been marked by a preference for the cash element rather than for share exchange. This observation has been given credence by data from official publication (see Table 8.3 on the next page) supporting the general trend towards cash financing as well as evidence from this research based on case studies (see Table 8.4, page 170).

It is difficult to pinpoint the precise reason for this phenomenon but there are 2 possible explanations of the greater weight given to cash in acquisition financing during the period 1979-1981 selected for this survey. One possible reason is that the contemporary bidders favour more effective corporate control (shareholders of biddee company by accepting cash are in fact surrendering their claim to the company) whereas in a share exchange, depending on the ratio of the newly merged entity, the biddee shareholders still have a stake in the enlarged group. Another more likely reason is that equity prices here throughout the period undervalued assets and biddee's shareholders may therefore have found cash more acceptable.

8.6 Opening Premium (Bid Pricing)

On average, over all the Group 1 case studies the bid premium was 19.3%.[1] This figure is very near to the premium level advocated by the merchant bankers (see Chapter 5) and also writers like Hayes and Taussig (10)(1967) and Philip Shelbourne (3)(1967) who stated that the bid premium should be approximately be over 20% over the market price. One would have expected that the higher the premium, the lower would be the failure rate. However, the evidence in

1. The premium was calculated by taking the opening bid price on the day of the announcement of the formal takeover and subtracting the final market price of the biddee company immediately prior to the despatch of the bid circular or the announcement of the formal offer.

Year	Cash	%	Ordinary Equity	%	Pref.Shares & Loan Stock	%	Total Expen-diture	No.of Acquisi-tions
1969	296	28	552	52	221	21	1,069	-
1970	251	22	596	53	275	25	1,122	793
1971	285	31	437	48	189	21	911	884
1972	493	20	1,459	58	580	23	2,532	1,210
1973	691	53	466	36	147	11	1,304	1,205
1974	347	68	114	22	47	9	508	504
1975	173	59	93	32	25	9	291	315
1976	321	72	120	27	7	15	448	353
1977	512	62	304	37	8	1	824	481
1978	654	57	463	41	23	2	1,140	567
1979	933	56	515	31	208	13	1,656	534
1980	760	52	669	45	46	3	1,475	469

Table 8.3: Mergers and Acquisitions of Industrial and Commercial Companies within UK 1969-80

Source: CSO, "Financial Statistics," (No.229), May, 1981 and HMSO, "Business Monitor MQ7" (4th Qtrly) London 1980.

Type of Financing	No.	% of Total Bid (n=30)
Cash instrument	15	50
Equity instrument	8	27
Mixture	7	23
Total	30	100

Table 8.4: Characteristics of Bid Financing Discerned in Case Studies.

Table 8.5 below suggests no such relationship.

Premium class (%)	(a) No.of bids	(b) Bid Failure No.	(c) Failure Rate (b) as % of (a)
Less than 1	4	1	25
1 - 9.9	4	3	75
10 - 19.9	8	1	13
20 - 29.9	8	3	38
30 - 39.9	2	0	0
40 - 49.9	4	1	25
Total	30	9	-

Table 8.5: Level of Premium Adopted by Bidders in the Case Studies and Failure Rate.

Premium Class	Success No.	Failure No.	Total No.
below 20%	11	5	16
above 20%	10	4	14
Total	21	9	30

Chi-square = 0.025, critical value = 3.84, degrees of freedom = 1 (5% significant level)

Table 8.6: Opening Premium Analysed by Chi-Square Test.

Indeed, the rate of acquisition failure peaked in 2 classes of relatively high premium, i.e., the 20%-29.9% class and the 40%-49.9% class. Specific explanations can be found. In the first category, one failure may be attributed to the blockage imposed by the Monopolies Commission (the Hiram Walker/Highland Distilleries case study), the second failure was due to the rescue effected by a 'white knight' RTZ Company in the last minute (Ward/Tunnel Holdings case study), and the third takeover failed owing to strong resistance from the founding family and key institutional holders (Sime Darby/Guthrie case study). In the second category, despite the attractive premium attached to the offer (over 40%), the merger was blocked by the Monopolies Commission (the Standard Chartered Bank/Hong Kong & Shanghai Bank/Royal Bank of Scotland case study). Computation from Table 8.6 above also indicated the fact that bids initiated with a premium of more than 20% do not necessarily have a higher chance of success than those

effected below this specific threshold. This evidence from the case studies is consistent with the empirical findings of the merchant bankers (Chapter 5).

8.7 Pre-bid Stake

Interviews with merchant bankers, reported in Chapter 5 suggested that the size of the pre-bid shareholding or stake in the biddee is an important factor in bid strategy.

Prebid stake (%)	(a) No. of bids	(b) Bid Failure No.	(c) Failure Rate (b) as % of (a)
0 - 4.9	6	2	33
5 - 9.9	4	1	25
10 - 14.9	7	4	57
15 - 19.9	2	2	100
20 - 24.9	2	0	0
more than 25	9	0	0
Total	30	9	-

Table 8.7: Pre-bid Characteristics of the 30 Case Studies and its Failure Rate.

Pre-bid Class	Success No.	Failure No.	Total No.
below 20%	10	9	19
above 20%	11	0	11
Total	21	9	30

Chi-square = 7.444, critical value = 3.84, degrees of freedom = 1 (5% significant level)

Table 8.8: Pre-bid Stake Analysed by Chi-Square Test.

From Table 8.7 above depicting the number of takeover bids effected from various levels of control or ownership status and in Table 8.8 (reclassified into 2 major groupings), it is evident that the bids launched from a platform of less than 20% are more likely to fail than those launched from a platform of more than 20%.

8.8 The Role and Influence of the Media in Contested Bids

We have seen in Chapter 5 that the majority of the merchant banking respondents have indicated that it was their policy to brief the press at all stages of a takeover battle. However, it is very difficult to measure quantitatively the extent or the influence exercised by the media on the merchant banking community on the final outcome of a bid. Nevertheless, their comments must to some degree influence the opinions of the fund managers and the small investors. It is possible, however, as in Table 8.9 on the next page to determine whether or not press comment was favourable or unfavourable, particularly in the final stages of the battle, and whether such comments in the "Financial Times," "The Times," and "Investors Chronicle" were associated with success or failure. The number of failures among the 6 examples selected was too small to permit statistical analysis but the Table does give a general impression of an association. Certainly, the merchant banks believe that the press is influential for they exploit favourable press comments in their circulars to shareholders (see Appendix A, Group 1 Case Studies). Both bidder and biddee and their financial advisers may also resort to heavy advertising when the independent shareholders held the key to the outcome. As a case in point, in the context of the Dalgety/Spillers case study, advertising was unusually intensive with Spiller's adopting a novel defensive public relations approach centering around the cartoon figure of "Fred Flourgrader" in order to foster identification with the Group's products as well as evoking shareholders' sympathy. The heavy expenditure incurred in advertising in this particular instance,provoked a new Panel ruling that all future advertisements related to bids required its seal of approval.

BIDDER/BIDDEE (bid duration)	FINANCIAL TIMES	DAILY TELEGRAPH	INVESTORS CHRONICLE	OTHERS	REMARK/BID OUTCOME
DALGETY/SPILLERS (16/8/79 - 15/10/79)	The right decision for the shareholders therefore is to accept the bid (29/9/79)	Shareholders owe no loyalty to Spillers (1/9/79)	If the bid fails to go through the Spillers shareholders are likely to slide back to 40p (14/9/79)	I have to judge I suppose between the management of Spillers and Dalgety, which? Past experience indicates Dalgety (24/9/79)	GFPC Success
COWIE/EWER (9/5/80 - 19/6/80)	Cowie is still picking up shares in Ewer and soon obtain absolute control diluted or not (10/6/80)	...shareholders should either accept or sell in the market. The E.T.deal only looks good for Eastern's shareholders (8/6/80)	..given the present depressed state of the motor industry and what still seems on common grounds a questionable deal for E.T.shareholders should take what is a fair Cowie offer (16/6/80)	Without the Cowie bid succeeding the shares are destined to go lower (6/6/80)	GFPC Success
GEC/AVERYS (14/9/79 - 23/11/79)	A strong defence against the bid from GEC was issued yesterday by Averys. The interim dividend is being raised from 2.15p to 4p (6/10/79)	GEC is pitching too low which is precisely why Avery's shares at 252p are showing a 7p premium This one must be shunned (12/10/79)	Averys has come up with an interim profit performance that makes GEC's 245p a share offer look mean (12/10/79)	GEC formal offer for Averys makes its price 245p a share look so much nonsensically low (29/9/79)	GUPC Success after second bid attempt
GEC/RACAL/DECCA (19/1/80 - 23/2/80)	It is true that there is all the difference in the world between negotiating from a position of financial weakness with only one prospective buyer and being the objective of the strategic ambitions of two powerful rivals (9/2/80)	The institutions want action and a bid from an aggressively growth conscious and efficiently run group such as Racal would find plenty of support in the City (16/2/80)	Shareholders in Decca have been dug out of a poor investment by the bid battle between Racal Electronics and GEC (8/2/80)	n/a	GFPC Success
WERELDHAVE/OLYMPIA & YORK/EPC (15/2/78 - 23/2/79)	Nobody seems willing to put a knockout bid but the public auction for EPC is still rolling normally. Shareholders can just sit back and watch (26/3/79)	n/a	Clearly, Wereldhave which kicked off in January with an opening shot of 37p has got to think again (23/2/79)	EPC shareholders can probably expect at least one higher offer (20/1/79)	GUPC Success after protracted triangular bid battle
NEWS INTERNATIONAL/WM. COLLINS (13/5/81 - 21/7/81)	By means of skilful opportunistic deals disaffected major family shareholder, Mr.Jan Collins and Mr.Maxwell, News has pushed its holding of the voting shares to 42% but it will not necessary be easy to proceed from here to over the 50% mark. The remaining shareholders are likely to take a longer term view (14/7/81)	This time Murdoch is not the antipodean Lochinvar: Maxwell might yet prove to be Collins white knight (17/5/81)	n/a	n/a	GUPC Failure

TABLE 8.9: A COMPARATIVE CROSS-SECTION OF LEADING PRESS COMMENTS ON SIX CONTESTED TAKEOVERS (1979-1981)

Key: GUPC (Generally Unfavourable Press Comment) GFPC (Generally Favourable Press Comment)

8.9 Success Determinants

Once control of the biddee company passed into the hands of the bidder (usually, the 50.1% threshold), the defender very often found it difficult to offer any more resistance and would normally resort to recommending the merger to its shareholders. From the findings of the survey discussed in Chapter 5, the merchant bankers usually attributed success to such factors as price adequacy, industrial logic of the merger, performance and image of the client, recommendation from key shareholders of the target company and approval from the board. In this section, the major perceptions of the respondents are correlated against those findings of the Group 1 case studies (see Table 8.10 below and also Appendix Table C.5) which depicts comparative highlights of the case studies).

Success Determinant	Merchant Banking Survey n=30	Case Studies n=30
price adequacy	24	18
industrial/commercial logic	20	14
bidder's performance	17	18
support from key shareholders	17	9
tactics and arguments	16	20
recommendation from directors	13	15
level of pre-bid stake	11	17
assurances	10	17
past record of target company	9	11
press comments	9	9
market conditions	6	8

Table 8.10: Comparison of Determinants Influencing Success between those of the Merchant Banking Survey and those of the Case Studies Spanning the 1979-81 Period.

Interviews with the merchant bankers had suggested 11 pertinent factors linked to bid success. As such, each of the case studies was analysed to establish if these same 11 factors might have been present.

The first two determinants require further elaboration as they are rather subjective. The respondents in the survey of merchant bankers did not define "price adequacy." Clearly, a price could be defined

as adequate if it induced a sufficient number of sharehol-ders to accept the offer, but the relationship with success would then be tautological and of no empirical or practical interest. Consequently, it was necessary to develop cri-teria for "price adequacy". In analysing the case stud-ies, two considerations were taken into account:

1) Whether a premium was incorporated in the bid pricing.
2) Whether there was revision in the original bid price.

Industrial or commercial logic as defined in this survey, pertains to the type of merger proposed by the bidder, i.e. whether it is vertical, horizontal or a case of corporate diversification. For instance, if Trust House Forte were to bid for William Collins (the publisher) rather than the Savoy Group, then the merger attempt would be deemed to lack commercial logic as Trust House Forte does not have the relevant management expertise in running a publishing business.

Thus, within the framework just defined, the evidence from Table 8.10 confirms the professional judgement and honesty of the merchant bankers interviewed on this significant bid issue.

8.10 Summary/Review

In terms of operational advantage, we noted that the majority of the UK clearing banks and Bri-tish-owned overseas banks merchant banking offshoots are indeed supported by the vast financial resources of their parent companies. On the other hand, we observed that these merchant banking operations suffered from time to time from parental interference in terms of conflicts of

interest arising from allocation of functions to boardroom matters such as the appointment of senior staff.

Broadly speaking, the merchant banks favoured providing their clients with credit facility in order to facilitate the takeover bids but this is not a function of the corporate finance division. Rather, it is the purview of the banking division within the merchant bank. Although the merchant banks were guided by the basic principle of initiating takeover bids to coincide with the bad results of the target companies, evidence in this study suggests that this was not always possible due to the entry of rival bidders or potential buyers building up a secret holding in the victim company.

The opening premium according to the findings of this study is about 19.3% and cash constitutes the most popular means of acquiring control of the biddee company. This is broadly in line with the perceptions of the merchant banks and the literature surveyed. Although general financial and non-financial principles exist for prescribing the terms of consideration, there is no straight forward formula as each case is dependent on special factors involved and a matter of serious negotiation. The evidence suggests good underpinning reasons why the bidder should build up a substantial control stake before springing a takeover attempt so as to increase his chance of success (empirical findings have shown this to be the case). It is also apparent that the press does exercise some degree of impact on the tactical thinking of financial advisers and to a certain extent, the outcome of each contested deal. However, its precise contribution is hard to measure. Finally, the contributory determinants to the success of an acquisition are very much contingent upon factors like price adequacy and the inability of the victim company to defend itself due to general financial weaknesses and other factors.

CHAPTER 9

COMPARATIVE ANALYSIS OF EMPIRICAL FINDINGS: DEFENSIVE STRATEGIES AND THE ROLE OF MERCHANT BANKERS AS TAKE-OVER SPECIALISTS

9.0 Introduction

The focus in this chapter is on the defensive techniques and the inter-relationships between merchant bankers and others. It therefore discusses again factors such as the ramifications of share composition on tactical manoeuvres, features associated with the underlying assumptions of forecasts used in contested bids, litigation associated with deviant forecasts, factors enabling merchant banks to maintain their supremacy as merger cum takeover specialists in the UK, the degree of their involvement with self-regulatory bodies and finally, the nature of their working relationships with their corporate clientele. Within the discussion, the results of analysis of the 30 case studies are again compared with the perceptions of the merchant bankers reported in Chapters 6 and 7.

9.1 Defensive Strategies in Perspective

In order to contest and successfully defend itself against a hostile offer, the management or board and its financial advisers can resort to certain counter-measures as we have seen in Chapter 6. However, the degree to which both biddee and advisor can take evasive action is dictated by influences such as the fidu-

ciary obligations to shareholders and the code of conduct imposed by the UK self-regulatory system. The decision-making process here is also guided by the need to provide shareholders with all the relevant information to enable them to judge the merits and demerits of the takeover proposal. As such, the board together with its merchant banking advisers and stockbrokers cannot simply frustrate a bid without taking into account the various City provisions, rulings and restraints prescribing the conduct of mergers and acquisitions.

Table 9.0: Correlated Data of the 11 Defensive Strategies

	Defensive Strategy	Observations	
		Merchant Banks	Case Studies
1.	revaluation (asset)	30	22
2.	dividend increase	30	14
3.	profit forecasts	30	17
4.	appeal for loyalty	30	30
5.	placing	21	1
6.	effect an acquisition	16	8
7.	asset disposal	13	4
8.	legal action	11	7
9.	capital reconstruction	7	0
10.	bonus/scrips issue	2	0
11.	buy bidder's equity	0	0

Spearman Correlation-Coefficient = 0.905, critical value = 0.6091 (significant at the 5% level)

The perceptions of the merchant banks when correlated with the data from the case studies regarding the 11 selective defensive strategies in Table 9.0 above reveal a high degree of consistency. A Spearman's rank correlation-coefficient of 0.905 suggested a highly significant positive association between defensive strategies favoured by the merchant banking community and those discerned in the case studies. Using a two-tailed test for a significance level of .05, we find that the critical values for "r" are ± 0.6091. Therefore, we would reject the null hypothesis of no correlation. The evidence again suggests that the merchant bankers interviewed are

expressing openly the principles on which they work.

The first 4 defensive strategies in Table 9.0, i.e. asset revaluation, dividend increase, profit forecast and appeal to shareholders' loyalty are clearly not only cited more frequently by merchant bankers but were also actively used most frequently in actual takeover cases. More controversial defences, such an undertaking an acquisition programme, legal action and sale of corporate assets were also combined with these 4 in a number of cases where thought appropriate. We shall now investigate the 11 defensive strategies selected for this study in greater depth and examine the implications from the comparative analysis between the advocacy of the merchant banks and the realities of actual contested bids reflected in the case studies.

(1) Asset Revaluation

The most popular and much publicised defensive device which target companies deployed in the face of hostile bids is the adjustment of the fixed assets in their corporate balance sheets. This is because some companies are opportunistic bidders aspiring to acquire undervalued assets cheaply or in specific cases, where up to date financial information was deficient, they would employ the "sighting shot" strategy to extract the relevant factual data for them to appraise the real worth of the target companies. From the biddee's viewpoint, the revalation of up-to-date accounting information during the currency of the bid provides its shareholders with the chance to rationally evaluate the merits or demerits of the offer.

In business or industry which is asset-orientated but reflecting poor or erratic performance, for example, companies like Hardy, SUITS, the House of Fraser, Proprietor of Hay's Wharf, English Property Corporation, Maples and the Savoy Group, property revaluation consti-

tuted one of the main planks of defence in order to demonstrate to their shareholders the strong net asset backing behind their holdings.

Action taken	(a) Defence Success(No.)	(b) Defence Failure(No.)	(c) Total	(d) (a) as % of (c)
revaluation	5	17	22	23
no revaluation	4	4	8	50
Total	9	21	30	-

Table 9.1: Asset Revaluation and Implications for Outcome of Defence.

Statistical Results:
Chi-square = 2.078, critical value = 3.84, degrees of freedom = 1 (5% significant level)

Results from Chi-square test in Table 9.1 above have confirmed that asset revaluation does not exert material influence on the outcome of defence. This goes to illustrate the point that although property revaluation is a vital key in defensive strategy, for its practical application to be enhanced, it should be harnessed in tandem with the other counter-measures designed to defeat an unwanted takeover bid.

(2) Dividend Increase

Under the Counter Inflation Act of 1973, listed companies could not raise the amount of ordinary dividends paid in relation to their share capital by more than 10% over the previous dividend level without the approval of the Treasury. Consent however, from the Treasury was always forthcoming conditional upon successful defence if the board of the biddee indicated its desire to contest the takeover by escalating its dividend pay-out. In 1979, however, the present Conservative Government lifted this restriction. Its application as a defensive

tool is based on the premise that a higher dividend often enhanced the value of a company's equity.

Action taken	(a) Defence Success(No.)	(b) Defence Failure(No.)	(c) Total	(d) (a) as % of (c)
dividend increase	5	9	14	35
no dividend increase	4	12	16	25
Total	9	21	30	-

Table 9.2: Implications of Dividend Increase for Outcome of Defence.

Statistical Results:
Chi-square = 0.407, critical value = 3.84, degrees of freedom = 1 (5% significant level).

The evidence from Table 9.2 above highlighted the fact that dividend increase by itself is not a key determinant in the success of a defence. Like the other core defensive strategies (for instance, asset revaluation), it has to be employed jointly with other defensive techniques designed to ward off the unwelcome bidder.

3) Profit Forecast

Table 9.3: Profit Forecast and Implications for Outcome of Defence

Action taken	(a) Defence Success(No.)	(b) Defence Failure(No.)	(c) Total	(d) (a) as % of (c)
profit forecast	5	12	17	29
no forecast	4	9	13	31
Total	9	21	30	-

Chi-square = 0.007, critical value = 3.84, degrees of freedom = 1(5% significant level)

The findings from Table 9.3 above indica-

ted that from the case studies, slightly more companies resorted to profit forecast as a defensive tool but attracted a lower success rate underlining the fact that defensive strategies are numerous and varied and although profit forecast is considered to be a pivotal defensive strategy, its deployment in contested bid situations does not necessarily ensure success implying the importance of the need to incorporate other counter-measures as well.

(4) Appeal for Loyalty

The investor receiving notice of a takeover bid is obliged to carefully evaluate the merits and demerits of the offer. In making a judgement, he may rely on the recommendations of the board of directors, financial journalists, lawyers, stockbrokers, accountants, investment analysts or bankers as to whether he should retain or dispose of his equity. He may speculate on the prospects of a higher premium from rival bids emerging or else face the prospects of being "locked in" as a minority holder should the bid succeed. Statutory provisions (City Code, Stock Exchange rules and Companies Act) also make it mandatory for directors of the biddee company to comment on the offer. It is precisely at this point that the management together with its financial advisers can first seek to win the support of their multitude of shareholders through the defence circulars. Appealing to shareholders' patriotism is therefore universal in all contested bids and this line of defence must be interpretated broadly as patriotism or loyalty includes anything from national interest (in the case of Highland Distilleries and the Royal Bank of Scotland) to pointing out to the dangers of asset-stripping by the bidder (such an accusation was levelled by Liggett against Grand Metropolitan) or the general unsuitability of the offeror. For example, Savoy attempted to undermine shareholders'

confidence in Trust House Forte by declaring that the merger with Trust House Forte lacked logic because Trust House Forte operates highway cafes. In the case of Spillers, as the company could not make full use of financial arguments due to its bad performance, it shifted its line of defence to the sentimentality of shareholders through heavy advertising using the caricature of "Fred Flourgrader." This approach is normally exercised when there is a predominance of small shareholders and if the basis of contention rests on independence rather than price.

(5) Placing (Issue of Shares to Friendly Holders)

Placing, basically involves the issue or sale of a block of the company's equity capital to a sympathetic institution, company or individual, is designed to thwart unfriendly bid by making it more difficult for an outsider to acquire the company. Placing also includes arranging cross-holdings, issue of equity to the trustees for the incumbent company's staff or its pension fund, rights issues, acquiring a friendly private company for shares and share option scheme for employees. There are 2 documented cases regarding its usage in the sample of the 30 case studies. In the first case, after Provincial Laundries' failure to acquire St.George, the Armstrong family (the dominant shareholder) placed some of its shares with private individuals. In the second instance, when Dunhill-Logida withdrew its bid for Aspreys, Morgan Grenfell, the merchant bank (advisor to Aspreys) successfully bid for the blocks of shares owned by Dunhill-Logida and the Philip Asprey Trusts and then placed these with chosen clients. This had the effect of giving John Asprey, the current owner-chairman, decisive control over his company as well as serving as a deterrent to future bids for his Bond Street business (see Dunhill-Logida/Asprey & Company

takeover bid in Appendix B, Group 2 Case Studies).

(6) Capital Reconstruction

This seems to be a lowly rated defensive tool by the merchant banks and the case studies failed to reveal its application. The logic behind its usage, however, is quite subtle. For example, if a target company suspected that a takeover was attempted and was motivated by the company's under-geared capital structure, the board can propose a capital re-organisation to incorporate the required gearing into its capital structure through the substitution of preference capital by loan stock.[1]

(7) Scrips Issue

It is another lowly rated tool and again, our study has uncovered no example of its application. In essence, this strategy is designed with the small, unsophisticated investors in mind. Presumably, when used, it has the effect of reducing the bid premium (which is based on the pre-bid equity) and therefore, the takeover will be construed as less attractive than before. For example, if the biddee's share is worth 200p and the bid is at 250p, the premium offered is thus 25%. If the biddee splits the equity 4:1, the bid then becomes 60.25p per share (still a 25% premium on a 50p share) but psychologically to the small holders, it is less attractive than 250p for a 200p share.

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1. See M.A.Weinberg et.al., "op.cit.," (Part V) for more details on this defensive strategy.

(8) Undertake a Defensive Merger

The Takeover Code does not allow the biddee to embark on an acquisition during the actual takeover process merely to frustrate the bid in order to preserve its own independence. However, the Code does not restrain the biddee from resorting to this strategy before or after (an aborted) takeover attempt. In the context of the case studies, in some cases like Wellman Engineering Corporation and Ewer, the bidders (i.e. Redman Heenan International and Cowie respectively) objected to their expansion programmes. In order to prevent further dilution of their shareholdings, the takeover attempts were swiftly initiated to coincide with the diversification programmes of their targets (in the case of Wellman Engineering Corporation, its proposed acquisition of "IBHD" in the USA and in Ewer's case, the takeover of Eastern Tractors). This tactic is also actively pursued by victims who have successfully eluded their potential bidders in the first attempt. The biddee then launched an acquisition programme contrived to strengthen its line of defence against the anticipated second bid attempt from the original bidder. From the case studies, it can be seen that Bestobell, British Sugar Corporation and Guthrie have availed themselves of this post-attempt defensive tactic.

(9) Sale of Corporate Assets

Similarly, the disposal of corporate assets is disallowed by the Panel, but again, this strategy may be used before or after a bid. In the case of Grand Metropolitan's attempted takeover of Liggett, the target company resorted to this controversial defensive strategy by instructing its financial advisers to arrange for the disposal of parts or all of its major assets. The subsequent sale of Liggett's subsidiary, Austin Nichols to a French company, Pernod Ricard, during the process of the bid attracted heavy criticisms from the bidder and this

highly unpopular move further accentuated the aggravations that surrounded this bid attempt. In this particular case in point, the usage of such a defensive tactic during the actual takeover itself should be viewed in isolation because Liggett is an American company operating in the USA where such a practice is not outlawed by the Securities & Exchange Commission.

Trust House Forte's attempted takeover of the Savoy Group also coincided with the latter's proposed disposal of its East Wing property to another buyer. As an outsider to the actual event, it is not possible to pin-point the true rationale influencing the disposal of this asset by the Savoy, but, from the strong resistance displayed by Trust House Forte towards the sale, it is not unreasonable then to infer that the disposal of this property constituted an integral part of Savoy's master defensive strategy designed to ward off unwelcome bids.

Yet another case involved Lonhro's controversial attempted takeover of the House of Fraser. To frustrate Lonhro's persistent attempt to gain creeping control of the company, the board of the House of Fraser then decided to negotiate a sale-and-leaseback of its Oxford Street D.H. Evans departmental store with an institution in order to raise £29 million. This was done possibly with 2 defensive motives in mind, firstly, to strengthen the company's balance sheet and secondly, to put some of the prime assets of the Group outside the sphere of control of the bidder in order to dissuade him from mounting a full bid.

(10) Legal Action

Legal action is defined here in the widest sense as it encompasses reference to the Monopolies Commission, Scheme of Arrangement device and lawsuits.

In 4 of the cases analysed, submission was made to the Monopolies and Mergers Commission. Three of the cases cited in Table 9.4 below resisted strongly but in the case of the Royal Bank of Scotland, the company had approved the bid from Standard and Chartered Bank but not that of the Hong Kong & Shanghai Bank. Despite this, pressures from other groups led to a referral and subsequent blockage by the Government.

Bidder	Target	MMC Verdict	Outcome
GEC	Averys	cleared	successful
Hiram Walker	H.Distilleries	vetoed	lapse
Lonhro	SUITS	cleared	successful
Standard & Chartered Bank / H.K.& Shanghai Bank	Royal Bank of Scotland	vetoed	lapse
Lonhro	HoF	vetoed	lapse

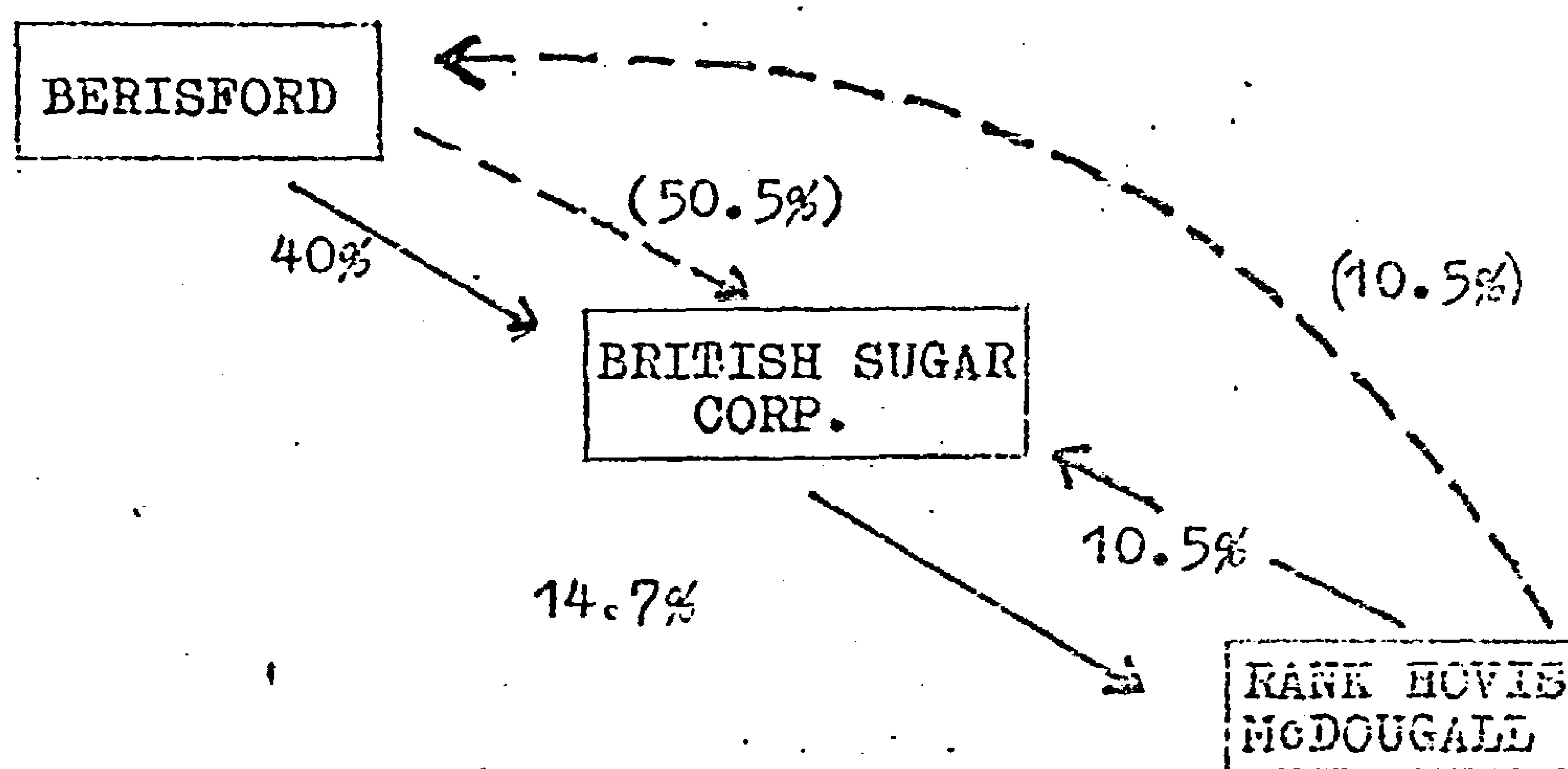
Table 9.4: Takeovers from the Case Studies Referred to the Monopolies Commission.

In the case of the proposed acquisition of Cambridge Petroleum Royalty, the bidder resorted to the legal device of a proposed Scheme of Arrangement but owing to its gross undervaluation of the biddee's assets and the vociferous institutional objections, Cambridge Royalty Corporation failed to obtain the 75% majority required for the scheme to be successful.

(11) Acquire the Bidder's Shares

Evidence from this study reveals that this novel defence has indeed been used for the first time as the circumstances warranted its adaptation and usage in the UK. In our Berisford/British Sugar Corporation/Rank Hovis McDougall case study (see Appendix B, Group 2 Case Studies) we noted that the British Sugar Corporation was being actively pursued by Berisford, and in order to frustrate

Berisford's takeover design, British Sugar Corporation implemented a series of defensive moves. Its main defence, however, pivoted on undertaking a sizeable acquisition itself. When it suddenly acquired a minority stake in Rank Hovis McDougall, the biddee suspecting the true motive of the British Sugar Corporation responded quickly by building up a counter equity holding in British Sugar Corporation. The Diagram below will serve to elucidate the implications of this bold tactical manoeuvre more precisely.



legend:

—— line denoting actual course of action
--- line denoting possible course of action

Diagram 9.0: Novel Defensive Ploy Undertaken by Rank Hovis McDougall to Neutralise British Sugar Corporation's Takeover Design.

As can be seen from Diagram 9.0 above, Rank Hovis' bold defensive action had the effect of stifling British Sugar Corporation's takeover ambition as well as rendering British Sugar more vulnerable to being acquired by Berisford should it mount a second takeover attempt for the company. Theoretically, this would be facilitated by Rank Hovis' disposal of its 10.5% stake in British Sugar to Berisford. However, it should be emphasised that this anticipa-

ted course of action requires the Takeover Panel's sanction for under its rules, Rank Hovis McDougall could not act in collusion with Berisford. This defensive move serves to show that in contested situations, each case should be structured and transacted according to the merits of the circumstances involved.

In retrospect, defensive strategies are extensive but the key to the outcome of the contest is very much subjected to the ability of the defending party to select the right strategy which should be relevant, unconventional and decisive (see Transcript of interview with FMB3 Volume 2).

9.2 Share Ownership and Implications for Defence

In Chapter 6, it was indicated that merchant bankers perceived that shareholding structure strongly influences the acquisitive or defensive strategies adopted. Interviews with them suggested that the 3 main categorisation of ownership structure engendered 3 broad streams of tactical defensive thinking, viz.

(1) Control Vested with the Board/Family

Easy to defend.

(2) Control Vested with Institutions

Dual implications as institutions are generally 'cold-blooded.'

(3) Control Vested with Public

Relatively easy to defend as private investors tend to be more loyal to their boards or just

display inertia.

To enable a basis for comparison of data derived from both research samples, the shareholding pattern of the companies in the case studies was broken down into 3 ownership classifications based on the 5% shareholding criterion (see Tables 9.5 and 9.6 below).

Table 9.5: Shareholding Characterised by Ownership Type, Dominant Holder & Implications for Defence Outcome.

Shareholding classification	(a) Dominant shareholder No.	(b) Defence success No.	(c) (b) as % of (a)	(d) Merchant Bank's Views of share composition on tactical manoeuvres
board/family (above 5%)*	14	6	43%	"easy to defend"
institutions (above 5%)	19	5	26%	"influenced by cold financial arguments"
public holders (above 5%)	20	7	35%	"tend to be loyal to the board"

Table 9.6: Tactical Implications of Ownership Pattern of Biddee Companies on Defence Outcome Analysed by Chi-Square Test.

Shareholding category	Defence Success (No.)	Defence Failure (No.)	Total
board/family	6	8	14
institutions	5	14	19
public	7	13	20
Total	18	35	53

Chi-square = 1.309, critical value = 5.99, degrees of freedom = 2 (5% significant level)

Evidence from Table 9.5 above tends to support the views of merchant banks on this defensive issue. However, the results of Chi-square test presented opposing evidence by showing that share composition does not exert material influence on the outcome of defence. This finding underlined the fact that share composition is but one element of overall defensive strategy.

* This arbitraty figure was chosen because under the revised Companies Act, it is mandatory for a holder of 5% equity stake to declare his shareholding. There is double counting here owing to the approach adopted but nevertheless, the computed results matched very well with the respondents' views on this defensive matter.

(i) Behaviour of Public Shareholders Discernible In Case Studies

The merchant bankers' views of the perceived response of private investors to bid situations and their loyalty to their boards adhere closely to that of Chesham's empirical study regarding shareholders' behaviour (see Table 9.7 on the next page). In 3 case studies in particular, the public remained loyal to the biddee companies, viz., Montfort, Evered and Wellman Engineering Corporation and bids were repelled. However, with the declining trend in individual ownership of UK equity capital and the growth of institutional capitalism, it can be anticipated that companies in the future may find it more difficult to maintain their independence.

(ii) Behaviour of Institutional Holders Discernible in Case Studies

According to R.J.Briston and R.Dobbins,[2] institutional holders are acquiring roughly 2% of all UK listed shares annually, and at the end of 1977, they already owned 46% of the ordinary equity in UK quoted companies and are responsible for more than 50% of the UK stock market turnover in shares (see Table 9.8 on the next page). Inevitably, such a concentration of ownership of British industry in institutional hands would certainly constitute a compelling force in the stock market since institutions have the ability to influence prices and decide the outcome of takeover battles in the UK as shown in this survey.

Of the 9 successfully defended cases against unwelcome bids found in the case studies, in 3 of the cases examined, viz., Bestobell, Cambridge Petroleum Royalty and Guthrie Corporation, the institutions were largely responsible for the defeat of the takeover attempts. In the case of Bestobell, British Tyre & Rubber Company (BTR)

2. R.J.Briston & R.Dobbins, "op.cit.", (see Chapters 3 and 7).

Statement:	Agree %	Disagree %	No opinion %
I would be happy to accept a bid if the directors of my company approved of it	65	21	14
I should be reluctant to accept a bid if the directors of my company opposed it	62	26	13

If the directors advised:	They would probably or definitely do as the directors advised %	They would probably or definitely not do as the directors advised %
Acceptance of bid	70	5
Rejection	56	12

Table 9.7: Willingness To Follow Directors' Advice About Bids.

Source: Chesham, "Attitude of Private Shareholders to Mergers and Acquisitions," London, Occasional Paper No.5, Nov.1971, p31.

Table 9.8: Estimated Ownership of UK Companies 1971-77 (%)

	1971	1972	1973	1974	1975	1976	1977
Insurance companies	12.9	13.9	14.8	15.4	15.5	15.9	16.3
Private pension funds	6.4	6.9	7.4	8.4	9.0	9.5	10.1
Public pension funds	2.8	3.3	3.6	4.5	5.1	5.6	6.3
Local authority p.f.	1.5	1.7	1.9	1.9	2.5	2.8	3.2
Investment trusts	6.7	6.8	6.5	6.6	6.1	6.3	5.9
Unit trusts	3.1	3.1	3.4	4.1	4.2	4.2	4.2
Other shareholders	66.6	64.3	62.2	59.1	57.5	55.7	54.0
Total equity market	100	100	100	100	100	100	100
Combined pension funds	10.7	11.9	12.9	14.8	16.6	17.9	19.5
Combined institutional investors	33.4	35.7	37.6	40.9	42.5	44.3	46.0

Source R.J.Briston et.al., "Financial Institutions & the Stock Market," Management Bibliographies & Reviews, vol.4, 1978, p175.

attributed its failure to gain control largely to the lack of support from 3 important institutions in the final phase of the takeover. In the second case, dissident institutional holders voted against the proposed Scheme of Arrangement (the bidder requires a 75% majority vote to win) by Cambridge Royalty Corporation, and in the third case in point, M&G, the largest institutional holder of Guthrie sided with the biddee and released a strong supportive statement against the bid (see Sime/Guthrie case study).

Institutional involvement in managerial decision-making in contested bid situations can also be analysed more in-depth. For example, in the Dalgety/ Spillers case, because of institutional cross-holdings in both companies, the controversial nature of the bid, the failure of Dalgety to present a convincing case for merger and the unimpressive performance record of Dalgety, the institutional shareholders were confronted with a dilemma as to which party it should support. In fact, the strong resistance came from some pension fund holders of the bidder itself. As a result, a "case committee" of the National Association of Pension Funds (pension funds controlled about 15-20% of Dalgety's equity) headed by Airways Pension Fund, explicitly stated their desire to vote against Dalgety's capital raising resolution formulated in conjunction with the proposed takeover of Spillers.[3]

In Lonhro's controversial bid for SUITS, the outcome of the battle centred around the strategic 9% holding held by the Fraser family trusts (this block of shares would increase Lonhro's equity holding to over 40% in SUITS as it initiated its bid from a platform of 30%). In order to prevent Lonhro from successfully

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3. The institutions' attempt to seek a collective meeting with Dalgety through a special case committee just before the EGM failed due to opposition from the Panel. Instead, they were advised by the Panel to meet Dalgety individually.

acquiring this stake and to persuade Sir Hugh Fraser, the deputy chairman, to break his pledge to the bidder, Charterhouse Japhet, financial advisers to SUITS, with the Panel's approval organised a syndicate of 8 institutions to make a higher offer for this specific trust holding. The underlying rationale of this tactical move was to compel Lonhro to improve its bid for SUITS.

Owing to the controversy surrounding Lonhro's attempted takeover of the House of Fraser, the institutional investors in this second instance also activated a a "case committee" headed by the National Coal Board Pension Fund (NCBPF), the largest shareholder, to protect their investments in the company. The "case committee" representing 35% of the votes sought to resolve the contiuing uncertainty and ambiguity that surrounded the divided House of Fraser's board and expressed its hope that the company would strengthen its board to bring about a new corporate direction. It is interesting to note that a few days after the formation of the institutional ad hoc committee, the Fraser's board of directors finally removed Sir Hugh as the chief executive of the company. The exact role of the institutions in bringing about this drastic change is difficult to fathom but it can be speculated that strong institutional pressures must have reinforced the fortitude of the Fraser's board and its merchant bank, Warburgs (the bank had in fact quietly pressurised Sir Hugh to resign earlier on) to implement this boardroom decision. Institutional support was also critical to the House of Fraser's board continued struggle against Lonhro. In an earlier corporate boardroom tussle in which Lonhro attempted to block the sale-and-leaseback of D.H.Evans by House of Fraser, the latter managed to defeat Lonhro's resolution which was chiefly attributable to the strength of institutional support for the company.

In the case of Decca, constrained partly by the obsolete capital structure and the concentration of voting power with the board and partly because of the adverse

financial performance of Decca over the last few years, institutional investors in fact held meetings with the company to persuade the board to strengthen its management in order to reverse the company's continued losses. It is hard to imagine how Decca would have defended itself in view of the erosion of shareholders' confidence and institutional disenchantment with the company. Naturally, not very long after these meetings, when GEC and Racal were bidding for the company, institutional support for independence was evidently lacking.

With the balance of power increasingly in their hands, UK fund managers are potentially able to intervene in the industrial performance and corporate decision-making process as well as fight for the rights of both the small and large shareholders. The Wilson Committee Report and recent speeches by Sir Keith Joseph have advocated that institutions should adopt a more direct and positive role in company affairs. From the case studies, it may be seen that institutions such as the Kuwaiti Investment Office (KIO), Prudential Assurance, M&G and Britannic Assurance are almost ubiquitous owing to their diversified portfolios. For instance, Table 9.9 on the next page shows the industrial portfolio of the Kuwaiti Investment Office and it is evident that because of the size and extent of its holdings, the Kuwaiti Investment Office, undoubtedly has the institutional power to decide the future of many UK companies when they are threatened by takeovers.

(iii) Nominee Holdings

During the course of this survey, a few respondents said that nominee shareholdings could sometimes create difficulties for the defending merchant bank especially if the nominees are sited overseas and hence beyond the jurisdiction of the UK company law or self-regulatory system. Indeed, this device has been used

Company	% Holding
Aberdeen Construction Group	7.6
Allnat London Properties	5.6
Anderson Strathclyde	7.8
Bank of Scotland	9.0
BBA Group	7.8
Birmid Qualcast	6.0
Bridon	5.6
Burmah Oil	5.93
Caledonia Investments	8.92
Capital & Counties	6.42
Cawoods Holdings	8.1
Chubb	10.9
Coats Patons	5.02
Commercial Union	5.29
Dawson International	5.3
English & Scottish Investors	11.02
Equity & Law Life Assurance	7.13
General Accident Assurance Corporation	9.1
Gerrard & National	5.6
Glasgow Stockholders Trust	7.85
Guardian Royal Exchange	5.91
Hambros Investment Trust	7.3
Harrisons & Crosfield	9.98
Hikson & Welch	8.7
Hogg Robinson Group	7.7
Howden Alexander Group	7.8
Jessel Toynbee	8.5
Lakeview Investment Trust	6.14
Laporte Industries	5.5
Legal & General Group	6.2
London & Manchester Assurance	5.02
London & Montrose Investment Trust	6.6
London & Provincial Trust	8.5
McKechnie Brothers	5.1
Mowlem (John)	9.1
Muirhead	7.7
Pentland Investment Trust	8.63
Powell Duffryn	5.44
Property Holding & Investment Trust	8.9
Romney Trust	8.1
Royal Bank of Scotland	8.04
Royal Insurance	5.7
Scottish Ontario Investment	14.6
Slough Estates	5.1
Sterling Trust	6.68
Stock Conversion & Investment Trust	7.78
Trusthouse Forte	5.1
Union Discount Company of London	10.45

Table 9.9: The Kuwaiti Investment Office's Stakes in British Companies.

Source: The "*Financial Times*," (15/1/82)

quite successfully by some foreign buyers to acquire unsuspecting UK companies by stealth (see the Kangra International/Renwick and Gasco/St.Piran case studies).

In Decca's case, the late founder chairman, Sir Edward Lewis besides making the electronics company relatively bid-proof by concentrating 17.2% of the voting equity in the hands of the board, also placed some shares in unknown nominee holdings (see Table 9.10 below). This has the dual defensive function of denying the potential bidder easy identification of the company's shareholding composition as well as preventing him from knowing the voting power of the owner-shareholder.

Nominees	Shares
Credit Suisse of Zurich Nominees	486,000
Hartson Nominees	420,000
Control Nominees	391,000
Bishop Nominees	266,000
Heathview Nominees	204,000

Table 9.10: Nominee Holdings of Shares Assumed to be Related to the Decca's Board.

Source: The "Financial Times," (19/1/80)

The problems posed by nominees and steps toward reform are discussed more fully in Chapter 10.

9.3 The Assumptions Underlying Profit Forecasts Used in Bids

We gathered from the findings of the merchant banking survey that difficult problems were created for merchant banks required to approve profit forecasts by ambiguous and unimpressive assumptions. Table 9.11 (page 199) shows the profit forecast assumptions of 44 companies (1979-81). As can be seen, assumptions like "management policy will remain unchanged" or "no serious deterioration in the economy" focused more on generalities

	Assumption	Frequency
1)	No industrial disputes	30
2)	No material change in exchange rates from present levels	25
3)	Accounting policy will remain unchange	21
4)	No material change in interest rates	19
5)	Management policy will remain unchange	18
6)	No material change in tax policy	12
7)	Sales adhere to present level and previous trends	11
8)	Government policies will not adversely affect business	9
9)	No political disturbances	8
10)	Gross profit margin will be maintained	7
11)	Rates of inflation will not be increased	7
12)	Adherence to wages policy	6
13)	No serious deterioration in the economy	4
14)	No unseasonal weather condition	4
15)	Costs of materials/overheads will increase with inflation	4
16)	No manpower shortages	2
17)	No disruption of energy supplies	2
18)	Commodity price fixation	2

TABLE 9.11 : Assumptions Underlying 44 Profit Forecasts Related To Mergers & Contested Bids 1979/81.

Adapted from bid circulars

and are somewhat uninformative. More specific assumptions about prices of products, maintainence of market shares in the face of competition, the value of the company's quoted and unquoted investments or exchange rates would permit better appraisal of the forecasts. Furthermore, as turnover is one of the main contributors to profits, the forecast should attempt to link group sales with recovery in demand resulting from, say, a decline in the rate of destocking by clients. Statements on management policy could usefully be expanded to cover remedial action directed to curtailing losses with the expected financial outcomes. Similarly, an analysis of debts and creditors is often useful as are precise assumptions as to, say, the probable duration and outcome of current or anticipated industrial disputes. Nor should the substantial cost of manning a defence against the unwelcome bid be ignored as an extraordinary item of expense.

9.4 Monitoring of Profit Forecasts

During interviews reported in Chapter 6, the majority of the merchant bankers said that, because of manpower shortage and time constraint they do not monitor profit forecasts endorsed by them. Instead, the Takeover Panel oversees this task by randomly picking out forecasts and monitoring them for results.

Outcome	Forecast No.	As % of Total Forecasts n=107
successful	76	71
failure	31	29
Total	107	100%

Table 9.12: Accuracy of Profit Forecasts by Defending Companies Effected During Takeovers.

Source: adapted from C.A. Westwick, "The Accuracy of Profit Forecasts In Bid Situations," London ICAEW, 1972.

The evidence (see Table 9.12 on page 200) from the Panel's earlier effort (1969-71) reveals that there was a relatively high degree of success in forecasts made during bids. As a result of this, the Panel has since 1972 ceased publishing results related to to forecasts used in both mergers and acquisitions.

9.5 Litigation Arising from Deviant Forecasts

We have noted earlier on in Chapter 6, a cross-section of merchant banks interviewed for this study have expressed concern about the possibility of libel actions arising from missed forecasts. In order to discern whether such misgivings have any foundation, an extensive search of newspaper reports over the last 3 years was undertaken which revealed impending lawsuits against professional negligence resulting in deviant profit forecasts. The first involved the threat of legal proceedings by Lonhro against Morgan Grenfell and Grindlay Brandts as well as Turquands Barton Mayhew (accountants) with reference to a missed forecast after its acquisition of Dunford & Elliot. The company had in fact forecasted profits of £5 million for 1976/77 period when it was warding off a hostile bid from Johnson & Firth Brown in December 1976 and again reaffirmed this figure when Lonhro made a higher bid in February, 1977. However, after acquisition, it failed to meet its target and made a profit of only £1.7 million. The Panel subsequently got involved when it made its own investigation of the affair but in its verdict found the defendents had acted in good faith and advised Lonhro accordingly.[4]

The second case involved Pentos suing Singer & Friedlander and accountants Malvern & Company in 1980 over overstatement of assets of Caplan Profile by £950,000 (which have indirectly materially affected the company's profits) as well as for a shortfall of £400,000

4. The "Financial Times," (21/5/80)

in forecasts.[5] As a result, Pentos relieved the financial director of Caplan of his executive duties and received a sum of £50,000 from him as compensation. Pentos also reached an agreement with Mr.Ian Caplan (who later resigned as director of the company) and his family in which the latter will pay Pentos £700,000 to allow for the overstatement of assets.

In the third case involving the contested acquisition of Fairey Holdings by Doulton & Company (a subsidiary of S.Pearson & Son), the bidder successfully forced the National Enterprise Board (NEB), the parent company of the biddee to accept a lower offer of £22 million as against a proposed price of £24 million. This situation arose when Doulton requested Morgan Grenfell, its merchant banker to examine the optimistic forecasted figures of £5.5 million made by Fairey Holdings in conjunction with the takeover. As a result of this re-appraisal, the biddee then revised the forecast downwards from £5.5 million to £4 million and warned its shareholders of the deteriorating situation on the economic front.

With regards to the threatened lawsuits by the dissatisified clients against various financial advisers related to the Dunford & Elliot and the Caplan Profile acquisitions, there seems to be no follow-up of these 2 cases in the media and therefore one has to assume that out-of-court settlements were arrived amongst the parties concerned (see also Chapter 10 which contains an extended treatise on this issue). In the Fairey's case, despite the forecast adjustment, in 1982, the media speculated that because of anticipated losses, S.Pearson might sue the financial advisers concerned for deviant forecast. This proved to be speculative.

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5. Caplan forecasted a profit of £1.4 million for the year ending August, 1979.

9.6 Distinction as Merger and Acquisition ("M&A") Specialists

We have seen from Chapter 7 that the merchant bankers in general perceived that they enjoy certain advantages over the other financial advisers in fee-earning earning corporate advisory activities. Analysis of the case studies certainly confirmed their predominance as financial advisers in contested bids (see Tables 9.13 to 9.15 on page 204 and also section 12.3 of the Postscript). Such work is moreover heavily concentrated in the hands of a few leading UK houses like Morgan Grenfell, Kleinwort Benson, Warburgs.* Only in 2 particular instances, do we find stockbrokers (i.e., Montagu, Loebl & Stanley and Close Brothers) involved *per se* in contested battles without the involvement of merchant banks (see Appendix Table C.5).

It should be pointed out that in certain instances, the client may retain the services of more than one merchant bank. For example, in the case of the Hong Kong & Shanghai Bank's bid for the Royal Bank of Scotland, it not only retained the services of its own European merchant banking arm, Antony Gibbs, but also that of Hambros Bank as well. In transnational acquisitions, especially in the USA, British merchant banks work closely with their American counterparts as was evident in Grand Metropolittan's takeover of Liggett where Warburgs allied itself with Morgan Stanley, the famous American investment bank in "Wall Street."

9.7 Involvement With the Takeover Panel

Earlier on, we have noted that the merchant banks declared themselves to have a strong relationship with the Takeover Panel. Existence of this linkage is amply borne out by information in Tables 9.16 and 9.17

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* See also Appendix Table C.6 for details of transactions effected by financial advisers (Group 2 Case Studies).

Merchant Bank (all categories)	Transactions Handled by individual merchant bank (No.)
Barclays Merchant Bank	4
Baring Brothers	4
Charterhouse Japhet	1
County Bank	2
Gray Dawes	1
Gibbs Antony	1
Hambros Bank	2
Hill Samuel	4
Kleinwort Benson	7
Keyser Ullmann	2
Lazard Brothers	3
Lloyds Bank International (M.B.)	1
Morgan Grenfell	7
Robert Fleming	3
Rothschilds	3
Singer & Friedlander	4
Samuel Montagu	4
Standard Chartered Merchant Bank	1
Wagg J.Henry Schroder	4
Warburgs	8
Total	66*

Table 9.13: Contested Bid Transactions Handled by the Individual Merchant Bank Discerned in the Case Studies

Merchant Bank (wholly-owned subsidiaries of UK clearing/overseas banks)	Transactions Handled by individual merchant bank (No.)
Barclays Merchant Bank	4
County Bank	2
Gibbs Antony	1
Grindlay Brandts	0
Lloyds Bank International (M.B.)	1
Samuel Montagu	4
Standard Chartered Merchant Bank	1
Total	13*

Table 9.14: Contested Bid Transactions Handled by the Individual Merchant Bank Discerned in the Case Studies Categorised by Affiliated Status (Non-independent).

* Sometimes, a client is advised by 2 merchant banks

Category of Financial Advisers handling the Contested Takeover Bids	No.	As % of Total financial advisers
Merchant banks constituting survey sample	66	88.0%
Merchant banks outside survey sample	2	2.6%
American investment banks	5	6.6%
UK stockbrokers	2	2.6%
Total	75	99.8%

Table 9.15: Total Contested Bid Transactions Handled by the Different Types of Financial Advisers Discerned In the Case Studies Selected for this Survey.

(see pages 206 and 207) which show the frequency and nature of involvement between merchant banks and the Takeover Panel in the case studies used in this dissertation. From the findings tabulated in both Tables, it is evident that the Takeover Panel is indeed used as a multi-functional body by the merchant banks (or indeed other professional nals) in these context:

a) as a lobby
b) as an appeal body
c) as an arbitrator of questionable bid practices/ behaviour
d) as a guardian of the 'spirit' of the City Takeover Code.

Of the 40 case studies of contested bids the Panel was involved in at least 14. Its involvement ranges from seeking clarifications regarding erroneous or ambiguous bid statements made by chief executives of the bidding companies to extreme form of public censure for the deviant bidder (J.J.Raper - see the Gasco/St.Piran case study in Appendix B).

The evidence thus suggests that the Takeover Panel is actively involved in contested bid activities. This highlights the fact that contested takeovers are controversial and complex and consequently, advisers may sometimes breach the technicalities and the 'spirit' of the Code. From the case studies, it was clear that some advisers attempt to circumvent restrictive provisions and stretch non-statutory "legalities" to its limits. As the case studies show, control is made particularly difficult because bid strategies are constantly evolving in line with changing environmental and institutional forces. Consequently, a fresh approach may be required with each new transaction according to the type of industry and the circumstances surrounding it.

Table 9.16: Nature of the Takeover Panel's Involvement with Financial Advisers During Contested Bids (Group 1 Case Studies)

CASE STUDY	NATURE OF PANEL'S INVOLVEMENT
BTR/Bestobell	Bidder objected about the wording of the biddee's defence circular.
Cowie/Ewer	Panel ruled that Cowie's withheldment of payment to the accepting directors of Ewer was unethical.
Dixons/Montfort	Montfort accused the bidder of infringing Rule 37 of the Takeover Code. Additionally, the Panel met P.Bailey of Palma Textiles regarding his bid intention.
Dalgety/Spillers	The Takeover Panel disallowed institutional request to hold discussion with Dalgety during the bid. Owing to the use of heavy advertising by both contestants, the Panel ruled that all future advertisements related to mergers/takeovers would need its prior sanction.
GEC/Averys	Schroder Wagg, the merchant banking advisor to Averys sought the Panel's views on its defensive approach.
Hanson Trust/Caparo/CMT	The Panel set a date-line for Caparo to effect a formal bid owing to its protracted and ambiguous intention towards CMT.
Lonhro/SUITS	Charterhouse Japhet, the HoF's merchant bank received approval from the Panel to form a consortium of institutions to counterbid for the 9% equity stake held by the Fraser Trusts.
Mining Supplies/L.Scott	The defender successfully lobbied the Panel to impose on the bidder to extend its cash offer element.
Redman Heenan International/Wellman Engineering Corp.	WEC clarified with the Panel regarding its aim to acquire the Industrial Business Heating Department (IHBD)
Starwest/ALP/G.Cooper	Panel sought clarification from Starwest regarding its statement of not increasing its bid price.
Sime Darby/Guthrie Corp.	Kleinwort Benson lobbied the Panel and alleged that the bidder was guilty of concert party action.
SMI/Proprietor of Hay's Wharf	Imposed a bid restriction on KIO after its acquisition of St.Martin's Corporation in 1974.
Provincial Laundry/St. George	Sanction given by the Panel for the bidder to launch a partial and full takeover simultaneously.
Waring & Gillow/Maples	Bidder complained to the Panel regarding certain aspects of Maple's defence.

Table 9.17: Nature of the Takeover Panel's Involvement with Financial Advisers During Contested Bids (Group 2 Case Studies)

CASE STUDY	NATURE OF PANEL'S INVOLVEMENT
Lonhro/House of Fraser	Panel sought clarification from Mr. Tiny Rowland regarding his statement that his initial bid price would be the final offer.
AAH/Kangra International /Renwick	Samuel Montagu lodged a strong protest against the unethical use of nominee companies as a vehicle for takeover of Renwick by Mr.Becker.
Avana/Robertson	Avana successfully obtained permission from the Panel for the disposal of its minority shareholding in the biddee company during the course of the takeover. As a result of this precedent, the Panel ruled that all future deal of this nature requires 24 hour notification.
Gasco/St.Piran	The Takeover Panel instituted its own investigation into Mr.J.J.Raper's infringement of the City Takeover Code and the subsequent imposition by the Panel on Gasco's obligation to bid for St.Piran. Furthermore, the Panel issued its strongest censure against Mr.Raper by rebuking him publicly.
BICC/Higgs & Hill	Due to the novel bid tactic adopted by BICC (bid conditional on appraisal of Higgs & Hill book value by independent auditors) and protracted period of indecision, the Panel then intervened and set a date-line for the bidder to effect a formal takeover for the biddee.
News International/ William Collins	The defender accused Mr.Rupert Murdoch and Mr.Robert Maxwell of collaboration i.e.the sale of the latter's shareholding in Collins to News International was linked with the settlement of an industrial dispute between both entrepreneurs. The Panel rejected the allegation as well as the subsequent appeal against its decision by Schroder Wagg, the defending merchant bank.

9.8 Working Relationships With Clientele

From being financiers of international trade, British merchant banks have emerged as the most important source of financial advice for the corporate sector domestically and in certain markets overseas, for instance, Hong Kong (see Postscript). However, as we have repeatedly demonstrated in this study, advice on contested deals implies constant exposure to publicity or being involved in conflict of interest situations or with controversial industrialists/entrepreneurs. Sometimes, these events contributed greatly to the stresses in the advisor-client relationship.

The best case in point involves that of the well known Accepting House, Warburgs, Lonhro and the House of Fraser. This merchant bank was formerly advisor to Lonhro but resigned in the early 1970s due to differences. This quarrel was to continue for Warburgs in its capacity as financial advisers to the House of Fraser in which Mr.Tiny Rowland held a substantial stake and was represented on the board. Indeed, it seems to have been one factor in precipitating the ultimate split in the boardroom which led to the removal of Sir Hugh as chairman. This particular crisis illustrates the fact that merchant banks are deeply involved in their clients' affairs and their on-going professional relationship does not always proceed smoothly.

In yet another widely covered incident, the merchant bank was sacked by the corporate client. The crisis of confidence occured when Guinness Peat, the parent company of Guinness Mahon, the merchant bank, sold its 21% equity holding in Linfood to Gulliver Foods which in turn sold it to Argyll Foods in September, 1981. Afterwards, Argyll used this particular block of shares as a springboard for the attempted takeover of Linfood Holdings. Linfood then replaced Guinness Mahon with Morgan Grenfell as

its new merchant banking advisor. The change of advisor was natural given the fact that many of Guinness Mahon's directors (who are also directors of the parent company) were retained as non-executive directors of Linfood. These directors eventually resigned as a result of the boardroom strife which erupted over the sale of Guinness Peat's 21% stake in Linfood to Gulliver Foods.[6]

These two particular incidences underlined the fact that there are practical constraints and limitations to the capability of merchant banks to influence the internal affairs of their corporate clients. High-handed actions, poor communication or lack of co-ordination, sometimes may simply influence the client to take drastic action and seek a new financial advisor.

9.9 Summary/Review

This chapter has shown that defensive strategies are critically dependent upon the nature and emphasis of the offensive strategies. To be effective, they have to be devised and adapted to the specific situation. Of the 11 defensive strategies selected for testing, 4,viz., asset revaluation, profit forecast, shareholders' loyalty and dividend increase, were found to be very important and normally constituted the principal or main line of defence in the various case studies examined. The others were used in various degrees and it is interesting to note that with the shift in the Government's policy towards mergers, more and more defending merchant banks are treating the Monopolies and Mergers Commission as a final resort for defence when all else has failed.

6. It should be emphasised that Lord Kissin, the ex-chairman of Linfood retired from his chief executive post a week before this block was disposed of.

The other crucial point which underlined strongly the creative aspects of strategy formulation has been well supported by some of the case studies, for instance, Rank Hovis McDougall's swift response and innovative share buying approach in British Sugar, was clearly beyond the anticipation of the bidder and it has the effect of stalemating the corporate designs of all parties concerned. Equally important is the fact that defensive strategies are by no means merely confined to these few counter-measures highlighted for testing. The case studies approach have sufficiently demonstrated that defensive strategies (for that matter bidding strategies too) are richly varied. New and "peripheral" strategies are constantly created or adapted from elsewhere to lend support to the core strategies (as identified in this study) and at times, they may become a key part of the defence. as in the Berisford/British Sugar Corporation/Rank Hovis McDougall case study.

The victim company was found to have a higher rate of survival when the shareholding is widely concentrated in the hands of the family, board members or individual holders than institutions because of greater loyalty exhibited by private shareholders to their boards.

Profit forecast assumptions in contested bid situations seemed to be largely uninformative generalities.[7] None the less, so far, no cases for professional negligence involving financial advisers have succeeded in relation to deviant forecasts. So, there is no legal precedent to fall back on. Thus, unless the Panel dispensed with the need for the merchant banks to endorse their concurrence with the reported forecasts, very little can be done to prevent dissatisfied clients from suing merchant banks and accountants for misplaced forecasts in the near future.

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7. This tends to expose the merchant banks who are unable to properly check the forecasts in time and with the calibre of information available.

Despite the range of merchant banks selected for this special study, there is a tendency for contested offers to be conducted by a handful of merchant banks in the City especially the few large multinational traditional houses (with equally big corporate finance divisions) and, increasingly, some wholly-owned merchant banking offshoots of large UK clearing banks. These banks have managed to maintain their market shares of this high fee-earning business in spite of spasmodic competition from some stockbroking houses. However, owing to the close inter-relationships between most of the merchant banks and stockbroking firms in the City, and also to other factors mentioned in Chapter 7, the stockbrokers tend to act as agents for merchant banks servicing and advising them more on the market-related aspects of takeover rather than assuming the role of principals.

There is also a high degree of involvement between merchant banks and the Panel in the area of contested bids. This is a clear testament of the fact that despite familiarity with takeover transactions, owing to the City's institutional framework, complexities, legalities, ambiguity and fast evolving events surrounding contested offers, merchant banks have to constantly consult the Takeover Panel regarding various aspects of bid approaches and practices. As a result, it is hard to conceive that non-merchant banking professionals lacking in corporate finance expertise, experience and financial power would attempt to advise companies on transactions of this nature without the help of merchant banks. Finally, advisor-client relationships have not always been smooth and amicable. Generally though, there is no real evidence nor reason to believe that there is widespread discontentment existing between the 2 factions.

In the following concluding chapters, we will be reviewing some of the salient hypotheses, contemporary takeover problems/issues and suggested reforms, summary and review of both acquisition and defensive strategies, recommendations for future research and finally, trends in merchant banking and corporate advisory activities in the 1980s.

CHAPTER 10

CONCLUSIONS I: ANALYSIS AND SUGGESTED REFORMS OF SALIENT CURRENT TAKEOVER ISSUES/PROBLEMS DISCERNED IN EMPIRICAL CASE STUDIES RELATED TO THIS RESEARCH

10.0 Introduction

In the course of interviews and analysis of the case studies, we have discerned that there are many contemporary takeover issues and problems facing financial advisers, the City and other related interests. As these issues are of immediate concern and relevance to this research, they are highlighted and discussed in this section. They include the following:

1) Unidentified buyers, "concert party" and nominees.
2) Market raids and "quick-fire" takeovers.
3) Institutional power.
4) Profit forecast.
5) Conflicts of interest.

Furthermore, this chapter also traces current changes related to these issues and problems and also delineates certain recommendations for reforms.

10.1 Unidentified Buyers, "Concert Party" and Nominees

This survey has shown that in some cases, UK listed companies have been acquired by highly questionable takeover tactics particularly by foreign buyers

using nominees to camouflage their real intentions. Such an operation is normally conducted through off-shore nominees and to circumvent the UK Companies Act 1976, Section 27.[1] Occasionally, the anonymous bidder can deliberately acquire various blocks of voting equity capital (each under 4.99% to circumvent the 5% ruling for disclosure) through concerted effort and goes on accumulating and 'warehousing' these stakes until it is near the 30% trigger level.

In the Group 2 case studies, Kangra International, a Hong Kong based company owned by a South African businessman secretly acquired a 27.5% stake in the Renwick Group through the stockbroking firm of A.J.Bekhor. At the same time, investors sheltering behind the nominee name of the Uto Bank of Zurich also used the same broking firm to acquire a 22.5% equity holding in Renwick. It should be stressed that both the biddee and the original bidder AAH Limited, failed to identify these overseas nominee stakes till the very last stage of the takeover contest when Mr.Becker, the South African entrepreneur revealed himself as the potential buyer. He then promptly gained control of Renwick when he purchased the other strategic block of shares held by Uto Bank. As a result of these controversial tactics, both Renwick and its merchant banking advisers, Samuel Montagu protested to the Panel but the Takeover Panel ruled that there was no collusion or acting in concert despite the use of the same stockbroking firm.

In the notorious St.Piran case study, Mr.Jim Raper acquired ownership of St.Piran through several stages through the concerted use of 7 foreign nominees according to the Panel's investigation (see the Gasco/St.Piran case study). In both these cases

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1. This empowers the directors of quoted companies on reasonable notice to require the nominees to reveal the beneficial holders of shares in the company.

the buyers with their substantial pre-bid platform managed to successfully acquire the victim companies very swiftly. Even more serious was the fact that owing to the modus operandi in which the two acquisitions were effected, the defending merchant banks could not put up any credible defences to prevent their clients being taken over.

In two other cases which had not resulted in formal bids (although the possibility existed), involved De Beers, the South African mining conglomerate and Goodyield Holdings of Malaysia utilising nominee companies[2] to secretly build up their control in Consolidated Gold Fields and Dunlop Holdings respectively. Their covert action resulted in large scale condemnation in the City and attracted the Department of Trade which subsequently instituted investigations.

Reform Measures

The predominant acquisition issue which sharply divided the views between the Government and the City revolved around the seemingly intractable problem of "concert party." The ambiguity and imprecision of the concept of acting in concert which ultimately required proof of intention was initially felt to be too difficult for proof of contravention, enforcement or legislative control and so, the Government decided against it. In July, 1981, after much deliberation the Government finally produced draft clauses planned for incorporation in the current Companies Bill. Under this new proposal, any shareholder who is conciously related to a "concert party" will be obliged to disclose the size of the whole grouping's equity holding. This is because he will be liable to be counted as interested

2. In both instances, surmised to have acted in concert using foreign nominee companies.

in the total holding and not merely confined to his own shareholding. The City and the Stock Exchange have in fact all along favoured the Government implementing changes so that the obligation on a shareholder of 5% or more in a British company is applicable to a group acting in concert which has 'warehoused' 5% or more of a company's share capital. Nowadays, with the removal of exchange control, enforcement of the proposed provisions may be difficult in relation to foreign holders. To provide for this contingency, the draft clauses also deem non-co-operation with investigation a criminal offence (under Section Q4, either the unhelpful shareholders or their agents are liable for two year imprisonment).

The main reform in the new legislation clauses focuses on the "self-help" provisions. If approved, it will strengthen a company's own power to investigate holders with interest in its equity capital. It can be recalled that companies already have the right to unravel the beneficial holders/owners of shares in nominee names. However, the line of approach advocated now is that they can approach any shareholder whom they feel has had an interest in their company shares during the previous three years. If the shares have been sold, the company can ask for the identity of the buyer, but, if they are frustrated in the course of their inquiries, the draft provisions would empower companies to apply to the court for restrictions (Section 174 of the 1948 Companies Act) to effectively freeze the shares and this implies that the mysterious buyer would not be entitled to vote nor receive dividends for the duration of the restrictions. To assist the shareholder further, the new amendments to the Companies Bill also allow shareholders who together controlled a tenth or more of the voting capital in a company to compel the company to exercise its power to find out the real owners of its equity provided they demonstrate reasonable basis for

such a request (unmistakably designed with St.Piran in mind so that a company with a puppet board of directors under the control of an unknown shareholder would not easily evade its corporate responsibility). These official measures were undoubtedly designed to fit in with the 1980 Council of Securities Industry's proposals in the Department of Trade consultative document motivated by the De Beer and Dunlop affairs - which proposed cancellation of shares whose beneficial shareholders fail to expose themselves, the rejection of ignorance as a line of defence in the accumulation of holdings and finally, the definition of control to encompass indirect holdings through intermediaries. Additionally, regarding the latest draft relating to the Code, the Council for the Securities Industry also proposed that a financial advisor should be regarded "as acting in concert" with its clients. As such, all its dealings and shareholdings would then be circumscribed by the regulations applying to the bidder. As envisaged, this proposal evoked an unfavourable response from both merchant banks and stockbrokers which managed portfolio investment on a discretionary basis as well as providing corporate financial advisory services during contested acquisitions. Finally, the Government also strengthened the powers of investigation of the Department of Trade's Inspectors to enable them to call witnesses when investigating a company's affairs.

Preventive self-induced action can also overcome the problem of overseas nominee holdings where real beneficiaries of the shares are difficult to identify. Firstly, through the invokement of S.27 of the 1976 Companies Act which empowers board of directors to compel any holder to reveal the capacity in which he hold shares. Secondly, Articles of Association can be amended in anticipation of such a problem arising at an Emergency General Meeting (EGM) convened on a fort-

night's notice to insert a provision enabling directors complete power to enquire about the beneficial ownership and control of shareholding at any time. Non-compliance by any holder within 42 days will enable the board to disenfranchise him. Such an inbuilt provision would serve as a potential deterrent and also enable the board to take swift counter-measures if a covert bid action seems imminent. Furthermore, if a company is frustrated in its endeavour to discover the beneficial owners of the holding, it can appeal to the Department of Trade which can invoke S.174 of the 1948 Companies Act which permits the Department to impose the following sanctions:[3]

1) Any transfer of shares shall be void.
2) There will have no voting rights.
3) No further issues can be made connected with the shares.
4) No payments can be made on the shares.

An exhaustive search of the financial press reveals that over the last few years, some British companies have indeed taken precautionary steps based on these measures to curb the abuses of nominees (see Table 10.1 below):

DoT's Action S.173, 174 1948 Co.Act	Company Invoking S.27, 1976 Co.Act	Nominee Action Taken Against	Subsequent Takeover By	Remarks
Bond Street Fabrics	-	National Westminster Guernsey Tst.	Grovebell	failed
-	Davy Corp.	n/a	Enserch	blocked by MMC
-	Sangers Gp.	London Wall Nominees	-	no bid yet
-	Guinness Peat	-	Lord Kissin	status unclear

Table 10.1 : Counter Measures Taken by Some British Companies to Disenfranchise Nominee Holdings (1980/81)

Source: The "Financial Times" (1980 to 1981)

3. Under S.173 (1948 Companies Act), the DoT can intervene if "..there is good reason to investigate the ownership of any shares of a company" while S.174 authorises the imposition of certain restrictions as listed above.

On balance, the Government's new policy is to foster an effective means of obtaining disclosure of "concert party" holdings in British companies and those camouflaged by nominee names.

10.2 Market Raids and "Quick-Fire"(Rapid) Takeover

The concept of market or "dawn" raids is basically a market operation where buyers procure a substantial number of shares in a company in a very short space of time at an attractive premium. This practice is not new to the stock market but gains notoriety when De Beers adopted a two-tiered strategy of secret purchases through nominees and then swiftly mounted a market raid of the shares of Consolidated Gold Fields on the London Stock Exchange in February, 1980. This covert share acquisition strategy enabled De Beers to acquire a 25% equity holding in the company within a very short period of time. However, owing to strong protests from Consolidated Gold Fields about the incognito _modus operandi_ adopted in gaining partial control of the company and the extensive media criticisms, both the Stock Exchange and the Department of Trade instituted formal investigations into the whole affair. In a subsequent report published in July, 1980, the Inspectors criticised De Beer's usage of the two-tiered method which exploited the loopholes in UK company law and share registration procedures. In conjunction to that, its operations involved members of the Stock Exchange (Rowe & Pitman and Akroyd & Smithers) in evading the 'spirit' of fairness and disclosure on which the British stock market was modelled.

Reform Measures

Despite the De Beer incident, market operation of this nature continued. In our case stu-

dies, from Table 10.2 below, we observed that there were 3 incidences of market raids and the 3 'raiders' successfully used their market raid equity holdings as powerful leverage to acquire full ownership of their victim companies (see also Appendix Table C.7).

Raider	Victim	Pre-bid Stake	% After Raid	Price of Raid (p)	Outcome
Yule Catto	Revertex	-	29.5	40	acquired
Mining Supplies	L. Scott	4.0	27.3	60	acquired
Starwest	G.Cooper	-	29.5	95	acquired

Table 10.2 : Market Raids Executed by Bidders Constituting the Research Case Studies.

To curb further abuses, the Council for the Securities Industry on 7th, August 1980, imposed a temporary embargo on this practice and outlined measures it intended adopting to stop this practice. Under the Council's proposed reforms, market raids are allowed for holdings below 15% since at this level, control was deemed to be still vested in the biddee's hands. However, if a buyer intends to obtain more than 15%, it will have to give 5 working days notice (which is more viable than the half hour originally proposed by the special committee of the Stock Exchange). In retrospect, this proposal has the following advantages:

i) It provides the remotest shareholder with adequate time to take advantage of the offer,

ii) It allows a rival bidder to effect a counter move,

iii) It permits the defending company's board sufficient time to mount its defences and arguments.

In the first week of December 1980, after refining its draft proposals, the Council then imposed an official ban on this acquisition practice and promulgated two dominant rules governing share acquisition:

a) Anybody who intends to hold more than 15% of a company's voting capital through the purchase of a 5% shareholding from more than one party must effect a partial or tender offer to all shareholders. Tender offers can be at a fixed or a maximum price and must be advertised in two national newspapers at least 7 days before the event. If the tenders aggregate less than 1% of the voting rights, the offer is void.

b) If a 15% shareholding comes to be held by other means, example a by-product of a takeover, the company and the Stock Exchange have to be[4] informed by noon of the next dealing day.

However, the advent of these new rulings did not completely stop adroit financial advisers from finding the legal loopholes in the new rulings. Two particular takeovers focused on in this study (the Guthrie and Law Land case studies) serve to remind us of the futility of more rules and also the swiftness with which local financial advisers exploited deficiencies in the interpretation of non-statutory rulings. Basically, these two case studies illuminated the way in which effective independent ownership of UK listed companies can be transferred by substantial share acquisitions on the London Stock Exchange.

The new style of market raids which characterised rapid takeovers involved the bidder stating his bid terms and then entering the market and persuading key shareholders (especially institutional holders) that their best interests lay in taking cash immediately rather than losing out while waiting for the uncertain outcome of the takeover. As a consequence, the defender or its small investors have been left with no opportunity to debate or evaluate the financial or

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4. For a fuller account of the new ruling, see CSI, "Rules Governing Substantial Acquisition of Shares" CSI, No.2, 1980.

commercial merits of the takeover attempt. In the case of PERNAS acquisition of Guthrie Corporation, strategic control changed hands in a matter of only 4 hours! Again, the media centred their attention on this vexatious issue and to curb this new form of market operation, the Council for the Securities Industry(which has the critical role of supervising the behaviour of UK security markets) instituted 3 more restrictions which are highlighted below:

1) If a company plans to initiate a market raid, it can only acquire 15% of the votes and is then banned from acquiring any more equity for 7 days.

2) If a company already owns 15%, it can buy a further 5% in the market and is then prohibited.

3) If a company already owns 29.9%, it can acquire a further 4.9% and then the 7 day moratorium or restriction must apply.

Under this new ruling, a market raider cannot state that its initial bid price for the shares will be its last before the first closing date of the offer (such a statement normally has the effect of forcing shareholders to sell without waiting to hear the board's response). The underlying rationale behind these moves is to provide the biddee's Board with time to consider its position, solicit professional advice and consult shareholders. In this particular instance, the City regulatory body is again responding to the wide public concern about the growing frequency of such raids and the need to inhibit the bidder's freedom of action or manoeuvre.

10.3 Rise of Institutional Power and Implications for Bids

The gradual rise of institutional power in the USA in the 1960s led the Securities & Exchange

Commission to institute a comprehensive investigation of institutional involvement in all aspects in corporate decision-making. The difficulties encountered in this special study are illuminated below.[5]

"Information upon which to base a judgement as to whether or not the potential power of institutions to influence corporate decision is or is not exercised is hard to come by. The response to the study's question shows some reluctance on the part of institutions and corporations to discuss this matter. Such data as is available tends to show that....if they lose confidence in the management they tend to sell their holdings in a company rather than to attempt to control or influence management decisions..Again, the extent, nature and impact of institutional participation in corporate takeovers is not a matter which to any significant extent is susceptible of statistical analysis. The study, therefore, endeavoured to explore this question by case studies."

In the UK securities market, over the past few years, institutions have overtaken the private investors in the stock market. In a more recent study undertaken by the London Stock Exchange on shareholder profiles of 357 companies representing just over half the total value of shares in the market and 320 of the top 500 companies, the evidence shows that institutions held over 64% of the total equity with private shareholders holding 36%[6] as illustrated in Table 10.3 below.

Valuation group	Insurance Companies %	Investment & unit trusts %	Pension funds %	Other institutions %	Individual shareholdings %
Over £500m	18	12	19	13	38
£200m-£500m	21	13	19	10	37
£151m-£200m	17	11	18	21	33
£101m-£150m	19	13	20	18	30
£ 76m-£100m	18	14	16	14	38
£ 51m-£ 75m	17	14	17	14	38
£ 36m-£ 50m	20	14	14	13	39
£ 26m-£ 35m	19	17	14	11	39
£ 21m-£ 25m	19	19	14	15	33
£ 0m-£ 20m	20	12	13	17	38
AVERAGE	19	15	17	14	35

Table 10.3: 1981 Survey of UK Shareholding Conducted by the London Stock Exchange.
Source: The "Financial Times," (24/9/81)

5. SEC, "op.cit.", volume 5, pp2846-2847.
6. As opposed to the 32% estimated by the Wilson Committee.

Using the case studies method adopted by the Securities & Exchange Commission, results from this research indicated that institutions with substantial holdings or the financial ability to procure such holdings often determined the outcome of contested bids. This is illustrated well by the case study of Guthrie. Sime Darby, of which PERNAS is the largest shareholder attempted to acquire Guthrie but failed to gain control because of strong resistance from the founding family and key institutional holders. Then Sime Darby sold its shares to PERNAS, another Malaysian conglomerate. PERNAS then bid for Guthrie at a much higher premium. Most of the institutions, including M&G which attested its loyalty to the company, in this instance, sold their shares to the new bidder. In a circular on 6th October 1980, addressed to the shareholders of Guthrie, Mr.M.J.Gent, its chairman attributed the loss of Guthrie's 160 years of independence mainly to "....the short term investment perspective of some institutional fund managers and the failure of the Council for the Securities Industry to institute effective self-regulatory controls."

From our case studies, however, it is clear that not all institutions adopt a short-term perspective when considering transfer of corporate control. In this context, institutions may be classified as:-

(A) Institutions Having Long Term Perspective

Institutions like Britannic Assurance have demonstrated consistent investment policy and loyalty to the biddees. It was responsible for the preservation of independence of Bestobell and Evered. Britannic's adherence to a pronounced portfolio investment policy was in fact instrumental in the defeat of British Tyre & Rubber Company (BTR) in its takeover attempt of

Table 10.4: Portfolio Holdings of Britannic Assurance

COMPANY	%
AI Industrial Products	11.0
Allen & Sons	11.9
Allen & Lacy	10.0
Ault & Wiborg	5.1
Averys	7.7
Bestobell	10.0
Bifurcated Engineering	12.0
Blagden & Noakes	10.1
Blundell-Permoglaze Hldgs	10.2
Boddingtons'Breweries	11.2
Border Breweries	10.4
Brickhouse Dudley	7.4
Matthew Brown	8.3
Buckley's Brewery	10.0
Butterfield-Harvey	8.9
W.Canning	11.3
R.Cartwright	8.1
Castings	10.2
Concentric	10.1
H.Cory	8.2
Davenports Brewery Hldgs	9.1
Deritend Stamping	12.8
Dowding & Mills	9.1
Ductile Steels	5.4
Duport	8.5
English Card Clothing	6.6
Evered & Co.Hldgs	13.7
Ferry Pickering Group	10.0
Flexello Castors & Wheels	5.2
Fodens	6.4
Foster Bros.Clothing	6.0
Gillet Bros.Discount	20.8
Hallite Hldgs	9.6
Hardys & Hansons	10.3
Hargreaves Group	10.6
Philip Harris	24.5
Harris & Sheldon Group	8.9
Hickson & Welch	5.0
Highland Distilleries	5.0
Hoskins & Horton	12.7
Jenks & Catell	8.3
F.H.Lloyd Hldgs	6.2
Martin-Black	5.3
Metal Closures Group	5.1
Midland Trust	30.5
Morall (Abel)	11.0
Moss Engineering	10.9
William Ransom	7.0
Ransomes, Sims & Jefferies	11.9
Ratcliffs	6.3
Record Ridgway	11.0
Refuge Assurance	7.5
Revertex	6.3
Ruberoid	11.1
G.H.Scholes	10.2
J.Shakespeare	10.3
Sketchley	6.2
Standard Fireworks	6.7
Tecalemit	7.[illegible]
Thermal Syndicate	8.0
Tomkinson Carpets	10.9
Triplex Foundries Group	10.0
United Spring & Steel	10.2
Vaux Breweries	4.9
John Waddington	10.1
Wheway Watson Hldgs	7.2

Source: "The Economist" (25/8/79)

Bestobell in which Britannic Assurance held a 10% stake.[7] The ubiquitous spread of Britannic's portfolio (see Table 10.4 on previous page) is certainly a compelling force. On the other hand, it should be underlined that its portfolio alone covers 1/6 of the total number of biddee companies chosen for this research (see Table 10.5 below). From these companies in which institutional shareholders are dominant or moderate and where Britannic singly held more than 5% equity capital and had expressed its support for independence, it can be seen very distinctly, most of the acquisition attempts failed.

Case Study	B.A.* Shareholding	Size of Institutional Holdings	Support statement	Outcome
BTR/Bestobell	10.0%	substantial (more than 40%)	/	failure
Francis Ind./Evered	10.8%	substantial (more than 40%)	/	failure
GEC/Averys	7.7%	marginal (less than 20%)	/	success
Hiram Walker/Highland Dist.	5.8%	moderate (more than 20%)	/	failure
Yule Catto/Revertex	7.7%	marginal (less than 20%)	n/a	success

Table 10.5 : Posture Adopted by Britannic Assurance Regarding Its Portfolio Holdings During Bids.

* Britannic Assurance

(B) Institutions Having Short Term Perspective

Institutions like the Kuwaiti Investment Office (KIO) which is inclined to take profits and was partially responsible for the loss of independence of such companies as Decca, Averys and Law Land. The Savoy Group was also rendered quite vulnerable when the Kuwaiti Investment Office pledged its large shareholding

7. As reflected in the policy statement made by Mr.J. Jefferson, Britannic's chairman who declared, "We see little logic in takeovers by companies merely seeking to sustain or improve their own growth rate by diversification. Such bids removed from an investment manager his freedom to choose the types of investments suitable for his funds. Some takeover bids are sheer piracy...Perhaps the takeover bidder is most use to society when he fails." (quoted in "The Economist" 25/8/79).

in the company to Trust House Forte, which in turn, used this as a springboard to make a formal bid for the Savoy (see Table 10.6 below).

Case Study	Size of Institutional Disposal before bid	Institutions	Outcome
Starwest/H. Leslie	35.3%	G.T.Management & Gartmore Investment Gp.	success
Churchbury/ Law Land	11.8%	Royal Insurance, M&G Kuwaiti Inv.Office	success
Trust House Forte/Savoy	22.0%	Kuwaiti Inv.Office	failure

Table 10.6 : Institutional Disposal of Large Blocks of Shares to Bidders Prior to Actual Takeovers.

(C) Significance of Decline of the Private Investor

Evidence presented by Briston and Dobbins,[8] the Wilson Committee (31)(1980) and lately, the Stock Exchange[9] itself indicates the rise of institutional shareholder in the UK with institutions holding more than 60% of the total stock market equity. With the balance in the hands of the public, therefore, it is pertinent to examine the ramifications arising from this phenomena and its likely impact on future takeovers. We noted in this study as well as that of Chesham[10] that the small investors tended to be loyal to the board. This makes it difficult to acquire companies in which they held strong voting power. Of the 3 relevant case studies examined, perhaps St.Piran was the most controversial as well as financially devastating for its shareholders due to the greatly discounted net asset value. Although the small investors attempted to form some sort of *ad hoc* 'protection committee' this action was quite futile as

8. R.J.Briston & R.Dobbins, "op.cit."
9. The "Financial Times" (24/9/81)
10. Chesham Amalgamated Industries, "op.cit."

Gasco N.V. managed to acquire St.Piran speedily due to its strong pre-bid controlling position. We also saw that a powerful corporate investor, the Gencor Group endeavoured to resort to litigation to compel Gasco to pay a higher price and for no apparent reason, withdrew at the last minute. Thus, it forfeited an invaluable chance to fight for shareholders' rights like Prudential did for Newman Industries shareholders.

This brings to mind the pertinent question regarding institutional power and its perceived role. To what extent should they concern themselves in company takeovers to protect the private investor? If they are not content, should they merely maximise profits by simply disposing their shares? We observed in this research that in a number of cases where institutions felt strongly about company performance (for instance, Decca and Law Land case studies) or, the incompatibility of the potential bidders (Lonhro, Dalgety and Jim Raper of Gasco) they reacted in various ways and in various degrees. In the case of Decca, they approached the board to suggest an uplift in company performance, whereas in Law Land, they simply liquidated their holdings. In SUITS, the House of Fraser and Spillers case studies, they fell back on their 'protection committees' which in turn activated individual case committee whose objective fundamentally was to watch and monitor takeover situations closely.[11] While in the Gasco/St.Piran affair, the largest single corporate holder, Gencor, attempted legal action to redress a miscarriage of justice. So, in all these cases, it is quite obvious that increasingly, some institutions are feeling less restrained and they are adjusting to a stance where they can assume a more constructive and active role in influencing the conduct of companies in

11. The various institutions in conjunction with the individual "Investment Protection Committee" (IPC) now have an umbrella "Institutional Shareholders Committee" (ISC) to protect their portfolio interests. Still, there is no defined procedures for activating the ISC or the different committees.

which they have a moderate or substantial shareholdings. Even if the rate of dis-investment by ordinary shareholders were to slow down, the role of the shareholders in the future as proprietor will largely be ineffectual as he is often viewed by companies as an investor who will not question their corporate decisions and will only interfere in the most extreme circumstance. Owing to this passivity, geographical dispersion, lack of financial power and the inability to form pressure groups to change inefficient management or prevent the loss of independence of their companies (by bidders using somewhat controversial acquisition tactics) cheaply, ordinary shareholders nowadays tend to be more and more dependent on the institutions to protect their rights and act as countervailing power to the unwelcome bidders. The Wilson Committee too was both concerned and impressed with the rising power of UK institutions and advocated a more active role in British industry.

Another interesting facet that emerged from this empirical study is that in a minority of leading UK listed companies, family or entrepreneur linkage is still quite dominant.[12] Although most UK companies are run for the benefit of shareholders with due regard to the employees' interest, it is possible that in fact, family interests may dominate. This may sometimes lead to a bid which is not in the interests of the shareholders. Indeed, empirical findings in Europe and the USA have adequately demonstrated that mergers and acquisitions have on average been unprofitable possibly because of the high premium over the market price requisite for bid success or even the diseconomies of size. In the long run, the interests of the bidder's shareholders can be adversely affected particularly when acquisitive companies like the defunct Slater Walker Group or Lonhro which are inclined to buy control into other businesses through heavy issue of the company's equity capital.

12. See Appendix Table C.8.

In the context of the British economy, it is unlikely that institutional investors constrained by both manpower and skills would relish interference or imposition of their will on the management of companies. Perhaps, it is also relevant to note the fact that both merchant banks and stockbroking firms managed many pension funds and the corporate philosophy of both City financial institutions favour selling as opposed to direct interference. But, on the other hand, our case studies showed that in highly controversial bid situations, institutions have intervened to protect their investments. Perhaps in view of the concentration of power in their hands, institutions should seek to exercise their shareholder power more actively and constructively, may be through restraining the power of acquisitive management (in terms of unissued shares), the provision of management talents through a newly created consultancy body and strengthening the role of the executive directors. Companies vulnerable to takeovers would then have recourse to their institutional shareholders for constructive assistance and corporate guidance rather than merely surrendering their independence to the first offeror that comes along.

Reform Measures

It can be argued that the powerful institutional shareholder needs to reconcile portfolio ownership with a large degree of responsibility to management, employees, creditors and clients which cannot be attained by the adoption of short term performance criteria (in the case of the Kuwaiti acquisition of the Proprietor of Hay's Wharf, the defending company stated that it was an unsatisfactory offer and promised substantial supportive defence including asset revaluation– but, the institutions failed to heed the board's appeal and hear its case or even wait for the formal bid circular). What is required is a change in the attitude of

the institutional shareholder and not in more statutory provisions.

10.4 Profit Forecast

In chapter 6, we have discussed and highlighted the following aspects of profit forecast, viz:

i) The desirability of a profit forecast in defensive situation.

ii) The difficulties confronting financial advisers in their review of forecasts related to contested bids.

The main issue which emerged in the light of certain revelations by merchant bankers and the increasing trend for clients to threaten to sue financial advisers for deviant forecasts make it pertinent to divide the discussion of this issue into two parts.

a) Trend towards litigation and ramifications for financial advisers.

b) Suggested reforms.

Trend Towards Litigation and Implications for Advisers

Particularly over the last 3 years, as we have previously discussed, some dissatisfied buyers threatened to sue leading financial advisers and accounting firms over badly inaccurate forecasts made whilst defending against a takeover. It should be stressed that companies are not obliged to make forecasts in connection with bids. However, when forecasts are used, more so in defensive capacity, the Panel attached great significance to their careful preparation and vetting. Merchant banks

are responsible in particular for the latter. The Panel holds a watching brief over profit forecasts and implemented a system of random checks but since 1972, has not published any figures on forecasts. However, the Panel still monitors forecasts very closely and over the last 5 years (1976-80), according to the figures provided to the researcher, it has in fact requested 85 forecasts from offeree companies as illuminated in Table 10.7 below. It gave no information, however, on any inaccuracies found.

Table 10.7: Profit Forecasts Monitored by the Takeover Panel (1976-1980)

Year	Forecasts Requested from biddee(No.)
1976	18
1977	23
1978	16
1979	16
1980	12
TOTAL	85

Source: The Takeover Panel, 1981.

In the USA, where litigation is more common, there have been a number of lawsuits connected with failures to achieve profit forecasts (Dolgow versus Anderson and Harry H.Levy versus Douglas Aircraft)[13] In the UK, we have just noted that over the last 3 years, Lonhro and Pentos threatened to sue both merchant banks and accountants for professional negligence arising from misplaced forecasts. Regarding the accountants, there were two out-of-court settlements (see Tables 10.8 and 10.9 on the next page). This move deprived the British accounting profession and other professionals as well of a current judgement in the area of professional negligence. This trend is believed to have the backing of the judiciary based on the assumption that the public interest is -

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13. AISG, "Published Profit Forecasts," London, ICAEW, 1974 (see chapter 4).

Table 10.8: Possible Litigation Threatened by Bidders Against Financial Advisers Connected with the Review of Profit Forecasts.

ACQUISITION	BIDDER	LITIGATION ANNOUNCED OR CONTEMPLATED	ISSUE	POSSIBLE DEFENDENTS
Dunford & Elliot	Lonhro	announced	d/f*	Morgan Grenfell G.Brandts, Turquands, Barton & Mayhew
Caplan	Pentos	announced	d/f	Singer & Friedlander, Malvern & Co.
Fairey Holdings	S.Pearson	contemplated (withdrawn)	d/f	Morgan Grenfell Peat Marwick, NEB

* d/f = deviant forecasts

Sources: "Financial Times" (Lonhro/D.Elliot) 1979-1980
"Financial Times" (Pentos/Caplan) 13/12/79
"Financial Times" (S.Pearson/Fairey) Jan/Oct 1981

Table 10.9: Out-of-Court Settlements Paid by Accounting Firms in Conjunction with Professional Negligence Lawsuits (1981).

ACCOUNTING FIRM	TYPE OF LITIGATION	DAMAGES PAID TO	TYPE OF SETTLEMENT	AMOUNT
Deloitte Haskins & Sells	professional negligence	Newman Ind.	out-of-court	£445,000
Neville Russell	professional negligence	Pentos	out-of-court	£400,000

Source: "Financial Times" 21/3/81, 3/8/81

best looked after by allowing professions to settle their differences through self-regulatory mechanism. Such a practice, again, is only practical as long as self-regulation works. The London and County collapse has demonstrated a need for the public to judge the professionals through some form of disciplinary action imposed on the quality of professional performance and responsibility. On the other hand, if too hard and punitive measures are imposed on financial advisers then the following repercussions might result:

1) Establish a possible legal precedent for more costly litigations akin to that of the American system,
2) Affect the reputation of leading merchant banks and accounting firms,
3) Increase in advisory fees to the detriment of the shareholders,
4) Avoidance of profit forecasts in bid situations thus depriving shareholders of an important evaluative tool.

o <u>Reform Measures</u>

Forecasting is both a science and an art and it is quite widely practised by public companies in Europe and the USA.[14] It should be stressed that it is not an exact science and therefore almost all forecasts will have some form of inaccuracy. However, owing to its special relevance in takeover situations, there is a critical need for the City and the companies to maintain the general credibility and the availability of forecasts for an efficient market to operate in the UK. As such, some suggested reforms are listed below:

1) A statement from the financial advisers (merchant banks and accountants) clarifying

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14. In the USA, profit forecast is banned in bid situations due to the prohibition by the SEC through the 1933 Securities Act (Release No.5362, 1973).

the extent of their involvement *vis-a-vis* the board.

2) The degree of responsibility taken by each advising member *vis-a-vis* the board of directors.

3) A disclaimer concerning the accuracy or reliability of the forecast to act as a sort of indemnity.

4) A "safe harbour" provision[15] which encourage voluntary disclosure on profit forecast devised in the appropriate format but at the same time accomplished without too much disclosure of factors which are of sensitive or commercial nature which may affect the forecasting company's competitive position.

5) In the newly revised Takeover Code (February 1981), there is a provision to remind companies and shareholders that only limited reliance could in the nature of things be placed on any forecasts.

The Takeover Panel, as we have pointed out earlier does randomly check on profit forecasts used in conjunction with takeovers. In the case of Dunford & Elliot, conforming with its institutional practice, the Panel has conducted its own investigation and issued a statement exonerating the advisers. Such action will to some extent serve to reinforce and reassure those involved in forecasting. But, unless there is adequate legal protection for financial advisers and a general understanding by the clients on the basis and limitations of forecasting, there may be a general reservation

15. Similar to that promulgated by the SEC (Release No. 33-5699, 1976).

on the part of advisers to bypass this business practice at the expense of investors who have the right to all relevant company information to evaluate the merits or demerits of an offer.

10.5 Conflicts of Interest

Conflicts of interest arise in situation where a professional or a financial institution is assuming dual capacity. Potentially, conflicts linked with takeover situations may be distinguished under the following circumstances.

1) Corporate Finance/Investment Management

Most merchant banks and to some extent, stockbrokers manage very large funds on behalf of their clients but to what extent, despite the existence of the 'Chinese Wall'* do they share common directorship? Common personnel? Joint accessibility to non-public price-sensitive information, files or other research materials?

2) Fiduciary Duties

Many bankers sit on the board of UK listed companies as non-executive directors. Inevitably, they face conflicts in discharging their fiduciary duties when their own merchant banks may be involved in advising on the acquisition of the companies with which they are affiliated. In America, for instance, Joseph Flom of New York, the famous corporate takeover lawyer (who acts sometimes for the offeror and sometimes for the defence) was sued by Curtiss Wright for breach of duty when Kennecott

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* "Chinese Wall" is a City jargon alluding to the voluntary barrier/safeguard erected by financial institutions to avoid conflict of interests situations e.g. investment and corporate advisory activities sited within the financial institution.

hired him to defend itself against takeover from Curtiss Wright (several years before, Flom had acted on a retainer basis to Curtiss Wright to defend the company against unwanted bids).

3) Merchant Banking Merger

Controversy also surrounded the Charterhouse Group acquisition of Keyser Ullmann when Throgmorton Trusts which was managed by Keyser took precautionary measure of contesting the Parliamentary Bill ("The Charterhouse Japhet Bill") sanctioning the merger owing to the conflicts of interest because both Charterhouse and Throgmorton are involved in investing in small public companies and Charterhouse acts as corporate advisers to some of these investments. This problem was only resolved when both parties agreed to create a new management company which will maintain the independence and continuity of the Throgmorton Trusts.

4) Parent Bank and Merchant Banking Off-shoot

All UK clearing banks operate merchant banking operations which make full use of the parents' vast domestic and international network and as such, share common clientele base. Conflicts may arise when both bidder and biddee are customers of parent and subsidiary. If the parent acts as a lending bank to both clients and is providing loan for the takeover, are there consistent guidelines for preventing the misuse of privileged information (like liquidity, strategic plans, relationship with key shareholders, etc) against the biddee client? Should they side in favour of the bigger customer and how far should they commit themselves if a contest breaks out?

Reform Measures

It should be emphasised at the outset

that conflicts of interest will continue to be a 'grey area' and that even in the USA with its more stringent legal supervision, these remain largely unresolved. In the final analysis, it is the professionals and key executives in the City who must voluntarily adopt safeguards against abuses and decide whether a potential conflict will lead to abuse. Ideally, conflicts may be resolved through preventive initiatives and the right balance of law interwoven with market forces. It is convenient to demarcate the proposed measures under 3 sub-categories.

i) <u>Structural Reforms</u>

a) More attention should be paid to the formulation of formal procedures and practices to ensure that the 'Chinese Wall', the standard safeguard adopted by the City against conflict is a realistic protective mechanism and not just an illusory barrier.

b) In the problem of handling privileged information or common clientele, the relevent advisers should adopt a neutral and detached posture when their clients are involved in contested situations.

c) Companies should opt for more unaffiliated directors or a minimum of such directors in instances where abuses are apparent. Similarly, merchant bankers who are caught in conflict situations should detach themselves from being involved to enable them to carry out their fiduciary duties to both the company and the bank.

ii) <u>Disclosure</u>

a) Transactions that give rise to substantial

conflicts of interest should be disclosed to the shareholders.

b) Investment managers, directors and officials should be required to disclose all purchases or disposals of all shares in specially related companies (for example, common directorship or cases which they act as account managers or investment banker) effected for their personal portfolio or members of their immediate families.

c) Some dealing rooms of UK merchant banks have restricted lists of companies where one arm of the bank possessed knowledge that might affect the share price.

iii) Legal Prescriptions

a) Tighten the provisions of the Prevention of Fraud (Investment) Act, 1958 and extending its provisions from licensed to investment advisers.

b) The Council for the Securities Industry is currently devising a code for the licensed dealers akin to that of the Takeover Code and to prevent the blatant abuses of inside information (under the 1980 Companies Act, use of insider information for personal gain at the expense of other shareholders has been made a criminal offence and carries a two year imprisonment sentence).

c) Practices leading to conflicts in complex situations, if they can be isolated, should be prohibited rather than surrounded with unworkable restrictions.

In this study, we saw evidence of conflicting bid incidences and management conflicts of interest afflicting City financial advisers in our brief

review of this vexatious issue. Some of these conflicts examined are more acute and require more in-depth study which is clearly beyond the scope of this dissertation. To facilitate institutional accountability, an acute and enlightened attitude should be taken by all concerned. Some of the measures advocated require a highly practical enforcement mechanism. As the UK stock market evolves and some of the rules undergo radical changes, the role of multiple-function merchant banks and those of other professionals in the City is likely to become more conflict ridden. And for these reasons, there is a need for reduction of conflicts so that legitimate confidential and financial relationships remain inviolate.

10.6 Self-Regulation in the 1980s: Appraisal of Current Institutional System

Ever since its inception in 1969, the Takeover Panel has sought to control a small group of merchant banks, issuing houses and stockbrokers which operate mainly within the City. It is just over 3 years since the Bank of England established the Council for the Securities Industry to fill in the vacuum in self-regulation and to avoid the necessity for intervention of the statutory authorities into the City's financial affairs and market operations. We observed that mergers and acquisitions in the UK are prescribed by institutional bodies within a self-regulatory system. As such, bidding and defensive strategies have to be devised not only within the guidelines and practices of the City but also to observe the 'spirit' of the Code as well. In essence, the UK securities market is supervised through a mixture of self-regulation and statutory rules. However, notably over the last few years, the Panel and the Department of Trade's investigations have questioned certain

aspects of takeover behaviour and practices. In particular:

1) Overseas nominee holdings, 'concert party' and breach of Rule 34 (Gasco/St.Piran affair).

2) Overseas nominee holdings, 'concert party' and control by stealth (De Beers/Consolidated Gold Fields and Goodyield/Dunlop Holdings incidences).

3) Rapid takeovers with hardly time for the defender to respond (PERNAS/Guthrie and Churchbury/Law Land case studies).

4) Controversial personalities and questionable tactics (Lonhro/SUITS and Lonhro/House of Fraser) and,

5) Accusation of collusion between key shareholders in special circumstances (News International/ Robert Maxwell/William Collins case study).

In these cases, the 'spirit' of the Code was infringed. This has led to widespread media criticisms of the shortcomings of self-regulatory system because of the vulnerability of some UK companies even some of the blue-chipped companies to the determined buyers. So, once again, there was strong advocacy for the establishment of a British SEC system by some quarters who favour the adoption of a statutory model. However, evidence from this research demonstrated that the City merchant banking community, while recognising the deficiencies and structural weaknesses of a non-statutory system are still strongly in favour of the <u>status quo</u> for reasons advanced in chapters 7 and 9. On balance, on grounds of economy, differences in securities market system, different business philosophy and approaches, it can be argued that there should

be no arbitrary superimposition of the American SEC model in the City (see the comparative system as prescribed in Table 10.10)

Institution	Staffing (No.)	Annual Budget 1980	Organisational structure	Approach to Takeovers	Companies Listed on Stock Exchange(No.)
Takeover Panel	20*	£3/4m	informal	quasi-judicial	2,000-3,000 London S.E.**
Securities & Exchange Commission	2,000	$69m	bureaucratic	legalistic	2,000-3,000 New York S.E.

Table 10.10: Comparative Institutional Framework Prescribing Mergers & Acquisitions in the USA and the UK.

* Inclusive of the Council for the Securities Industry staff.
** SE = Stock Exchange

Compiled from the CSI, "Annual Report," and the "Financial Times," (1980-81).

The Wilson Committee found the non-statutory framework as practised in the City to be a viable system and this view is shared by the researcher. One possible criticism of the present system is that too many of the constituent members of the Panel and the Council for the Securities Industry are interested members, i.e. represent vested interests. This flaw could be redressed by increasing the number of independent members to act as countervailing power and this would make it easier to resolve controversial issues like 'concert party,' market raids as well as reinforcing public confidence in both bodies in terms of objectivity and openness. With the American Securities & Exchange Commission's model in mind, it can be argued that statutory system is not an alternative to self-regulation because of the limited scope available for defining any legislation which creates criminal offences. Moreover, there is a lack of general consensus within the City about what constitutes unacceptable bid practices and behaviour. This, combined with other Stock Exchange

regulations exceeds the formal limit of legislation adopted to circumscribe behaviour. While the inclination is for outsiders to draw a firm distinction between illegal and legal behaviour/practices, in "grey areas" one has to take into account that more regulations and restrictions will generate attendent problems. For instance, the Council for the Securities Industry's rules on the operation and conduct of market raids make it difficult to acquire 30% of a company. A potential bidder must stop at the 15% mark and then effect a formal tender offer as in the Allianz offer for Eagle Star. Financial advisers soon saw the loopholes in this new ruling. Instead of impeding rapid takeover, this mechanism greatly facilitated the bid effort of the offeror who would commence his takeover by acquiring 15% equity holding, announce a bid price and then buy on. By stating that the price will not be increased, the bidder can exert tremendous pressure on shareholders and even portfolio managers. The Law Land and Guthrie case studies were two classic takeovers conducted in this fashion. This shortcoming was only remedied by a new Panel ruling that obliged the buyer to pause at 15% to permit the defending board to evaluate an attempt to secure effective control so as to give proper guidance to shareholders generally.

In the final analysis, it can be said that the securities market operates more efficiently under a framework which is equitable and flexible. A contemporary provocative study by S.M.Phillips and J. R.Zecher argues that there is no evidence to suggest that the current American SEC model serves public interest.[16] Recourse to more formal restrictions then would severely hamper the freedom of the market place and is also incongruent to national investment objectives aimed at inducing domestic industrial revival.

16. S.M.Phillips & R.Zecher, "The SEC and the Public Interest," MIT Press, Massachusetts, 1981.

In conclusion, institutional framework should strive towards a model which would ensure stability and propriety in the market place without adversely affecting corporate initiative and innovation. This can be done by building upon the present system of general principles to which specific prohibitions and imperatives could be furhher added. Furthermore, if the Takeover Panel and the Council for the Securities Industry are to continue to operate substantially intact in the 1980s, they should strive continuously for higher standards and to demonstrate the effectiveness of self-administration in the City. The 'watchdog' bodies not only require power over those in the City but at the same time, have the ability to operate within a context of relative openness, effectiveness and fairness. Given the history of these non-statutory bodies, there is a real need to extend both its field of operations and authority to cope with changes and complexities. At the same time, the Government has an undeniable obligation to support the country's self-regulatory bodies with some form of legislation to enforce disclosure and compliance. The implementation of these measures together with the upgrading of professional expertise and consistent evaluation of the operating system by the media and public would significantly contribute to the reformation of self-regulatory system in the 1980s.

10.7 Contemporary Merger Policy and Implications for Future Contested Takeovers

Since 1965, British Governments through the Monopolies & Mergers Commission have examined more than 50 merger references (see Table 10.11 on the next page). Despite this fact, no distinct policy has been evident which implies that the successive Governments chose to be

Table 10.11: Monopolies & Mergers Commission's References (1965-81)

BIDS	VERDICT
1965	
BMC/Pressed Steel	Y
1966	
Ross Gp/Assoc.Fisheries	N
Dental Mfg./Amal Dental	Y
Dentists Supply/Amal Dental	Y
GKN/Birfield	Y
BICC/Pyrotenax	Y
1967	
UDS Montagu Burton	N
1968	
Barclays/Lloyds	N
Barclays/Lloyds & Martins	N
Thorn/Radio Rentals	Y
1969	
Unilever/Allied Breweries	Y
Rank/De La Rue	N
Marley/Redland	L
1970	
Burmah/Laporte	L
British Sidac/Trans Paper	N
1971	
Reed/Bowater	L
1972	
Beecham/Glaxo	N
Boots/Glaxo	N
Sears/William Timpson	L
1973	
Tarmac/Wolseley-Hughes	L
Glynwed/Armitrage Shanks	L
Whessoe/Capper-Neill	L
Brit.Match/Wilkinson Sword	Y
Bowater/Hanson Trust	L
Davy Int./Brit.Rollmakers	N
1974	
Boots/House of Fraser	N
London & County/Inveresk	L
Eagle Star/Bernard Sunley	Y
Charter Consolidated/Sadia	Y
1974	
Sears/Nottingham Mfg	L
NFU Development/FMC	Y
Dentsply/AD International	Y
1975	
Norvic Secs./W.Canning	L
Eurocanadian/F.Withy	N
Amal Ind./Herbert Morris	N
1976	
Pilkington/UK Optical	N
Babcock & Wilcox/H.Morris	N
Fruehauf Corp/C.Fruehauf	Y
BP/Century Oils	N
1977	
Provident Fin./Cattle's	L
Assoc.Engineering/Serck	L
Sketchley/Johnson Gp.	L
Smith Bros./Bisgood B.	Y
Rheem Int/Redfearn Glass	L
Rockware/Redfearn Glass	N
United Glass/R.Glass	N
Derritron/Brit.E.Controls	L
1978	
Lonhro/Suits	Y
Hepworth/Johnson	L
1979	
GEC/Avery	Y
FMC/Alginate Industries	Y
1980	
H.Walker/H'land Distill.	N
Blue Circle/Arm.Shanks	Y
S & W Berisford/BSC	Y
Europcar/Godfrey Davis	Y
G.Metropolitan/Coral	L
1981	
Enserch/Davy Int.	N
BR Hovercraft/Hoverlloyd	Y
Lonhro/House of Fraser	N
European Ferries/Sealink	N
SCB/HKSB/RBS	N
BTR/Serck	A
Argyll/Linfood	L

KEY: (Total Verdict 1965/81)
Yes (Y) = 21; Awaited (A) = 1
No (N) = 21; Lapsed (L) = 19

Sources: compiled from "*Telegraph*," (29/3/81), "*Financial Times*," and MMC's reports (1965-81).

imprecise. The Hans Liesner Report (Consultative Document on Monopolies & Merger Policy, Cmnd.7198) instituted by the former Labour Government proposed that merger policy should be shifted from "favourable" to "neutral." It proposed that the Government should explain publicly the new merger policy and also prescribed non-statutory guidelines to enable critical evaluation of all mergers that would increase economic power or reduce competition. The Fair Trading Act, 1973 was to be amended to enable the Monopolies Commission to determine 'public interest' by balancing the disadvantages of reduced competition with that of increase competitiveness internationally. Adopting one of the central themes of the Liesner Report that the concentration of British industry since World War II had not only been disappointing but has in many instances caused a reduction in competition, the new policy has shifted to a slightly more hostile approach implying deeper scrutiny by the Monopolies Commission for future mergers.* The new approach towards monopolies and merger policies can be interpretated as a subtle deterrent to bidders and their financial advisers that they would need to present a more coherent and cogent case for their proposed mergers if they were to succeed.

In conclusion, legislative reforms in merger control are hard to conceive. The implications of the new merger policy is to support the case-by-case approach favoured by the Monopolies Commission. However, it is very difficult to generalise about the relationship between the structure of an industry and its performance. There is no simple answer. Given the present economic conditions, as part of its broader strategy, the Government should strive to develop a robust competitive environment and ensure that deficient corporate management are not insulated from results of their inefficiency. The

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* See 'Daily Telegraph's' Article, "John Biffen to Review Role of Monopolies" (22/1/1982).

threat of takeover sometimes acts as a catalyst for the target company to implement measures to improve performance but this response should be long term and not short term. In spite of the present Conservative Government's subscription to the new merger policy, the recent reluctance and ineptness to which the Government responded to the Department of Trade's advice regarding the winding up of St.Piran, demonstrated that firm guidance is still lacking, and, the essence of its new merger policy has yet to permeate swiftly through the plethora of City institutions involved directly or indirectly in the supervision of mergers and acquisitions. In view of the rising complexities, evolving market and technical systems, this vastly fragmented machinery requires more effective co-ordination, communication and guidance so that the sum of parts with strong central backing can function smoothly as a whole.

In the 1980s, the main task of the Government in this difficult area of national industrial management should be the adoption of a consistent but flexible policy towards corporate mergers. This would provide the City, the companies and the shareholders with the necessary guidance which has eluded them so far.

10.8 Summary/Review

As discussed in this section, the issues and problems associated with merchant banking, bid behaviour and practices within the UK institutional context are very complex and far-ranging. In essence, it is a contest between two groups of professionals - the financial advisers implementing the ambitious corporate expansionary plans of their clients and the public officials/professionals who are responsible for overseeing and regulating the bid designs and behaviour of acquisitive corporations and entrepreneurs. We have

noted the weaknesses of the American statutory system and the unsuitability of its wholesale transplant into the City. Moreover, it is hard to conceive that mergers can be judged in a mechanical fashion. With the objectives of the public interests and competition policy in mind, this researcher firmly subscribes to the concept of self-regulation and organisational flexibility.

In conclusion, the interests of the shareholders, managers, employees, consumers and the domestic economic structure can best be served by a mixture of formal and non-formal regulations augmented by common sense and rationality. As we have seen in this study, formal regulations cannot stop takeover abuses totally. This problem is further compounded by the fact that the scope of existing legislation remains unclear. As such, the step in the right direction is for both the City bodies and the Government to limit the circumstances where abuses can happen.

CHAPTER 11

CONCLUSIONS II: SUMMARY AND EVALUATION OF HYPOTHESES AND EMPIRICAL RESEARCH FINDINGS OF THIS STUDY

11.0 Introduction

This final chapter examines and highlights the hypotheses and observations discerned and tested in this dissertation. Within the broad framework delimited for this research, both bidding and defensive strategies and their special features are evaluated. In view of the extensive research findings and the resultant perception of gaps and structural flaws linked with certain areas of both merchant banking and corporate advisory services pertaining to contested bids, some recommendations for further research are listed for the benefit of interested scholars and researchers.

11.1 Summary of Research Hypotheses And Observations

Hypotheses suggested by the literature and direct observations were tested using data collected in the survey of merchant banks, the literature search, the analysis of 40 case studies, and the comparison of the salient features of the latter with the analysis and views expressed in the merchant banking survey. The results are summarised in this chapter in sequential order:

1) In the area of corporate finance and merchant banking in general, the merchant banking community perceives their greatest corporate asset to be financial power.

2) Broadly speaking, the merchant banking management perceives the potential disbenefits arising from affiliation with larger parental groups to be conflicts of interest and lack of independence.

3) A good number of the corporate finance divisions of the 30 UK merchant banks selected for study were established in the 1950s in line with the rising demands of specialist advisory activities in the City and the gradual ascendency of London as a global financial centre.

4) The label, "Corporate Finance Division," is the most popular name adopted by UK merchant banks to denote their corporate advisory services. It is within this division that advice is proffered to clients regarding bid transactions.

5) Corporate finance divisions are staffed largely by accountants and lawyers and to a lesser extent, business school graduates. This underlines the importance of providing an integrated in-house diverse professional skills.

6) Owing to the inherent complexities, multi-disciplinary and esoteric nature of contested bids, team work is the most important and common organisational method adopted by British accepting/issuing houses in advising their clientele in bid/defence situations. For the bigger houses with their correspondingly larger corporate finance divisional set-up, the hierarchical structure is normally staffed by corporate finance directors, assistant directors, managers, assistant managers and corporate finance executives.

7) Depending on the size, complexities, timing, geographical location of the transaction and also exposure of the bank (from the perspective of reputation), the team size may vary with a director and a manager working together to four, five or more,[1] involving

1. Adopted by such merchant banking houses as MB21, MB29 and MB30.

the senior director, the assistant director, the manager, the assistant manager, executive or even other specialists incorporated for the assignment from the other parts of the merchant bank. However, most banks favoured teams of two or three.

8) When asked to act in a takeover by new clients, most merchant banks and stockbrokers thoroughly screen their potential clients before consenting to act as advisers, mainly to avoid conflict of interest and to preserve their reputation in the City. For these same reasons, they will not act for anonymous clients.

9) In the formulation of acquisition ideas, merchant banks normally like their clients to generate or identify the acquisition targets believing that their clients should know what they want to acquire. The merchant banks believe that this contributes to the chances of success.

10) Many merchant banks use acquisition checklists. However, they cautioned against too great a reliance on checklists and suggested that their lists tended to be adapted to suit each circumstance.

11) Whenever feasible, merchant banks assist a takeover with a loan, this credit facility being provided by the banking division rather than the corporate finance division.

12) Merchant banks favour initiating their takeovers at a time when target companies have just published poor results but this is not always possible. Rival bidders may put in a bid or build up a pre-bid stake in the common target company.

13) That the terms of consideration are influenced by 6 principal factors, viz., the target's position, the bidder's capability, the financial rationale, tax considerations, stock market performance and general considerations.

14) Over the last 3 years, cash has become the popular medium of acquisition financing.

15) That the 'sighting shot' concept is commonly used in contested bid situations, the rationale being to solicit sufficient up-to-date information from the biddee to enable the bidder to appraise the real worth of the company.

16) That the 'sighting shot' strategy has a higher degree of success than the 'one-shot' strategy.

17) If there is more than one bidder, the bid price escalates rapidly and the final price on average is 34.1% above the initial bid price.

18) On average, the opening premium for contested offer is roughly 19% while the final premium is 15.3% over the initial premium level.

19) That as part of the acquisition strategy, there is a strong inclination for the bidder to acquire some form of pre-bid control in the target company through market raids or other means before springing the full takeover bid.

20) As an extension of the above factor, it can be established that the higher the pre-bid stake, the higher the chances of success.

21) The majority of the merchant bankers like to get the support of the bidder's board for the merger to facilitate the takeover.

22) Whilst in theory it is wholly desirable to approach key shareholders prior to the takeover, the merchant bankers displayed mixed reactions because of the constraints imposed by the Panel regarding providing equal information to all shareholders.

23) Takeover circulars (or documentation) are essentially drafted by the corporate finance team assigned for the takeover task in conjunction with the bank's legal advisers.

24) In bid circulars the emphasis is on factors such as the industrial logic of the merger, the bidder's pre-bid controlling position, lack of profit forecast by the biddee, his weak management, the attractive premium offered and the bidder's management record. In general, the bidder seeks to discredit the target company.

25) In general, merchant banks perceive that the press exercises considerable influence in contested bids and hence indirectly influences the tactical aspects of their strategy formulation.

26) Although inevitably price constitutes the paramount factor in gaining full ownership of the target company, the outcome is also a consequence of many non-financial determinants like commercial logic of the merger, good performance/image of the bidder, approval from key shareholders to tactics, ploys and strategies employed by both parties.

27) In defence, the formulation of counter-strategies is a function of the line of approach undertaken by the bidder.

28) Broadly speaking, counter-measures include appeals to shareholders loyalty, asset revaluation, profit forecasts and dividend increase but are supplemented by other moves developed to meet the circumstances surrounding the takeover bid.

29) In defence, merchant banks do not subscribe rigidly to fixed principles. Rather, they believe that a good defence requires flexibility and a creative approach which removes the initiative from the bidder and destroys the value of his tactical moves.

30) In the formulation of defensive strategies, the merchant banks are guided by factors such as the timing of the bid, the nature of the bid, strengths and weaknesses of both parties as well as other tactical considerations.

31) Before choosing their defensive strategy, the merchant banks tend to evaluate the financial performance of their client, market factors, shareholders' position in general, basis for contesting the bid and miscellaneous factors such as the press reaction to the takeover attempt.

32) In their defence documentation, merchant banks favour emphasising factors such as the net asset backing the company, the performance of the client (profitability and prospects), inadequacy of the offer, reasons for shareholders to retain their shares, lack of management's support for the bid, benefits of independence, property revaluation and future dividend policy.

33) Merchant banks perceive that their client company stands a better chance of retaining its independence when its voting power is vested in public's hands due to traditional loyalty of small shareholders to the board. Where shareholding is widely dispersed, as a result, a heavy emphasis tends to be put on loyalty in bid circulars and mass advertisements.

34) Merchant banks attach great importance to shareholders interests and employees' interests are deemed to be crucial as well.

35) In advising acceptance of the bid, merchant banks besides the financial consideration, also evaluate factors such as the balance of vested interests, bidder's capability/image, long term implications for client's business, line of approach adopted by the buyer and the general reaction to the bid itself.

36) Profit forecasts are valuable because, first, they indicate the company's profitability to shareholders and second, they may induce the offeror to improve his offer.

37) In reviewing profit forecasts the merchant bankers perceive their task to be compounded by the failure of most companies to provide informative assumptions.

38) With the increased tendency for dissatisfied customers to resort to lawsuits over deviant forecasts and professional negligence, merchant banks are becoming increasingly worried by the implications of such action, and in the long term might become reluctant to incorporate this tool in defence.

39) That in the arena of contested bids, there is a functional working relationship among the merchant banks, the stockbrokers, the accountants and the corporate lawyers.

40) The merchant banker perceives himself to be the leader and central co-ordinator of this team of professionals.

41) Vis-a-vis other professionals, the merchant banker perceives his role as financial advisor, to be well defined, and this stem from his ability to devise complex takeovers as well as co-ordinate other professionals involved in this sort of transaction.

42) From the merchant banking community's point of view, their distinctive advantages are their banking reputation, financial power, experience and their daily exposure to this sort of advisory work.

43) Stockbrokers are restrained from assuming the principal role in contested takeovers for fear of upsetting profitable relationships with the merchant banks.

44) In takeover transactions involving UK companies acquiring US corporations and vice-versa, there is a tendency for British merchant banks to co-operate with their American counter-parts.

45) Financial advisers work closely with the Takeover Panel implying that there is a high accessibility and that the Panel monitors mergers and acquisitions very closely.

46) In general, the overwhelming majority of the merchant

bankers favour self-regulation over a statutory system for overseeing the conduct of mergers and acquisitions in the UK despite occasional imperfections and abuses.

47) That merchant banks perceive their business relationships with their clients to be long term.

48) That over the last 3 years, UK merchant banking operations have been characterised by a trend towards conglomeracy and this trend is likely to continue.

49) As a result of the above merger movement, it can be hypothesised that for the 1980s, more merchant banks will seek to develop and fully exploit areas where they have a competitive advantage.

50) In the 1980s, merchant banking subsidiaries of UK Clearers can be expected to become strong competitors of established traditional houses in fee-earning activities as well as international banking.

51) With increasing pressure and competition from domestic and foreign merchant banks, a majority of the 30 London merchant banks selected for this study are expanding actively overseas especially into the North American and Asia/Pacific regions perceived by many experts to be the main growth areas for international merchant/ investment banking.

52) In the understanding of the total process and mechanics of contested bids as it is conducted in the UK, the non-merchant banking practitioner needs to approach the issue with a multi-disciplinary base as well as comprehending the institutional framework that prescribes behaviour and practices and hence, strategies.

11.2 Bidding Strategies in Retrospect

a) Objectives of the Takeover Exercise

By definition, the objective of the bidder is to acquire enough of the shares of the target company to give effective corporate control.

In the UK context, this tends to mean that over 50% of the biddee's equity capital be successfully acquired.[2] In other cases, an equity holding of 29.9% can also confer effective control (refer to the Lonhro/House of Fraser case study) with the single holder able to exert tremendous influence on boardroom and corporate decision making process.

b) Target Identification and Market Operation

In this study, we discovered that a majority of the merchant banks prefer their clients to identify the targets although many would advise on suitability of the choice. Once the mandate to act for a client has been agreed upon, then we come to the pre-bid share acquisition phase. From evidence collected during the research, it appears that most bidders favour building up a substantial stake below the 5% disclosable level or just under the trigger point for the following reasons:

i) To increase the chances of success.
ii) A large pre-bid control level would act as a psychological leverage to coerce recommendation from the board of the target company.

Basically, the share acquisition process may be executed in the following manner:

i) Market raid operations (Gough Cooper and Guthrie case studies)
ii) Disposal by large institutions (Law Land case study) due to disenchantment with the target's performance.
iii) Availability of a large shareholding from an institutional holder (the Savoy case study), or a powerful individual investor

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2. For a fuller discussion on the control consideration, see M.A.Weinberg et.al., "op.cit.", (Part I).

(Giltspur case study) or a family holder (William Collins and the House of Fraser case studies).

As far as possible, the bidder would endeavour to buy initial control in the victim company through subtle design for pre-emptive disclosure of the potential buyer's intention would distort the market price of the biddee's shares making the eventual take-over operation more prohibitive in financial terms. Additionally, premature publicity would enable the target company to take anticipatory counter measures such as the adoption of special bye-laws (Section 27 of the 1976 Companies Act, for instance) to thwart nominee holdings or even solicit corporate assistance from a "white knight."

c) In-built Flexibility Mechanism

While there are fundamental principles guiding the financial advisers in their acquisition planning and execution, the empirical evidence adduced in this dissertation indicates that an outstanding feature of contested deals is the retention of flexibility within a master plan. This is necessary because of the variety of defensive measures and the possible entry of a counter-bidder. Prior to the ban on "concert party" action and nominee holdings, there were some cases where the bidders resorted to the 'warehousing' of the victim company's share capital overseas through the skilful utilisation of foreign nominees (St.Piran and Renwick case studies).

d) Bid Timing and Financial Packaging

The timing element in any aggressive

takeover is crucial. As conceptualised, the bidder would exercise more influence over this factor than the biddee company. Ideally, most bidders would like to initiate their takeover bids to coincide with a period of adverse company performance (either through a fall in profitability or a period of sustained losses) of the offeree relative to their own positive results. This is an important consideration especially when the bidder is resorting to a share exchange. He is, in this context, undoubtedly influenced by the managerial theory that a high P/E multiple, a good market rating and a correspondingly low P/E multiple and poor market rating would generate an even higher price for the buyer's shares and may improve its P/E initially. Irrespective of the forms of arguments presented in this area of bid timing linked to acquisition financing, the underlying rationale remains the same. So, in a share offering, the market acceptability of the bidder's own shares is important. However, the bidder may not always have freedom to determine the timing of his bid for a rival contender may commence building up sizeable control or even effect a formal takeover for the same target company. Under these circumstances, for example, Liggett, CMT, Laurence Scott and Stag Line case studies, it may be necessary to launch a bid quickly to forestall or counter that of a potential rival bidder. On the other hand, if cash forms the main financial offering, then the P/E factor is of secondary importance. Moreover, data from this study and also official sources have indicated that over the past few years, cash has become the most popular medium of acquisition financing.

e) Acquisition Premium

While price is often perceived to be the final determinant for a successful takeover, a high premium over the market price in some instances (the

classic one being the Savoy case study) failed to solicit the desired shareholders' support. This may be attributable to factors such as intense loyalty to the company, unequal capital structure with voting power favouring the target company, or the business being held tightly by the family (St.George and William Collins case studies) who favour independence.

f) Opportunistic Bid

In some other instances where the buyer surmises that there is a likelihood of a rival bidder and where the biddee is experiencing great financial difficulties, an opportunistic bidder may make a "one-shot" offer (Lindustries and Laurence Scott case studies). The current economic recession too provided some of the opportunistic bidders the ideal timing to acquire their target companies cheaply or at a great discount to their net asset value (see Table 11.0 below). Under this condition, the biddees all exhibited symptoms of difficulty such as continued losses, reduced dividend or dividend restraint, staff redundancies and the adoption of business rationalisation programme. Under these circumstances, both the boards and their advisers have to react under great pressures and normally, defences are difficult to mount. Consequently, in the majority of the cases, the victims felt compelled to recommend the acceptance of the bids to their shareholders even with qualifications (CMT, Lindustries, Evered and the Spillers case studies).

Bidder	Biddee	Final Bid Price	N.A.V.	Outcome
Burns Philp	Hoffnung	88p	125p	success
Dalgety	Spillers	50p	64p	success
Hanson Trust	Lindustries	135p	225p	success
Caparo	CMT	55p	79p	success
Mining Supplies	Laurence Scott	66p	195p	success
Starwest/ALP	Gough Cooper	145p	215p	success

Table 11.0 : Opportunistic Bids & Discount to Net Asset Value Related to Case Studies.

g) "Quick-Fire"Bid Technique (Supplemented by Market Raid)

In 1980 and 1981, a number of bids were made characterised by"quick-fire" bid approach. This was designed to give the bidder the maximum leverage to compel other shareholders to sell, once effective control (the 50.1% level) is attained. Essentially, the "quick-fire" bid technique is an aggregate of some or all of these tactical ploys; the bidder normally commences his takeover by procuring a strong pre-bid holding in the target company, then seeks the requisite support of key shareholders in the biddee followed by further share acquisition both off and on the market. Once this carefully co-ordinated operation is commenced, the momentum is sustained and the bidder then declares that he is assured of important support or effective control and is able to coerce the board of directors and other shareholders of the target company to recommend the bid. The tactical superiority of this rapid takeover technique lies in the element of total surprise. It is swift, may be psychologically devastating, decisive and does not allow the target company time to mount any or some form of credible defence to counter such a bid technique.

h) Flexibility and Incremental Approach

Lonhro's endeavour to acquire the House of Fraser was in fact effected through a mixture of covert and overt strategies - incrementally designed to cater to evolving opportunism and circumstances. The strategies as conceived, show a great deal of planning, in-built flexibility and excellent timing. Its main moves against the House of Fraser can be outlined as follows:

- Uses SUITS to gain an important control in the House of Fraser,

- Attempted Installation of Lonhro's nominees on the board of the House of Fraser by proxy battle,
- Seek the alliance of Sir Hugh Fraser (the ex-chairman and the most important shareholder),
- Weaken the board of the House of Fraser, and
- Undermine the market rating of the target company.

i) Legal Device and Conventional Bid Approach

A determined bidder seeking full ownership of a highly coveted company (which in turn because of its vulnerability has designed strong defensive system) must formulate equally skilful and creative bid approaches to surmount the entrenched line of defence put up by the biddee. In the Trust House Forte/Savoy case study, to circumvent these legal and financial impediments, both Trust House Forte and its merchant banking advisers then devised its acquisition approach through a sequential two-tiered strategy with the second automatically becoming operational following the failure of the first. Through a skilful application of the company law, using the scheme of arrangement (SoA) device, Trust House Forte proposed that each class of Savoy's equity capital to be voted separately. Under this interpretation, a 75% majority of "A" shares would provide Trust House Forte with the control of all the shares in this category of capital structure. So, the main determinant in acquiring strategic ownership of the Savoy Group hinges critically on gaining the support of the high voting "A" shareholders. When the High Court rejected Trust House Forte's application, it then resorted to the fallback strategy of a conventional takeover.

j) Unconventional Creative Takeover Approach

We saw from both groups of case stu-

dies that creativity can manifest itself in many ways. In the Avana/Robertson case study, the bid was formulated in such a way that it is difficult to pinpoint the real tactical purpose when Avana declared it was selling its existing minority stake in Robertson while at the same time mounting a full bid for the company itself. This approach besides being unconventional was also contrary to normal acquisition logic. Generally speaking, Avana's action can be interpretated as a subtle ploy designed possibly to facilitate:

i) Avana with sufficient flexibility for manoeuvre during the rapidly evolving circumstances that usually surround a contested bid, or,

ii) By disposing the biddee's equity in the market for cash, it will be receiving £1 million in cash and then possibly uses it to repurchase these shares back under its own bid terms (akin to a rights issue in reverse), or

iii) It is not confident enough that it will take control of Robertson. As such, it did not want to be locked into a minority stake in a family-controlled business and thus, may be fully exploiting this chance to reduce its holding while Robertson's price was inflated by the bid attempt.

k) Controversial Bid Approach

In more extreme, controversial but untypical cases involving a triangular tussle, the original bidder may even threaten to acquire the rival bidder itself.* In the UK, this nearly happened when Burma Mines announced its intention to counter-bid for

* See Diagram 11.0, page 263.

St.Piran. Jim Raper (Gasco) then reacted swiftly by declaring that he would effect a formal takeover of Burma Mines which resulted in the intended victim's (Burma Mines) immediate withdrawal. In the USA, recently, a similar ploy has been used in the Mobil/U.S. Steel attempts to takeover the Marathon Oil Company. Frustrated by U.S.Steel in its acquisition attempt, Mobil has resorted to this drastic action by tendering for 25% of the shares of U.S.Steel!

*Co.A (bidder) → Co.C (target) ← Co.B (bidder)

Situation (i)

Co.A (bidder) → Co. B (target); Co.A (bidder) → Co. C (target)

Situation (ii)

Diagram 11.0: Highly Controversial Triangular Bid Technique With the Original Bidder Attempting to Acquire the Rival Contender.

* Co. = Company

11.3 Conclusions: Defensive Strategies in Retrospect

a) Defensive Response to Hostile Bid

The counter-measures and line of defence adopted by the target company and its financial advisers will depend on the following considerations:

i) Whether the bid was anticipated or not.

ii) The line and emphasis of attack adopted by the aggressor,

iii) The financial power of the offeror (its strengths and weaknesses),

iv) The performance of the biddee company itself and future prospects,

v) The basis for contention i.e.price or independence?

vi) The voting power and share ownership structure of the victim company.

b) Objectives of the Defensive Exercise

The case studies show that defensive styles and tactics are very much a function and response to bidding strategies. Moreover, it should be emphasised that "It is not possible to predict which defensive tactics may be utilised or the order in which they may be employed."[3] To recall, we observed that some of the defensive strategies employed in the case studies coincided broadly with those extracted from the literature of corporate finance and tested with the majority of the UK merchant banks and stockbrokers. It has been demonstrated that while there are central or pivotal defensive measures guiding the advisers, however, like acquisition strategy, their flexibility is fundamental to an effective defence. The ability to devise and structure defensive measures around the core strategies is vividly illustrated by the comparative analysis of tactics and strategies found in Case Studies Appendices A and B. As evident from the findings of this study, variations of some fundamental tactics and ploys could be applied in different circumstances. However, the main aim of the defensive exercise is to modify defences to acquisition approach and to create and superimpose new

3. Securities & Exchange Commission, "op.cit.", p2898. It should be noted that the SEC too adopted the case studies method in their approach to takeovers.

tactical moves designed to neutralise the bidder's initiative, to bewilder him as well as to solicit support for independence from the key investors or to elicit a higher price from the bidder.

c) <u>Voting Influence and Implications for Defence</u>

Voting power and its concentration as we observed in chapter 9, in the final analysis, will be a major determinant in deciding whether the defender retains its independence or not. From the defending party's point of view, we have also noted in this study that when ownership is diffused in the hands of the private shareholders, one of the main lines of defence will be a direct appeal for shareholders loyalty via:

i) A steady stream of defensive circulars.

ii) Heavy advertising in the press.

The arguments used in such an appeal seek to suggest:

1) The bid is opportunistic,
2) The merger lacks industrial logic,
3) The bid grossly undervalues the company,
4) The quality of the offeror's shares may not be good,
5) Performance of the offeror is not good relative to that of the biddee,
6) Dividend increases may be made,
7) Forecast of future profits/prospects are good,
8) The bid is disruptive and will adversely affect the company's stability and recovery.

d) Defence Against Acquisitive Bidder

In the case of an acquisitive bidder, there is often an attempt to identify a particular weakness in its past acquisition behaviour and then fully exploit it. Hanson Trust offers such a case in point. It is an acquisitive company but exercised great financial prudence in its offer terms (bid pricing) hence its subscription to the "one-shot" strategy. However, this acquisition philosophy engendered quite a high failure rate where targets have recognised its strategy (see Table 11.1 below). This underlines the weakness of adhering to prescribed principles and a strategy devised with little space for manoeuvre. Drawing from its past experience, however, there are signs that Hanson Trust is shifting from a rigid bid practice to a more flexible posture as exemplified by its current successful acquisition of Berec. This again, was an intensely contested triangular battle between Hanson Trust and another rival, Thomas Tilling for the Berec Company. The takeover attempt by Hanson Trust developed into a protracted affair but with the entry of Thomas Tilling halfway through the contest as a "white knight" Hanson Trust's chance of winning looked slim but it managed to acquire Berec after it had revised its original offer.

Bidder	Target	Line of Approach adopted	Outcome
Hanson Trust	Lindustries	one shot strategy	success*
Hanson Trust	C.M.T.	one shot strategy	failure
Hanson Trust	G.H.Downing	one shot strategy	failure
Hanson Trust	Berec	flexible strategy	success

Table 11.1 : Success Rate of An Acquisitive UK Company

* Failed in the first bid attempt.

e) The "White Knight" Strategy

As indicated in the case studies, this strategy can assume two characteristics:

i) Pure "white knight" strategy in which the biddee seeks a full merger with a more suitable party (Gough Cooper and Giltspur case studies).

ii) Enlisting "white knight" to consolidate his shareholding in the target company to deny the bidder the strategic share holding stake needed to gain success or to indirectly induce the bidder to improve his offer (Montfort and the Evered case studies).

f) Institutional Defence

The institutional shareholders examined and evaluated in this research now possess tremendous power to influence the outcome of contested takeovers due to the size and the spread of their portfolio. In this survey, we found that institutions were partially instrumental in defeating opportunistic bids in some of the acquisition attempts. In situations where institutional holders displayed strong resistance to the bid, the defender and its financial advisers could seek their formal support (the classic one being Britannic Assurance) and also work with them actively in defeating the hostile bid.

g) Lobbying for A Monopolies Commission Reference

In the USA, one of the most powerful deterrents to a bidder rests on anti-trust basis enforceable by the Justice Department and the Securities & Exchange Commission. In the UK, some of the merchant bankers interviewed suggested that more and more financial advisers would defend their clients by getting the bids referred to the Monopolies Commission as a weapon of last resort. Table 11.2 on the next page shows that 1/8 of the 40 case studies, in fact, had been referred

to the Monopolies Commission. Of these, two were cleared and proceeded successfully with their bid programmes while the other three were blocked by the Commission on various grounds.

Bidder	Target	MMC Verdict	Outcome
General Electric Company	Averys	cleared	success
Hiram Walker	Highland Distil	blocked	lapse
Lonhro	SUITS	cleared	success
Standard & Chartered/ Hong Kong & Shanghai Bank	Royal Bank of Scotland	blocked	lapse
Lonhro	House of Fraser	blocked	lapse

Table 11.2 : Case Studies Referred to the Monopolies Commission, Their Results & Subsequent Outcome

11.4 Summary and Conclusions of the Study of Merchant Banks and Corporate Advisory Services Related to Contested Bids

In many ways, it has been clearly established in this study that strategy formulation is a consequence of the substance, form and line of approach employed in each case. In conclusion, this study serves to fill a gap in the comprehension of the multi-faceted nature of contested takeovers by examining how UK merchant banks conduct it within the existing institutional framework. We started by looking at the corporate finance structure as constituted within the overall merchant banking framework and how the cross-section of leading houses approach their takeover assignments. We then proceed with the assumption that the client had already identified its acquisition target and then covered the operational phases of bid planning, strategy formulation and the *modus operandi* favoured in approaching the victim company. Conversely, this study then examined how merchant banks would

react to hostile offers for their clients, their selection of counter-measures and how they would proceed to defeat the takeover attempt. Current problems, issues and trends were then highlighted within the research framework prescribed in chapter 1.

In essence, it can be established that once a contested bid is in progress, events will move very quickly and develop into a climax. In the midst of these shifting circumstances, the financial advisers and their clients in both offensive and defensive situations will endeavour to hold the initiative. While adhering to general principles, they will bear in mind that contested bids are seldom straight forward. Hence, each deal is governed by special factors. As such, strategies need to be highly flexible, well-timed, carefully planned, creative and responsive to both internal and external forces as well as to the line of approach adopted by the opposition. The prime duty of a merchant bank (other financial advisers as well) is to provide the client with the best possible course of advice cum action given the set of events and industrial logic underpinning the merger attempt.

11.5 Recommendations for Future Research

In view of the numerous issues (bid) and merchant banking practices that became apparent as a result of this empirical study, there is great scope for both deeper and broader research in the following areas related to merchant banking and corporate advisory services pertaining to acquisitions:

1) Choice of merchant bank as financial advisor in corporate financial services relating to mer-

gers and acquisitions.

2) Attitude of institutional shareholders to takeovers.

3) The need to simplify complex bid documentation for the benefit of the small shareholders.

4) The role of the media in takeovers.

5) Conflicts of interest arising from contested bid situations.

6) Comparison of self-regulatory system (UK) with that of the American Securities & Exchange Commission system.

7) Competition and growth arising from merchant banking operations owned by leading UK clearing banks.

8) Threat of foreign merchant banks to corporate finance and related fee-based activities of UK merchant banks in the City.

9) Cost-benefit analysis of advertising in contested bids.

10) Possibility of UK stockbrokers assuming dual capacity i.e. stockbroking and merchant banking in the late 1980s.

11) How UK merchant banks conduct and approach foreign takeover transactions.

POSTSCRIPT

CORPORATE ADVISORY ACTIVITIES IN THE 1980s

12.0 Introduction

This final section examines the current trend towards conglomeracy in UK merchant banking as well as the diversification efforts of some City stockbrokers and the competition provided by foreign merchant banks in the field of fee-earning activities. Most of the London-based merchant banks are currently actively pursuing a programme of overseas expansion especially into the growth markets of the U.S.A. and Asia/Pacific.

12.1 Merchant Banking in the 1980s: Trend towards Conglomeracy

Over the period in which this research covers, notably 1979-1981, international financial services in the City and "Wall Street" have been characterised by a rise in mergers in the insurance, money broker, merchant/investment banking and even the clearing banking sector amongst local institutions and also with foreign companies. We shall, however, confine our interest to the merchant banking and clearing banking sectors (see Tables 12.0, 12.1 and 12.2 on the next page). Looking at Table 12.1, we can see that the mergers in the merchant banking sector involved at least 5 members of the Accepting Houses Committee representing 29.4% of the total merchant banks belonging to it. This number could rise if the much speculated merger of Hill Samuel and Merrill Lynch were to materialise. The trend in the financial services mergers in the USA and UK is marked by a shift away from specialisation into the broader range of conglomerate

Table 12.0: Conglomerate Financial Services Mergers In "Wall Street" USA (1979-1981)

MERGER PARTNERS	VALUE MERGER ($m)	CAPABILITIES
American Express/Shearson	915	Stockbroking, mutual funds, investment banking, international banking, travellers cheques, travel services, cable TV insurance, charge cards, data services, publishing, mortgage banking
Prudential/Bache	385	Stockbroking, investments, commodities, insurance, mutual funds, tax shelters
Sears Roebuck/Dean Witter Reynolds	600	Merchandising, insurance, savings and loans, real estate brokerage, construction, consumer credit, stockbroking, investment banking
Phibro/Salomon Brothers	550	Commodities trading, worldwide investment banking, market making in investment grade securities, research
Donaldson Lutkin Jenrette/ACLI Intl.	42	Stockbroking, investment banking, securities trading, commodities, institutional and individual money management
Goldman Sachs/J.Aron	n/a	Worldwide investment banking, securities sales and trading, individual investing, real estate, commodities, research
Bechtel/Dillon Read	n/a	Engineering, construction, energy, investment banking, securities

Source: "Financial Times" (3/12/81)

Table 12.1: Takeovers and Potential Mergers In the UK Merchant Banking Sector (1979-1981)

MERCHANT BANK ACQUIRED	AHC STATUS	BUYER	BIDDER'S BUSINESS	YEAR	REMARKS
Dawnday Day	—	RIT	investment trust	1979	completed
Gibbs A.	✓	HKSB	overseas banking	1980	completed
Singer & Fr.	✓	Europ.Ferries	industrial gp	1980	completed
K.Ullmann	✓	Chtr.Japhet	industrial gp	1980	completed
Arb.Latham	✓	Dow Scandia	intl.banking	1981	completed
Hill Samuel	✓	speculative	-	1981	-
G.Mahon	✓	Lord Kissin	merchant banker	1981	partial

CLEARING BANK	BIDDER	BIDDER'S BUSINESS	REMARKS
Lloyds & Scottish	Lloyds Bank	clearing bank	cpl*
Royal Bank of Scotland	SCB/HKSB	international banking	blk**
Grindlay Bank	speculative	-	-

* cpl = completed
** blk = blocked

Table 12.2: Takeovers and Potential Mergers In the UK Clearing Banking Sector (1979-1981)

financial services. Comparatively, it should be emphasised that as British merchant banks tend to be more specialist in outlook, the portfolio of financial and related services provided by them are less diverse than those offered by the existing or newly created American financial houses. Just how significant and diverse these American mergers are can be gauged by the fact that the mergers represented a cross-fertilisation of investment banking, research, stockbroking, insurance, commodities, merchandising, securities trading, insurance, engineering, construction and energy. The American commercial banks are not involved in these mergers because they are constrained from entering investment banking because of the Glass-Stegall Act (introduced in 1933 during the Great Depression). However, there are indications that the American commercial banks are taking the threat posed by these new financial conglomerates seriously. During the Securities Industry Association's annual spring meeting in Bermuda, the commercial banks argued that by offering such substantially new financial and international banking services, the securities industry have increasingly encroached on its banking territory and that they also should be allowed to participate actively in services restricted to securities institutions under the 1933 Glass-Stegall Act.[1] In the UK context, just how strong this trend towards conglomeracy will be and what potential advantages and dysfunctions conglomeracy will bring can be surmised from the cross-section of views proffered by some merchant bankers on this issue:

a) "It could be. There are already a few big mergers as you know; Keyser Ullmann with Charterhouse Japhet and some of the smaller ones are quite likely to be taken over. Size is not so much a criteria in this field, it is more so in the banking field. I mean, because one has a bigger banking group, it makes much more difference to your corporate

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1. The "Financial Times," (28/4/81)

finance work. Of course, with a bigger banking group, you are able to offer more banking services and possibly that way, attracts clients to your other services."

(Manager, MB4)

b) "You know, merchant banks have always been very interesting animals in that they are always very small. It surprised me when I first came into merchant banking, how small some of the big names in merchant banking are - and if you take a bank like Rothschilds they are really quite small and yet their reputation is as high as ever, whereas banks like Hill Samuel and Kleinwort Benson are merchant banks which have taken some sort of financial weight along side their corporate finance departments."

(Manager, MB24)

c) "I think there is a tendency towards a conglomeracy of merchant banks. Just like business, if you are standing still, you are going backwards aren't you? It is very easy to think in terms of industry tending to coalesce into giant companies but the more they do, the more a vacuum is created underneath them — given the right conditions like no oppressive taxation and so on...so, I think in the same way going back to merchant banks, there should be a role for the small specialists just as the same way as the larger companies. I think financial muscle must play an important part and so it is helpful, but, there is a danger I think, if you grow too big, you would be affected by a sort of creeping organisational paralysis."

(Director, MB17)

12.2 Implications of Current Stockbrokers Diversification Efforts into Corporate Financial Services

UK stockbrokers, on the other hand, although offering quite a range of services ranging from corpor-

ate finance to portfolio management remain insulated from the threat of takeovers by merchant banks at present (this is because the Stock Exchange ruling forbids its members from assuming dual capacity in both stockbroking and merchant banking). However, its fixed commissions practice is currently undergoing extensive review by the Restrictive Practice Court which is expected to publish its findings by the mid-1980s. Current evidence suggests that some stockbroking firms are already merging or diversifying into other financial services to expand their underlying functional and capital base should the Office of Fair Trading rule against the contemporary fixed commissions structure. This is how one stockbroker viewed the possible changes in the near future:

> "Stockbroking is going to change. There is no question about it. The whole of the Stock Exchange practices is under review and after 1984 or 1985 the stockbroking business would be a different one entirely. For instance, it is currently an entirely closed shop. We sit on the Stock Exchange and we decide who can become stockbroker and who can't. We try to run a monopoly! I think, we will see a greater stratification of the stockbroking industry, of the larger firms which tend to offer more diversified services to its clients and cover most of the markets in the world, and the smaller brokers or specialists will cover a certain sector or a particular country. I think in the middle of 1980s, firms will either merge or move upwards or contract. In theory, there are reasons to suppose that merger with merchant banks would be successful. However, this will increase the possibility of conflicts of interest in the City and lessen the chance of companies getting an entirely independent advice and concentrate the resources of advice to a smaller number. I tend to think that the functions will remain separate and the merchant banks as well as the Clearers will seek other forms of capital base."
>
> (Corporate Finance Director, STK4)

Events toward the end of 1980 and 1981 imply that some stockbrokers are already taking action towards this direction of diversification. In September, 1980, Rowe & Pitman, one of London's leading

stockbroking firms extended its link with PICA,[2] a Singapore based Asian development institution similar in function to the ICFC. PICA's shareholders include many of the large multinationals and its board contains representatives of Lazard Freres, BNP, Citibank, etc. The link between a local stockbroker and an overseas finance group is an important development because the PICA Group (having a net worth of US$150 million) specialises in banking, corporate finance and consultancy services ranging from mergers and acquisitions advice to the provision of consultancy expertise to the ASEAN (the Association of Southeast Asian Nation) corporate sector. It is significant to note that many of Rowe & Pitman's UK institutional clients are looking for ways of linking in Far East industries and the association with PICA could provide the much needed local knowledge.

The second event which might mark the start of a trend in the future rationalisation of the stockbroking sector was the decision by Rowe Rudd, a small but reputable firm to withdraw from the Stock Exchange to develop a financial service business centering on corporate finance and investment management. This move represented a deviation from traditional stockbroking into the preserve of merchant banking. However, steps toward the ultimate future re-structuring of the stock market is still several years away but with increasing market pressures, concentration of stockbroking business in the hands of a few firms and the contraction of jobbers, we noted that some broking firms have already instituted diversification action or structural reform to take full advantage of the inevitable structural changes due in the mid-1980s.

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2. Private Investment Capital for Asia S.A.(PICA)

12.3 Competition Emanating from Merchant Banking Operations of UK Clearers

While the smaller and medium-sized merchant banks are vulnerable to being acquired by the bigger houses, UK Clearers and British-owned international banks,[3] there is likely to be a tendency for corporate finance (mergers and acquisitions services) and other specialised merchant banking activities to become increasingly concentrated in the hands of the established accepting houses and subsidiaries of clearers. Just what kind of competition would the merchant banking arms of clearers pose to the other merchant banks? If we extend the definition of British clearing banks beyond the traditional "Big Four" then the scope of domestic UK 'wholesale' banking would cover a wider number than traditionally perceived, as illustrated in Table 12.3.

CLEARING BANK	MERCHANT BANKING OPERATION
Barclays Bank Ltd	Barclays Merchant Bank
Lloyds Bank Ltd	Lloyds Merchant Bank
Midland Bank Ltd	Samuel Montagu & Co.
National Westminster Bank	County Bank
Hong Kong & Shanghai Bank	Antony Gibbs
Standard & Chartered Bank	SCMB
Grindlay Bank	Grindlay Brandts
Royal Bank of Scotland	British Linen Bank

Table 12.3: UK Clearers and British Controlled International Banks & their Merchant Banking Operations.

Within the context of corporate finance advisory services related to takeovers, the overall corporate banking strategy of UK clearers reflected in their expansionary activities provide us with some insight as to the future thrust into this lucrative fee-earning sector. For example, the rationale behind the acquisition of Antony Gibbs by the Hong Kong & Shanghai Bank was the buyer's desire to develop a

3. See Appendix Table C.9 for a comparative analysis of International Banks (1980/81).

merchant banking capability in Europe and the Middle-East. This highly successful British-owned overseas banking group has already successfully established its merchant banking operations (Wardley Limited) in its Hong Kong base. With the infusion of new management expertise and a bigger capital base, Hong Kong & Shanghai hopes to transform Antony Gibbs into an important European merchant banking arm. At the same time, if Hong Kong & Shanghai Bank had managed to acquire the Royal Bank of Scotland, the Royal Bank might have been transformed into an international clearing bank and Antony Gibbs integrated with the British Linen Bank to form a formidable UK merchant bank with powerful overseas growth potential as highlighted in Table 12.4 below:

MERCHANT BANK	PARENT CO.	PARENT BALANCE SHEET	BANKING OFFICES
Antony Gibbs	HKSB	£20,676m	800
British Linen Bank	RBS	6,139m	600
Total	HKSB/RBS	26,815m	1,400

Table 12.4 : Merchant Banking Capabilities Arising From the Potential Acquisition of Royal Bank of Scotland by the Hong Kong & Shanghai Bank Corporation.

Grindlay Brandts which was expelled from the Accepting Houses Committee in 1975 because of financial difficulties has now been absorbed into the Grindlay Bank and as newly reconstituted, it is turning its attention into the Asia-Pacific area.[4]

Since the departure of Mr.Philip Shelbourne from Samuel Montagu, Mr.Staffan Gadd, the new executive has indicated that Samuel Montagu should develop more broadly its international corporate

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4. Grindlay Bank has strong connection with India because its founder, Robert M.Grindlay served in India and Grindlay & Company came into existence in 1843 replacing the old trading firm of Grindlay, Christian & Matthew (see special brochure, "Grindlays 1828-1978," Grindlay Bank, London, 1978.

finance activities as well as assuming an international merchant banking capability.

Like its Asian banking rival,[5] Standard & Chartered Bank has strong Asian affiliations and connections with Africa. In terms of multinational merchant banking, it has already established successful merchant banking operations in Hong Kong, Malaysia and Singapore.

Lloyds Merchant Banking Divison which is under the purview of Lloyds Bank International has strong affiliations with Mexico and Latin America. Recently, because of a merger effected by its Australian merchant banking offshoot, Lloyds International, the bank now possessed potentially the biggest corporate finance capability in Australia (see Chapter 1, Volume 2 for more details).

As shown in Chapter 4, in terms of operating advantages over the other independent merchant banks, generally, the UK clearer-owned merchant banking arms perceive their competitive edge in 2 main areas, viz.,

i) Financial power.

ii) Bigger clientele base.

The number of contested offers handled by this category of merchant banks in this study should provide a rough indicator of their market share in this lucrative fee-earning business related to mergers and acquisitions in the UK advising both the bidding and defending companies (see Tables 9.13, 9.14 and Table C.11

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5. The Hong Kong & Shanghai Bank.

(Appendix C). From Table 9.14 page 204, it can be seen that both Barclays Merchant Bank and Samuel Montagu (subsidiary of Midland) seem to have a marginal edge in corporate advisory business over its peers. In aggregate terms, affiliated merchant banks advised on only 13 of the 75 client companies (involving 30 contested bids) selected for this study vis-a-vis 62 undertaken by independent merchant banks (see Table 9.13 and Table 9.14, page 204).

12.4 Competition From American Merchant Banks

London owes its prime position as a global financial/banking centre to the fact that Britain had traditionally been a trading nation, the pioneer of the industrial revolution and because of the extensive empire it built up, London assumes the position of a traditional banking centre. Towards the second half of this century, more and more foreign banks were attracted to London especially in the late 1960s and early 1970s (see Tables 12.5 and 12.6 on the next page) to service the needs of their existing multinational clients, to participate in syndicated loans, the Euromarkets and develop business for their own customers. With this development, the main challenge confronting the London merchant banks (especially the leading traditional houses) is to endeavour to preserve their market share in certain fields like corporate finance and international banking as both foreign banks especially American banks and merchant banking operations of UK Clearers encroach more and more into the dominant 'bread and butter' merchant banking business. Merchant banking will therefore be highly competitive as each bank tries to preserve its own market in corporate finance, flotations, new issues, portfolio management and other global ventures. At the same time, many members of the traditional Accepting Houses have undergone significant structural changes (for example, Antony Gibbs, Hill Samuel, Charterhouse Japhet Samuel Montagu and Rothschilds) and their management

Table 12.5 : Number of Major Foreign Banks Represented in Leading Banking Centres

Banking Centre	Banks With Direct Representation	Banks Represented Through Consortium Banks	Total
London	248	17	265
New York	136	2	138
Hong Kong	99	9	108
Paris	92	10	102
Singapore	96	5	101
Tokyo	98	0	98
Frankfurt	92	2	94
Bahamas	72	3	75
Luxembourg	45	7	52
Bahrain	48	3	51
Zurich	45	5	50

Source: British Bankers'Association, "London As An International Banking Centre," London, BBA, 1977, p39.

Table 12.6: Number of Foreign Banks Directly Represented in London & New York

Year	New York Number of Banks with Subsidiaries, Branches or Representative Offices	London Number of Banks with Subsidiaries, Branches or Representative Offices
1975	127	261
1976	144	263
1977	177	298
1978	208	311
1979	249	328
1980	249	351

Source: "Investors Chronicle," (18/9/81), p30.

have been streamlined with new talents brought in from the outside to develop traditional markets and seek new sources of income.

With profitability gradually eroded by local competitors and aggressive foreign banks, it can be foreseen that the trend towards conglomeracy will continue and the London merchant banks will be forced to concentrate their corporate strategy on specialisations or areas of pure "wholesale" banking where they possess the competitive edge. Similarly, the American commercial and investment banks which have operations in the City will also be concentrating their international banking activities in the fee-earning area. This latest trend in the American banks operating in the UK has been highlighted by the chairman of the London American Banks Association who surmised that US banks will develop along the following lines:

i) US banks would penetrate further into local markets both in corporate and consumer business.

ii) They would try to increase Sterling lending as a percentage of their total UK portfolio.

iii) There would be great pressure to increase the volume of fee-earning business.[6]

In this research, we have seen that in some trans-atlantic takeover transactions (Grand Met/Liggett and Marsh & McLennan/C.T.Bowring case studies) American banks were involved with their British counterparts in structuring the deals. Some facets of their involvement in this area of fee-earning business can be gauged by the views of these two leading American merchant banks operating here in London:

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6. "UK Banking," Financial Times Survey (3/9/79)

> a) "Perhaps their client company A is looking for an acquisition in the States and will look to their merchant bank and the merchant bank will usually approach an American investment bank. They will introduce us as well as a few others to their client and they will like us to stay in the background but they expect to get a portion of the fees."
>
> (Manager, FMB1)

> b) "We work very closely with them, same as we work closely with the American banks in the States. When we are looking for target companies or selling situations, we would also contact other merchant banks who are in the position of advising vendor and we tap on them to see whether they have any interest or suggestions. When we are advising a seller and looking for a buyer, we would also work closely with them."
>
> (Vice-President, FMB5)

We discerned earlier the creation of conglomerate financial institutions in the USA as a result of increasing concentration in the financial sector and also the capabilities the bigger houses now possess. It is a distinct possibility that once the gestation phase has been completed, these new American financial giants will branch out from their "Wall Street" base into London and other off-shore financial centres pursuing multiple international banking functions. They would then pose a strong challenge to the traditional English merchant banking domain in the highly renumerative fee-generating business of advising on mergers and acquisitions, divestments, long term finance, re-structuring of corporate balance sheet and designing financial packages.

12.5 Consortium Banking & Implications for Fee-Earning Services of Merchant Banking

Since the inception of consortium banks i.e. Midland & International Banks Ltd in 1964, there have been some doubts about their long term viability mainly due to conflicts of interest arising among the banking shareholders and the need to demarcate their specialist or geographical roles (as originally conceived, their main objective was to act as medium term lending vehicles in the Euromoney markets for their parents). At a time with diminishing profits on straight lending, the consortia are likely to seek to diversify away from medium term lending into areas like investment banking and advisory services.[7] Although consortia have expressed interest of heavier involvement in fee-earning activities, signs are that they are still dependent heavily on revenue from lending and their ability to compete in this lucrative area of merchant banking will depend on how they go about resolving the fundamental obstacle of duplicating operations of their parent shareholders or business identified by their parent banks for exclusive development.[8] The figures in Table 12.7 (next page) show that some of them have developed a ranking and size comparable with that of the more multinational Accepting Houses, an indication that given the right multibanking flexibility, formula and stimulus, they can constitute a threat to the corporate finance business of traditional merchant banking.

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7. A recent study conducted by Steven I.Davis, a consultant banker relating to the worldwide strategies of 50 major commercial banks suggests emerging, a strong inclination towards diversion from wholesale lending to fee-earning activities such as corporate finance advice, investment management and money transmission (see "International Bank Expansion: Time for a Re-assessment," The Banker, May, 1981, pp63-66).

8. "Consortium Banking," Financial Times Survey, (16/7/80).

Table 12.7: Leading UK Consortium Banks and Their Financial Performance.

Consortium Bank	Total Assets (£m)	Pre-tax Profits(£m)	Loan As A % of Deposits
UBAF	1,806	7.1	103.6
Banque Europenne de Credit	1,562	9.1	7.5
Orion Bank	1,232	8.5	83.6
Nordic Bank	1,229	10.0	75.4
Scandinavian Bank	1,211	9.3	57.8
MAIBL	1,118	10.6	51.8
Saudi International Bank	785	5.5	30.8
European Asian Bank	739	5.2	35.0
Arab African International	642	6.2	n/a
Gulf International Bank	640	2.9	43.0

Adapted from Financial Times Survey, "Consortium Banking," (16/7/80)

12.6 The Level of Acquisition Activity in the UK

In terms of main activity, the financial sector, distributive trades and mechanical engineering sector saw the largest number of mergers in 1979 (see Table 12.8, page 287). The analysis given by economic category in Table 12.10, page 287 , indicates that diversifying mergers rose sharply from 34% in 1978 to 42% in 1979 while the share of vertical mergers decreased to the lowest level since 1975.[9] Since then, the level of merger and acquisition activity in the UK has remained relatively consistent. The figures in Table 12.11, page 288, show that merger and takeover trend in the UK has a cyclical pattern with a peak in 1972/73 followed by a marked decrease through to 1975 and a subsequent recovery. For the 1980s, from the evidence given in Table 12.11, we can reasonably deduce that there will be a gradual growth in merger activity (computated to be approximately 556 annually for the 1980s) but the volume of assets acquired (see Table 12.9, page 287) can be expected to escalate quite substantially as conglomerates and big industrial companies seek new areas of diversification (see Table 12.12, page 288 and also Appendix Table C.10 illustrating merger trend in the USA).

Thus, with the level of merger activity remaining very much static over the last few years compounded by declining profitability and market shares in the merchant banking industry (due to competition provided by foreign merchant banks and wholly owned merchant banking arms of large UK clearers), the elite of the London houses will be expected to focus on specialty roles and seek new corporate finance and international banking activities overseas.

12.7 Transplanting Merger & Acquisition Specialism Abroad

With constriction in corporate advisory business, a need to service UK multinationals, a desire for

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9. OFT, "Annual Report (1979)," London, HMSO, 1980, pp97-99.

Table 12.8: Acquisition Analysis by Main Activity, Number & Asset Size in the UK, 1979.

	SIC ORDER	NO.	ASSETS (£m)	AVERAGE ASSETS(£m)
1	Insurance, banking & finance	46	4,555.7	99.0
2	Distributive trades	41	622.3	15.0
3	Mechanical engineering	17	533.9	31.4
4	Chemical & allied industries	16	212.1	13.3
5	Electrical engineering	16	958.6	59.9
6	Miscellaneous services	15	568.9	37.9
7	Food, drink and tobacco	13	540.8	41.6
8	Bricks, pottery, glass, cement	12	200.5	16.7
9	Metal manufacture	12	189.4	15.8
10	Vehicles	10	346.5	34.6
11	Construction	8	1,501.5	187.7
12	Transport & communication	8	99.5	12.4
13	Paper, printing & publishing	7	141.4	20.2
14	Agriculture, forestry & fishing	6	309.6	51.6
15	Timber, furniture	6	97.8	16.3
16	Other manufacturing industries	6	74.3	12.4
17	Mining & quarrying	5	1,706.1	341.2
18	Instrument engineering	4	373.3	93.3
19	Textiles	4	37.6	9.4
20	Clothing & footwear	1	9.7	9.7
21	Gas, electricity & water	1	1.7	1.7
22	Leather goods & fur	1	40.0	40.0
23	Metal goods	1	1.4	1.4
24	Professional & scientific	1	17.5	17.5
25	Coal & petroleum products	0	0.0	0.0
26	Public administration/defence	0	0.0	0.0
27	Shipbuilding & marine	0	0.0	0.0
	TOTAL	257	13,140.0	51.1

Adapted from Office of Fair Trading, "Annual Report 1979," HMSO, 1980, p99.

Table 12.9: Analysis by Size of Assets of Target Company 1979

SIZE OF ASSETS	NO.	TOTAL ASSETS £m	AVERAGE ASSETS £m
0- 24.9	192	1,865.20	9.71
25- 49.9	27	953.50	35.31
50- 99.9	19	1,351.30	71.12
100-249.9	9	1,384.32	153.81
250-499.9	3	821.10	271.70
500-999.9	5	3,721.40	744.28
1,000 and over	2	3,043.14	1,521.57
TOTAL	257	13,139.96	51.13

Source: "ibid.", p99.

Table 12.10: Total Acquisition in the UK in 1979 Analysed by Economic Category

Merger Type	ECONOMIC CATEGORY NO.	% OF TOTAL
Horizontal	132	51
Vertical	18	7
Diversified	107	42

Source: "ibid.", p100.

Year	Bid Activity	Year	Bid Activity
1970	793	1976	353
1971	884	1977	481
1972	1,210	1978	567
1973	1,205	1979	534
1974	504	1980	497
1975	315	1981	477

Table 12.11: Bid Activity in the UK Spanning the 1970-1981 Period.

Sources: CSO publications and the "Financial Times." (1979-81)

Table 12.12: Large Mergers and Acquisitions Effected in the UK, 1980.

BIDDER	SECTOR	TARGET	SECTOR	VALUE (£m)
British Petroleum	oil	Selection Trust	mining	409.6
Marsh & McLennan	insurance	C.T.Bowring	insurance	191.7
O.O.C.(Hong Kong)	shipping	Furness Withy	shipping	112.6
Racal Electronics	electronics	Decca	electricals	104.3
Imperial Cont.Gas	oil	CompAir	mech.engin.	58.1
KIO (Kuwait)	investment	PHW	misc.(uncl)	53.7
Allegheny Ludlum	conglom.	W.Match	misc(uncl.)	53.5
Charterhouse	misc.(fin.)	Keyser Ullmann	merchant bk	43.2
Foseco Minsep	metals	Unicorn Ind.	mech.engin.	38.3
Vickers	mech.engin.	R-Royce Motors	motors	38.1
Blue Circle	bldg.mats.	A.Shanks	bldg.mats.	35.5
Sun Oil	oil	Viking Oil	oil	31.4
MFI Furniture	stores	Status Discount	stores	30.4
Costain	construct.	County & Dist.	property	28.5
British Land	property	UK Property	property	21.7
Guthrie	trader	City & Int.	inv.trust	20.9
Globe Inv.Trust	inv.trust	W.E.Trust	holding co.	18.1
Reed Int.	paper/pkg.	L & P Paper	advertising	17.5
Burns Philp	conglom.	Hoffnung	trader	17.5
HKSB	bank	Antony Gibbs	merchant bk	17.4
Seagram	wines	G.S.Sandeman	wines	16.9
F.W.Woolworth	stores	B&Q (Retail)	stores	16.6
Hume Holdings	inv.trust	Dawnday Day	misc.(fin.)	16.6
H.Queensway	stores	H.Kenton	stores	14.4
Dobson Park Ind.	mech.engin.	Wolf Elec.Tools	mech.engin.	14.1
Dunham Mount	inv.co.	Norwest Holst	construct.	13.5
Supreme Invs.	inv.co.	Royco	construct.	12.0
British Land	property	Corn Exchange	property	11.7
Allied London	property	Gough Cooper	construct.	11.4
T.Cowie	motors	George Ewer	motors	10.7

Source: Investors Chronicle, "Annual Review 1980," (2/1/81)

growth and stability, internationalisation of world trade and current shift in economic emphasis for the next decade, more and more London-based UK merchant banks are likely to diversify worldwide in quest of new ventures and to earn substantial income as corporate finance advisers and international investment bankers. Since the late 1960s and early 1970s, overseas expansion has been an important component of the overall strategy of many major UK merchant banks as they seek to transplant local financial/banking skills universally and to foster the development of international banking where they possess a competitive edge. The overall strategy of the independent merchant banks has focussed fundamentally on 3 major geographical markets:

1) <u>USA</u>

Morgan Grenfell, Lazards, Schroder Wagg, Hill Samuel, Rothschilds and Warburgs.

2) <u>The Middle-East</u>

Barings, Antony Gibbs and Robert Fleming.

3) <u>Asia/Pacific</u>

Kleinwort Benson, Arbuthnot Latham, Morgan Grenfell, Robert Fleming, Rothschilds, Schroder Wagg and Barings.

1) <u>United States of America</u>

Of the 3 worldwide markets listed, the USA, owing to her size and economy is considered by many banks to be a major overseas market for expansion. The abolition of exchange controls and the strength of the Sterling against the dollar provided great impetus for acquisitive UK companies like Thomas Tilling, Grand Metropolitan and Hanson Trust to expand and diversify across the Atlantic (see Table 12.13 on the next page). From the case

Table 12.13: Selective UK Acquisitions of U.S.Corporations 1979-81.

UK BUYER	U.S.CORPORATION
Midland Bank	Crocker National Corp.
Imperial Group	Howard Johnson
Grand Metropolitan	Liggett Group
Barclays Bank	Beneficial Corp.
Barclays Bank	Aetna Business Credit
Hanson Trust	McDonough Company
GEC	Picker
Consolidated Gold Fields	Newmont Mining
Cavenham	Diamond International
Sears Holding	Zale Corporation's (footwear group)
Hawker Siddeley	Fasco Industries Incorp.
Northern Foods	Bluebird Inc.
Consolidated Gold Fields	King Oil Tools Inc.
Laird Group	N.York Twist Drill Corp.
Lex Services Group	Schweber Electronics Corp.
Hepworth Ceramic Hldgs	Western Plastics Corp.
Charterhouse Group	PRF Corporation
GEC	Scriptomatic Inc.
Thomas Tilling	Hin Kleys & Sevenoaks Brickworks
Tunnel Hldgs	Alcolac Inc.
Northern Engineering	Extel Corporation
Thomas Tilling	Electrical Supplies Distributing Co.
Thomas Tilling	US Supply Co.
Thomas Tilling	Hudson River Aggregates Inc.
Stewart Wrightson	Calvert Fire Insurance Co.
United Biscuits	Ready Crust
Extel	Digital Micro Systems
Thomas Tilling	Spindletop Electrical Distribution Co

Source: compiled from "Financial Times" (1979-81)

Table 12.14: Selective Merger and Bid Attempts Effected By U.S.Corporations in the UK, 1979-81.

U.S.BUYER	UK ACQUISITION
Merck	Alginate
Rockwell International	Wilmot Breeden
Allegheny Ludlum	Wilkinson Match
Seagram	G.S.Sandeman
Hiram Walker	Highland Distilleries
F.W.Woolworth	B & Q Retail
Cambridge Royalty Corp.	Cambridge Petroleum Royalty
Rockwell	Serck
Enserch	Davy Corp
Georgia Pacific	Inveresk
First Pennsylvannia Tst.	Anglo Metropolitan
Dana Corp.	Brown Brothers

Source: "ibid."

studies and additional empirical evidence from interviews, we noted that American companies and their American financial advisers in the City retained the services of UK merchant banking houses to jointly structure and complete domestic mergers and takeovers.[10] The reverse happens when American investment banks complement UK merchant banking advisers in their acquisition activities in the USA on behalf of their British corporate clients.

Amongst the UK merchant banking multinationals, Warburgs is by far the most established in corporate finance business in the American market operating through Warburg Paribas Becker (a joint venture with A.G.Becker and the French financial conglomerate, Paribas). In view of the potential of the American corporate sector, Morgan Grenfell in April, 1981 started its New York merchant banking subsidiary to provide specialist advice on international corporate mergers and acquisitions.[11] This move by Morgan Grenfell clearly reflects the rationale that fee-based income is a common aim that unites commercial banks, investment banks and merchant banks as different forces drive them all towards this objective from different directions.[12]

Nonetheless, the level of transatlantic takeover in the future is difficult to determine but there exists a possibility of resurgence in view of the current acquisition trend underlined by American oil and non-oil conglomerates diversifying into other fields. Advising companies of this size is highly profitable as a successful deal can earn a merchant or investment bank an advisory fees of several million dollars as illustrated in Table 12.15, page 302 and also Appendix Table C.11.*

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10. See Table 12.14 on the previous page.
11. The "Financial Times," (15/4/81)
12. See "World Banking," Financial Times Survey, 19/5/80
* Acquisitions transacted by Credit Suisse First Boston (1981),

ADVISERS	RETAINED BY	BIDDERS	TARGET	SUCCESS	FAILURE
Credit Suisse First Boston	Marathon	1. Mobil Oil 2. US Steel	Marathon	$17.5m	$2.0m
Credit Suisse First Boston	Du Pont	1. Du Pont 2. Seagram	Conoco	$14.0m	n/a
Morgan Stanley International	Belridge	Shell	Belridge	$14.6m	n/a
Goldman Sachs	US Steel	1. Mobil Oil 2. US Steel	Marathon	$10.0m	n/a

Table 12.15 : Corporate Advisory Fees Charged by Some Major Wall Street Investment Banks for Conglomerate Takeover Transactions.

Sources: Compiled from the "Financial Times," (25/11/81) and the "International Herald Tribune," (25/11/81)

In the context of corporate financial advice in the UK, Table 12.16 below shows the scale of introductory fees charged by ICFC (the Industrial & Commercial Finance Corporation).[13]

TRANSACTION	% PAYABLE
On the first £250,000	4%
On the next £250,000	3%
On the next £250,000	2%
On the remainder	1%

Table 12.16 : Advisory Fees Charged by A London-Based Merchant Bank On Merger Transaction.

Source: "ICFC"(Special Brochure)(undated)

2) The Middle-East

With the formation of the OPEC (Organisation of Oil Exporting Countries) cartel and the flow of funds to the Middle-East, Arab investors too constitute

13. As this is only a specific illustration of one merchant banker's scale of fees, it should not be regarded as the standard format charged by UK houses with regards to corporate advisory fees. As a rule, for historical and other reasons, domestic merchant banks do not publish their scale of fees but from the research findings, fees are devised according to the type of client, size, complexity and time factors.

a powerful source of fee-earning activities but they are inclined to adopt a low profile regarding their investment activities in the UK and elsewhere. The takeover of the Proprietor of Hay's Wharf (PHW), a large UK property company by the Kuwaiti Investment Office, the investment agency of the Kuwaiti Government gives us an idea of the substantive financial power and business potential of the Middle-East market. However, because of the Jewish origin of many of the leading UK independent merchant banks, many of them are constrained from expanding into this lucrative market.

3) <u>Asia/Pacific Region</u>

The post-war recovery of Japan and her economic 'miracle' together with other political and socio-economic factors provided a stimulus for other Asian countries like South Korea, Hong Kong, Taiwan, Malaysia and Singapore to seek national economic development. Of these newly industrialised countries or NICs, Hong Kong, Malaysia and Singapore were perceived by many British merchant banks to be the main growth area for expansion for the following reasons:

a) With the exception of Hong Kong which is still a crown colony, both Malaysia and Singapore were former territories of the British Empire and because of their natural resources attracted heavy British investments;

b) The presence of an economically powerful Chinese community in these foreign markets and the transformation of some of their businesses into regional multinationals constituted a natural attraction to British merchant banks to proffer their advisory skills;

c) The commitment of these newly industrialised countries to economic development and the heavy involvement of their governments in businesses via the growing number of multiple functional public enterprises;

d) The adoption of the New Economic Policy (NEP) by the Malaysian Government to retain a substantial share of the non-Malay business in the corporate sector. As a result of this policy:[14]

"The corporate advisory business in Malaysia is potentially the most lucrative in Asia. Unlike Hong Kong where most consulting is already tied, Malaysian business is a function of good marketing. In addition, the New Economic Policy's local ownership and control requirements produce much corporate re-structuring work transferring corporate headquarters and registration from London to Malaysia. Another by-product is the splitting of Pan-Malaya operations into their separate Singapore and Malaysian components...the successful completion often involves a public offering and potential underwriting fees... As other foreign investors comply with the NEP local ownership, the amount and availability of such work should increase."

e) The presence of many British multinationals and other American and Japanese business corporations make it imperative for the London merchant banks to service their clients in these markets as well as to get new businesses from non-British corporations.

Notably, over the last few years, some Asian business conglomerates have become significant international investors in Europe especially in the UK and the number of major takeover bids by some of these Asian corporations are discernible in Table 12.17 on the next page.

14. M.T.Skully, "Merchant Banking in the Far East," Financial Times Book Publication, London, 1981, p256.

UK COMPANY	FOREIGN INVESTOR	ORIGIN	REMARKS
Furness Withy	C.Y.Tung	Hong Kong	takeover
Newman Industries	Cycle & Carriage	Singapore	partial bid
Mansion Trust	Hong Leong Finance	Singapore	takeover
Dunlop Holdings	Goodyield/Pegi MPH	Malaysia	Dept of Trade investigation
Guthrie Corp.	PERNAS	Malaysia	takeover
Marshall Cavendish	Straits Times Publishing Bhd	Singapore	takeover
St.Piran	Gasco	Hong Kong	takeover
Antony Gibbs	Hong Kong & Shanghai Bank	Hong Kong	takeover
Royal Bank of Scotland	Hong Kong & Shanghai Bank	Hong Kong	blocked by Monopolies Comm.

Table 12.17 : UK Investments by Investors From Hong Kong, Malaysia & Singapore.

Direct foreign investment is regulated in Japan. Similarly, acquisition of Japanese companies is difficult because it is frowned upon and effectively curbed by the Japanese business community and regulatory bodies. In the foreseeable future, there is potential scope for the development of fee-earning business in Japan by UK multinational merchant banks mainly due to the phenomenal growth of the Japanese economy and the expansion of her corporate sector over the last two decades as well as the increased listings of high technology Japanese corporations on the London Stock Exchange.

From these overseas expansionary activities especially those among the leading Accepting Houses, we can discern that many UK merchant banks have been actively propagating corporate finance worldwide to counter against the increasing competition from the bigger American investment banks as well as domestic commercial banks which also operate in these geographical markets. The real challenge, though, lies in the development of an international structure superimposed and adapted to local banking requirements as well as business structures, management techniques and their long term corporate aspirations. In the main, the indications are that some of the houses have succeeded

TABLE 12.13 :COMPARATIVE OPERATIONS OF UK WHOLLY OWNED OR AFFILIATED MERCHANT BANKS IN MAJOR ASIA/PACIFIC FINANCIAL CENTRES

UK PARENT COMPANY	OFFSHORE AFFILIATES, BRANCHES OR SUBSIDIARY MERCHANT BANKING OPERATIONS			
	HONG KONG	MALAYSIA	SINGAPORE	AUSTRALIA
Arbuthnot Latham	-	-	Arbuthnot Latham Asia Ltd	-
Barings	Baring Brothers Co.Ltd	Pertanian Baring Sanwa	Baring Brothers Asia Ltd	Baring (Aust) Ltd
Barclays Bank	Trident International Ltd	Malaysian International Merchant Bankers	-	Barclays Australia Ltd
Guinness Mahon	-	-	Guinness Mahon South East Asia Ltd	-
Grindlay Bank	Grindlay Finance Ltd	Asian International Merchant Bankers	Grindlay Brandts Ltd	Grindlay Australia Ltd
Hambros	Hambros Pacific Ltd	-	-	Australian Finance & Securities
Hill Samuel	Hill Samuel & Co.Ltd	-	-	Hill Samuel (Aust.) Ltd
HKSB	Wardley Ltd	UDA Merchant Bankers Bhd	Wardley Ltd	Hong Kong Finance Ltd
Schroder Wagg	Schroders & Chartered Ltd	-	Singapore International Merchant Bankers Ltd	Schroder, Darling & Co.
Kleinwort Benson	Kleinwort Benson (H.K.) Ltd	ASEAN Bankers (M) Bhd	-	Bank of America Australia Ltd
Lloyds Bank International	LBI Finance (HK) Ltd	-	-	Lloyds Bank International
Morgan Grenfell	-	-	Morgan Grenfell (Asia) Ltd	Morgan Grenfell (Aust) Ltd
Royal Bank of Scotland	Royal Scot Finance	-	Associated Merchant Banker (Pte) Ltd	-
Rothschild N.M.	Rothschild & Son (HK)	Bumiputra Merchant Bank	N.M.Rothschild Singapore Limited	International Pacific Corp.
Robert Fleming	Jardine Fleming	-	Jardine Fleming Singapore Ltd	-
Standard & Chartered Bank	Chartered Finance (HK) Ltd	Chartered Merchant Bankers	-	Standard Chartered (Aust) Ltd
Warburg S.G.	East Asia Warburg	-	-	Australian Securities

Sources: M.T.Skully, Merchant Banking in the Far East, London F.T.Business Publishing, 1980, Annual Merchant Banking Survey, Far Eastern Economic Review (1979/81) and "Financial Times" (1979/81)

Table 12.18: Comparative Operations of UK Wholly Owned Or Affiliated Merchant Banks in Major Asia/ Pacific Financial Centres.

relatively well, for instance, Jardine Fleming in Hong Kong (a joint banking venture between Robert Fleming and Jardine Matheson), Bumiputra Merchant Bank Berhad (a joint venture between Rothschilds and Bank Bumiputra of Malaysia) and Morgan Grenfell's wholly owned merchant banking operation in Singapore (Morgan Grenfell Asia Ltd)(see Table 12.18 on the previous page).

APPENDIX A

(GROUP ONE CASE STUDIES)

This Appendix covers the array of opposed strategies (both bidding and defence) used in the Group 1 Case Studies. The main box at the top of the beginning of each case study encompassed the 11 defensive strategies selected for testing. The ticks against the side boxes denote the application of these appropriate strategies in the individual case study selected for this research.

At the bottom half of the page, the right hand column depicts that besides these 11 defensive strategies, the defender also utilised these various counter measures/arguments to support its case for independence. In essence, the two columns (the one on the left depicting bidding strategies) illustrate the whole array of opposing strategies used in the context of individual case study.

The factors contributing to the success or failure as well as special features connected with individual case study are also highlighted.

Fundamentally, the objectives of this chosen format are to provide the reader with an idea of the depth and extent of strategies used connected with contested takeovers in the UK.

BURNS PHILP/ S. HOFFNUNG & CO.

✓	Property revaluation
✓	Sale of assets (before/after the bid)
	Capital reconstruction
✓	Dividend increase
	Bonus/scrip issue/share split
	Profits forecast
	Legal action
✓	Appeal to shareholders' loyalty
	Placing
	Undertake an acquisition (before/after)
	Acquire bidder's equity

(Defensive strategies listed in the research questionnaire)

BIDDING STRATEGIES/ARGUMENTS

1) Commercial logic - geographical spread of both companies are complementary.

2) Financial advantages for both classes of capital (increases in capital value of 8% and 46% for ordinary and preference equity).

3) Entitlement of Hoffnung for interim dividends.

4) The offer was in excess of 20 times earnings.

5) Opportunities for Hoffnung's overseas investments were limited.

6) The abolition of the investment currency pool remove the possibility of windfall profits in the event of domicile transfer of Hoffnung from the U.K. to Australia.

7) The offer was generous in view of the biddee's disastrous profits record.

8) Hoffnung's chairman previous optimistic forecast

DEFENDING STRATEGIES/ARGUMENTS

1) It was an inadequate bid (88p versus 125 n.a.v.)

2) The bidder was hoping to acquire Hoffnung cheaply before the benefits from business expansion reflected in the company's profits.

3) The cash released from the sale and closure of the wholesale division would be available to earn a good return.

4) The market value of Hoffnung's ordinary shares continued to be higher than the bid price.

5) A personal note from the retiring chairman regarding the successful fending off of the 1970 offer by "Slater Walker" and Hoffnung's continued independence resulted in a growth phase for the group.

6) The revised bid was a derisory premium for control.

7) No assurances given by B.P. for Hoffnung's employees.

8) The bidder's proposal for the convertible loan stocks was unacceptable.

9) B.P. sought to direct share-

had not been borne out by events.

9) The offer ensured the value for Hoffnung's equity which could not be justified in the foreseeable future in the absence of a bid.

10) B.P. attempted to undermine the Hoffnung's shareholders' confidence regarding tax liabilities and effects on asset value arising from the transfer of domicile from the U.K. to Australia.

11) Possible default of trust deeds relating to unsecured loan stock if sale of Hoffnung's wholesale operations resulted in change of use and B.P. accuse the biddee's chairman of having been evasive on this point.

12) Irrevocable acceptances of 9.4% from investment trust ran by "Murray Johnstone".

13) The revised bid was the final offer.

holders' attention to alarmist conjectures and to short-term considerations.

10) The transfer of domicile to Australia had been interrupted by B.P.'s takeover bid and the transfer process would not incur any material exit tax charge.

11) The outlook for Hoffnung's subsidiary "G&M Power" was brighter (£1m. firm orders had been received).

12) Option open for shareholders to withdraw acceptances.

13) The bid had a low acceptance level of only 5.5%.

14) There was good economic prospects for recovery in Australia.

15) Support of employees for independence.

16) Major management changes had been instituted to improve the company's performance.

SUCCESS/FAILURE

The timing of Burns Philp's offer caught the biddee in a weak position,coinciding with a drop in the company's interim profits as well as the closure of its major loss making Australian wholesale operation. Perhaps, another contributory factor for Hoffnung's loss of independence could be ascribed to the fact that most of the company's shares were held by institutions which are more disposed to financial arguments than non-financial arguments.

BTR/BESTOBELL

	Property revaluation
	Sale of assets (before/after the bid)
	Capital reconstruction
✓	Dividend increase
	Bonus/scrip issue/share split
	Profits forecast
	Legal action
✓	Appeal to shareholders' loyalty
	Placing
✓	Undertake an acquisition (before/after)
	Acquire bidder's equity

(Defensive strategies listed in the research questionnaire)

BIDDING STRATEGIES

1) Logic for merger since 1973 had not diminished.

2) Stressed on BTR's philosophy to nurture and stimulate growth.

3) BTR's contrasted its profits record with those of Bestobell over the last six years.

4) Financial advantages arising from the bid (Offer price was higher than the n.a.v. even before discounting Zimbabwe & Zambian assets).

5) The offer was higher than share value (Bestobell) in the six years prior to announcement of BTR's approach.

6) A chance for Bestobell's shareholders to exchange different earnings for BTR's equity with an annual compound growth rate in earnings and dividends of 43% and 37% respectively.

7) Without the support of BTR's the fall in Bestobell's share price might be drastic.

DEFENDING STRATEGIES/ARGUMENTS

1) Bestobell's reshuffled management was geared to growth.

2) The bid was not a constructive move for British industry.

3) It did not reflect current or potential value of Bestobell.

4) BTR's bid was opportunistic (the bid coincides with the turning point in Bestobell's performance and fortune).

5) Bestobell was a sensible and progressive employer.

6) Bestobell's case for independence was supported by its financial advisers, customers, suppliers, trade union officials, Members of Parliament, shareholders, the Australian Foreign Investment Review board, Bestobell's management, and employees worldwide.

7) The bid represented a low P/E multiple (it was inadequate rating for such a company as Bestobell).

8) No profits forecast had been made by BTR.

8) It was relevant for shareholders to note that capital gains in a tax year of up to £1,000 were exempt from CGT and the next £4,000 of gains, bear tax at only 15%.

9) The 200p offer for the ordinary equity represent a P/E 12 fully taxed.

10) It was not prudent for Bestobell to pay a dividend if its profits forecast was not attained.

11) It highlighted the disparity in gross dividend increase of 12.4% and profits forecast increase of 30%.

12) BTR's ordinary offer and cash option provide for increases in income by 40% and 59% respectively.

13) Contrasted management record and questioned the ability of Bestobell's reshuffled management.

14) BTR expressed scepticism about the biddee's profits forecast.

15) It complained to the Takeover Panel about the way in which Bestobell words its final defence circular.

9) It was easier to grow at a faster rate from a base the size of Bestobell than that of BTR.

10) Bestobell was a resilient com- fully able to handle tight trading conditions.

11) Limited prospects for shareholders to reinvest in similar equities to Bestobell whose dividend yield was above the Financial Times sector average.

12) BTR's shares had fluctuated by over 10% within the last few weeks before the bid.

13) Prescribed medium term strategy and way ahead for profits.

14) Interim figures showed a 37% increase.

15) Support from Britannic Assurance, the largest shareholder regarding independence.

16) Due to it acquisitive policy BTR was suffering from 'indigestion'.

17) Regional press support for independence of Bestobell.

18) Substantial sums invested in future development should accrue to Bestobell's shareholders.

19) BTR lacks expertise in higher technology.

20) International merchanting network which contributed 32% of the 1978 sales was the prime target for BTR.

SUCCESS/FAILURE

BTR ended up with 45.1% of Bestobell's equity. It failed in its attempt to acquire Bestobell principally because of strong institutional support (55%-60% of the company's equity are held by institutions) especially Britannic Assurance's 10% shareholding. BTR is currently the largest shareholder in Bestobell and the threat of a second takeover bid is still a strong probability.

CAMBRIDGE ROYALTY COMPANY/CAMBRIDGE PETROLEUM ROYALTIES LTD.

✓	Property revaluation
	Sale of assets (before/after the bid)
	Capital reconstruction
	Dividend increase
	Bonus/scrip issue/share split
	Profits forecast.
✓	Legal action
✓	Appeal to shareholders' loyalty
	Placing
	Undertake an acquisition (before/after)
	Acquire bidder's equity

(Defensive strategies listed in the research questionnaire)

BIDDING STRATEGIES/ARGUMENTS

1) Recommendation of the bid by CPR independent directors who hold 5% of the equity.

2) Industrial logic: the takeover would enable CPR's shareholders to broaden the scope of their investment with a consequent spreading of risks. Also, to avoid conflicts of interest due to increasing geographical area open to investment, both companies have had to agree amongst themselves certain restraints and priorities in the acquisition of worldwide royalties.

3) Job assurances and undertakings to continue the business of CPR.

4) The control position of CRC (it already had a holding of 12.5% in CPR)

5) The merger would improve management links between the U.K. and the American operations (the provision of management expertise by CRC to CPR was vested in the 1972

DEFENDING STRATEGIES/ARGUMENTS

1) It was an indequate bid (asset value had been estimated by a stockbroking firm as between 350p and 450p.

2) The Brae Field royalty interests (i.e. CPR's main asset and lucrative profits contributor) worth to CPR was much higher than attributed by the bidder.

3) The company was more valuable with its own British identity and listing.

4) The deal valued CPR below its current market value.

5) The takeover would result in the dilution of U.K. assets.

6) CPR reminded its shareholders of the probabliity of a more suitable counter bidder ("Premier Consolidated") making a bid.

7) Owing to high institutional holdings CPR's main defensive strategy hinge on fermenting institutional objections to the bid and their support for the independence of the company.

advisory agreement).

6) Attempt to re-assure CPR's shareholders that despite the merger, they would end up owning 44% of the enlarged group.

7) In order to overcome strong institutional resistance, the managing director of CRC arranged a meeting with most of the major shareholders to persuade them to vote in favour of the bid.

SUCCESS/FAILURE

In view of the support for the bid given by some directors of CPR, the bidder resorted to the scheme of arrangement device to take control of the company. However, for this legal device to suceed, CRC needed a 75% majority. Strong U.K. institutional objections (see shareholding structure below) and dissension by other shareholders resulted in the merger attempt not going through. The main objection to the bid rested on the substantial undervaluation of CPR's assets. This view was also shared by the media.

Institutional Ownership of CPR

Schroder Wagg	10%
Robert Fleming	7%
Prudential Assurance	6%
London Nominees (Stanlife)	5%
Edinburgh Securities	5%
Scottish American Inv. Tst.	5%
Scottish United	2%

OTHER FEATURES

During the bid, CRC received an offer which it rejected from "Premier Consolidated Oilfields" to acquire all the existing half a million shares in CPR owned by CRC and the 1 million new ordinary shares in CPR which CRC would own following the exercise of its share option in the company. The failure to merge with CPR influenced CRC to sell off its equity to various investment institutions for £4m.

T. COWIE/GEORGE EWER & COMPANY LTD.

✓	Property revaluation
	Sale of assets (before/after the bid)
	Capital reconstruction
✓	Dividend increase
	Bonus/scrip issue/share split
	Profits forecast
✓	Legal action
✓	Appeal to shareholders' loyalty
	Placing
✓	Undertake an acquisition (before/after)
	Acquire bidder's equity

(Defensive strategies listed in the research questionnaire)

BIDDING STRATEGIES/ARGUMENTS

1) It countered Ewer's accusations of not holding pre-bid negotiation by declaring that it had discussed merger possibility with Ewer's deputy chairman on 29/6/78 and repeated its intention on 24/8/79.

2) Its pre-bid stake of 29.9% (it intended to further exercise its option to acquire 701,000 shares in Ewer thus increasing its control position to 33.96%).

3) Pointed out to Ewer's shareholders that there were circumstances under which the acquisition of Eastern Tractors would not take place (if it fell short of the 90% stipulation).

4) It tried to undermine Ewer's shareholders' confidence by stating that the Stock Exchange might not grant a listing for the new 2.6 million Ewer's share to be issued for Eastern Tractors (shareholders' approval was needed for this transaction).

5) The bid for Eastern Tractors was too high and will reduce the value of Ewer's equity.

DEFENDING STRATEGIES/ARGUMENTS

1) Cowie did not approach Ewer with regards to its bid intention.

2) Cowie's bid represented a derisory premium as the offer reflected a discount on the price of 55p, the value of Ewer's equity within the last three months before the bid.

3) Press comment suggested bid price should be 60p or 65p.

4) The offer price represented a P/E 6 times 1979 earnings (only marginally higher than the FT-Actuaries Industrial Group Sub-Index)

5) Attempt of bidder to buy assets for less than their real worth.

6) The attempt by Cowie to attribute a lower notional price to Ewer's equity was based on a false premise (use of FT-Actuaries Motors & Distributors Sub-Index) as 38% of Ewer's profits was derived from coaching and travel.

7) Ewer's trading margins was well in excess of the ave-

6) Eastern Tractors was a loss making concern and therefore Ewer's shareholders had to shoulder Eastern Tractors' borrowings.

7) The acquisition of Eastern Tractors was an attempt by Ewer to dilute the percentage ownership of Ewer's shareholders in the company.

8) Early acceptances of Cowie's bid would indicate to the Ewer's board that Eastern Tractors was a poor investment.

9) Shareholders would receive an additional 2 1/2p per share if they vote against Ewer's acquisition (proposed) of Eastern Tractors.

10) The offer represented a 10.1 P/E against the FT-Actuaries Industrial Group Sub-index of 6.3 times.

11) By accepting the bid Ewer's shareholders' income would increase by 38%.

12) Contrast performance of the shares of both companies.

13) It was a fair and reasonable offer.

14) The rejection of the bid could result in a marked decline in the market value.

15) Cowie's bid was an opportunity for Ewer's shareholders to participate in a company with a proven record.

16) Assurances to maintain and develop Ewer's business and no significant redundancies were envisaged.

17) Incorporation of press comments endorsing Cowie's views.

rage for quoted companies in the motor trading sector.

8) The strength of Ewer was enhanced by its balanced business activities.

9) Ewer's profits after tax were more than 5 times that of the 1975 figure.

10) Eastern Tractors leisure activity would fit in well with Ewer's plan to develop its own leisure business, a sector of recognised growth potential.

11) Contrast interim performance of both companies.

12) The bid was not in the long term interest of the company, shareholders, and employees.

13) Support for independence from other shareholders owning 14.3% of Ewer's equity.

14) The location of Cowie's business was mostly in the adverse unemployment and recession area in the North of England.

15) Failure of Cowie in its early attempt to acquire Colmore Investment.

16) Ewer's chairman resorted to a novel defensive move by inviting shareholders to contact him on reverse charges (telephone) to explain the case for independence.

17) Portrayed Cowie as an opportunistic bidder "1980 is going to be the year of the buyer. Companies are going cheap". (Cowie)

SUCCESS/FAILURE

Despite strong resistance put up by the Ewer's board and its merchant banking advisor, Cowie managed to takeover Ewer. Its success may be largely attributable to the fact that it had a substantial pre-bid stake of 29% and this shareholding was increased to 34% when it exercised its option to acquire more equity in the biddee.

OTHER FEATURES

When Cowie took a 29.9% stake in Ewer, the latter resorted to undertake defensive measure to fend off the bid by doing a takeover of Eastern Tractors, an unlisted company. Cowie then immediately bade for Ewer on a dual price basis (55p without Eastern Tractors and 52.5p with) and simultaneously taking up an option which made it mandatory for Cowie to put in a formal bid for the company. It followed up its victory by dismissing three directors without notice or compensation and witheld the payment (which was deposited into a special designated account) due to the directors involved who assented to the offer. This high-handed action resulted in High Court litigation. It also involved the Panel which ruled that it was illegal to withold payment to those who assented to a bid.

DALGETY/SPILLERS

✓	Property revaluation
	Sale of assets (before/after the bid)
	Capital reconstruction
✓	Dividend increase
	Bonus/scrip issue/share split
✓	Profits forecast
	Legal action
✓	Appeal to shareholders' loyalty
	Placing
	Undertake an acquisition (before/after)
	Acquire bidder's equity

(Defensive strategies listed in the research questionnaire)

BIDDING STRATEGIES/ARGUMENTS

1) Emphasised the commercial logic of the merger.

2) Higher capital and income value for accepting shareholders.

3) The bid will provide long term advantages by enabling Spillers' shareholders with the opportunity to participate in the future growth of the enlarged group.

4) Assurances to maintain and develop the businesses of Spillers.

5) The bid will provide better employment security within a larger and financially stronger group.

6) Underlined the strong management team of Dalgety.

7) The bid was based on fair and reasonable terms.

8) Pointed out to shareholders that the biddee lost market shares in milling, animal feeds and major branded products.

9) Capitalised on the failure of Spillers to implement its objective to foster an international division and queried the sources of capital needed for its capital expenditure.

DEFENSIVE STRATEGIES/ARGUMENTS

1) Dalgety's proposal was a takeover and not a merger.

2) Underlined the strong asset base of Spillers.

3) Exploited the failure of the bidder to provide a profits forecast.

4) Pointed out to shareholders that the reshuffled management of Spillers was competent to reverse the losses of the group.

5) The bid was a discount of 25% on the net tangible assets of Spillers.

6) Criticised the fact that Dalgety's bid conditions were drawn on very wide terms for example, condition (vi) allows it to abandon the bid even though unconditional as to acceptances.

7) Emphasised on the loyalty of Spillers shareholders including some leading institutions.

8) Highlights the fact that Dalgety was a high risk business.

9) Orientated shareholders' attention to the fact that Dalgety's profits were erratic (for instance, Dalgety failed to reflect a £19m currency loss against its profits).

10) Exploited the fact that the biddee had suffered a decline in its profits (It lost about £50m in bread baking).

11) Underlined the fact that there was no basis for Dalgety to revise its offer in view of the continuing poor performance of Spillers.

12) Highlighted the fact that Spillers had a poor financial standing. As a result of a rescue operation mounted in 1978 by a syndicate of bankers, the board faced stringent restrictions regarding its business operations.

13) Indicated to shareholders that the company had a growing overseas business (hence, a wider spread of investment risk).

14) Cited the company's quality performance as reflected by a 29% increase in Dalgety's profitability as well as 160% increase in dividends since 1975.

15) Incorporated media's comment on the takeover in its bid circular.

10) The preference offer was inadequate.

11) Orientated shareholders' attention to Dalgety's problem on its Australian property development project, falling Canadian lumber profits as well other adverse business pressures in the U.S.A.

12) Underlined the fact that Dalgety's overstretched management was a result of too many acquisitions.

13) Portrayed Dalgety as an asset-stripper (there was a danger that the bidder might sell off major parts of Spillers' business)..

14) Spillers had activated plans to reshape the Group.

15) No cash alternative to Dalgety's equity which could fall if the bid succeeded.

16) Highlighted the fact that the company's retained profits will be sufficient to finance its proposed capital expenditure programme.

17) Spillers' shareholders should reap the benefits of the company's heavy investment in research and development.

18) Vis-a-vis the bidder, Spillers had a wider range of branded products with household names like "Homepride", "Winalot", "Spratts", etc.

19) Criticised Lazard's role in the takeover (questions the effect on Spillers' market price if Lazards, Dalgety's mer-

chant bank sold its 13% holding of Spillers in the market).

20) Exploited Dalgety's split board regarding its takeover attempt of Spillers.

21) Underlined the fact that Spillers' board was united in its quest for independence.

22) Capitalised on the widespread opposition to the bid from Dalgety's own shareholders.

23) The bid was bad for shareholders, employees, and customers of the company.

24) Resorted to a novel defence tactic by commissioning a bid poll (market research) designed to gauge its shareholders' reaction to the unwelcome bid by Dalgety.

SUCCESS/FAILURE

The takeover was both acrimonious and protracted in nature owing to the ambiguities surrounding the takeover rationale. This problem was further exacerbated by the fact that some of Dalgety's major institutional shareholders were not convinced by its acquisition objectives while the press in general, failed to be swayed by the arguments projected by both sides. Despite all these complications, Dalgety finally succeeded in taking over Spillers because of its ability to purchase more than 3.4 million ordinary shares of the biddee which gave it a holding of 51%, thus enabling Dalgety to assume strategic control of Spillers.

OTHER FEATURES

This long drawn contested bid was marked by various distinct features viz:

a) The adoption of a novel defence strategy by Spillers in commissioning a market research during the bid to guage its own shareholders' reaction to the takeover bid from Dalgety.

b) Heavy advertising by both parties in the main media. This over-saturation in public relations resulted in the TakeOver Panel making it mandatory for all advertisements related to future takeovers to get its prior sanction.

c) Lazards, Dalgety's merchant banking advisor, during the bid acquired a stake of 12.3% in Spillers in order to assist its clients in its takeover efforts (however, a possible drawback was that Dalgety would be obliged to

make a cash alternative if it bought more than 2.6% of Spillers equity in the market during the takeover period).

DAVID DIXON & SON HOLDINGS/MONFORT (KNITTING MILLS)

✓	Property revaluation
	Sale of assets (before/after the bid)
	Capital reconstruction
✓	Dividend increase
	Bonus/scrip issue/share split
✓	Profits forecast
	Legal action
✓	Appeal to shareholders' loyalty
	Placing
	Undertake an acquisition (before/after)
	Acquire bidder's equity

(Defensive strategies listed in the research questionnaire)

BIDDING STRATEGIES/ARGUMENTS

1) As a combined force it could consolidate and improve David Dixon's share of the domestic market especially in the hosiery sector.

2) David Dixon's good performance record.

3) The offer, partly in Dixon's shares would allow shareholders to participate in the enlarged group which would have considerable potential.

4) Its control position (10.9% pre-bid stake).

5) Shareholders were assured of 14.2% increase in capital value (above the price of Monfort's ordinary shares before the Dixon's approach).

6) By accepting the offer shareholders would benefit from an increase in income of 17.3%.

7) The bid provided shareholders with a valuable opportunity of realising their investment in Monfort at a premium at a time when value in the stock market had fallen con-

DEFENDING STRATEGIES/ARGUMENTS

1) By accepting the offer shareholders would suffer a fall in income.

2) The bidder was trying to buy assets at well below their real value.

3) Focused shareholders attention on Dixon's erratic profit performance.

4) The price offered by Dixon was less than the average P/E multiple of the textiles sector.

5) Monfort had a record net tangible asset backing per ordinary share of 123p.

6) The revised offer undervalued assets by 33% per ordinary share.

7) Pointed out to shareholders Dixon's volatile share performance (it had fallen from 180p to 114p).

8) Questioned the management-ability of Dixon's board (consisting of only two accountants and an insurance broker) to run Monfort successfully.

siderably (following Dixon's offer and the suspension of Monfort's shares, the Financial Times-Actuaries Textiles Index ha fallen by 8.4%).

8) The merger of the two companies was in the interest of their businesses, customers, and companies.

9) A number of Monfort's shareholders had indicated to Dixon that they would like to receive a bid for their preference shares.

10) Monfort's shareholders should have asked for a profit forecast to be published immediately and question the reason for the delay.

11) Shareholders should have asked Monfort's board to explain why its dividend policy was apparently dictated by external events such as Dixon's offer rather than by long term interest of shareholders and business.

12) Shareholders should ask the Monfort's board to state precisely what support they receive from their ordinary shareholders with regards to the revised offer.

13) Shareholders should have ignored the intervention by Palma.

14) In the absence of Dixon's increased offer and in the depressed stock market conditions there was little prospects for achieving a price of 90p in the foreseeable future.

9) CGT liability.

10) The high-handed action of Dixon in threatening Monfort with a takeover if it does not exceed to its merger proposal.

11) Exploited the low acceptances level (0.3% is one of the lowest levels of acceptances in any public offer in 1979).

12) Rebutted Dixon's claim that the actions of Palma have served to frustrate its takeover bid.

13) The bid did not have the support of Monfort's board.

14) Received strong support for independence from over half of its shareholders.

SUCCESS/FAILURE

Dixon failed to acquire Monfort because it lacked the recommendation of the board and key supporters as well as the crucial intervention of a privately owned Leicester company, the Palma Textile Group. During the process of the takeover it acquired a 17% stake in Monfort thereby effectively blocking Dixon's takeover attempt. As a consequence of Palma's action, Dixon complained to the Takeover Panel about Palma's unethical behaviour.

FRANCIS INDUSTRIES/EVERED & CO HOLDINGS

	Property revaluation
	Sale of assets (before/after the bid)
	Capital reconstruction
	Dividend increase
	Bonus/scrip issue/share split
	Profits forecast
	Legal action
✓	Appeal to shareholders' loyalty
	Placing
	Undertake an acquisition (before/after)
	Acquire bidder's equity

(Defensive strategies listed in the research questionnaire)

BIDDING STRATEGIES/ARGUMENTS

1) The bid was conditional upon the auditors of Francis's Industries being statisfied that Evered share capital and reserves (book value) were in excess of £2.2m and was further conditional upon recommendation by the biddee's directors (other than Mr. Saunders, the chairman of both companies) in writing by 12/1/80.

2) Time the bid to coincide with the publication of poor interim results (Evered suffered a loss of £246,000) on 21/9/80 as well as further deterioriration of trading results.

3) Francis Industries accused Evered of not paying any dividend to its shareholders for two out of the last five years and also for the current financial year.

4) The preference offer compared favourably with the FT Actuaries Index of Commercial and Industrial preference equity.

5) The ordinary offer represented a premium of 37.5% (prior to the bid announ-

DEFENDING STRATEGIES/ARGUMENTS

1) It did not fully reflect the asset value or long term prospect of Evered.

2) Its defensive strategy includes holding talks with other "white knights".

3) Francis Industries should increase its bid price to a more reasonable level.

4) Evered shareholders and Francis Industries should benefit from the recent corporate reorganisation effected in the company.

5) Zahid Industries representing the major shareholders, i.e. the Saudis, could expand Evered's business and reduce its reliance on the depressed British economy only if the company stayed independent.

6) Mr. Sandy Saunders, the chairman of Evered by increasing his shareholding in Evered had demonstrated his confidence in the company.

7) The Saudis during the process of the bid increased their shareholding in Evered from 12% to 29.9% at prices above Francis Industries bid thus preventing the bidder from buying in the market.

cement.

6) The bid offered shareholders the chance to reinvest in a security more likely to produce a regular income and an improved yield.

7) Financial support from Francis Industries would enable a return to profitability for Evered.

8) Assurances regarding Evered's employees.

9) The bid had the recommendation of some of Evered's directors representing 4.2% of the company's shareholding.

SUCCESS/FAILURE

Due to adverse trading conditions and bleak prospects for recovery Evered found it difficult to mount a credible defense against an unwelcome bid from Francis Industries. However, Evered's dissident major shareholders i.e. Zahid Industries & Investments and Mohamed Mahmood of Panama, representing some Saudi businessmen, contested the bid by acquiring large blocks of shares in the market and further increasing their investments in Evered to 29.9%. The Saudi interest together with that of the Astra Industrial Group who were both against the attempted takeover bid by Francis Industries, during the process of the bid, decided to increase their investments in Evered. Their combined shareholding of 54% was instrumental in causing the bidder to abandon its takeover effort.

OTHER FEATURES

Due to the inability to mount a credible defence, the board's initial recommendation was qualified as Evered stated that it did not consider the terms of the ordinary offer to fully reflect the asset value or long term prospects of the company. It should be noted that in this particular takeover, the bidder was advised by a stockbroker and not by a merchant bank.

GRAND METROPOLITAN LTD./ LIGGETT GROUP INC.

	Property revaluation
✓	Sale of assets (before/after the bid)
	Capital reconstruction
	Dividend increase
	Bonus/scrip issue/share split
	Profits forecast
✓	Legal action
✓	Appeal to shareholders' loyalty
	Placing
	Undertake an acquisition (before/after)
	Acquire bidder's equity

(Defensive strategies listed in the research questionnaire)

BIDDING STRATEGIES/ARGUMENTS

1) GM had a long standing relationship with Liggett in spirits and wines businesses (franchise given to Paddington, a subsidiary of Liggett for 'J & B Scotch Whisky')

2) No agreement had resulted from merger negotation initiated since 1977.

3) GM's acquisition of a 9.5% stake in the biddee was a result of takeover rumours and also to protect its interest of 'J & B Rare' which was being sold through Paddington.

4) Commercial logic (providing a base in the United States for the Group and benefit from each other's experience and expertise).

5) The acquisition and philosophy of GM was to preserve the autonomy of management and separate identity of each of its operating divisions.

6) Any disposal of Liggett's operations would only be

DEFENDING STRATEGIES/ARGUMENTS

1) The bid could be seriously detrimental to employees, customers and suppliers.

2) To fend off the unwelcome bid from GM Liggett instructed its investment bankers to look at options which include "the possible sale as going concern of all or part of Liggett".

3) Applied to the North Carolina Superior Court for a temporary restraining all the (under the Tender Offer Disclosure Act) effective for ten days restraining GM from buying more of Liggett's equity.

4) Obtained a cease-and-desist order from South Carolina temporarily blocking GM's bid (alleges that GM's bid come under South Carolina's jurisdiction because a Liggett subsidiary, the Atlantic Bottling Company had been incorporated in the state).

5) It portrayed GM as a predator.

6) It tried to discredit GM by focussing on its gambling interest.

7) The disposal of Austin Nichols and Company (wines and spirits

effected only after full consideration of the interest of employees and the company as a whole.

7) It sought exemption in North Carolina courts from a statutory thirty day waiting period for bid offers.

8) Applied to the Delaware court for a restraining order regarding the sale of Austin Nichols by Liggett to Pernod Ricard.

9) The rationale for GM's revised offer was due to the special relevance it attaches to spirits and wines business of Liggett to GM's American subsidiary , International Distillers & Vinters Ltd.

10) Threatened to end Liggett's franchise rights for GM's wines and spirits if Liggett proceeded with its disposal of Austin Nichols.

11) The sale of Austin Nichols and the possible disposal of Paddington would expose Liggett to enormous business risk.

12) It obtained a temporary order from a New York court barring Liggett from disclosing confidential information regarding 'J & B Rare Scotch'.

13) It accused Liggett's board of asset stripping against their shareholders' interests.

14) It launched its bid to coincide with a good interim performance of the company.

subsidiary of Liggett's) to Pernod Ricard, the French drinks group in order to frustrate the hostile bid from GM.

8) It accused GM of breaching its fiduciary duty to Liggett shareholders by buying the company's equity with the benefit of confidential and inside information.

9) GM intended to liquidate most, if not all of Liggett's non-liquor assets to pay for the acquisition of Liggett's drink interest alone.

10) Enlistment of a 'white knight' i.e the Standard Brands Company to make a cash tender offer of US $65 per share for 45% of the outstanding common stock of Liggett.

11) GM's offer for the company was grossly inadequate.

SUCCESS/FAILURE

This contested bid was characterised by heavy litigation instituted by both parties including the sale of assets by Liggett during the bid (not allowed in the U.K.) to frustrate the offer. GM finally managed to acquire Liggett and won the recommendation of its board of directors when it improved its offer to US $69.00 per share versus Standard Brands's US $65.00 per share offer.

OTHER FEATURES

As a result of GM's successful acquisition of the company, eight non-management board members of Liggett resigned. Both financial advisers (Warburgs & Morgan Stanley) would each earn US $1.2m plus expenses for successfully concluding the bid (failure would reduce the fees to US $100,000 and US $300,000 for both merchant banks respectively).

GEC/AVERYS

	Property revaluation
	Sale of assets (before/after the bid)
	Capital reconstruction
✓	Dividend increase
	Bonus/scrip issue/share split
✓	Profits forecast
	Legal action
✓	Appeal to shareholders' loyalty
	Placing
	Undertake an acquisition (before/after)
	Acquire bidder's equity

(Defensive strategies listed in the research questionnaire)

BIDDING STRATEGIES/ARGUMENTS

1) Approach made on 30/11/78 to initiate bid negotiation and Avery's management met GEC's management.

2) GEC complement the services Averys offer to its customers. Additionally, Avery's suppliers and employees would benefit from the merger.

3) Undertaking to preserve the trading name of Averys.

4) No enforced redundancy except Tames Bridge Foundary where Averys itself was uncertain about the future.

5) The bid was 44% above 170p, the value prior to the November 1970 takeover bid.

6) Averys all time high market price of 197p was attained on 18/9/78, since then the FT Actuaries Mechanical Engineering Index has fallen by 21%.

7) The loan notes option would increase income by 142% and enable shareholders to defer realisation of their present Averys investment. Additionally loan notes were redeemable at par readily.

DEFENSIVE STRATEGIES/ARGUMENTS

1) GEC would be equally well served by an independent Averys.

2) Averys management and employees were united in strongly opposing the bid.

3) It was a totally inadequate bid.

4) GEC failed to make a case for a merger.

5) Averys was the world's technological leader in its field.

6) The financial strength of Averys provided a sound base for growth.

7) Averys had a low level of gearing.

8) Support from MPs for independence.

9) CGT liability for accepting cash.

10) GEC loan notes did not offer income growth or the same opportunity for capital appreciation and did not assist in avoiding CGT but only to defer it for a period of less

8) Pre-tax profits were a much truer measure of a company's performance than after tax earnings..

9) The increase in Averys after tax earnings per share was derived not from higher operating profits but following a change in the basis of accounting for tax mainly from leasing to third parties (this was highly questionable as profits were small from such leasing contracts).

10) Cash consideration would result in an annual income of 41% for Averys shareholders.

11) GEC approached Averys for merger negotiation before the engineering dispute.

12) Averys was increasingly vulnerable to competition from electronic based companies.

13) Accessibility to GEC's technology would keep Averys product up to date.

14) Cited evidence from M.M.C. and the Department of Industry regarding the inability of Averys to hold on to present position and expected competition from Japan and the U.S.A.

15) Without GEC's bid it was difficult for Averys's shares to hold on to the present level or it will fall.

16) GEC increased offer of 265p was 55% higher than the price of 170p prior to approach.

17) The Averys dividend was imprudent.

18) Careful timing of the disposal of loan notes would enable many individi- than 5 years.

11) Averys was a well managed international company of 250 years standing.

12) By its own admission to the M.M.C., GEC conceded that it had "little detailed knowledge of Averys business".

13) Low acceptances level of 9.5% (even after 6 weeks of the bid).

14) GEC's outlets in the U.S.A. was inappropriate for the marketing of Averys's products.

15) GEC's subscribed to the same rejected arguments as before.

16) Opportunistic attempt to takeover Averys cheaply by exploiting the engineering dispute and fall in the stock market.

17) Reliability and consistency of Averys's growth profits are reflected in the Group's balance sheet.

18) GEC had acknowledged the in-inadequacy of its first offer by slightly revising it.

19) Irrelevance of the comparison of Averys's performance to the Mechanical Engineering Index (it was more appropriate to use the Instrument Index which has increased by 17% versus the 23% decline in the Mechanical Engineering Index).

20) Withdrawal option open to those shareholders who had accepted GEC's bid.

21) GEC's bid undervalued the strengths, future posspects, market position, dividends level, expert management and work force of Averys.

duals to take advantage of the annual exemption from CGT on gains up to £1,000 and could provide tax advantages according to individual circumstances.

19) It was the duty of the Averys's board to give its shareholders all the information it could to enable them to decide whether it is in their interest to accept GEC's offer.

22) By merging with GEC Averys's identity would be subsumed in a large conglomerate.

23) The merger would not benefit industry, employees, suppliers or customers.

24) Incorporate press comments endorsing Averys's case for independence.

25) The future prosperity of Averys belongs to its own shareholders.

SUCCESS/FAILURE

GEC's first bid for Averys was referred to the M.M.C. and after clearance by the Commission to proceed subsequently returned with a second takeover bid of 245p for the company. Averys (advised by Schroder Wagg, the established merchant bank) then put up a strong resistance but the weak market particularly in the engineering sector greatly handicapped the defenders which had a hard task of persuading its own shareholders not to be swayed by short term considerations. GEC managed to acquire Avery successfully despite the strong defences put up by the biddee when it improved it offer by another 20p giving it control over acceptances of more than 55.8% of Averys share capital.

OTHER FEATURES

Its two largest institutional shareholders, i.e. Britannic Assurance (8% of the equity) and the Kuwaiti Investment Office (7% of the equity) held contrasting postures during the bid. Britannic Assurance remained loyal to the board and described the takeover as "ludicrous" while the KIO adopted the typical 'wait-and-see' stance of U.K. institutions in bid situations.

GEC/RACAL ELECTRONICS/DECCA

	Property revaluation
✓	Sale of assets (before/after the bid)
	Capital reconstruction
✓	Dividend increase
	Bonus/scrip issue/share split
✓	Profits forecast
	Legal action
✓	Appeal to shareholders' loyalty
	Placing
	Undertake an acquisition (before/after)
	Acquire bidder's equity

(Defensive strategies listed in the research questionnaire)

BIDDING STRATEGIES/ARGUMENTS

Racal

1) When combined with the considerable resources of the Racal Group, Decca's advanced technology in the areas of professional electronics would create a powerful base for the development of future business and for the profits growth of the enlarged Racal Group.

2) Assurances on jobs (however, in the long term interest of the businesses, some reorganisation might be necessary).

3) Upon the bid becoming unconditional, the chairman of Decca would be invited to join Racal's board.

4) Medium term borrowing facilities had been arranged to enable Racal to satisfy in full any elections by Decca's shareholers for the cash alternative.

5) The intention of Racal was to expand and develop the businesses of Decca and to continue the use of the "DECCA" name and trademarks.

6) Racal was an established leader in radio and data communicatiions and Group profits ending March

DEFENSIVE STRATEGIES/ARGUMENTS

This was a contested bid with a marked difference. Because of its continued dismal financial performance, Decca did not object to being taken over, as such, the basis for contesting the bid rested on price rather than independence. Although Racal's initial bid had the approval of Decca's board, the entry of GEC as a rival competitor enabled Decca to fulfill its price objective by extracting a higher value for the company. Equally interesting was the fact that no formal defensive documents had been issued, rather it issued a series of press statements regarding the board's view of the takeover attempt of the company by both Racal and GEC.

1979 is £61.6m.

7) The bid entitled shareholders to receive Racal's final dividend vis-a-vis nil dividend for Decca.

8) Racal already owned 29.9% of Decca's ordinary shares as well as 13.5% of its 'A' shares.

9) The bid had the support of Sir Edward Lewis, the founding chairman of Decca.

10) Decca timed its takeover bid to coincide with the depressed results of Decca.

11) Racal had already received irrevocable acceptances by the whole board of Decca, other individuals and institutions and together they accounted for 29.9% of the ordinary shares and 11.3% of the non-voting 'A' shares.

GEC

1) It could make more out of the acquisition than Racal because of the close association that existed between GEC-Marconi and Decca.

2) Categoric assurances on safeguard of jobs.

3) Expressed it willingness to increase its offer price.

SUCCESS/FAILURE

The outcome of the contested bid for Decca between GEC and Racal was finally decided in favour of the latter bidder for the following reasons:

a. Price
b. Anti-GEC feelings of Decca's employees
c. Key institutional support for merger with Racal
d. Support of Sir Edward Lewis
e. The merger with Racal received the tacit support from the Ministry of Defence and the Department of Trade
f. The press in general was sympathetic to Racal

g. Less risk of a reference to the M.M.C. if Decca merge with Racal and furthermore, Racal had reassured Decca that it would renew its takeover bid even if it is referred.
h. "not preoccupied with the last penny but best future for the company and industry" (statement by the chairman of Decca).

OTHER FEATURES

The takeover for Decca had long been a subject of speculation in the "City" even before Racal and GEC initiated their formal takeover bid for the company. The contributory factor to Racal's success was centred on the dominant shareholding of Sir Edward Lewis, the founding chairman, who died suddenly in the middle of the bid (but not before he committed his support of 17.2% shareholding to Racal). It should also be emphasised that Decca had an obsolete capital structure with 60% of its issued capital being voteless. And, it could be argued, that without this protective mechanism and boardroom voting power, Decca would have been taken over much sooner.

HANSON TRUST/L.K. INDUSTRIAL INVESTMENTS (CAPARO)/CMT

✓	Property revaluation
	Sale of assets (before/after the bid)
	Capital reconstruction
✓	Dividend increase
	Bonus/scrip issue/share split
✓	Profits forecast
	Legal action
✓	Appeal to shareholders' loyalty
	Placing
✓	Undertake an acquisition (before/after)
	Acquire bidder's equity

(Defensive strategies listed in the research questionnaire)

BIDDING STRATEGIES/ARGUMENTS

Hanson Trust

1) Pre-bid stake of 13.3%.

2) Capitalised on CMT's adverse financial performance as reflected by a £7.1m trading loss, nil final dividend and decrease in shareholder's funds by 30%.

3) Pointed out to shareholders that the resignation of CMT's previous chairman and his brother from the board was an indicator of poor management.

4) The merger would provide CMT with accessibility to the greater financial resources of HT.

5) Highlighted the good performance of HT (profits, earnings per share and dividends had increased every year since 1964).

6) It was a fair and reasonable offer.

7) Questioned the ability of CMT in providing its shareholders with another substantial dividend.

8) Offered a cash option for those not wishing to take the shares of HT.

DEFENSIVE STRATEGIES/ARGUMENTS

1) Pointed out to shareholders that the benefits from the company's management reorganisation and other major changes were not reflected in the offer.

2) Underlined the important point that as a result of a strengthened management, improvement of financial reporting and control, reduction in overheads and borrowings, disposal of surplus assets and actions on activities with poor returns (implemented in conjunction with CMT's new merchant banking advisor, Robert Fleming) the company was now better controlled and operated more efficiently.

3) It was a totally inadequate price for the company.

4) HT's cash option was 38% below CMT's latest published net asset value (78.6p per ordinary share).

5) Forecasted substantial recovery in profitability as well as reduction in borrowing (down from £16.9m to £5.4m).

6) Rejection of the share and cash offer by both independent members of the board and its financial advisers.

9) Emphasised HT's commitment to CMT's development as reflected by the presence of two non-executive directors of HT on the board of CMT.

10) Assurances on the employment of CMT's employees,

11) The offer would not be increased(designed to accelerate acceptances from doubtful shareholders).

Caparo

1) Stressed its substantial 49.9% control position of CMT (Caparo increased its holding of the biddee from 15.3% to 21.5% when HT bade for CMT; it increased this shareholding further when it managed to acquire the large block of shares i.e 13.3% from HT).

2) Underlined the commercial logic of the merger.

3) Appointment of three CMT's directors to the board of IKI (68.8% subsidiary company of Caparo) if the bid was successful..

4) Opportunities for CMT directors and employees to participate in the share participation scheme of Caparo.

5) Pointed out to shareholders that Caparo's cash offer was 12% above that of its counter bidder i.e. HT.

6) Cited the fact that accepting shareholders will enjoy higher capital and income values.

7) Orientated shareholders to the fact that HT's nominees, Messrs A.L. Alexander and R.D. Cowell were not responsible for the management changes and recovery of CMT rather, it was attributable to its acting chairman, R.L. Lewis and another senior director, Mr M. Hale.

8) Shareholders would incur CGT liability if they accept cash for their equity.

9) Accepting shareholders would forsake the benefits from CMT's recovery.

SUCCESS/FAILURE

In spite of its late entry into the bid, Caparo managed to successfully defeat its rival competitors' acquisition of CMT because of:

a) Sound tactical manoeuvres.

b) It substantial pre-bid stake of 22% reinforced by further

purchases in the market which subsequently changed its control position considerably.

c) The reluctance of HT to improve its offer (HT was an acquisitive company but adopted a prudent acquisition pricing policy as shown in many of its previous bids, for example, Lindustries).

d) The procurement of a single large block of shares (13.3%) from HT when it withdrew from the contested bid.

OTHER FEATURES

HT had to bid for CMT sooner than planned due to the rapid build-up by Caparo (15.3% before the bid). Caparo's inexactitude to launch a counter bid resulted in the Takeover Panel's imposition of an acquisition deadline for Caparo. Owing to its non-listed status, Caparo then initiated its takeover for CMT through its quoted subsidiary, LKI, from a position of considerable strength. Faced with its fait accompli, CMT then accepted Caparo's higher bid but its recommendation to its shareholders was qualified on the grounds that "The cash value of the offers represents a discount of 30% to CMT's latest published net assets value". It is interesting to note that HT sold its stake to Caparo at a loss of 30p per share (it acquired this holding of CMT at an average price of 85p per share).

HANSON TRUST/LINDUSTRIES

✓	Property revaluation
	Sale of assets (before/after the bid)
	Capital reconstruction
✓	Dividend increase
	Bonus/scrip issue/share split
✓	Profits forecast
	Legal action
✓	Appeal to shareholders' loyalty
	Placing
	Undertake an acquisition (before/after)
	Acquire bidder's equity

(Defensive strategies listed in the research questionnaire)

BIDDING STRATEGIES/ARGUMENTS

1) Exploited biddee's admission of poor performance by quoting the remarks made by Lindustries's retiring chairman during the 1979 AGM ("Due to particularly difficult trading conditions...profits for the current year may show a reduction compared with those of the last year").

2) Exploited the adverse reaction of Lindustries stock market performance as a consequence of the chairman's gloomy statement made at the company's AGM. This had the effect of depressing Lindustries's share price to its lowest level at 115p since 1977.

3) Contrasted the three year performance record of both companies.

4) The offer entitled shareholders to receive the final dividend.

5) Questioned prudence of Lindustries for maintaining its dividend level.

6) It was a fair and reasonable offer.

7) Without bid announcement

DEFENSIVE STRATEGIES/ARGUMENTS

1) The bid was derisorily low (it represented a P/E multiple of only 3.1 as against the FT-Actuaries multiple of 7.5).

2) It was an opportunistic bid.

3) The offer represented a 32% discount on the average P/E ratio of U.K industrial equities.

4) Accepting shareholders would have limited reinvestment option due to the restricted range of equity investments with the quality and yield of Lindustries (the FT-Actuaries gross dividend yield of 494 U.K. industrial companies in 1979 was only 5.9%).

5) The offer represents no increase on the weighted average middle market quotation of ordinary shares.

6) The assets of Lindustries underline its financial strength.

7) Emphasised the strength of the company's balance sheet (the low gearing of the company is a prime target for any opportunistic bidder).

Lindustries's shares would have fallen further.

8) HT had no intention of increasing the bid.

9) The selling of the company's shares by some of Lindustries's directors did not reconcile with the claim of a confident board geared for profitable expansion.

10) Option for reinvestment of cash for Lindustries's shareholders in other higher yielding companies.

11) Pointed out to shareholders that Lindustries had to write 15p per share off the company's assets to cover Cowlishaw's losses amounting to £2,8m.

12) Exploited Lindustries poor acquisition record regarding companies such as William Warne, Cowlishaw Walker, Whiteley Lang & Neill.

13) Hanson's resources and proven management will restore Lindustries's adverse performance.

14) Emphasise the well known operating philosophy of the company in giving its subsidiaries maximum autonomy compatible with proper financial support and disciplines.

15) It argued that assets were only viable when they were used to earn profits.

16) Questioned the direction of Lindustries's future growth.

17) Holders of 3.5million shares had already sold to HT.

8) Lindustries possessed the necessary management and financial strengths to implement plans for future expansion.

9) Lindustries would maintain its dividend.

10) Lindustries's growth sectors (vehicle components, high technology, rubber products, etc.) accounted for 50% of the 1978 sales and its management was fully capable of exploiting other opportunities as they ar se.

11) Lindustries 7,400 employees identified with their own individual companies within the Group and favour of independence.

12) Highlighted the possibility of HT selling off Lindustries prime property i.e. Trevor House, to reduce the cash cost of its acquisition.

13) HT's bid for Lindustries lacked industrial logic as the only area of overlap in both their businesses lay in their trade industries which was marginal to the bidder's operation.

14) "Every reason why Hanson wants Lindustries is a reason why shareholders should keep their shares".

SUCCESS/FAILURE

Hanson Trust's failure in 1977 to acquire Lindustries might be attributable to the lack of recommendation by the board of Lindustries. Lindustries's subsequent poor financial performance and depressed stock market rating aggravated further by persistent losses in its Cowlishaw operation enabled Hanson Trust to successfully acquire the company in the second takeover attempt with a "one shot" offer.

OTHER FEATURES

The value of Hanson Trust's second successful takeover attempt for Lindustries in 1979 duplicated the same 135p offer value made during the abortive 1977 acquisition attempt.

HARRIS QUEENSWAY GROUP/HARDY & CO. (FURNISHERS)

✓	Property revaluation
	Sale of assets (before/after the bid)
	Capital reconstruction
	Dividend increase
	Bonus/scrip issue/share split
	Profits forecast
	Legal action
✓	Appeal to shareholders' loyalty
	Placing
	Undertake an acquisition (before/after)
	Acquire bidder's equity

(Defensive strategies listed in the research questionnaire)

BIDDING STRATEGIES/ARGUMENTS

1) It breached the tightly held company by driving a wedge between the two families who held the majority of the equity and gaining the support of the Slotovers.

2) Irrevocable acceptances from two directors (R.S. Slotover and R.J.E. Slotover) representing 41.1% of the voting equity (40.4% of the ordinary shares and 15.1% of the 'A' share). This together with shares already owned by Harris Queensway represent 47.9% of the voting capital.

3) Offered chairman of Hardy a seat on the board of Harris Queensway.

4) Hardy had not earned any significant profits since 1976 despite possessing prime retail positions in High Street.

5) The acquisition of Hardy will provide Harris Queensway with the opportunity to expand its existing carpet shops and home improvement store chains.

DEFENSIVE STRATEGIES/ARGUMENTS

1) The proposed bid does not full reflect the present value of the group's assets or its potential.

2) The bid did not have the recommendation of Hardy's chairman, Mr. E.L. Datnow, nor family interest who jointly hold 44.8% of the voting equity (45.5% ordinary and 22.6% of the 'A' shares).

3) Sought assurances on the employment of its employees before consenting to recommend the offer to its shareholders.

6) In order to gain approval from the other major family share holder i,e. the Datnows, Harris Queensway revised its original bid terms by including a cash alternative.

SUCCESS/FAILURE

The chairman and members of the Datnow family who opposed the bid could not mount any strong defence against the unwelcome bid from Harris Queensway due to the large stake(41.1%) pledged by the Slotover family to the bidder. Moreover, the interim accounts for the twenty eight weeks ending in October 1978 showed a loss before tax of £240,000 on a turnover of £20m. In view of these circumstances, Hardy's main defence rested mainly on assets revaluation.

OTHER FEATURES

It was interesting to note that besides retaining the services of Barclays Merchant Bank as financial advisor, both families also retained independent financial advice of two other leading merchant banks, viz Kleinwort Benson (Datnow) and Rothschilds (Slotover). Thus it was quite a novelty for a takeover of this size (£28m) to involve the services of four prime merchant banks.

HIRAM WALKER-GOODERHAM & WORTS/HIGHLAND DISTILLERS

	Property revaluation
	Sale of assets (before/after the bid)
	Capital reconstruction
	Dividend increase
	Bonus/scrip issue/share split
	Profits forecast
✓	Legal action
✓	Appeal to shareholders' loyalty
	Placing
	Undertake an acquisition (before/after)
	Acquire bidder's equity

(Defensive strategies listed in the research questionnaire)

BIDDING STRATEGIES/ARGUMENTS

1) The offer price of 130p represented a P/E ratio of 17.

2) H.W. underlined the fact that in the Scotch whisky industry as in other industries, the value of assets was a function of what they would contribute to future earnings.

3) The offer represents $2^1/2$ times the book value of H.D.'s net tangible assets.

4) Highland got only 50% of its benefits of its wholly owned subsidiary's (R & B) sales of the "Famous Grouse" brand which it owned

5) Highland could not determine the level of dividend nor had it any effective rights in the assets of R & B (which was a subsidiary of another company, Edrington Holdings) and the 35.4% holding was simply a dividend yielding investment in a private company.

6) There were negative factors to be accounted in assessing the true value on Highland Distilleries stake in R& B for example, there was a special clause designed to probibit foreign sharehold-

DEFENSIVE STRATEGIES ARGUMENTS

1) Launched an advertising campaign calling for rejection of further foreign intrusion into Scotland's "heritage".

2) Decling number of independent distillers was a strong rationale for keeping H.D. in existing hands and if the takeover succeeds it would be difficult for investors to invest in the Scotch whisky industry.

3) H.D.'s shareholders should reap the benefits from the growing and increasing momentum of the "Famous Grouse" brand - the prime target of H.W.

4) The poor performance of "Ballantines" (the main H.W. brand of whisky) was a sharp contrast to the rapid expansion of the "Famous Grouse".

5) The substantial resources of R. & B was available to H.D. for the continuing development of the "Famous Grouse".

6) It could not be assumed that

7) If the takeover was successful, H.W. would divest H.D.'s shareholding in R & B.

8) Highland was witholding two significant facts relating to R & B from H.W.

9) Mr. MacPhail, chairman of H.D. was also the managing director of R & B and its parent company and it was difficult to justify Highland taking credit for 35.4% of the undistributed earnings of R & B.

10) Highland's rejection document, "does not provide sufficient evidence, facts and opinions (in particular, about assets, prospective profits and dividends) for you to form a judgement as to the merits of the offer".

11) H.W.'s own extensive marketing organisation would assist the "Famous Grouse" to realise its full potential outside the U.K.

12) H.D. might impose upon its shareholders for more capital due to rapid expansion.

the long standing relation- between Highland and Robertson and Baxter (R & B) would continue if control of H.D. were to change.

7) In connection with R& B, the directors's intentions were to give "to shareholders as much information as possibe without disclosing to competitors information that could be damaging to Highland's trading activities".

8) The profits of R & B attributable to H.D. was already reflected in its published accounts and obviously its directors could not advise its shareholders to ignore Highland's 35.4% shareholding in R & B.

9) 0.1% acceptances was an indication that the majority shareholders agreed with the board's view of maintaining its independence.

10) Seagram had been appointed as the distributor of the "Famous Grouse" in the U.S.A. while H.D.'s other brand, "Cutty Sark" had a powerful export potential.

11) The control of H.W.'s Scotch whisky business resided firmly in Canada.

12) H.D. would only resort to a rights issue if the company's rate of growth was so fast that it could not be self-financed or satisfactorily be funded by other means.

13) The market price of the company had increased by 500% over the last five years.

14) On a combined basis (H.D. and R & B) H.W.'s offer would drop from a P/E of 17 to a multiple of 12.

15) The board holding 8.1% of the company's equity did not recommend the offer.

16) It was absolutely the wrong stage in Highland's economic cycle to even contemplate recommending this bid.

17) Despite what H.W. said in its latest circular the board considered that Highland's shareholders were in a position to form a judgement on the merits of the offer.

18) The support of the Glasgow M.P., Mr. Donald Dewar for the independence of H.D. to a large extent influenced the Trade Secretary for the bid to be referred to the M.M.C. (January 1980).

SUCCESS/FAILURE

On 5/8/80, the Commission blocked the merger on the grounds that such a merger would lead to a loss of efficiency, affecting the strength of competition it offered in the U.K market. The other reason given for the rejection of the merger was that a takeover by Hiram Walker of Highland Distilleries would mean a further concentration of distillery ownership in Scotland. The Director-General of Fair Trading in ensuring the compliance of the Commission's ruling would seek formal assurance from H.W. that it would not attempt to proceed with the takeover.

OTHER FEATURES

Hiram Walker's main acquisition strategy revolve around the disclosure of the true worth of Robertson and Baxter (as a subsidiary of Edrington, R & B merely appeared in Highland's accounts at a cost price of £181,000). Due to this style of accounting, the question arose as to the extent to which a listed company should link itself into trading contracts with a private company ran essentially by the same management and the rights of shareholders in a public company to information needed to assess the value of their investment. In retrospect, it could be seen that H.D.'s defensive tactics focus more on Scottish nationalism than sound financial arguments. It was interesting to note that as a result of the Commission's ruling against the bid H.W. withdraw from the takeover attempt with a £1m profit, while on the other hand, H.D. incurred £345,000 in costs to defend itself against this unwelcome takeover.

HUNTING GIBSON/TURNBULL SCOTT/STAG LINE

✓	Property revaluation
	Sale of assets (before/after the bid)
	Capital reconstruction
✓	Dividend increase
	Bonus/scrip issue/share split
✓	Profits forecast
	Legal action
	Appeal to shareholders' loyalty
	Placing
	Undertake an acquisition (before/after)
	Acquire bidder's equity

(Defensive strategies listed in the research questionnaire)

BIDDING STRATEGIES/ARGUMENTS

1) The logic of the bid was to facilitate the development of a prosperous ship management company based on Tynside.

2) In the absence of a bid it was unlikely for the biddee's share price to rise to 255p (the market price prior to the announcement of the offer).

3) Assurances on employees and no redundancies envisaged.

4) The operation of Stag Line with a fleet of only two deep sea vessels, without a merger would make management overheads uneconomically high,

5) Benefits arising from merging the two comparatively small fleets into a single larger unit.

6) Hunting Gibson's revised offer was 30p above its rival bidder (430p versus 400p) and had the recommendation of the board of directors of Stag Line.

7) Irrevocable acceptances plus shares owned by Hunting & Son Ltd. (subsidiary company of Hunting Gibson) totalling 52%

DEFENDING STRATEGIES/ARGUMENTS

1) The bid undervalued assets.

2) Possibility of a rival bid (Turnbull Scott) emerging.

3) Stag Line was a recovery situation.

4) It negotiated a loan note option for some of its shareholders in order to mitigate CGT liability.

5) The basis of Stag Line's defence hinged largely on the revaluation of its shipping fleets and the current market value of its quoted investments.

6) The bidders should take into account the long term prospects of the biddee's employees.

already represented a platform
for control.

SUCCESS/FAILURE

Turnbull'Scott's withdrawal from the contested takeover was a result of the irrevocable undertaking to accept the bid given by Ropner Holdings (the largest single shareholder with 29% of Stag Line's shareholding) and the fact that it failed to secure the recommendation from Stag's board who held the other vital 29% of the company's equity. The basis for Stag Line's contention of the takeover bid for the company itself rested mainly on price rather than independence. Its willingness to recommend the offer at the later stage of the takeover was mainly attributable to shipping economics (owing to the rapid escalation in ship building cost replacing the aging assets of the company would impose a severe strain on Stag Line's financial resources).

OTHER FEATURES

Hunting's bid for Stag Line followed discussion on management cooperation between the two companies for some time but with little result. Abnormal movement in the share prices of Stag Line and the fear of a possible rival bid itself galvanised Hunting Gibson to launch its bid for Stag Line sooner than planned.

LONHRO/SCOTTISH & UNIVERSAL INVESTMENTS LTD. (SUITS)

✓	Property revaluation
	Sale of assets (before/after the bid)
	Capital reconstruction
✓	Dividend increase
	Bonus/scrip issue/share split
✓	Profits forecast
	Legal action
✓	Appeal to shareholders' loyalty
	Placing
	Undertake an acquisition (before/after)
	Acquire bidder's equity

(Defensive strategies listed in the research questionnaire)

BIDDING STRATEGIES/ARGUMENTS

1) The increased offer of 195p (1979) was in excess of the previous old share offer of 130p (1978).

2) The new offer contained a significant cash element.

3) Lonhro intended to retain and develop all the major activities of SUITS and to continue to emphasise its Scottish identity.

4) Trough Lonhro the shareholder will retain and investment in SUITS while benefitting from Lonhro's international range of activities.

5) Lonhro's association had already been of great benefit to SUITS - in one instance; a proven advantage of £9m.

6) By accepting the revised offer, shareholders would receive increases in capital value (25%), income (122%), and earnings (197%).

7) Lonhro, mindful of the past acquisition record of SUITS had assisted the company in avoiding high risk investments in Africa (for example, the

DEFENSIVE STRATEGIES/ARGUMENTS

1) Declared that SUITS had a prosperous future as an independent company.

2) The bid was not in Scotland's economic interest.

3) It grossly undervalued SUITS.

4) Recent offers had been made both for whisky and for publishing companies valuing the earnings of such companies on substantial premium to these market indicies i.e. the FT-Actuaries Indicies for Wines and Spirits and for Newspapers & Publishing.

5) The value of SUITS and its shareholding in the House of Fraser (£50.9m) exceeded the Lonhro's bid (£39.9m) by £11m.

6) SUITS'stake in the HoF and its whisky interest alone could be worth more than Lonhro's offer.

7) Lonhro's takeover of SUITS was based on the ulterior motive of securing SUITS key 10.29% shareholding in the HoF.

abandoning of a publishing investment in Nigeria due to remittability problem).

8) Lonhro would "fit beautifully" with a whisky, printing, and engineering interest of SUITS.

9) Under standard accounting practice the earnings of the HoF could not be treated as part of SUITS profits but shareholders should know that they would benefit in this way because of Lonhro's shareholding in the HoF.

10) "The entrepreneurial drive of Lonhro and its wider industrial and commercial experience ...could be of benefit to SUITS and in the long term, to the prospects of employment in Scotland". (The report of the M.M.C. quoted by Lonhro in its bid circular of 11/4/79).

11) Attempted to assure shareholders that Lonhro's merger with the HoF would not operate against public interests by quoting on the M.M.C.'s report (15/3/79).

12) Highlighted the intentions of the trustees of the Fraser Trusts (8.94% of HoF's) to accept the bid.

13) The bid had the support of Sir Hugh Fraser (Deputy Chairman) and Mr. J. Gossman, a director of the HoF.

14) Pointed out to shareholders that three directors out of the board of eight directors, viz. Mr Laughland (Chief Executive) and Messrs. Anderson and Cowan i.e. the opposing directors were recent appointees and only hold marginal shareholdings in SUITS itself.

15) The figures put forward by the opposing SUITS directors

8) Emphasised SUITS good performance.

9) Lonhro was a controversial group which operated in many areas of political and economic risks (in 1977, Africa contributed 73% to Lonhro's pre-tax profits).

10) The bid served to reduce Lonhro's high gearing by acquiring SUITS which had a low debt ratio and a strong balance sheet.

11) Exploited Lonhro's failure to mention current trading and prospects.

12) As a general rule, companies with dividend yields in double figures (14% for Lonhro were regarded by the market as involving above-average risks.

13) If Lonhro wanted control of SUITS it must pay the right price.

14) The M.M.C.'s Report reinforce SUITS's view that it did not need Lonhro ("...the acquisition of SUITS would increase Lonhro's direct shareholding in the HoF and the influence which Lonhro was able to exert on HoF....it was a plain fact that Lonhro has in recent years been involved in controversy and it was impossible to say that it would not be involved in controversy again").

15) Pointed out to shareholders that Lonhro's shares were not attractive and additionally the bid had no cash alternative.

16) It could not evaluate Lonhro's shares properly without knowing the current level of its debt.

(regarding SUITS's stake in the HoF and its whisky interest could be worth the value put on SUITS's by Lonhro's bid) were inadequately based.

16) Questioned the ability of the three opposing directors to run SUITS without Lonhro.

17) Exploited the fact that on the 24/2/77 the SUITS's board including the three opposing directors were in favour of a proposal to sell SUITS's valuable holding (10%) in the HoF.

18) SUITS's shareholders should exercise their own commercial judgement regarding the merits of the offer.

19) Stressed Lonhro's financial record over the past 17 years and the quality of its assets.

20) Lonhro's proven growth record.

21) The right of shareholders to receive Lonhro's interim dividends.

22) If the offer lapsed, SUITS's share price was likely to fall substantially.

23) SUITS's headquarters should remain in Glasgow.

17) SUITS was ideally placed to make substantial progress under its new management team (the excellent performance of the company in 1977 and 1978 was largely attributable to Mr. Laughland, the new Chief Executive).

18) The market view of Lonhro's shares according to Data-Stream statistics indicate that its P/E multiple with only three exceptions was lower than that of any listed company with a market capitalisation of more than £25m in 1978.

19) SUITS's shares with a P/E of 6.4 (including dividends from HoF) compared favourably with the P/E of 7.9 shown by the FT-Actuaries Share Index in 1978.

20) Lonhro's 1979 offer represented a discount of 60p per share or £18.7m.

21) If against advice, shareholders had accepted the original offer, they would had exchanged each share in SUITS now worth 195p for a holding in Lonhro, which was only worth 143p.

22) SUITS's shares at their current value of 195p stand higher than the offer value.

23) The decision to sell SUITS's stake in the HoF was based on the need to concentrate on the industrial trading strength of SUIT rather than on its investment portfolio.

24) This policy had the approval of both Sir Hugh and Mr. J. Gossman.

25) Mr. Rowland, chairman of

SUITS failed to inform the board of the contents of the letter by a large institutional shareholder suggesting at least one addition to the board.

26) Exploited the low acceptance level of 8.25% (excluding the Fraser Trusts).

27) In order to induce Lonhro to improve its offer Charterhouse organised a syndicate of eight institutional investors in making a counter bid for the 9% holding of the Fraser's Trusts.

SUCCESS/FAILURE

Lonhro's success (the bid had been revised several times) in gaining control of SUITS might be attributable to its large controlling stake, the support given by Sir Hugh Fraser and the final revised premium of 20p which induced many major shareholders to sell out (this premium level was derived by discrete probings among some key shareholders by Lonhro's brokers).

OTHER FEATURES

Charterhouse Japhet resorted to a novel defence tactic by organising a consortium of institutions to bid 200p for Sir Hugh's family trust to induce Lonhro to pay a higher price for its client (SUITS). In addition, Charterhouse also held talks with Warburgs, the HoF's merchant bank regarding a possible counter bid by the HoF for SUITS. It was interesting to note that Lonhro's takeover policy failed to receive the support of its dominant shareholder i.e. Gulf Fisheries which had a holding of 21% in Lonhro. In the final analysis, Lonhro's victory might be attributable to its skilful takeover strategy fortified by its ability to split the SUITS board of directors and undermine its shareholders's confidence in the company. Furthermore, it could be observed that Robert Flemming, SUITS's former merchant banker resigned as advisers to the company when Sir Hugh sold his vital 24% holding in SUITS to Lonhro. This holding provided Lonhro with a sizeable platform to finally gain control of SUITS.

MARSH & McLENNAN/C.T. BOWRING

	Property revaluation
	Sale of assets (before/after the bid)
	Capital reconstruction
✓	Dividend increase
	Bonus/scrip issue/share split
	Profits forecast
✓	Legal action
✓	Appeal to shareholders' loyalty
	Placing
	Undertake an acquisition (before/after)
	Acquire bidder's equity

(Defensive strategies listed in the research questionnaire)

BIDDING STRATEGIES/ARGUMENTS

1) M&M requested Bowring not to frustrate the merger.

2) It promised to preserve Bowring as an independent entity in order to get the OFT's approval for the Takeover.

3) Its major acquisition strategy in circumventing Lloyd's "20 per cent ruling" was to agree to transfer 75% of Bowring's insurance broking business to another owner acceptable to Lloyd's (it should be noted that Lloyd's waiver of its 20% ruling was influenced by the fact that thirty per cent of its business came from the U.S.A.).

4) To abide by the Bank of England's wishes, it also agreed to the disposal of Singer & Friedlander, Bowring's merchant banking subsidiary to a third party (under the Bank of England's ruling no foreigner was allowed to own more than 15% of a British merchant bank).

5) The revised offer allowed the shareholders of Bowring to receive a final dividend (this dividend was excluded in the original offer).

6) It undertook not to dispose

DEFENSIVE STRATEGIES/ARGUMENTS

1) Instituted legal actions in the U.K. and the U.S.A. to ward off the hostile bid from M&M.

2) It disputed the contents of M&M's prospectus filed with the SEC (a classical delaying tactic normally employed by biddee companies in the U.S.A.).

3) Bowring had the support of it employees for independence.

4) Cited the fact that M&M had no experience in merchanting, banking, credit finance, shipping and trading.

5) Highlighted the danger that the takeover would result in a "Domino effect" in the U.K. insurance industry.

6) Focussed the shareholders' attention to the possible danger of the bidder in diverting valuable U.K. underwriting experience to New York.

7) Highlighted Bowring's trade record (winner of the Queen's Award for export).

of other assets or businesses of Bowring with the exception of insurance broking and merchant banking.

7) Preservation of Bowring board structure and an election of four Bowring's representatives to the board of M&M if the merger succeeded

8) Assurances given to employees regarding employment.

9) The bid was conditional upon Bowring's withdrawal of litigation against M&M.

8) The bid would prevent Bowring from entering the U.S. insurance market.

9) The bid would affect the UK insurance relationship with the EEC.

10) It attempted to get the bid referred to the MMC.

11) It charged M&M of breaching its fiduciary duty to its shareholders by the use of confidential information to launch a bid for Bowring.

12) It main defensive strategy is underpinned by the Lloyds' 20% ruling (no outside interest may hold more than 20% of the equity of a Lloyds' broker).

SUCCESS/FAILURE

Bowring's key defence against the hostile bid from M&M hinged on the crucial Lloyds' 20% ruling. Once Lloyds had lifted this artificial barrier designed to protect its constituent members from foreign takeovers and augmented by an improved offer, the Bowring's board dropped its resistance to the takeover and decided to recommend the merger to its shareholders. This factor greatly enhanced M&M's chance in finally gaining control of the company.

OTHER FEATURES

This contested bid was characterised by heavy litigation reflected in the exchange of acrimonious letters (used as exhibits in court) between both parties. M&M's decision to takeover C.T. Bowring was influenced by difficulty posed in its own home environment in taking over an American insurance broker due to anti-trust implications. As such, Bowring constitute a "back door entry" for M&M into Lloyds and hence, U.K. insurance market. It was interesting to note that the post-acquisition period was marked by a significantly high number of resignations from Bowring's senior management.

MINING SUPPLIES/LAURENCE SCOTT

✓	Property revaluation
	Sale of assets (before/after the bid)
	Capital reconstruction
	Dividend increase
	Bonus/scrip issue/share split
	Profits forecast
	Legal action
✓	Appeal to shareholders' loyalty
	Placing
	Undertake an acquisition (before/after)
	Acquire bidder's equity

(Defensive strategies listed in the research questionnaire)

BIDDING STRATEGIES/ARGUMENTS

1) Emphasised the commercial logic of the merger (rationalisation of microprocessor equipment).

2) Highlighted the fact that it had an excellent industrial relation (only 1 1/2 working days lost since the company was established in 1960).

3) The offer represented a premium of 51%.

4) Contrasted performance of both companies.

5) No major changes in biddee's businesses or assets if the merger went through.

6) Shareholders should regard the recent asset revaluation by Laurence Scott as a mere "window dressing".

7) Mining Supplies exploited Laurence Scott's weak position by using a "one shot" strategy for its acquisition of the company.

8) By accepting the offer shareholders would receive a higher income and capital values for their investment.

DEFENSIVE STRATEGIES/ARGUMENTS

1) It expressed reservation on the bidder's intention as the chairman declined to discuss the bid with the company.

2) Mining supplies failed to provide current and future trading information.

3) Cited the fact that the company was trading from a substantial asset base.

4) Owing to internal management reorganisation and the availability of surplus assets the company was confident that it was able to reverse losses.

5) The bid undervalued assets.

6) The company had the support of some of its loyal customers who were in favour of Laurence Scott's independence.

7) It complained to the Takeover Panel that the bidder had infringed Rule 23 (1) which forbade the withdrawal of an offer without 14 days notice.

8) It announced a big contract worth £10m.

9) It advised shareholders to reject the share exchange terms of consideration but regarded the cash offer as fair.

SUCCESS/FAILURE

The success of Mining Supplies in acquiring Laurence Scott might be attributable to the extremely weak performance of the biddee in view of the fact that it had sustained continued losses for two years. This adverse situation was further compounded by an engineering strike in the company. Furthermore, Mining Supplies position was enhanced by its substantial control position (27%) of Laurence Scott, a holding which it managed to build up just before the acquisition.

OTHER FEATURES

The media described the takeover as bitter in nature. The decision by Mining Supplies to bid earlier than planned was influenced by the fact that Laurence Scott had become vulnerable and hence the possibility of a competitor coming in. During the closing stage of the contested offer, Laurence Scott managed to influence the Takeover Panel to force the bidder to extend both cash offer as well as share alternative. As a result of the merger, Laurence Scott and its subsidiary, PPD Engineering sued Hambros Bank and two of its former directors (PPD) in conspiring to weaken PPD Engineering in order to force Laurence Scott to sell it cheaply to a rival company.

PROVINCIAL LAUNDRIES/ST. GEORGE'S LAUNDRY (WORCESTER)

✓	Property revaluation
	Sale of assets (before/after the bid)
	Capital reconstruction
	Dividend increase
	Bonus/scrip issue/share split
	Profits forecast
	Legal action
✓	Appeal to shareholders' loyalty
✓	Placing
✓	Undertake an acquisition (before/after)
	Acquire bidder's equity

(Defensive strategies listed in the research questionnaire)

BIDDING STRATEGIES/ARGUMENTS

1) It was a fair and reasonable offer (53p represented the highest price ever placed on St. George's shares).

2) The bid represented an 85% increase in capital value.

3) The terms for consideration put a P/E of 21.6 on St. George's Laundry.

4) Emphasised on the industrial logic of the merger.

5) It aimed to provide a more comprehensive service in a wider geographical area.

6) Contrasted return on assets employed of both companies.

7) Assurances regarding businesses and employees.

8) If neither offers (partial and full) succeeded the biddee's share price was likely to fall drastically.

DEFENSIVE STRATEGIES/ARGUMENTS

1) St. George's Laundry believed in a strong local presence than a wide geographical spread.

2) The commercial strategies of both companies were diametrically opposed.

3) The bid represented a discount of 36% on the net asset value of the company.

4) The bid diluted dividend income by 37%.

5) The shareholders of the company should be able to reap the financial benefits of their investments due to the reorganisation effected in the company.

6) As a result of the failure of the bidder to acquire the company the directors of St. George's Laundry resorted to share placement of some of the company's equities in friendly hands.

SUCCESS/FAILURE

In order to split the united board and its strong family control of the company, Provincial Laundries attempted to circumvent these impediments via an unique partial and general takeover bid launched simultaneously. However, the clear wish of the family controlled business to retain its independence was the contributory factor towards the failure of Provincial Laundries to acquire St. George's Laundry. Provincial Laundries ended up with only 16% of the Group's equity.

OTHER FEATURES

Soon after the abortive takeover attempt by Provincial Laundries for the company, the Armstrong family who held more than 50% of the shareholding of St. George's placed a substantial block of shares in friendly hands viz 26.7% with P. Dellar and P. Dobson, 18.7% with Simon & Coates while fully retaining 26% in its own hands. After its failure to acquire St. George's Laundry, Provincial Laundries then disposed its 16% holding in the company and made a net profit of £40,000. In January 1981, St. George's Laundry made a reverse takeover for the laundry business of Provincial Laundries.

REDMEN HEENAN INTERNATIONAL/WELLMAN ENGINEERING CORPORATION

✓	Property revaluation
✓	Sale of assets (before/after the bid)
	Capital reconstruction
	Dividend increase
	Bonus/scrip issue/share split
✓	Profits forecast
	Legal action
✓	Appeal to shareholders' loyalty
	Placing
✓	Undertake an acquisition (before/after)
	Acquire bidder's equity

(Defensive strategies listed in the research questionnaire)

BIDDING STRATEGIES/ARGUMENTS

1) Emphasised on its pre-bid controlling position.

2) It was a fair and reasonable offer.

3) Criticised the bad acquisition record of WEC.

4) The profits forecast assumptions of WEC were meaningless (it exploited the fact that the biddee in a later stage of the takeover bid had to revise its forecast figures).

5) The offer represented a 17% premium on the net asset value of WEC.

6) Criticised the weak balance sheet of WEC as reflected by a fall in the company's liquid resources.

7) Cited the fact that in two out of the three years, the biddee's dividends have not been covered by profits.

8) The share price of WEC will fall sharply if the offer lapsed.

9) Highlighted the fact that WEC failed to provide information on current trading and future prospects.

DEFENSIVE STRATEGIES/ARGUMENTS

1) It received support for independence from both its employees and union.

2) The offer price was below the company's net tangible asset value per share.

3) CGT liability from accept- cash offer.

4) Omission from final dividend for accepting shareholders.

5) By accepting the bid from RHI's shareholders would be deprived of the benefits accruing from the IHBD acquisition (RHI was a poor option to IBHD).

6) Questioned RHI's desire to hold discussions with General Electric (the American parent company of IBHD) in the event of a successful takeover of WEC as RHI had already indicated that it will withdraw the bid if the takeover of IBHD was to proceed.

7) The acquisition of IBHD was covered by a warranty on the basis that the biddee's profits was not less than U.S. $2.5m for 33 weeks (if this

10) Pointed out that the shareholders of WEC should have the opportunity to consider and evaluate the alternative offer for the company.

11) Insubstantial defences put up by WEC.

12) The offer represented an exit P/E of 14.8.

13) Emphasised the acquisition policy of RHI in giving freedom to operating units.

14) The offer was conditional on the IBHD deal not going through.

15) Queried the source of funds for the takeover of IBHD by WEC.

16) Questioned the commercial logic of WEC's proposed acquisition of IBHD.

17) By acquiring IBHD, WEC would be incurring a gearing of 95%.

18) Pointed out to shareholders that IBHD had an erratic profits record.

19) Highlighted the fact that General Electric had not warranted for the future profits of IBHD.

20) No difficulty in reinvesting cash for accepting shareholders.

figure was not achieved, then the payment would be reduced by a £1/4m).

8) By acquiring IBHD, WEC would be incurring a gearing ratio of 72% and not 95% as stated by the bidder.

9) Indicated to shareholders that the pre-tax losses of IBHD had been included in the results and anticipated that future losses would be small.

10) Probability of redundancies if the takeover succeeded.

11) Cited the fact that WEC's borrowings had been effected at reasonable rates of interest.

12) The company's fluctuation in cash resources was back to normal due to the receipt of overdue payments from three overseas contracts.

13) Capitalised on the low level of acceptances (14.4%).

SUCCESS/FAILURE

The offer by RHI for WEC lapsed as shareholders of WEC voted in favour of the IBHD acquisition. Additionally, RHI's failure might be attributable to the lack of institutional support from three main institutional shareholders namely, Prudential Assurance, Pearl Assurance and the National Coal Board Pension Fund. It was interesting to note that some institutions described RHI's opening bid price as being "a fraction on the mean side".

OTHER FEATURES

The takeover of IBHD by RHI was basically a defensive merger as the company endeavoured to ward off the unwelcome takeover from RHI. After the abortive attempt to acquire WEC, RHI disposed its shareholdings in the company and made a profit of £2.2m. It should be noted that RHI revised its offer by 5p to 70p a day before the offer closed. (in normal circumstances, the offer would not have been raised until the closing date but RHI received the Panel's approval for this move because the shareholders of WEC had to vote for the IBHD acquisition on the closing day of the RHI's takeover bid).

SIME DARBY/GUTHRIE CORPORATION

✓	Property revaluation
	Sale of assets (before/after the bid)
	Capital reconstruction
✓	Dividend increase
	Bonus/scrip issue/share split
✓	Profits forecast
	Legal action
✓	Appeal to shareholders' loyalty
	Placing
✓	Undertake an acquisition (before/after)
	Acquire bidder's equity

(Defensive strategies listed in the research questionnaire)

BIDDING STRATEGIES/ARGUMENTS

1) It belittled Guthrie's share performance.

2) It denigraded Guthrie's management record.

3) It questioned, Guthrie's unsuccessful attempt at diversification.

4) No prospect of a rival bidder.

5) Sime Darby had a good management record and is a good employer.

6) Strengths and performance of Sime.

7) Questioned Guthrie's objective with regards to the deployment of its cash from Malaysianisation.

8) Obligation of Guthrie to dispose of 40% of his assets progressively by 1990 to the Malaysians.

9) Plantation earnings were cyclical.

10) Opportunity to attain 535p was foregone if the bid lapsed.

DEFENDING STRATEGIES/ARGUMENTS

1) The bid was not in shareholder's interest.

2) Investment currency premium and CGT implications.

3) It denigraded Sime's management record (since 1973, it had four chairmen, and five chief executives).

4) Rubber and palm oil prices were showing the upward trends.

5) Guthrie was a recovery situation.

6) Commitments of Guthrie to Malaysianisation.

7) The market price of Guthrie's share was standing at a premium to bid price.

8) Sime's bid would jeopardise the security and welfare of employees.

9) Rejection by the board holding 7.6% of the equity.

10) By accepting, shareholders would be selling out once and for all a major block of estate land at a discount rather than at a substantial

11) Opportunity for Guthrie shareholders to reinvest its cash.

12) The bid represented an exit P/E 17.

13) Maintainability of dividend was imprudent as it will result in the fall of EPS and dividend cover.

14) The revised price of 535p constitute the final offer.

15) Sime complained to the Takeover Panel that M & G, Hogg & Anderson Trustees were working in concert (implied that they had seen the rejection document before its despatch).

16) Sime's control position during the bid (it managed to acquire 24% of Guthrie's equity in just a few days).

17) Inclusion of share option to alleviate CGT problems for some shareholders and for those interested in retaining an investment in a plantation sector (it also offrred full underwriting cash alternative if shareholders did not wish to accept the share offer).

18) It questioned Guthrie's profit forecast credibility in view of fluctuating comodity prices.

19) Guthrie's assets revaluation was unrealistic because:
- its value of M $4,000 per acre was far above the value of Sime's estate land which was recently revalued at M $3,000 per acre.
- land values were determined by the Malaysian Capital Issue Investment Committee ultimately and their assessment was generally lower than those of independent valuers.
- assets were worth on a continuing valuation basis only on premium.

11) Shareholders had a clear cut alternative: accept cash offer with a 30% discount (in relation to the opening bid price of 425p) thus forfeiting any continuing interest in Guthrie and let Sime reaped all the future rewards or, retain investment in a viable plantation conglomerate.

12) Right of withdrawal option open to shareholders who had accepted.

13) Sime lacked the expertise to manage operations outside the Far East.

14) The bid bore no relation to the intrinsic value of Guthrie.

15) A number of important companies for which Guthrie acted as agents had given notice of their intent to terminate such agencies in the event of a Sime takeover.

16) Guthrie's management in Singapore had been reshuffled to reverse losses.

17) Undue weight had been given by Sime regarding support by a small number of shareholders.

18) The offer for preference share was inadequate being below recent comparable offers.

19) It capitalised on the low acceptances level.

20) Issue a five year corporate plan 'The Future of Guthrie' to convince shareholders of the company's viability.

21) Sime's bid was opportunistic (it was always wrong to sell a share just before the

what they can earn.

20) The cash offer of £123m was a rarity.

21) Entitlement for accepting shareholders to retain the final dividend of Guthrie.

22) CGT problems were greatly exaggerated as considerable reliefs were available to small shareholders.

23) A Guthrie shareholder who acceptedthe part share and part cash offer could finance the payment of investment currency premium (Sime was regarded as an overseas company) by using part of its cash proceeds thereby retaining an interest in Sime which would include Guthrie.

main recovery was due and it is often precisely at this moment that a takeover made.

22) Sime's revaluation was done by the same valuer retained by Guthrie and it was unprecedented for a valuer to be questioned in such a manner.

23) Incorporated the basis of M & G's rejections:
- there are few plantation companies left registered in the U.K. thus Guthrie had an irreplaceable and scarcity value
- Guthrie had a good dividend record
- its 8% yield was higher than the only comparable company i.e. Harrisons and Crosfield
- experience of Barings (Guthrie's financial advisor) in advising various other plantation companies in Malaysia.

SUCCESS/FAILURE

Sime Darby's bid of £154m for the Guthrie Corporation (one of the biggest transnational corporate takeovers in the U.K. in 1979) failed due to its low 'sighting shot' (neutralised by a strong market) as well as strong institutional support given by M & G (11.5% stake increased to 13.3% during the contested bid). The lack of support by the Andersons, the founding family also played a crucial role in the defeat of Sime. In the end, Sime ended up with 49% of the equity but has only 29.9% voting control of Guthrie Corporation.

OTHER FEATURES

As a result of the abortive attempt to takeover the Guthrie Corporation, Sime then appointed Rothschilds to replace Kleinwort Benson as its new merchant banking advisor. In April 1980, Rothschilds then held secret talks with M & G, Guthrie's biggest institutional shareholder but it rejected the revised offer of £9 per share. As Sime was still showing renewed interest to takeover Guthrie essentially the latter had three broad defensive options, viz:
- seek a 'white knight'
- made itself less vulnerable i.e. by undertaking an acquisition
- diversify broadly to defeat the commercial logic of the first offer.

Over a period of time, Guthrie had progressively adopted the second and third defensive options by bidding for the City & Investment Trust thereby, diluting Sime's stake from 29.9% to 27.6% . The Sime/Guthrie takeover generated much publicity both in the U.K. and in Malaysia and both parties resorted to heavy press advertising. The bid costed Sime £1m in underwriting and advertising expenses.

On Dec. 15, 1980, Sime Darby (which was itself 25% owned by the Malaysian Government) then transferred its 27.6% shareholding in Guthrie to PERNAS (the National Equity Corporation) which was the subsidiary of the Bumiputra Investment Foundation. The foundation, created in 1978, was the main vehicle through which the Malaysian Government aspires to achieve its new economic policy of giving at least 30% of the Malaysian corporate sector to the Malays by 1990.

The final phase of the takeover of Guthrie by a leading Malaysian public corporation was characterised by controversy surrounding its takeover strategy which can be illuminated in this context. The initial strategy involved Sime Darby making an outright bid for Guthrie and as a result builded up a substantial stake. This stake was then transferred to PERNAS. From a 27.6% platform PERNAS then swiftly gainal control of Guthrie through a two-pronged market buying strategy. This was done by Rothschilds acquiring a 12% stake in Guthrie from Southeast Asian shareholders and Rowe & Pitman, the stockbrokers famous in the 'City' for "dawn raids" acquiring another 5% in London. With 42% secured, the bidder then instituted a formal takeover bid for Guthrie at 901p.valuing the company at £282m (the bid price constituted a premium of 229p above the prebid price). On the same day, (7/9/81) in which PERNAS activated its market operations, within a span of four hours, it managed to acquire more than 50.1% of Guthrie's voting equity, thereby gaining the control of the biddee.

The *modus operandi* of the Guthrie takeover, and two other recent takeovers, involving Law Land & Amalgamated Power, in which the target companies had little time to react, or, mount their defences, had resulted in the chairman of the Stock Exchange, requesting the CSI, to examine the implications of rapid takeover tactics as well as expressing concern regarding institutional power (*i.e.* the willingness of fund managers to sell out for short term gains at a moment's notice).

ST. MARTINS (INDUSTRIAL)/PROPRIETORS OF HAY'S WHARF

✓	Property revaluation
	Sale of assets (before/after the bid)
	Capital reconstruction
✓	Dividend increase
	Bonus/scrip issue/share split
	Profits forecast
	Legal action
✓	Appeal to shareholders' loyalty
	Placing
	Undertake an acquisition (before/after)
	Acquire bidder's equity

(Defensive strategies listed in the research questionnaire)

BIDDING STRATEGIES/ARGUMENTS

1) It portrayed a good image as an employer.

2) To allay fears of Arab encroachment SMI re-assured shareholders that its porfolio investment in the U.K. was run by a mixture of Kuwaiti and British managers.

3) The offer provided shareholders with the chance of realising their investment now without further risk or delay.

4) Highlighted the fact that it was beyond the financial capacity of PHW to develop the Tooley Street Estate (TSE).

5) Commitment of the Kuwaiti Investment Office (the parent company of SMI) to develop TSE from its own financial resources.

6) The bid was in the best interests of the Southwark Community as well as the shareholders and employees of PHW.

7) Cited the fact that the notional value assigned by PHW on its trading subsidiaries was irrelevant because KIO (the Kuwaiti Investment Office) had no desire

DEFENSIVE/STRATEGIES/ARGUMENTS

1) The bid did not reflect the underlying assets value of PHW.

2) SMI failed to reflect the development prospects of the huge TSE project.

3) Pointed out to shareholders that the board found it impossible to recommend the merger due to the inadequacy of the bid price.

4) PHW's interim figures showed a 32% increase over a comparable period in the previous year.

5) It sought assurances on the future of the company's employees.

6) Highlighted the fact that PHW failed to discuss future plans for the company although application for this matter had been made by the board of PHW through its financial advisers (Morgan Grenfell).

7) The revised offer coinciding with the asset revaluation of PHW was meagre (representing an increase of only 4% over its original bid terms).

of breaking up PHW's businesses.

8) The bid fully reflected the value of trading activities as well as PHW's investment and development properties.

9) Pointed out to shareholders that the bid represented an increase of 54% over PHW's market capitalisation as well as a P/E of 12.8 times full tax charges.

10) Cited the fact that the £13m deferred tax liability of PHW would eliminate any increase in book value reflected in the balance sheet.

11) No redundancies.

12) Reassured shareholders that it was the intention of the bidder to retain the existing board of PHW as executives or consultants of the company.

13) Its strong pre-bid platform of 32.7%.

SUCCESS/FAILURE

KIO's ability to acquire another 17.5% in the market to supplement its 32.7% pre-bid stake effectively influenced the outcome of the contested bid. It should be noted that the revised price of 250p had the immediate impact of inducing institutional sellouts even before the dispatch of the formal bid circular. These pre-emptive tactical manoeuvres by KIO effectively denied PHW the opportunity of negotiating with a counter bidder ("white knight").

OTHER FEATURES

The KIO's 32% controlling position in the biddee is a consequence of its successful acquisition of St. Martin's Corporation in 1974 but, owing to the controversies surrounding the bid, the Takeover Panel imposed certain limitations on the new owner. With the restrictions removed in 1980, KIO then fully exploited its strong controlling position by making a full bid for PHW through a wholly owned new company, St. Martin's Industrials.

STANDARD CHARTERED BANK/HONG KONG & SHANGHAI BANK/ROYAL BANK OF SCOTLAND

	Property revaluation
✓	Sale of assets (before/after the bid)
	Capital reconstruction
✓	Dividend increase
	Bonus/scrip issue/share split
✓	Profits forecast
	Legal action
✓	Appeal to shareholders' loyalty
	Placing
	Undertake an acquisition (before/after)
	Acquire bidder's equity

(Defensive strategies listed in the research questionnaire)

BIDDING STRATEGIES/ARGUMENTS

Standard Chartered Bank (SCB)

1) The merger had the recommendation of the board of the RBS.

2) Linkage with SCB (1,500 offices in 60 countries) would provide more opportunities for expansion and access to international capital markets.

3) Stressed the good performance of SCB (as illustrated by increase in its interim profits and total dividends).

4) Management of RBS would be decentralised

5) RBS would operate as a separate entity.

6) The merger would create a powerful force in British banking.

7) Invitation to the RBS board to join the board of SCB. Sir Michael Herries (the chairman of RBS) would become the senior deputy chairman of the enlarged group.

DEFENSIVE STRATEGIES/ARGUMENTS

The SCB's takeover bid had the recommendation of the board of directors of RBS but not that of the HKSB, the latter which after an abortive merger negotiation with the board of RBS decided to appeal straight to the shareholders. As RBS anticipated a possible referral to the M.M.C., its defences revolved around the benefits arising from a merger with SCB. Undoubtedly, its financial advisers, J. Henry Schroder Wagg was conserving the major defences for the second round of battle should the M.M.C. gave its official approval for the takeover when it arrived at a verdict at the end of 1981.

8) The revised offer matched that of its rival bidder i.e. HKSB (inclusive of the improvement of the preference share).

9) The disposal of 39.3% in Lloyd's and Scottish to Lloyds Bank had the approval of RBS.

10) It was a fair and reasonable offer.

Hong Kong & Shanghai Bank (HKSB)

1) Raised funds before the acquisition through a rights issue (£170m).

2) Advantages for RBS to merge with HKSB which is the world's largest bank by market capitalisation, £2.2 billion (800 offices in 45 countries).

3) Envisaged that RBS would become the "flagship" of HKSB in Europe.

4) Its offer exceeded the SCB's offer by 56%.

5) Referred to the proposed takeover of RBS as a "partnership".

6) Assurances given to the Bank of England that RBS would conform and comply with British banking regulations despite the merger.

7) RBS would be allowed to retain its identity and Scottish-based independence.

8) Invitation to RBS board to join HKSB's board.

9) Stressed on its good performance and track record over the past five years. Between 1975 and 1980 the total bank assets had increased by 38%, earnings per share by 34%, and dividends per share by 29%.

10) Assurances on management and employees (no redundancies).

11) It attempted to assert its Britishness that despite the fact that although it was an international bank incorporated in Hong Kong (which was outside the jurisdiction of the Bank of England) nevertheless, it was a "British bank under British control".

SUCCESS/FAILURE

HKSB's rival bid and higher offer for the RBS galvanised by the SCB's proposed merger implied that the biddee would eventually receive a better value because of the intensity of rivalry existing between both the bidders. However, before the contested bid escalated into a major takeover battle the Office of Fair Trading, at the request of the Bank of England intervened to have the takeover referred to the M.M.C., partly due to the complexity of the whole affair and also long term implications regard- the independence of other U.K. clearers in general should the bid be allowed to proceed.

OTHER FEATURES

The distinct features and implications involved in the proposed takeover in the RBS might be summarised as:

a) Although both bidders were British owned multinational overseas banks and due to its colonial history, external registration and essentially non-U.K. operations both are considered in this country as non-British banks.

b) The American banks had expressed interest in acquiring leading British banks and if the Bank of England and the M.M.C. approved the takeover, then the barrier was removed for the future acquisitions of British clearing banks by foreign banks.

c) Lloyd's Bank had in fact in 1979 held secret talks with RBS and therefore constituted a possible third contender for RBS itself.

d) Mr. John Clay, the Deputy Chairman of Hambros was also a director of the Bank of England and under this circumstance there was a potential conflict of interests as Hambros was a joint advisor (together with Antony Gibbs) to the HKSB. The Bank of England when faced with this

enigma to come to a balanced decision, exerted discrete pressure on Hambros to dissuade its client to withdraw but to no avail.

e) The biddee, the RBS was the largest Scottish clearing bank domiciled in Edinburgh and as such the bid trangressed on Scottish economic nationalism.

f) Pressures were exerted by wide sectional interests ranging from Scottish members of Parliament to Trade Union Congress and even the Church of Scotland for a M.M.C.'s reference because of the foreign image of both bidders.

g) The SCB had to placate Lloyd's Bank because the latter was the largest shareholder (16.3%) in the RBS and thus it sanctioned the disposal of the RBS's shareholding in Lloyds and Scottish (which was jointly owned by the RBS and Lloyds Bank) to Lloyds Bank in order to receive its support for the SCB merger with the RBS.

The Bank of England circumvented the aforementioned dilemmas by having the Office for Fair Trading recommending to the Trade Secretary to have both bids referred to the M.M.C. on the 1/5/81 based on asset criteria. The deliberation by the M.M.C. would normally take six months and therefore a verdict should be expected by the end of 1981. Meanwhile, both bids had automatically lapsed because of the referral.

THE RIVAL BIDDERS FOR THE ROYAL BANK OF SCOTLAND

Bank	Stockmarket Capitalisation (US$ bil.)	Share Price	Total Assets (US$bil.)	Shareholders Funds (US$bil.)	1980 Profits US$mil	PER
HKSB	4.8	HK$15	46.5	2.46	239.3	15
Standard Chartered	1.35	86p	36.8	1.05	446.2	5.7
RBS	0.56	126p	11.8	0.93	192.3	5.7

Market capitalisation of 4 leading UK clearing banks

Barclays	US$2.46 bil.
Lloyds	1.47 bil.
Midland	1.11 bil.
Nat. West.	1.86 bil.

Source: '*Far Eastern Economic Review*' (22/1/82) p62.

STARWEST/ALLIED LONDON PROPERTIES/GOUGH COOPER

✓	Property revaluation
✓	Sale of assets (before/after the bid)
	Capital reconstruction
	Dividend increase
	Bonus/scrip issue/share split
✓	Profits forecast
	Legal action
✓	Appeal to shareholders' loyalty
	Placing
	Undertake an acquisition (before/after)
	Acquire bidder's equity

(Defensive strategies listed in the research questionnaire)

BIDDING STRATEGIES/ARGUMENTS

Starwest

1) The offer fully reflected the biddee's values and trading record of the past five years.

2) It had to see more details before justifying an improvement in its terms of offer.

3) As a result of a strong shareholding (29.5%) in the company, Starwest solicited for boardroom representation.

Allied London Properties

1) Cited irrevocable undertakings to accept the offer from the directors and families of Gough Cooper representing 21.8% of the company's equities.

2) The offer price of 18.4% higher than the market value of 122.5p of Gough Cooper (the last dealing day before the suspension of the company's shares).

3) The activities of both companies were complementary.

4) Assurances regarding management of the biddee (the chairman of Gough Cooper would be

DEFENSIVE STRATEGIES/ARGUMENTS

1) The bid undervalued assets.

2) The company intended to shift its business policy to that of industrial property investment from housing due to severe trading conditions encountered in the private housing sector.

3) Highlighted the fact that Mr. Remo Dipre, the chairman of Starwest contradicts his assurances of not making an offer for the company despite a purchase of a 29.5% stake in Gough Cooper.

4) It sought a defensive merger ("white knight") with Allied London Properties in preference of Starwest, the original bidder.

invited to join the board
of Allied London Properties).

SUCCESS/FAILURE

Gough Cooper and its merchant banking advisers had great difficulty in putting up an effective defence due to the poor trading performance experienced by Gough Cooper (the company had a loss of £655,000 and forecast a further loss of £350,000 for the calendar year). Other determinants which contributed to the loss of independence of Gough Cooper were the historically low stock market rating of the company's shares as compared with the net asset backing, its contemporary adverse trading conditions and little prospects for the shares to attain 145p in the near future.

OTHER FEATURES

Starwest announced that it intends to withdraw Gough Cooper as a listed company if it succeeded in its takeover. However, its ambition was thwarted by Gough Cooper making a defensive merger with Allied London Properties. As a result of its inability to acquire Gough Cooper, Starwest, then disposed of its shareholding of Gough Cooper to its rival bidder, Allied London Properties and made a profit of £1.2m.

STARWEST/HAWTHORN LESLIE

✓	Property revaluation
	Sale of assets (before/after the bid)
	Capital reconstruction
✓	Dividend increase
	Bonus/scrip issue/share split
	Profits forecast
	Legal action
✓	Appeal to shareholders' loyalty
	Placing
	Undertake an acquisition (before/after)
	Acquire bidder's equity

(Defensive strategies listed in the research questionnaire)

BIDDING STRATEGIES/ARGUMENTS

1) Acquired a strong controlling stake (35.3% of the biddee) through a market raid.

2) Spelt out its corporate intentions towards Hawthorn Leslie.

3) Capitalised on the disposal by some non-executive directors of their Hawthorn Leslie shareholdings during the bid as a sign of poor faith in their own company.

4) No redundancies.

5) Criticised the poor interim results of the biddee.

6) The omission of profit forecast by the biddee in its defence circular.

7) Assurances on continuation of Hawthorn Leslie's business.

8) It was a fair and reasonable offer.

9) The offer represented a premium of over 64% on the net assets of the biddee.

10) Choice of re-investment option for accepting shareholders.

DEFENSIVE STRATEGIES/ARGUMENTS

1) Exploited the fact that Starwest made no attempt to discuss the merger with the company.

2) Cited the fact of the failure of Starwest in two recent takeovers (Tridant Group Printers in 1978 and Gough Cooper in 1980).

3) Starwest was an opportunistic bidder because Hawthorn Leslie has just completed a successful investment.

4) Stressed on the lack of industrial logic for the merger (the only area of overlap was in electrical components operation).

5) The terms of consideration constituted no premium on the market value of the company's shares (since August 1980 the shares of Gough Cooper had been trading between a range of 100p and 137p).

6) The preference offer was lower than recent comparable offer for preference equity.

7) Cited the lack of safeguard for the company's employees.

8) Starwest's heavy borrowings

11) Implications for biddee's share price if the offer lapsed.

could affect the future growth of Hawthorn Leslie's business.

9) During the bid, two directors of the company increased their holdings in Hawthorn Leslie through market acquisition thereby strengthening the board's control of the company (this strategy was also designed to drive up the market price of the target company in order to inhibit the bidder from purchasing more shares in the market).

10) Highlighted the fact that the bid price was less than the market price six weeks before the offer.

SUCCESS/FAILURE

As a result of a "put-through" (35.3% stake acquired from G.T. Management & Gartmore Investment Management Groups) in accordance with the Takeover Code, Starwest had to effect a formal cash bid for the remaining equity of Hawthorn Leslie's at the same price of 130p. During the bid, Starwest managed to increase its controlling position of the biddee to 45%. On the other hand, Hawthorn Leslie handicapped by the strong headstart of the bidder appealed to Starwest to either increase or withdraw from the takeover bid. To accommodate the biddee's wishes and to receive its recommendation for the takeover, Starwest then revised its takeover terms to 147p cash for the ordinary equity and 55p for each preference share (against the original terms of 130p and 45p respectively).

OTHER FEATURES

The "put-through" was conducted through the stockbroking firm of Walter Walker, whose two associate directors sat on the board of Hawthorn Leslie (one of them subsequently resigned during the bid). The board, who had a holding of 6% in the company before the takeover from Starwest, increased its shareholding in the company to 9% during the bid by purchasing in the market and managed to win the support of M & G, its biggest institutional shareholder in its initial rejection of the bid.

TDG/UNIGATE/GILTSPUR

✓	Property revaluation
	Sale of assets (before/after the bid)
	Capital reconstruction
✓	Dividend increase
	Bonus/scrip issue/share split
	Profits forecast
	Legal action
✓	Appeal to shareholders' loyalty
	Placing
✓	Undertake an acquisition (before/after)
	Acquire bidder's equity

(Defensive strategies listed in the research questionnaire)

BIDDING STRATEGIES/ARGUMENTS

TDG

1) It received support from Mr Maxwell Joseph (ex-chairman of Giltspur) who had committed his 23% shareholding in Giltspur to TDG in the absence of a materially higher bid.

2) It emphasised on the commercial logic of the merger (two activities i.e. transport and exhibition are complementary).

3) Cited the management philosophy of TDG in giving a considerable degree of independence to operating companies.

4) Highlighted the proven record of TDG (Transport Development Group).

UNIGATE

1) Cited the synergy to be derived from the merger.

2) Giltspur will continue to trade as a separate unit.

3) No redundancies.

4) Commitment to the growth and expansion of the biddee.

DEFENSIVE STRATEGIES/ARGUMENTS

1) Contrasted profits record of both companies.

2) Highlighted the fact that Giltspur was in a strong financial position with over £5.5m in deposit.

3) The bid undervalued assets.

4) Pointed to shareholder that the offer was not underwritten (therefore, it had no guaranteed minimum cash value).

5) It cited the fact that 33% of Giltspur's offer was in unconvertable loan stock. (therefore, it did not provide shareholders with the right to participate in any increase in profits or assets of the company).

6) Highlighted the fact that the borrowings of the company had been reduced from £13.4m to £3.6m.

7) The bid failed to reflect the past record of Giltspur.

8) The substantial cash flow resources of Giltspur would enable management to take advantages of new opportuni-

5) The 135p cash offer was a substantial improvement over the 111p offer price of TDG.

6) It entitled shareholders to retain the interim dividends of the company vis-a-vis nil interim for the TDG's offer.

7) Cited the fact that it had received the approval for the merger from the board of Giltspur (holding 24% of the equity). as well as that of its largest single shareholder i.e. Mr Maxwell Joseph who had an equity stake of 23% in Giltspur.

... ties as they arose.

9) Provided an up to date review of the current performance and activities of the company in order to reinforce shareholders' commitment to the company.

10) Pointed out to shareholders that TDG competed with Giltspur in stand-fitting business, hence the bid posed a threat to the company's successful exhibition operation.

11) The bid would reduce shareholders' participation in the growth of the company.

12) The appointment of a new management team in 1977 had resulted in rationalisation, consolidation and recovery for the company.

13) Held merger negotiations with other counter bidders including Inchcape, Hanson Trust and Tricentrol in order to find a "white knight".

SUCCESS/FAILURE

Despite an excellent interim performance, Giltspur's defence had been considerably undermined in view of the intended disposal by its own non-executive director, Mr Maxwell Joseph of his strategically large shareholding (23%). As Giltspur deemed TDG as an unsuitable bidder, it finally merged with UNIGATE which received both the approval of the board and its largest single shareholder.

OTHER FEATURES

TDG managed to negotiate quietly with Mr Maxwell Joseph over a period of four months, without the knowledge of the rest of the Giltspur's board regarding the commitment of his large single block of shares to the company (TDG).

THOMAS W. WARD LTD/ TUNNEL HOLDINGS LTD.

✓	Property revaluation
	Sale of assets (before/after the bid)
	Capital reconstruction
✓	Dividend increase
	Bonus/scrip issue/share split
✓	Profits forecast
	Legal action
✓	Appeal to shareholders' loyalty
	Placing
	Undertake an acquisition (before/after)
	Acquire bidder's equity

(Defensive strategies listed in the research questionnaire)

BIDDING STRATEGIES/ARGUMENTS

1) Stressed on long relationship with THL since 1929.

2) Pre-bid stake of 25.8% (this shareholding had 29.9% voting rights of THL).

3) Emphasised the industrial logic of the merger (combination of cement activities of the two companies would result in significant additional profits which neither company could achieve on its own).

4) Casted doubt on Tunnel's diversification efforts (for example, the 1978 acquisition of the Chemical company, Alcolac Inc.) which had made losses and constituted a waste of management activities.

5) Orientate shareholders' attention to the good track record of the company (between 1976 and 1980, it enjoyed a 94% increase in profits before tax, 66% increase in dividends and reduces borrowings by 84%).

6) Reinforced shareholders' faith in TWW by asserting that it will continue to develop the cement business of the enlarged group.

DEFENSIVE STRATEGIES/ARGUMENTS

1) The merger between TWW and Tunnel lacked commercial logic and would lead to a lower growth rate for THL alone.

2) The bid was misconceived and failed to reflect existing or potential value of THL.

3) Highlighted the fact that following a three year period of reorganisation and consolidation, the company has doubled its profits in the last two financial years.

4) Tunnel had broaden its product base and invested overseas to reduce its dependence on the U.K. construction centre.

5) Cited the fact that TWW's non-construction operations had fallen by 33%.

6) Indicated to shareholders that Tunnel's management philosophy of concentrating on efficiency rather than size had been proved correct by results.

7) Contrasted management styles of both parties (THL's centralised management with low overheads versus dictatorial style of Ward with large central administration).

7) No intention of disposing or closing any businesses of Tunnel.

8) Contrasted performance of both companies.

9) Made a case for the merger by focussing on the underlying rationale which is cement (this product contributed to 86% of THL's profits and 70% of TWW's profits).

10) The offer represented an increase in capital value (28%) and income value (125%).

11) The bid price of 417p was doubled the net asset value per share (30/3/80 balance sheet).

12) The bid represented and exit P/E multiple of 15 times on the basis of full tax at 52%.

13) If the bid lapsed, shareholders can expect a fall in the value of their investments.

14) The revised terms of offer (446p per Tunnel ordinary share) represented a gain of 141p per share over the market price of 325p (prior to the announcemnt of the formal bid).

15) Entitlement to receive Ward's interim dividends for accepting shareholders.

16) Highlighted the fact that TWW already owned 41% of Tunnel's votes and there was no other counter bidder for THL.

17) Indicated to shareholders that they could defeat RTZ's attempt to frustrate the merger by accepting TWW's offer.

8) Asserted that the company had a strong financial base.

9) Cited the fact that in order to free itself of TWW's restrictive presence, THL in fact had previously contemplated making a takeover for Ward itself.

10) Orientated shareholders' attention to the fact that Ward's proposed expansion into the South East, would imply making an entry into an area with excessive cement capacity and had the further effects of making it the most fiercely competitive market in England.

11) The plan to deliver 250,000 tonnes into the South East market would mean a vastly increased distribution cost and no price competition.

12) Discredit TWW's marketing plan ("selling on the margin" proposition) that old inefficient plant should be utilised to service a distant market appeared to assume that customers could be shuffled around to suit individual maker.

13) THL had completed the rationalisation of its own cement operation and had the flexibility to exploit favourable economic conditions as they arose.

14) Reasserted that the company's diversifications were well founded and the benefits were beginning to emerge.

15) Pointed out to shareholders that in the event of a change of control, namely the acquisition of 50% or more of THL, various pre-emption and other rights detrimental to the existing business of THL would come into effect, for instance, loss of Tunnel's 50% interests in Stablex Ltd. (joint venture with RTZ) and 37% in Metro (an Australian public company) to its chairman.

18) Provided a loan note option for shareholders wishing to mitigate CGT liability.

19) Reassured shareholders that the company's balance sheet and cash flow would support the borrowings which will arise both from the implementation of the takeover for THL and capital expenditure at Ketton and Ribblestadle and elsewhere.

20) Cement customers in London and the South East will welcome a stronger third supplier.

21) Criticised the unquantified profits forecast of THL.

22) Pointed out to shareholders that Stablex, THL's subsidiary was a loss making business.

23) If Ward failed, Tunnel's shares would fail.

24) The share and cash election would not be available after 8/6/81 (closing date) and the offers would not be increased (this tactic was designed to pressurise doubtful shareholders to accept).

25) The bid was generous.

26) The bid provided accepting shareholders with a wider choice of consideration.

27) Ward had greater potential for recovery.

16) The takeover would affect the motivation of THL's management and employees.

17) Capitalised on the absence of profits forecast by the bidder.

18) Contrasted historic performance of both companies.

19) Cited the fact that the market price of THL had been re-rated due to improved interim results and intrinsic value of the company.

20) Ward's share value was illusory (currently supported by the value of its investment in THL and was an insecure investment).

21) The timing of TWW's takeover was opportunistic coinciding with the speed of growth and recovery of THL.

22) Highlighted the potential problems arising from forced merger of two differing management entities.

23) The merger was not based on cement as THL had restructured its business and overseas investment.

24) Over the past three years Tunnel's share price had often outperformed the building material sector.

25) The cash value of TWW's offer represented a multiple of only 10.3 times attributable earnings.

26) Indicated to shareholders that TWW might have to sell substantial assets or resort to a rights issue to finance its acquisition.

27) The acquisition of Alcolac considerably enhanced THL's position in the American

specialty chemical field.

28) Incorporated favourable press comments for independence.

29) Cited the independent support given by RTZ which acquired 3.7% of THL's capital during the bid.

30) Shareholders should retain their investment in THL as there is short, medium and long term growth to be derived from cement specialty chemicals, Stablex and metal.

SUCCESS/FAILURE

Ward's failure to acquire THL might be attributable to the following factors:

a) Entry of RTZ during the bid in buying 3.7% voting control of Tunnel itself. This tactical ploy had the effect of casting doubts on the biddee shareholders' minds of an alternative bidder to TWW. Furthermore, RTZ's procurement of THL's equity at a higher price had the additional effect of accelerating the market price of the biddee and hence preventing TWW from further purchases in the market.

b) Strong case for independence by the board of THL.

c) Lack of media's endorsement for TWW's takeover attempt.

d) Presence of Sir Charles Ball, ex-chairman of Barclays Merchant Bank ("The great defender") on Tunnel's board.

TWW ended up with 41.8% of THL.

OTHER FEATURES

S.G. Warburg, TWW's merchant banking advisor assisted its client in its takeover efforts by procuring 1.75m "B" shares of Tunnel (Warburg received the Takeover Panel's approval to acquire these shares independently on the grounds that it would then either accept the cash offer or sell the shares back to its client at the price which they had been acquired. In addition, Warburgs also charged the full interest rates for the money deployed in such acquisition manoeuvres). After the abortive attempt, Ward increased its holding in THL further by 42.25% through market purchases (under the Takeover Code, it was entitled to buy a further 2% during the year after its offer lapsed). Similarly, RTZ increased its equity stake in THL from 3.7% to 8.7% of the voting capital. From these actions, the possibility of a second takeover attempt for THL should not be discounted.

WARING & GILLOW HOLDINGS/MAPLES

✓	Property revaluation
	Sale of assets (before/after the bid)
	Capital reconstruction
✓	Dividend increase
	Bonus/scrip issue/share split
✓	Profits forecast
	Legal action
✓	Appeal to shareholders' loyalty
	Placing
✓	Undertake an acquisition (before/after)
	Acquire bidder's equity

(Defensive strategies listed in the research questionnaire)

BIDDING STRATEGIES/ARGUMENTS

1) Cited the fact that Maples refused to entertain serious major negotiation.

2) Stressed the commercial advantages arising from the merger (especially in merchandising and warehousing).

3) The offer provided a minimum value of 30p vis-a-vis a net asset value of 14.5p as reflected in the biddee's 1979 accounts.

4) Capitalised on the incriminating statement made by Maples regarding its asset value; "the directors consider that the present market value of these properties are in excess of book values by an amount which is not significant in relation to the total asset of the group" (1979 accounts).

5) The offer for preference equity was 70% higher than its recent market price.

6) The revised offer was 75% above the market price before talks commenced.

7) Pointed out to shareholders that Maples would not benefit from the closure of W & G's

DEFENSIVE STRATEGIES/ARGUMENTS

1) Shareholders should take into account the fine retail name of Maples and its long standing tradition.

2) Maples would benefit from W & G's closure of its Regent Street store.

3) Cited the fact that as a result of the closure of W & G's Regent Street store the bidder's staff might be given employment at the expense of Maples' employees.

4) The bid was too low and placed an unacceptable value on the company's equity.

5) Highlighted the fact that recent furniture store acquisitions had been effected at a P/E of around 12 to 18 times.

6) Pointed out to shareholders that the bidder failed to provide assurances on employment.

7) Maples' earnings per share had risen by 48%.

8) Underlined the fact that the benefits from the reorganisation of the company should accrue to the share-

Regent Street store as the company would continue to trade in Central London.

8) No information on current trading and prospects given by Maples.

9) Highlighted the fact that Maples property revaluation omitted major tax liabilities.

10) Exploited the fact that the majority of Maples properties were on short lease which would mean increased depreciation and thus affected profitability.

11) Disputed Maples inclusion of fixtures and fittings in its balance sheets on the grounds that it had no additional value to the bidder as it had already been included in its accounts.

12) Assurances to preserve the fine retail name of Maples.

13) Implications for shares of Maples if the bid lapsed.

14) Entitlement to final dividends for accepting shareholders.

15) Pointed out to shareholders that Maples' tax losses could only be beneficial if profits were substantial.

16) Orientated shareholders' attention that properties retained for trading were only worth what they can earn.

holders of Maples.

9) W & G's preference offer did not reflect voting rights.

10) Informed shareholders that the inclusion of fixtures and fittings in the balance sheet (excluded due to open market valuation) would reflect a surplus of £4.8m over the company's book value.

11) Drew the attention of shareholders to the availability of £2.4m tax relief which could be set against trading profits in future years, i.e. it was a valuable asset.

12) Capitalised on the failure of the bidder in supplying information on recent performance (in fact, the profits of W & G had declined by 1.5%).

13) As a result of recent acquisitions in Nice and Cannes and the opening of a new store in Qatar, the company's profit would be increased by a further £1/4m.

SUCCESS/FAILURE

W & G's successful acquisition of Maples was based on three factors, namely, an improved price, purchases in the market and substantial acceptances in the closing stage of the bid in nominees' names.

OTHER FEATURES

Great Universal Stores was the largest shareholder (31% of W & G's equity) of W & G. Therefore, it may be deduced that W & G's takeover of Maples may be construed as a possible strategic defensive move against an eventual takeover by Great Universal Stores for W & G.

WERELDHAVE/OLYMPIA & YORK/ENGLISH PROPERTY CORP.

✓	Property revaluation
✓	Sale of assets (before/after the bid)
	Capital reconstruction
✓	Dividend increase
	Bonus/scrip issue/share split
✓	Profits forecast
	Legal action
✓	Appeal to shareholders' loyalty
	Placing
	Undertake an acquisition (before/after)
	Acquire bidder's equity

(Defensive strategies listed in the research questionnaire)

BIDDING STRATEGIES/ARGUMENTS

Wereldhave

1) Discussed bid with EPC over a six month period and expressed its readiness to resume negotiation with EPC over its merger proposal.

2) Shareholders of EPC should be given the opportunity to assess the merits of Wereldhave's offer.

3) Accused EPC of not disclosing its liability incurred in conjunction with the delay completion of an overseas development project sited in Nice.

4) Accused EPC of not reflecting a shortfall of £33m in its balance sheet relating to development properties in Belgium.

5) Pointed out to shareholders that the diminution of EPC's reserve amply reflected the erosion of the company's net asset base and also a substantial fall in net worth.

6) Tendency of EPC's investment policy of concentrating its development portfolio in smaller properties (this

DEFENDING STRATEGIES/ARGUMENTS

1) Appealed to its shareholders to keep a vigorous U.K. company intact.

2) Cited a 1826 quotation alluding to Wereldhave's meagre offer ("In matters of commerce the fault of the Dutch is offering too little and asking too much").

3) Acceptances imply selling out at the turning point in the company's fortune.

4) EPC had a steadily improving share price.

5) The bid did not have the approval of EPC's board.

6) A fair price for Eagle Star (EPC's largest institutional shareholder) did not reflect a fair price for the company's shareholders (statement made in rebuttal of Wereldhave's claim of a fair price offered for the Eagle Star's shareholding).

7) The offer was not a fair price.

8) Pointed out to shareholders of the refusal by Morgan Grenfell, the merchant bank

policy made EPC attractive to institutional investors).

7) Cautioned shareholders to treat any property revaluation by EPC with reserve (pointed out to shareholders that in fact EPC had incurred a loss of £16.8m from sales of its properties).

8) Pointed out to shareholders that the present board of EPC had been actively selling off the company's properties over the last few years.

9) Tried to concentrate shareholders' attention to the fact that some of the company's property valuations were made by the EPC's directors.

10) It was imprudent for EPC to continue to pay dividends due to its poor financial performance.

11) Contrasted financial strengths of both companies. It endeavoured to direct shareholders' attention to its own strong balance sheet, accessibility to long term funds and a favourable tax status.

12) EPC's profits were a result of capitalising on large amounts of interest accruing to the company.

13) A rise of MLR will worsen EPC's revenue deficit.

14) EPC had high gearing.

15) EPC did not own Trizec although it held 50% of Trizec's equity.

16) The bid had the support from Carena, Trizec's main shareholder.

17) Highlighted the fact that the larger portion of EPC's investment in Trizec, being in the form of a minority holding in a private company (Carena) to provide details of a cooperation agreement between Wereldhave and Carena regarding the merger proposal.

9) Highlighted the bouyancy of U.K. property market in general by citing a 1978 EIU report that U.K. property values had increased over the last fifteen years at an annual rate of 13% (for offices), 12% (for shops), and 11% (for industrial properties).

10) EPC's development programme in the U.K. and Europe was virtually completed (this had the effect of enhancing its investment portfolio of international properties):

11) It rebutted Wereldhave's accusation of conservative accounting policies regarding the act of capitalising interests on development properties by stating that this practice was universally practised by the majority of the property companies in the U.K.

12) The bid was an opportunistic attempt by Wereldhave to acquire EPC's investment at book value due to the recognition of the surplus arising from development programmes in the U.S. and Canada (the open market value of the company's development properties in fact exceeded book value by 7p per share).

13) Highlighted the fact that the sale of EPC Nice property had added another £4.8m to the book value of the company.

cannot readily be disposed of or used as collateral for borrowings.

18) EPC's ordinary share price had not recovered in line with other shares in the FT-Actuaries Property Index.

19) Share price of EPC would continue to fall if the bid fails.

20) For many years the market price of EPC had lagged behind its net asset value per share.

21) The accounting treatment of Trizec did not conform to SSAP 14.

22) Wereldhave had the support of EPC's principal shareholder i.e. Eagle Star regarding the merger.

23) The bid had been cleared by the Office of Fair Trading as well as receiving the tacit approval of the Bank of England.

24) The bid by Olympia and York served as a smoke screen to divert shareholders' attention from the firm offer of Wereldhave.

25) Wereldhave's cash offer was attractive to EPC's shareholders.

Olympia & York

1) The bid represented a 62% premium over the market price of 37p of EPC's shares.

2) The merger had the support of EPC's main shareholders i.e. Eagle Star (27%) and the Royal Insurance Company (3.7%).

3) Unanimous recommendation from the board of directors of EPC in favour of the merger with Olympia & York.

14) The EPC's board had no responsibility for the borrowings of Trizec which was an independently managed Canadian public company.

15) The bid was an attempt by Wereldhave to undermine the value of EPC's investment.

16) The level of capitalised development interest would be minimal after 1980 due to the completion of many development projects.

17) Reassured shareholders that the existing borrowings of the company have been effective at low rates of interest.

18) The prime interest of Wereldhave in its takeover attempt of EPC lay in its significant inherent land values of the company.

19) By accepting the bid shareholders would face a loss of final dividend.

4) Assurances given on employees of EPC.

5) Retention of EPC's identity within Olympia & York.

6) Unlike Wereldhave, Olympia & York's bid for EPC was not conditional upon the consent of the Canadian Foreign Investment Review Agency.

7) Olympia & York was in control of 22% of EPC's equity.

SUCCESS/FAILURE

The failure of Wereldhave to acquire EPC might be attributed to three main factors-

a) The emergence of Olympia & York as a counter-bidder.
b) Being a Dutch property company involved in a complex transnational takeover of EPC, whose main assets, Trizec which was located in Canada (hence the entry of the Canadians into the bid) Wereldhave found it difficult to explain the complicated deal to its Dutch shareholders.
c) Wereldhave's major Dutch institutional shareholders were reluctant to let the company be involved in an intensely competitive takeover in a foreign environment which could to be too expensive for Wereldhave itself.

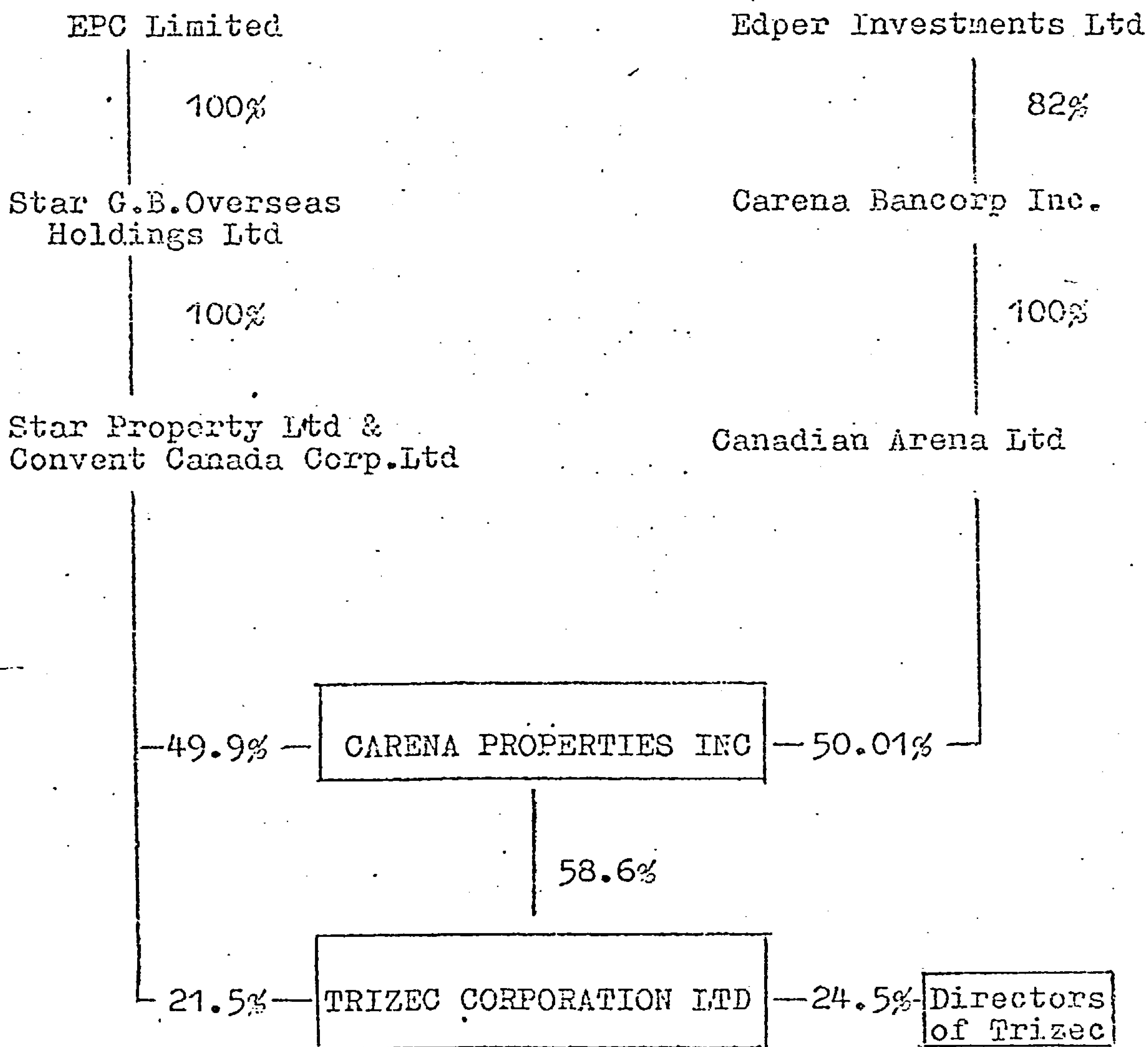
OTHER FEATURES

The bid for EPC started out as a normal overseas acquisition of a U.K. property company but because of Trizec, EPC's main Canadian investment it soon assumed a different dimension by reflecting a power struggle between two leading Canadian business families; the Bronfman (who had an interest in Trizec via Carena and therefore the reason for preventing Olympia & York from gaining control of EPC and hence Trizec) and the Reichmann (Olympia & York). The chart on the next page illustrated the ownership structure of Trizec and would provide a better understanding of the source for the power struggle between the two families.

In addition, the role and perceptions of some U.K. institutions (EPC's shareholders) in this contested takeover deserve to be mentioned as it illustrated their growing power to determine the outcome of a company's independence in a takeover situation. In conjunction with the successful acquisition of EPC by Olympia & York certain pension funds led by the Electricity Supply Industry Superannuation Scheme were unhappy with the offer for the 12% convertible loan stocks and they exercised their power by vetoing the proposal for a tax-saving scrips issue in connection with the offer for the EPC's ordinary equity. The National Asso-

ciation of Pension Funds regarded the bid in adverse light and abhorred the way "the bid was being rushed through on terms that stink".

Owing to its late entry into the bid and a strong competition provided by Wereldhave, Olympia & York had to revive its terms of offer in order to win the support of the key institutional shareholder i.e. Eagle Star, as well as that of the board of EPC. The seventh price revision finally decided the outcome of the deal in favour of Olympia & York. This merger was perhaps the most protracted takeover in U.K. history with the highest number of price revisions.



Ownership Structure of Trizec Corporation.

Source: The "Financial Times" (1/8/78)

YULE CATTO/REVERTEX

✓	Property revaluation
	Sale of assets (before/after the bid)
	Capital reconstruction
✓	Dividend increase
	Bonus/scrip issue/share split
✓	Profits forecast
	Legal action
✓	Appeal to shareholders' loyalty
	Placing
	Undertake an acquisition (before/after)
	Acquire bidder's equity

(Defensive strategies listed in the research questionnaire)

BIDDING STRATEGIES/ARGUMENTS

1) It emphasised its pre-bid holding of 29.5%.

2) Focussed on the commercial logic of the merger (tradition links between the two companies in Malaysia where Revertex processes Yule Catto's rubber crop).

3) Previous merger negotiations with Revertex board proved inconclusive.

4) It endeavoured to reach satisfactory agreement with Hoechst to abandon its rights of acquiring 50% of Harlow Chemical Company (Harco) if control of Revertex passed on to another company.

5) The bid represented a 65.5% premium of the market price the day before the purchase of the pre-bid stake.

6) The bid improved income by 226%.

7) Undertakings to continue to develop Revertex and the retention of its trading name.

8) Yule Catto will safeguard the interest of Revertex's employees.

DEFENDING STRATEGIES/ARGUMENTS

1) Revertex pointed out to its shareholders that in the event of the bid succeeding Hoechst could excercise its option regarding Harco to the detriment of the ongoing international business of Revertex and its employees.

2) Yule Catto failed to hold substantive discussion on these matters (the agreements existing between Revertex and its various international joint venture partners) despite request by Revertex for a meeting.

3) The bid was inadequate.

4) Revertex sought to ensure the continuation of its business as presently constituted.

5) It sought to share for its shareholders terms which could be recommended to them as fair and reasonable.

9) The incorporation of Revertex's board into the Yule Catto's board of directors if the bid succeeded.

10) The bid was conditional on no changes occurring in any business agreements of Revertex.

SUCCESS/FAILURE

The key to Revertex's defence revolved around its special business agreement with Hoechst regarding their joint venture in Harco. However, Hoechst reserved its position on the matter until the bid outcome. Yule Catto's success was attributable to a higher revised offer and various assurances given to the biddee regarding its trading activities, employees, and the status quo of the Revertex board.

OTHER FEATURES

One month before the bid became unconditional, Revertex modified its profits forecast because of the fall envisaged in its original forecast. Futhermore, Revertex had given an undertaking to Yule Catto that even if the bid lapsed it would still invite three Yule Catto's representatives to join its board of directors.

APPENDIX B

(GROUP TWO CASE STUDIES)

The decision to use a second category of case studies was influenced by the results of the survey of the merchant banks. One of the main findings which emerged from this study was that while there are general principles guiding the various aspects of bids, for a transaction to be successful, it is crucial for it to be analysed, structured, devised and fully exploit the circumstances prevailing. As we have observed in the various sections of this study, a takeover bid cannot be approached in a mechanical way as it is interlinked with a multitude of legal, quasi-legal, financial, market and industrial considerations. Moreover, takeover behaviour and practices are circumscribed by the City self-regulatory system.

Consequently, the approach adopted in this section differs somewhat from the approach adopted for Group 1 case studies. Rather than taking a comprehensive evaluation of all relevant facts of the various case studies, here we focus on the creativity, uniqueness and special aspects of contested bid situations.

CASE STUDIES GROUP 2

TRUST HOUSE FORTE ("THF")/THE SAVOY GROUP

(Case Study No.1)

THF, one of U.K.'s largest hotel and leisure conglomerate on 18/3/81 instituted a takeover bid for the Savoy Group, the hotel business chain which operates leading hotel names like, "The Savoy", "Claridges", and "The Berkeley". To understand the takeover strategies employed, it is essential to grasp the main factors which influenced the approach adopted by THF and its merchant banking advisor, Warburgs.

Because of its heritage, valuable assets and worldwide appeal, the Savoy Group has always been vulnerable to takeover attempts, the earliest dated back to 1953 when Harold Samuel (later Lord) and Sir Charles Clore acquired 1/3 of Savoy's equity. The Savoy directors, including Sir Hugh Wontner, the current chairman reacted by designing strong counter-measures to reduce Savoy's vulnerability to bid. The first defensive move entailed the transfer of valuable Savoy's assets, the "Berkeley" to a new company (the Worcester Buildings Scheme) the voting control which was vested in the Savoy's staff benevolent trusts. This defensive design was widely condemned in the City as an abuse of corporate power. The second defensive move involved the restructuring of Savoy's capital structure through the creation of more high voting 'B' shares thus conferring on the board more effective control of the company.

In the mid-1960's, Trafalgar House managed to acquire a 10% stake in the 'A' capital of Savoy and it later improved its holding to 15%. After its abortive attempt to acquire the Savoy, Trafalgar House then disposed of this block of shares to Grand Metropolitant in 1978. In 1979, Rothschild Investment Trust managed to purchase this shareholding from Grand Metropolitan and then subsequently sold it to the Kuwaiti Investment Office (KIO). KIO then improved its newly acquired stake in Savoy to 34% (22% of the vote). Based on the availability of this block of shares and the commitment of KIO to THF's acquisition aim, the poor performance of the biddee company (Savoy suffered a loss of £1.8m in 1980) and a reduction in tourism, THF then decided to proceed with a bid for the Savoy.

The line of approach adopted by Warburgs to surmount the near bid-proof defences of the Savoy Group was based on a two-pronged strategy:

i) The <u>legal strategy</u> designed to circumvent the two classes of capital with flexibility to fall back on,

ii) A <u>conventional takeover</u> attempt, if the first device fails.

Through an ingenious application of company law (Scheme of Arrangement), THF proposed that each class of capital be voted separately. Under this interpretation, a 75% majority of "A" shares would give THF control of all the shares in this category, representing 51.4% of the total votes and thus, effective corporate control. So the key to winning control of the Savoy rested on gaining adequate support from "A" shareholders. However, this legal attempt was aborted by the High Court.

Having failed with the legal strategy, Warburgs then resorted to a more conventional takeover bid for the biddee by offering 201p for the "A" shares and 1,005p for the "B" equity with cash option (valuing the Group at £58m). Essentially, Warburgs dual priced strategy has the underlying rationale in mind:

a) A reasonably devised 'sighting shot' with the following aims; namely, to extract vital information regarding the true value of the Savoy, to split the support of the trustees and possibly to flush out some private trustees who controlled the key shareholdings of the high voting "B" shares (THF could only identify 30% of the shareholdings).

b) Portray good performance of THF and its ability to provide qualitative management and worldwide marketing expertise for the Savoy.

c) Attempt to discredit the management of the Savoy for poor performance.

d) Voice objection to the sale of certain assets by the biddee.

e) A revised offer of £ 11.22 which was a substantial premium for the "B" shares and way above the net asset value (140p as a result of property revaluation) in order to entice shareholders' support.

To counter this unwelcome bid, Barings, the Savoy's merchant banking advisor mounted the following defences;

1) Financial Strategy

a) As property constituted the pivotal defence, the company has always reflected a low book value in its balance sheet (£18m in December 1980).

b) The revaluation generated a surplus of £62.7m which resulted in a revised offer from THF

c) Sale of assets to raise £7m and to reduce interest charges.

d) Reassured shareholders that the financial setback was only temporary.

2) Emotive Strategy

   a) Stressed on the tradition and standard of the Savoy.

   b) Encouraged petitions by staff and loyal customers (especially highlighted in its defence circular)

3) Commercial Logic: questioned the suitability of THF to run the Savoy in view of its involvement in motorway Cafe business.

4) Overseas Expansion: envisaged a programme of expansion in the hotel sector in the USA.

5) "White Knight": held talks with other more suitable bidders amongst which included Grand Metropolitan , its former shareholder.

6) Independence:

The takeover for Savoy inevitably generated wide media publicity and because the basis for contention hinged on independence rather than price, it assumed a bitterly contested posture with both parties exchanging insults.

When the first bid dateline ended, acceptance from both classes of shareholders were very low (3.2% of "A" and 0.4% for "B"). At this juncture, it should be noted that although THF held 59.4% of the equity, it only possessed 37.2% of the votes as illustrated by TABLE B.1 below:

Table B.1: Trust House Forte's Control Position at the End of the First Bid Dateline.

"A" Shares Number	%	Source of Acquisition
9,600,000	34.6	commitment from the KIO
6,200,000	22.7	market purchases
862,000	3.2	acceptances received
16,760,000	60.5	
"B" Shares		
95,600	7.3	KIO
62,950	4.8	market purchases
4,846	0.4	acceptances received
163, 396	12.5	

Source: constructed from 'Financial Times,' 'Times' and the 'Daily Telegraph' 1981.

Despite an extended closing date, in view of the strong loyalty of the Savoy shareholders to the company, THF ended up finally with 63.1% ("A") and 12.6% ("B") of both classes of equity giving it 61.9% of the total shares but with only 38.6% of the votes.

The Savoy case study is a classic case in point illustrating that although a high price in most acquisition attempts constitute the critical factor which influenced the bid outcome, in this context, despite the stupendous premium (700% in the revised offer) price played a secondary role.

In retrospect, the Savoy, due to its rich cultural heritage, its worldwide reputation, its unequal capital structure (designed to fend off successive bidders) and the deep loyalty of its shareholders will remain difficult for bidders to acquire it. Another interesting factor according to Sir Hugh which greatly assisted the defence effort was the fact that a substantial number of shareholders were women who are more inclined to be ruled by sentimentality rather than financial consideration.

On its part, Savoy is not yet totally bid proof as THF has publicly stated that it intends to return in 1982 for a second takeover attempt. The bid has enabled THF to become the biggest shareholder in the company and if it initiates a second takeover in 1982, it will probably be starting from a platform of nearly 40% of the voting control for after the bid has lapsed, THF continues to expand its shareholding in the company. However, under the City Code, it cannot acquire more than 12% in the 12 months from the date its offer lapsed.

This particular case study is a good amplification of the hypothesis that flexibility is the essence of contested bids and also each case has to be approached with all its special factors taken into account. It is also interesting to note that in this bitterly contested bid, the two merchant banks involved are leading accepting houses with formidable reputations in this field thus reinforcing another finding of this study, i.e. contested takeovers in the UK are inclined to be conducted by the few established traditional merchant banks.

DUNHILL-LOGIDA/ASPREY & COMPANY
(Case Study No.2)

This is a case study of Asprey, the famous Bond Street jeweller, whose independence was severely threatened in 1980 by a bid from Dunhill-Logida, the joint company (owned by Alfred Dunhill Group and Sheik Al-Tajir of Dubai) formed to effect the takeover. This unquoted family controlled company managed to ward off the unwelcome bid but in the process brought in Sears Holdings as a minority shareholder as well as leaving one side of the Aspreys in control of the business after the dissident family members had decided to dispose of their shares in the company.

Asprey became vulnerable when Algernon and Harry, the sons of Kenneth Asprey were removed as two of Aspreys four managing directors in 1971 due to boardroom disagreement. Both former directors then sold their 7% stakes to Amalgamated Investment & Property and over the passage of time, this peripatetic block of shares finally ended up under the control of Dunhill in January 1977. Soon after this, Dunhill managed to acquire another 23% from Mr. Philip Asprey (see Diagrams A&B, pp389-390) and then another small block of 6.8% in May 1980 at the price of £28.50 per share. The acquisition of this last block of equity subsequently triggered off Rule 34 and Dunhill-Logida then effected a formal offer for the rest of Asprey at this price.

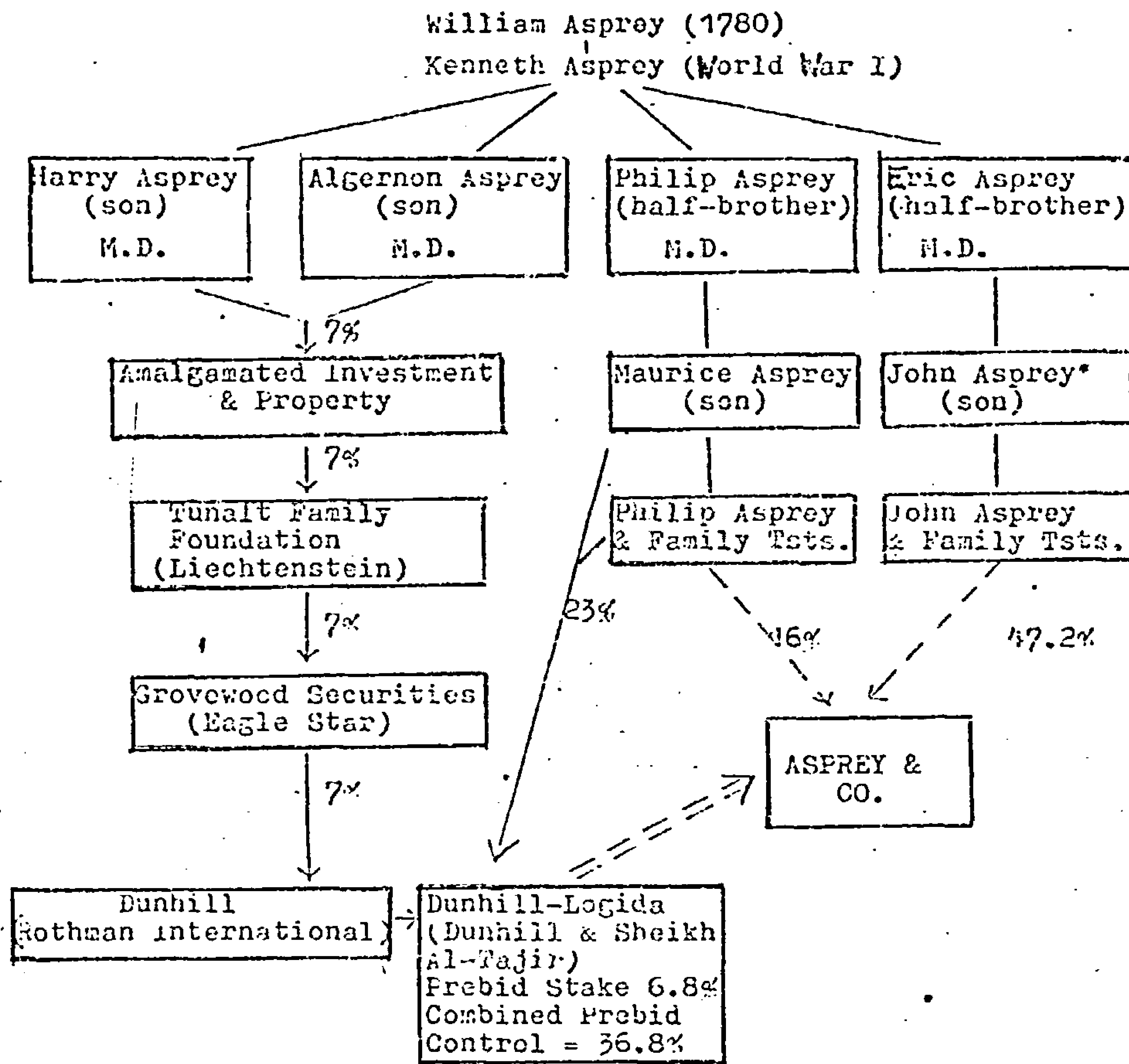
Mr. John Asprey, the current chairman of the company (he was the successor to this post after his father, Eric retired from being its chairman (1972-79)) then resisted this takeover attempt on the grounds of price and independence.

As a result of the formal offer, the trustees of the Philip Asprey trusts sought direction from the High Court on the 12/5/80 as to whether, in respect of such holdings, the bid of £28 1/2 made by Dunhill-Logida should be accepted (in the absence of a rival bid, there was a strong possibility of the High Court directing a sale of the 16% holding to Dunhill-Logida, thus, enabling it to improve its control position from 36.8% to 53%).

Morgan Grenfell, the merchant banking advisor to Mr. John Asprey then devised a scheme which enabled him to retain full control of the company as well as providing dissident family holders with the opportunity to liquidate their holdings at an attractive price (£37 per share versus £28 1/2 by original bidder). Consequently, the plan also allowed Dunhill-Logida to depart with a huge profit of £1m, therefore, basically satisfying the objectives of three sectional interests. In order to execute this strategy successfully, Morgan Grenfell had to commit £7m of its own money first to buy the 52.8% holding of Dunhill-Logida and the Philip Asprey family trusts. After a share placing by Morgan Grenfell and stockbrokers, De Zoete & Bevan, John Asprey and related trusts managed to retain 50.4% control of the company while Sears Holdings had 20% and the rest

SHAREHOLDING STRUCTURE OF ASPREY & COMPANY DURING THE TAKEOVER ATTEMPT BY DUNHILL-LOGIDA IN MAY 1980

(Appendix Diagram A)



* He became chairman in 1979

——— hereditary line

———> sale of equity

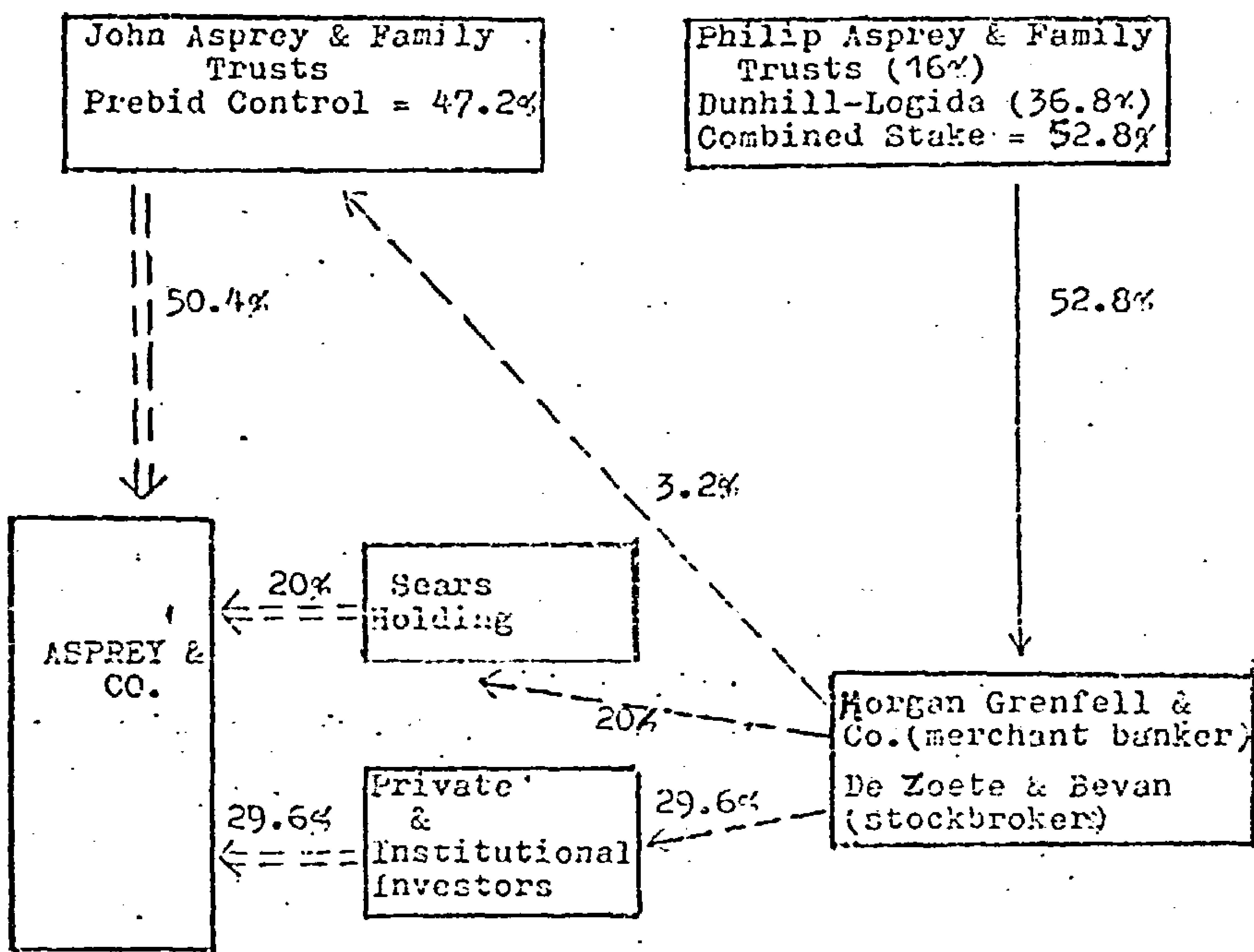
-----> controlling interests

=====> formal takeover bid in 1980

Source: 'F.T.', 'Daily Telegraph' & 'The Times' 1980.

COMPOSITION OF THE SHAREHOLDING STRUCTURE OF ASPREY & COMPANY AFTER THE FAILURE OF THE TAKEOVER ATTEMPT

(Appendix Diagram B)



Legend

⟶ sale of shares

----> placing

====> controlling interests

was placed in the hands of 370 private shareholders. It should be pointed out at this juncture that Mr. John Asprey and trustees representing their interests entered into an agreement with Sears, provided that each party has the right of first refusal if the other chose to sell any shares and that each must offer a proportionate share to the other of any shares in Aspreys it acquired from a third party.

In retrospect, it can be discerned that internal dissension within the Aspreys provided the bidder with the chance to exploit the situation. However, Morgan Grenfell acting with Mr. John Asprey pre-empted the takeover intention of Dunhill-Logida by making a counterbid for the vital 16% of the Philip Asprey family trusts, the key to the outcome of the battle. The reluctance of the original bidder to improve its bid price contributed greatly to the victory of Morgan Grenfell and its client. The victory also allowed representatives of Morgan Grenfell and Sears Holdings to be incorporated into the current board of Aspreys. In brief, this takeover is characterised by three main features-

i) The role of the merchant banking advisor acting as principal in counter-bidding for the equity of Aspreys.

ii) In a transaction of this nature where financial power comes into the forefront, and here, a reputable merchant bank like Morgan Grenfell has tremendous edge over other financial advisers, for instance, stockbrokers if they were to advise and implement this particular scheme.

iii) Legal action as manifested in High Court action.

GASCO/ST. PIRAN

(Case Study 3)

The acquisition of St. Piran, the Cornish tin mining group by Gasco, the master company of Mr. J.J. Raper is perhaps the most controversial takeover in UK corporate history. Fundamentally, the debate revolved around around the questionable takeover techniques employed by Jim Raper which had rendered vulnerable, the system of self-regulation as practised in the City.

Mr. Raper's involvement with St. Piran dated back to 1974 when he acquired 34% of the equity of the company through his Far Eastern company, "Faber Merlin". The Takeover Panel at that time declared that he need not bid for the rest of St. Piran if he reduced his shareholding below 30%. However, instead of divesting himself of the extra

shares, Raper who was the ex-chairman of St. Piran carried out a series of deals with specially created companies in Liberia, Panama, Luxembourg and Hong Kong which left the final 37% shareholding still firmly under his control as shown in the following TABLE B.2.

Company	Shares	%
Gasco	3,450,000	29.6
Ruffec	470,000	3.9
Aerolinas Cordoba	400,000	3.5
J.J. Raper	100,000	0.01
Total	4,320,000	37.01

Table B.2 Nominee Holdings of St. Piran Associated with J. Raper

Source: "Financial Times", "Daily Telegraph" and Panel's Report

As a result of Mr. Raper's subsequent covert share dealings in November 1979, the Takeover Panel instituted an investigation as to whether Mr. Raper had formed a "concert party" with other St. Piran shareholders whereby he would have control over 30% of St. Piran's equity capital (this would breach Rule 34 of the Code which requires a holder of over 30% of a company's equity to make a bid for the outstanding equity). Owing to the gravity of the situation compounded by the fact that Jim Raper was residing overseas and the institutions used by him were all foreign nominees, the DoT* also appointed Inspectors under Section 165 (b) which gave them power to examine every aspect of the company and under Section 172 which related specifically to controversy over the true control of shares.

On 1st. April 1980, the Panel ruled that strong circumstantial evidence indicated that shareholdings roughly amounting to 37% of St. Piran and registered in the names of 8 overseas companies were actually controlled by Jim Raper. As such, he incurred an obligation to make a mandatory bid for St. Piran at 85p (the highest price paid in the market by Gasco). However, Jim Raper resisted this notion to bid on the grounds that he did not act in concert or was ever in breach of Rule 34. The Panel then invoked its strongest sanction against him by describing his conduct as "deplorable" and also declared that he was "unfit to be a director of a public company" following the failure of Gasco Investments, the Hong Kong registered company to mount a full bid for St. Piran. The Stock Exchange in a parallel move forbade its members to deal in any business for Mr. Raper. It followed up this action by suspending the shares of St. Piran at 55p on 20th May 1980. During the following month, the Stock Exchange extended this suspension to Gasco, the master company till it:

* Department of Trade

a) Promised not to use its voting power in St. Piran, or
b) Mount a takeover, or
c) Disposed a large part of its shareholdings in St. Piran.

He appealed against the publication of the Panel's views. In spite of that, the Panel's Appeal Committee decided that their findings should be published. In December, the DoT published its interim report on St. Piran. The report traced Mr. Raper's influence through a complex interlocking of nominee companies and share transactions. In the final analysis, the inspectors concluded that these holdings were all associated with one company, Bathgate, a nominee company in Bermuda and the ultimate parent of Gasco. At one stage, in 1976, according to the Report, combined with holdings controlled by a Cayman Island company called Clermont, Jim Raper effectively controlled 48.5% of St. Piran itself. By 1980, the shares held or controlled by Bathgate and Clermont had fallen to 29.7%.

On 11th April 1981, after a period of protracted dispute with the various City watchdog bodies, Gasco then launched a 50p per share cash bid for St. Piran (whose shares were previously suspended at 65p in May 1980). In this takeover, it should be emphasised that the bidder was advised by Financial Network Guaranty, an unkown licensed dealer in securities and not one of the City's merchant banks. By bidding for St. Piran at well below the price laid down by the Takeover Panel and even below the suspension price, Jim Raper was again directly defying the Panel and the Stock Exchange. Three days after the bid announcement, the DoT published its full report of its investigation. The DoT concluded that the Secretary of State should consider a petition to the Court under Section 135 (1) of the Companies Act 1967 to wind up the company. But , Mr. Reginald Eyre, the Parliamentary Under Secretary of State considered this recourse inappropriate and preferred to leave it to the shareholders themselves to bring such an action if they wish. The Inspectors also made it clear that the board of St. Piran was controlled by Mr. Raper and Gasco Investments. Referring to the position of Mr. Malcolm Stone, the chairman of St. Piran and also the managing director of Gasco, the Inspectors declared that he faced potentially a most severe conflict of interest.

Events then moved swiftly and on the 18th April 1981, Burma Mines headed by Mr. Tom Scrase, the senior partner in Gittins, the stockbrokers announced that it intended to launch a rival 60p per share bid for St. Piran (Burma Mines had a small 4.37% stake in St. Piran and its clients controlled a further 13%) but found itself a possible victim company to a takeover from Gasco!

On 28th April 1981, Gasco claimed control of St. Piran (it received acceptances which raised its holding up to 50.13%) and dropped its bid for Burma Mines. Once this strategic control element was attained, Mr. Raper then approached Mr. Scrase to solicit for the equity under the Burma-Gittins umbrella. He successfully gained the support he wanted when he agreed to revise the Gasco's offer to 60p, the same cash offer made by Burma Mines.

As a result of the transfer of control of St. Piran into Gasco Investment (Netherlands N.V.), the Stock Exchange then reacted by suspending the listings of South Crofty and Milbury (58.5% and 86% owned subsidiaries of the St. Piran Group) on the grounds that it was "...undesirable that a company having listed on the Stock Exchange should be under the ultimate legal control of Gasco and Mr. Raper".* Following the Stock Exchange's drastic action, Gencor Group, South Africa's second largest mining company and owner of just under 1% of St. Piran's equity then announced that it had instructed its solicitors to wind up St. Piran as it alleged that the company had been conducted in a way that was prejudicial to minority shareholders and that it was just and equitable that the company should be liquidated. Gencor intended to use Section 209 (2) of the Companies Act to require Gasco to buy its shares at a more equitable price than the 60p per share offered by Gasco. Nevertheless, three months later, in a suprise decision without any explation, Gencor abandoned its legal attempt to wind up St. Piran as less than 10% of the equity capital remained in the hands of independent minority shareholder.

On 19th August 1981, Gasco announced that following the closure of its 60p per share bid, it had received acceptances representing 94% of St. Piran and therefore, would resort to implementing Section 209 (1) of the 1948 Companies Act to compulsorily acquire the rest. Mr. Raper then accused the Takeover Panel of deliberately blackening his name and having callous disregard for the shareholders of St. Piran and its subsidiaries.

As can be seen, this takeover is characterised by the skilful use of foreign nominees acting in concert. This then constituted the pivot of Mr. Raper's acquisition by stealth by acquiring less than a majority holding and then putting his own nominees on the board (the original directors of St. Piran all resigned when Piran acquired his initial holding in the company in 1974). It should be underlined that Gasco Netherlands (the subsidiary of Gasco Investments) was advised in its takeover attempt by a small

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* The "Financial Times" (12/5/81)

unknown licenced dealer, Financial Network Guaranty who is not a member of the Licenced Dealers Association. Through this action, it can be inferred that owing to the controversy surrounding the case, none of the accepting houses nor issuing houses would assent to act for the bidder for fear of damage to their reputations.

We have seen that in counteracting to a direct challenge to its authority, the Panel with the assistance of the Stock Exchange imposed on Mr. Raper, the most severe sanction it could by suspending the listing of St. Piran's shares in May 1980. With hindsight, it can be argued that this measure backfired because the shareholders could not dispose of their shares in normal dealings for a year, or indeed to ascertain the market value of their investment. As such, when the takeover was ultimately initiated for the company, despite the vastly discounted cash bid, the shareholders were unwilling to support their board for fear of being burdened with unrealisable assets. In gaining control of St. Piran, Mr. Raper profited at the expense of independent investors as he only paid £7m for a group with assets worth about £11m.*

In the course of their investigations into St. Piran, the Inspectors raised issues far wider than those confronting self-regulation and are concerned with the standards of behaviour regarding the management of a public company. The Inspectors alleged that Mr. Raper adopted a cavalier attitude towards companies in which he held effective control. and one of his own companies had a management agreement which permitted it to control St. Piran's Far Eastern assets at a substantial fee. More important still, the Inspectors were scathing about the control exercised over St. Piran's to the detriment of minority shareholders by Gasco and related interests instead of the St. Piran's board. In view of the gravity of the situation, they recommended that St. Piran'should be liquidated so that shareholders would have the opportunity of investing directly in Milbury and South Crofty. They argued that both these companies were quite capable of independent survival and by such an action, Mr. Raper's control in these companies would be considerably reduced. Moreover, the possibility existed for a rival company to effect an independent acquisition for these assets. Nevertheless, Mr. John Biffen, the Trade Minister decided against the adoption of such drastic action and stated that the 1980 Companies Act allows investors to resolve the problems themselves through court.

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* Essentially, St. Piran consists of three main assets; an 84% holding in the property developer, "Milbury", a 64% holding in "South Crofty", and assorted investments in the Far East.

The Panel also attempted to resolve the St. Piran's enigma by calling for a MMC reference. However, the Office of Fair Trading's reluctance to act may be attributable to its lack of authority or flexibility to demand that the takeover merited a reference. As Gasco is a 'shell' company none of its traditional reference criteria is applicable.* This is further constrained by the fact that the Fair Trading Act does not cater for abnormality. But difficult and complex though the position now is, the issue could potentially shift from self-regulation to legal recourse; the 1980 Companies Act has provisions which provide for the disenfranchisement of shares, forced sale of shares, access to courts to endeavour to prove conduct prejudicial to shareholders interests**and even regulation by the court of a company's affairs. Alternatively, St.Piran's 2,500 shareholders could take direct action to protect themselves against Gasco's questionable intentions. Perhaps the afore-mentioned provide the possible remedies available.

To summarise, Mr.Raper acquired an interest in St.Piran through his control of a Thai company, Faber Merlin which commenced buying St.Piran's shares since 1973. By 1974, Faber Merlin managed to retain 34% control in the company and Jim Raper became chairman. Although he resigned from the board at the end of 1976, in the opinion of the successive official investigations, the transfer of St.Piran's holdings to a Hong Kong company endowed Raper with effective control often exercised through his nominee directors. When the extent of the outside control became apparent, the City self-regulatory bodies then acted but the complex web of nominee companies resident overseas proved an impediment to the City authorities.

Equally important is the fact that Charterhouse Japhet, the merchant bank adopted by three independent St.Piran directors to evaluate the bid, found it hard to put up a credible defence owing to the complicated circumstances around the takeover which was further compunded by the fact that shareholders of its client company remained locked in by the suspension imposed by the Stock Exchange. In its defensive circular (14th May, 1981) it pointed out that:

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* Within the traditional guidelines, i.e. whether it creates a monopoly situation, whether it is against public interests, employees interests, etc.

** Under UK company law, companies can require nominee shareholders to disclose their beneficial ownership but this legal requirement is easily complied and abuse by a mere declaration which does not reveal the ultimate ownership in a complex series of nominee holdings, especially overseas nominees.

"We do not believe that it would be in the interests of shareholders to remain as minority shareholders in a company controlled by Gasco....shareholders could expect to receive more than 60p per share in a liquidation if it takes place, but the shareholders must take their own decision about accepting the offer or awaiting the outcome of the litigation, which may be protracted and the result of which is uncertain."

On balance, the defence could only succeed if the minority shareholders held out but the speed in which Gasco obtained full ownership of St.Piran suggested that the shareholders preferred a swifter solution.

This case study has demonstrated that a determined and resourceful man can gain control of a UK company using controversial tactics and flouting self-regulation. To be fair, the City bodies have done everything they possibly could under the circumstances prescribed. Criticisms, however, should be levelled at the Department of Trade for ignoring its inspectors' advice and those of the City bodies on the grounds that in the public interest, the Department could not justify such a prohibitive litigation. The failure of the Department of Trade to act during the course of events emboldened the bidder which exploited the situation fully to its own advantage at the expense of small investors as well as render vulnerable the country's self-regulatory system. The City Takeover Code as has been repeatedly emphasised throughout this study has no legal force. Its viability rests mainly on the moral weight of the Panel in the closely interwoven City community. These rules have been spurned in a few other instances (Kangra International/Renwick and De Beers/Beers/Consolidated Gold Fields case studies) by equally adroit bidders in their acquisition or would be acquisition attempts of UK companies.

Whether the main incident and other unrelated incidences highlighted here would be repeated by other bidders remain to be seen. If self-regulation and protection of the interests of shareholders are to remain credible, they would require the full support of the government from time to time.

CHURCHBURY/LAW LAND

(Case Study 4)

This is a reverse takeover in which a smaller company with a market capitalisation of only £11.6m managed to acquire a much larger company capitalised at almost three times (£44.7m) its size.

Prior to the bid, Churchbury managed to procure the support of four key institutional shareholders, viz., the Royal Insurance, the Kuwaiti Investment Office (KIO), Globe Investment Trust and the National Water Council Superannuation Fund representing 11.75% of their combined holdings as well as 16.2% support from other shareholders. With the support of the four previously mentioned shareholders and along with its own holding in Law Land, Churchbury effectively initiated the bid from a very strong leverage position of 39.43%. In addition, M & G Investment Management which managed funds owning 2.73% of the biddee had also declared its intention to accept.

Six days after the initiation of its formal takeover bid (21st May, 1981), Churchbury then revised its bid price and claimed it already had the support of 40% of the shareholders.

Due to the speed of the takeover, the hastily mounted defences were based on the lines below:

a) Criticised the vulnerability of Churchbury's share offer
b) Produced a profit forecast of £1.2m for 1981
c) 33% increase in dividends
d) Underlined the value of its revalued assets (163p versus bid price of 121p)
e) To deny Churchbury from acquiring more shares in the market, Lloyds Merchant Bank, the biddee's financial advisers acquired 50,000 shares of its client (Law Land) in the market.

On 24th July, 1982, two days after the appearance of Law Land's defence circulars, the bidder then announced the takeover to be unconditional as it already received more than 50% of the biddee's share capital. Despite the odds ranged against the company, Law Land re-asserted that the bid was still inadequate and took the unconventional move of advising its shareholders to remain as minority investors. On 2nd October 1981, Sir Henry Warner, the chairman of Law Land resigned in order to identify with other

dissentient minority shareholders representing 11.5% of the company's equity capital.

Churchbury's rapid takeover of Law Land succeeded because of strong institutional backing, poor financial performance of its target company and the good management record of Mr.Oliver Marriot, the chief executive of Churchbury. However, the modus operandi of the takeover in which the target company was suddenly presented with a fait accompli attracted widespread criticisms in the press. The board of the biddee company strongly denounced the institutional holders of "undue haste and behaviour - contrary to City practice and the interests of shareholders as a whole".

This particular takeover together with two other similar acquisitions i.e.Northern Engineering/Amalgamated Power Engineering and PERNAS/Guthrie, in which the target companies and small investors had very little time to respond effectively resulted in the CSI (Council for the Securities Industry) imposition of a purshase moratorium period of 7 days to furnish the biddee with more time to mount its defence.

BICC/HIGGS & HILL

(Case Study 5)

In July (20/7/80), BICC, the electrical and engineering group pledged itself to bid for Higgs & Hill (contractors) provided that an independent audit of work in progress amounting to £500m and the value of the biddee's net tangible assets were satisfactory. The bidder assured the target company that its proposed approach to this matter would be a highly flexible one; it would not expect an independent appraisal to reflect the same figures as in the audited accounts. Added to that, it assured the biddee that it would not object to the figures if they are not materially different. But, if they are much lower, BICC might still proceed with a formal takeover bid although at a lower price. As part of its preconditions, BICC intended to bring in Coopers & Lybrand to assess the biddee's contracts in progress

which amounted to £484m in the company's balance sheet. This move was influenced by the rationale that the detailed breakdown of work in progress on such a scale was important to a group like Higgs which had a market capitalisation of £6.8m.

BICC had in fact held pre-bid discussion with the biddee for 3 months prior to the bid announcement but the negotiation broke down because of the bidder's exceptional demands. BICC then switched tactic and decided to appeal directly to shareholders (15% of the biddee is in family control, 50% with the institutions and the rest with independent shareholders) with the hope that the main institutional holders would pressurise Higgs to comply with its demands.

Lazards, merchant banker to the biddee then defended its client through a mixture of defensive measures and arguments based on:

a) the audit exercise would take a long time.
b) it would not be good for the morale of staff and sub-contractors.
c) any valuation by outside accountants would be inclined to be ultra cautious.
d) the investigation would not be able to meet the strict time-table imposed by the Takeover Panel and would put directors in a position of exceptional personal liability if the accountants insisted on letters of representation from them.
e) instituted a property revaluation.

Six weeks after attempting to acquire the biddee through its novel but heavy-handed acquisition strategy, BICC then re-formulated its tactics by committing itself to bid at a price of 110p a share. This tactic was partly adopted in order to pressurise institutional investors and partly to comply with the Panel's insistence for the company to effect a formal takeover bid or withdraw within the dateline (12th October, 1981) imposed by the Panel.

As an integral part of its takeover strategy, Morgan Grenfell and Hoare Govett (financial advisers to BICC) actively lobbied the biddee's leading institutional shareholders including the Prudential Company (after the Higgs family, it was the next largest shareholder) to enlist their support. This lobbying job might have involved Cazenove, stockbrokers to Morgan Grenfell and BICC but owing to to its wide clientele list and possible conflict of interests Cazenove was therefore ineligible for this task.

BICC finally conceded defeat on the closing date when its prebid conditions were not fulfilled by the board of directors of Higgs & Hill, who throughout the whole affair, put up a very determined resistance.

In retrospect, one should question the bidder's creative but rather assertive takeover strategy on the following grounds. Central to the debate are the recurrent provisions which big contractors have to provide from time to time spanning several years. For example, when BICC acquired Tersons in 1970, it discovered belatedly that it had to provide nearly £14m against contract losses. It should also be pointed out that the biddee made a similar loss provision amounting to £2.5m for a big road contract in Trinidad. BICC further argued that the construction industry was by nature very uncertain and that the biddee's own erratic profits record illustrated this very point. On the other hand, Higgs was justified in believing that such an independent audit could be disruptive and might intimidate potential clients to the detriment of the company's future profits.

In the final analysis, BICC's takeover strategy albeit novel in approach lacked flexibility and was self-defeating. The biddee company by merely refusing to comply with BICC's preconditions effectively defeated the takeover attempt. Moreover, BICC over-estimated the main shareholders inclination to exert pressure on the biddee company. It could have well succeeded if it had been prepared to make a formal conditional takeover because the appraisal task it demanded could not have been executed within the normal time limits.

AVANA/ROBERTSON

(Case Study 6)

The acquisition of Robertson Foods, the food manufacturer by Avana has been incorporated as one of the case studies because of the creative approach devised by Avana. On 28th January, 1981, Avana, when it announced its takeover attempt for Robertson simultaneously declared it may decide to dispose some or all of its 6% equity capital in Robertson! Avana had to seek the dispensation of the Takeover Panel for this unusual move and the Panel subsequently incorporated amendments to the Takeover Code

requiring that 24 hours notice be given by an offeror in the rare event that it may contemplate the sale of shares in the target company.*

An unique strategy like this inevitably generated more questions than answers:

a) A possible supposition is that the bidder was not confident enough that it would win the battle for Robertson and as such, it did not want to be left with a minority stake in a family controlled business and thus was exploiting the chance to realise its holding while its price was inflated by the bid.

b) Alternatively, through the disposal of Robertson's shares in the market for cash, Avana could then re-purchase these shares back under its own bid terms (a sort of reverse rights issue).

c) Or possibly, a more likely explanation was that Avana intended to retain sufficient flexibility for manoeuvre during the rapidly evolving events that characterised a typical contested offer.

On the 5th February, 1981, just before the despatch of its bid circulars, Avana then disposed of its holding of 705,000 shares in Robertson for £1.07m. In its offer document issued subsequently, the bidder stressed on its good performance and profits record. It also underlined the fact that its experiences and skills will be complementary to the Robertson activities in jam marmalade and mincedmeat. Additionally, its technology and work practices in its factories can be introduced to improve Robertson's manufacturing operation.

The target company then rebutted the unwelcome bid by adhering to the following defensive measures:

a) instituting a profit forecast.
b) claimed support for independence from 29% of the shareholders.
c) criticised the speculative nature of Avana's share price.
d) disputed the industrial logic of the merger.
e) criticised the bid as being opportunistic as

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* Under the Stock Exchange 5th General Principle, false markets must not be created and when a takeover is in progress, this may be avoided by giving 24 hour notice to the Stock Exchange of such an intention.

the takeover was effected before shareholders can get an opportunity to reap the benefits of the re-organisation of the preserves division.

f) informed the Takeover Panel that the bidder failed to comply with certain aspects of the Code, for example, the omission of the directors' responsibility statement in its documentation (required under Rule 14 of the Takeover Code).

By 31st March, 1981, Avana received acceptances amounting to 51.6% (6 million shares) of Robertson's equity and the bid became unconditional. As a result of this event, the biddee's board advised shareholders to accept the bid or dispose their shares in the market for it would not be appropriate for them to remain as minority shareholders in the company.

Robertson failed to retain its independence because of its poor performance and poor market rating. Six months earlier, it had to dispose of some assets to reduce borrowings and its 1980 profits were down from £1.1m to £750,000.

A few months after gaining control of Robertson, Sir Julian Hodge, the chairman of Avana company and four other directors signed an option agreement with Northern Foods to sell his 2.75 million shares at 250p per share during November 1981 (if the options were exercised, Sir Julian and his fellow directors would then retire from Avana). This new transaction had been cleared by the Panel because under the new rules announced by the CSI, no one may acquire within a period of one week 5% of the voting capital of a company other than from a single shareholder if the purchase would take the buyer's stake to 15% or over. The deal had been sanctioned by the Panel because the bulk of the shareholding acquired (8.2%) came from a single shareholder i.e. Sir Julian. This move would increase Northern Food's holding in Avana from 8.95% to 17.95%. It should be stressed that during the takeover by Avana for Robertson, Northern Food held a cross-holding of shares (8.2% in Avana and 4.9% in Robertson) in both companies but supported Avana in its acquisition programme.

In conclusion, this case study again reinforced the underpinning principle that strategies have to be created and innovated. Another interesting factor to be noted is that the transaction was handled by the Commercial Bank of Wales and not by an established London merchant bank. Probably, this may be attributable to the fact that Avana is a Welsh company and Sir Julian was also the chief executive of the bank itself. It remains to be seen whether Northern Food would exercise its option agreement in November 1981 thus consolidating its control

further in Avana and then bid for the company. Or, Northern Food may be protecting its interest in the company (Avana) against an eventual bid by a rival bidder by retaining a substantial defensive block of equity in Avana.

NEWS INTERNATIONAL/WILLIAM COLLINS & SONS

(Case Study 7)

The takeover bid by News International Limited (NIL) for William Collins, UK largest independent commercial publisher arose owing to the disposal by the biddee's chairman, Mr.Ian Collins and family trusts of 28% of the voting equity of the company on 12th May, 1981. Subsequently, NIL, the British subsidiary of the Australian owned News Corporation headed by Mr.Rupert Murdoch effected a cash takeover bid for the company (200p for the ordinary equity and 150p for the non-voting "A" shares). Mr.Ian Collins then relinguished his stewardship of the company and was in turn succeeded by Mr.Ian Chapman. Mr.Ian Collins and related interests' decision to dispose of their shares in the company stemmed chiefly from internal disagreement in the predominantly family-controlled business.

To complicate this issue further, Mr. Robert Maxwell, the chairman of Pergamon Press and a rival business competitor of Mr.Murdoch had over the period of several months accumulated a 9.4% holding in the company through two nominees, viz, Norman Nominees and Down Nominees.

In its initial bid circular, NIL informed shareholders that with Collins' share price above the bid price, the company (NIL) may not receive adequate acceptances for the takeover to become unconditional. In that event, it would be prepared to consent to be the biddee's biggest shareholder if the takeover failed. However, at the same time, NIL remained non-committal about the possibility of an improved bid.

Basically, the defence adopted by the biddee and its merchant bank pivoted on four main counter-measures; firstly, it forecasted a doubling of profits for

1981 and on this basis, the directors will recommend increased dividends from 3p to 7.5p. Secondly, it drew its shareholders' attention to the fact that the disruption caused by the takeover would jeopardise the company's continued recovery. To support this contention, the new chairman revealed that negotiation had already stopped one very important contract because of uncertainty surrounding Collins' future as an independent company. The third major defensive measure involved the enlistment of 9 leading authors including Jack Higgins, Alistair Maclean and Hammond Innes to lend their support for the company's case for independence. In the later stage of the takeover, the media speculated that one of the authors was even involved in the procurement of some voting shares in in the market, undoubtedly to assist in the defence of the company.*

Then on the 26th June, 1981, in a surprise move, Mr.Murdoch managed to win over Mr.Maxwell's support** when he agreed to revise his ordinary offer from 200p to 225p. NIL settled the deal with Mr.Robert Maxwell at a special meeting which also resolved a severe commercial dispute between NIL and British Printing Corporation, a subsidiary of Pergamon Press. Additionally, they also agreed to the Bemrose merger, an important printing operation of the two groups. Schroder Wagg (Collins'merchant banker) then alleged that the shares held by Pergamon Press had been sold to NIL in conjunction with the settlement of an unrelated dispute between News and BPC. As a result of these allegations, the Panel then convened its full executive to examine the circumstances behind the sale of the Collins' shares by Mr.Maxwell and also the disparity in the offers between the ordinary and non-voting shares. After a week of deliberation (3rd July, 1981), the Panel finally decided to reject the biddee's allegations that there was a link between the sale of shares in the company by Pergamon Press to NIL and the settlement of an unrelated dispute between the two parties. Schroder Wagg then decided to re-appeal against the decision but a few days later, the Panel dismissed the appeal. However, the biddee managed to win a major concession when NIL after consultation with the Panel, revised its bid for the "A" shares from 150p to 163p.

On 20th July, 1981, NIL then abandoned its bid for William Collins but possessed 42.3% of the votes and 18.2% of the aggregate share capital (whereas in the Savoy's case, THF ended up with 62% of the total equity but only 39% of the voting power).

* The "Daily Telegraph" (8/7/81)

** The two entrepreneurs in 1969 were involved in a vigorously contested acquisition over the 'News of the World' and in 1980, their business interests again converged when the Thomson Organisation decided to sell 'The Times'. In both cases, Mr.Robert Maxwell lost to his business adversary.

The contributory factors behind the failure to acquire Collins may be attributed to the bidder's inability to win over two other key shareholders i.e. Crossburn Trusts and Witan (a listed investment trust) which held the other vital 8.25% of Collin's equity. Equally important was the fact that the defending company managed to successfully keep the market price above the bid price thus effectively inhibiting NIL from further market purchases. Moreover, NIL was also constrained by the fact that even if it intended to improve its bid premium further for the voting shares (so that it can gain control at a minimum outlay), the Panel had already asserted that adherence to the concept of 'comparability' was crucial. This implied that the ratio between voting and non-voting equity cannot differ very much from the historical level set in the market.

From this case study, we noted that by means of skilful opportunistic deals with the dissident major family shareholder and possibly even trade off between two business rivals, NIL had managed to acquire 42% of Collins but owing to the long term view taken by its major shareholders and determined resistance by the board and the defending merchant bank, it failed to attain the critical 50% control threshold.

This takeover again involved the Panel over certain contentious issues. One of the main features of this aborted acquisition attempts was the ability of the target company to rally its key employees(i.e. the famous authors) support for independence. This case study again shows that events surrounding a bid evolved very swiftly and strict adherence to acquisition principles could be detrimental to ultimate success.

BRITISH SUGAR CORPORATION/RANK HOVIS McDOUGALL

(Case Study 8)

This contested offer is unique in the sense that it is a triangular battle involving three companies of near equivalent size, namely, Berisford (£191m), British Sugar Corporation (£214m) and Rank Hovis McDougall (£180m). On the 20th October, 1981, BSC denied market rumours that it intended to bid for RHM but on the 2nd November, 1981, BSC in a market raid swiftly acquired 14.7% of RHM's share capital. It then issued a conciliatory

statement saying that it believed that RHM would provide the diversification away from complete reliance on the sugar beet industry, its main source of business and as such, it was still evaluating as to whether it should proceed with a formal takeover.

We can surmise that BSC's action was basically a classic defensive ploy designed to ward off Berisford's takeover attempt as well as to dilute its control of the company. To recount briefly, Berisford's attempt to acquire BSC had been characterised by market raids, impassioned defences and a Monopolies reference. The government which held a 24% stake in BSC, during the bid, assumed a neutral posture and to a large extent was contributory to Berisford's defeat in June, 1981. A month later, the government then sold off its large block of shares. With the disposal of this holding which hitherto impeded BSC from embarking on its acquisition programme, it then turned its full attention to RHM. It is interesting to note that for tactical reason, BSC had to camouflage its bid intention from its largest shareholder i.e.Berisford. Once Berisford was alerted by BSC's subtle corporate diversification design, it responded by stating that it would give its approval only after full appraisal of BSC's investment proposition in RHM.

To pre-empt BSC's takeover design on the company, RHM on the 9th November, 1981 dramatically executed a very well devised and sophisticated counter manoeuvre by acquiring 6.3 million BSC's equity capital representing 10.5% of the company's share capital. The significance of such a bold pre-emptive move by RHM added new dimensions and balance of power in the design of the three parties. From the tactical point of view, such a counter move had indeed rendered BSC more vulnerable than before because:

i) Under Stock Exchange rules, a deal of this size required the approval of shareholders. With 51% of its equity now in unfriendly hands, both major shareholders i.e.Berisford and RHM could block the approval for the takeover.

ii) Should Berisford be released from the mandatory 12 month abstention period (the Panel could waive this requirement if Berisford could demonstrate a strong case for protecting its shareholding interests, or, if a new group of shareholders emerged in the manifestation of a proposed merger between BSC and RHM) and mount a full bid, control could easily be transferred to Berisford. This scenario was only tenable if RHM sold its 10.5% holding in BSC to Berisford which was already in possession of a substantial stake (40.2%) in BSC.

iii) Another possible permutation was for RHM to mount a takeover bid for BSC itself.

It may be recalled that the merchant banking respondents unanimously rejected this defensive strategy i.e.buying shares of the bidder company, when this notion was suggested during the interview but in this very special case study, we had noted its utilisation as a pre-emptive technique designed to deny BSC the chance of mounting a full formal takeover for the company itself (RHM). This clearly showed that the merchant banks do monitor overseas acquisition practices for its adaptation to the domestic environment. Finally, it was evident that merchant banking reputation for takeover transactions hinged on their non-absolute compliance to fixed acquisition principles and their ability to structure financial deals creatively within institutional framework prescribing bid behaviour. This in turn, would greatly contribute to their level of success and indirectly to their merchant banking reputation in the City and worldwide.

LONHRO/HOUSE OF FRASER

(Case Study 9)

The 150p cash bid for the House of Fraser (HoF) was a controversial takeover attempt skilfully devised by Lonhro and its financial advisers (Standard Chartered Merchant Bank). The genesis of Lonhro's association with the HoF may be traced to the sale of SUITS (an industrial holding company founded by Sir Hugh Fraser's father) of 21.3 million shares (17.5% of the equity capital) of the HoF to Carter Hawley Hale Stores in 1974. Subsequently, in 1977, Lonhro bought a 25% equity stake in SUITS and Mr.Tiny Rowland, became chairman. Later in the year, Lonhro managed to acquire another 23.55 million shares (19.43%) in the HoF from Carter Hawley Hale and Mr.Rowland then became a non-executive deputy chairman of the HoF while Lord Duncan-Sandy (Lonhro's chairman) also took a seat on the Fraser's board.

This strategic build-up gathered momentum when Lonhro initiated a takeover bid for the rest of the equity of SUITS in April, 1978 but in the following month, the bid was referred to the Monopolies Commission. In its submission

to the Commission, Lonhro argued that the MMC should have taken into account that there was no evidence of any endeavour to exercise material influence or control on the HoF's policy since it took an equity stake in the company and had no desire of doing so in the future. However, this view was not endorsed by the HoF which strongly believed that "Lonhro was able, directly or indirectly, materially to influence and to exercise a measure of control over the policy of the HoF." The Monopolies Commission in reaching a verdict based on the prevailing circumstances and arrangements cleared the bid but with some misgivings due to the fact that "Much of the evidence given to us assumed implicitly or even explicitly, that Lonhro would seek eventually to acquire control of the HoF or to promote other mergers involving HoF and Lonhro and would effectually diminish the existing autonomy of the HoF."

(Monopolies & Mergers Commission, "Lonhro, SUITS & the HoF," HMSO, March, 1979)

In 1979, Lonhro proceeded with its successful takeover of SUITS which then gave it a strategic 29.9% (this is 0.1% short of Rule 34 which requires a formal bid) in the HoF.

Table B.3: Lonhro's Strategic Stake in the House of Fraser in 1979 According to Evidence Given by the MMC.

Holder	% Holding
Lonhro	19.1
SUITS	10.1
Carter Hawley Hale	1.1
Fraser Family Trusts	2.4
Bank of England Nominees	2.6
Institutional Holders	22.4

Source: Monopolies Commission, '*ibid.*,' p46.

Table B.4: Lonhro's Shareholding in the House of Fraser in 1981 According to "The Times."

Holder	%
Lonhro	29.99
Fraser Trusts	3.54
National Coal Board Pension Fund	2.72
British Rail & Post Office Pension Funds	3.05
Legal & General Assurance and Prudential Corp.	2.47
Midland Bank Trust	1.51
Robert Fleming Nominees & Clydesdale Nominees	1.87

Source: "The Times" (28/1/81)

In view of the fact that the bid for SUITS was strongly resisted by the biddee, the close relationship between SUITS and the HoF and the location of Harrods, the prestigious international departmental store within the HoF, Lonhro would have to resort to a controversial publicly contested takeover bid rather than an agreed one. However, the "weak" Fraser's board, the wide economic recession and the downturn in the retail sector in general were countervailing forces which worked in Lonhro's favour and it skilfully exploited these situations. As such, Lonhro and its financial advisers adapted their strategies to fit the prevailing and anticipated circumstances. Fundamentally, the bidder's acquisition strategies could be deduced as follows:

a) to weaken and undermine the HoF board in which Lonhro has board representation,

b) create doubts in the shareholders' minds about the quality of Fraser's management,

c) to destroy the anticipated defensive plank (dividend increase) of the HoF in the event of Lonhro making a takeover bid,

d) to depress the market price of the HoF, finally

e) to camouflage Lonhro's real intention.

The prime strategy underpinning all these tactical moves was the utilisation of proxy battle to gain management control, a takeover ploy common in the United States but quite a novelty to the UK business environment.

In April, 1980, Lonhro commenced its tactical campaign by attempting to compel the HoF to raise its dividend from 4p net per share to 6p net per share and to put four of its own nominees to replace four of the HoF's directors at the AGM (if Lonhro succeeded in this endeavour it could nominate three more directors in the next election thus shifting the boardroom balance of power to its favour*). The rationale behind this pre-emptive move was to undermine and split the Fraser's board and destroy its defensive capability as well as dislocating the equilibrium of boardroom power. However, the HoF advised by S.G.Warburg, one of the City's leading merchant banking houses, skilfully counteracted Lonhro's design and with the support of institutional shareholders, defeated Lonhro's special resolutions (Lonhro lost the dividend vote by 71 million to 50 million and directors' election by 73 million to 48 million votes) at the EGM in June, 1980. The following month, to ready itself for the eventual takeover of the HoF, Lonhro subtly resorted to a 1:5 rights issue raising £34.4m and also extended its

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* The full Fraser board is made up of 15 directors.

borrowing limits.

To forestall Lonhro's acquisition intention and to cushion against the impact of the adverse interim results due in September as well as to overcome the vulnerability of its client, Warburgs then swiftly instituted the following organisational and defensive measures:

1) the recruitment of Prof. Roland Smith to take the post of the executive deputy chairman at the HoF in order to upgrade its management quality,

2) the commissioning of a leading property valuation company, Conrad Riblat, to do a comprehensive asset revaluation of the Group,

3) the formation of an executive committee which excluded both the Lonhro's board representatives and,

4) the implementation of an efficiency audit to reduce uneconomical store space and convert this to more profitable use.

The HoF's interim results which were published on the 2nd September, 1980 showed a drastic reduction in its profits from £7.8m to £1.02m (see Table B.5 below).

Table B.5: The House of Fraser's Interim Results (1980).

Performance	1980 (£'000)	1979 (£'000)
Turnover	285,588	276,612
Trading profit	11,880	15,640
Profit before tax	1,020	7,835
Profit after tax	490	3,761
Preference dividend	16	16
Attributed to ordinary shareholders	474	3,745
EPS per ordinary share (25p)	0.32p*	2.52p

* Based on 149,725,689 shares in issue (versus 148,554,628 shares in 1979 - adjusted for the 1:5 scrips issue).

As an integral part of its corporate reorganisation strategy, in early November, 1980, the new directors at the HoF announced that it was raising £40m by proposing two sale-and-leaseback property transactions (D.H. Evans in Oxford Street for £29m with 5 year rent review and Rackman Store in Birmingham for £11m) with Legal & General Assurance.* The funds raised would be used to complete investment in computerised equipment, rationalising existing stores and the possible opening of new stores overseas. This proposed deal presented Lonhro with yet another excellent

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* Other stores like UDT, Tesco, Debenhams, Raybeck and Burton also resorted to this device in 1980.

chance to apply further boardroom pressures and disruptive tactics to discredit the management of the target company.

At the second EGM which was convened in less than seven months at the behest of Lonhro, the Fraser's board together with their merchant banking advisers, Warburgs, managed to marshal 71.5 million votes (against 51.9 million) to defeat Lonhro's resolution. However, although Lonhro failed to block the deal, its crafty tactics succeeded in splitting the board of Fraser and confusing both the private and institutional shareholders (as a result of uncertainty surrounding the Lonhro's influence in the HoF's corporate policies, the institutional shareholders swiftly reacted to this situation by forming an <u>ad hoc</u> "case committee"). The aftermath of the EGM was followed by a bitter exchange of letters between the two chief executives with Mr.Rowland predicting that "...I would lay 10 to 1 that Sir Hugh Fraser would not be chairman by the end of the year." This calculated statement underpinned by Lonhro's relentless harassment cum divide and rule tactic resulted unexpectedly in a dramatic reconciliation between the two protagonists on 22nd January, 1981 shortly after the second abortive EGM. Sir Hugh's turnaround could be ascribed to the fear of his removal by his own board and his inability to get along with his own merchant banking advisor, Warburgs (he later revealed that Warburgs attempted to remove him in July, 1980 after the dividend proxy battle). The sudden switch in the boardroom balance of power afforded Lonhro the chance to attempt to remove the main impediment to its takeover design i.e.Warburgs which had earlier acted but resigned as Lonhro's merchant banker in the 1970's. In a public statement Mr.Rowland proclaimed that, "Warburgs seem to be taking control of the company without owning a single share. It is not for a merchant bank to tell us what to do. Let's run the HoF without Warburgs. I imagine they would want to resign and their appointee to go as well" (<u>"The Times"</u> 25/1/81). As a result of this public statement, both Warburgs and Cazenove convened a private meeting with Sir Hugh to clarify their <u>status quo</u> as financial advisers.

Events finally reached a climax on the 28th January, 1981. At the board meeting of the HoF, by a vote of 12 to 2, Professor R.Smith suddenly replaced Sir Hugh as chairman. Lonhro exploited this dramatic event by putting in a 150p cash bid for the HoF valuing the company at £211m <u>vis-a-vis</u> its own market capitalisation at £252m.

From an analysis of the events and circumstances surrounding the bid, it could be surmised that the biddee's defensive line of action would possibly include some or a mixture of the counter-measures listed below:

1) get the bid referred to the MMC,
2) present HoF as an united front and a strengthened board,
3) asset revaluation and revelation of new information,

4) emphasise the lack of industrial logic,
5) emphasise the discounting of assets,
6) enlist the assistance of Lonhro's biggest shareholder i.e.Gulf Fisheries (which owns 15% of Lonhro) to veto the takeover attempt,
7) appeal for loyalty,
8) seek the assistance of a "white knight" and
9) keep the market price above 150p to prevent Lonhro from further purchases in the market.

Lonhro's interest in the HoF and its controversial bidding strategies vividly illustrated the complexities and controversies normally surrounding conglomerate takeovers the world over. Due to the near similar size of its victim and other factors mentioned in this particular study, Lonhro decided to adopt covert tactics to acquire the HoF (Mr.Rowland had in fact proclaimed that Lonhro's "...tactics seem unexpected and unpredictable to those who do not have imagination") by undermining and splitting the board of the target company. The tactics used were highly flexible and adroitly adapted to optimally exploit the opportunistic circumstances as they arose and at the same time, erode shareholders' confidence and cunningly camouflage its takeover timing with the consequence that "...shareholders both large and small are confused, angry and - perhaps susceptible to an offer of an apparently quick and easy way out."*

A.A.H.LTD/KANGRA INTERNATIONAL/RENWICK

(Case Study 10)

This particular case study illustrated certain issues related to contested bids highlighted in this empirical study and indicated that an agreed bid or recommended merger could sometimes fail.

In October, 1980, A.A.H.Limited (AAH), the fuel distribution and road haulage group made an agreed

* The "Financial Times" (29/1/81)

takeover at 65p per share (valuing the company at £5.?m) for Renwick, the motor cruiser manufacturer. Nevertheless, on 23rd December, 1980, an unknown offshore 'shell' company, Kangra International Holdings based in Hong Kong staged a market raid and acquired 14.99% of Renwick's shares at 85p through the London stockbroker, A.J.Bekhor. At the same time, just before Christmas, Bekhor bought another 22.5% stake for six nominees of Uto Bank of Switzerland. The acquisition of these large blocks of shares effectively damaged AAH chance of success and it decided to abandon the bid after receiving only 21.1% acceptances and also the fact that its merchant banking advisers, County Bank, could not discover the identity of its counter bidder. On 13th January, 1981, Kangra further increased its shareholding in Renwick to 22.49% and subsequently Renwick requested an investigation by the Stock Exchange and the Takeover Panel. Both bodies were informed by the stockbroking firm that its nominees were unrelated clients and did not constitute a concert party.

To get a better perspective of this complicated case study, it should be pointed out that at the point in time, Renwick shareholding was basically fragmented into six equity components, viz, an 11% holding by the unsuccessful original bidder, AAH, a 22.5% holding by Kangra, 22.5% by Uto Bank of Zurich, 7.5% holding among board members/family, 11% holding by shareholders who accepted the AAH bid and finally, 23% by shareholders of Renwick who did not accept the AAH offer. Strenuous attempts were made by Samuel Montagu, Renwick's financial advisers to uncover the ultimate beneficiaries behind the nominees but they eventually conceded that they have "...reached a brickwall as far as Kangra is concerned." ("Financial Times," 14/1/81)

In late January, Renwick was presented with a fait accompli when Mr.Graham Beck, a wealthy South African businessman (the real owner of Kangra International) announced that he held 50.9% of Renwick voting shares (Kangra had effectively purchased the 22.5% stake in Renwick from Uto Bank) and was making a formal bid at 85p per share for the remaining equity of the company.

In this particular case study, we noticed that the control of a local company passed to a foreign bidder in such an unusual fashion that both the victim and its advisers were unable to put up any resistance due to the fact that the bid was dexterously executed involving such bid devices as market raid, covert nominee shareholdings and a Hong Kong 'shell' company resuscitated for this particular acquisition purpose (it was formed in April, 1980 and changed its name in August the same year). Pointing at the way in which the takeover was conducted and its attending ramifications, "The Times" ruefully exclaimed that "The Takeover Panel furthermore faced with these nominee shareholdings seems

to have been less effective...the fact that Renwick was never in a position to mount a defence until it was too late and that other Renwick shareholders were unclear to this day about the exact circumstances in which their company was taken over is hardly a satisfactory state of affairs."*

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* "The Times" (2/2/81)

Appendix C.1: Questionnaire (Merchant Banking Survey)

The City University Business School

LIONEL DENNY HOUSE, 23 GOSWELL ROAD, LONDON EC1M 7BB 01-253 4399

STRICTLY CONFIDENTIAL: QUESTIONNAIRE ON CORPORATE FINANCE ADVISORY SERVICES RELATING TO CONTESTED BIDS RENDERED BY UK MERCHANT BANKS

(A) MERCHANT BANKING BACKGROUND (STRUCTURE/FUNCTIONS)

1) When was your merchant bank established?

2) Is your merchant bank:
   a) A principal/independent unit
   b) A subsidiary

3) If you are a subsidiary, who is your parent company?

4) What advantages do you believe a merchant bank may derive from being subsidiary of a larger financial organisation?

5) What disadvantages do you perceive merchant banks suffer when subsidiaries of other organisations?

6) Do you have:

a) an organisational chart?	Yes/No
b) a corporate prospectus?	Yes/No
c) could you supply us with both?	Yes/No

7) What particular unit/division within your merchant bank deals with corporate mergers and takeovers?

8) When was this unit/division created?

9) What are its main functions?

10) What is the title of the head of this unit/division?

11) Whom does he report to?

12) What specialists do you have staffing this unit?

☐ Accountants ☐ Business graduates
☐ Lawyers ☐ Others (please specify)

13) Do your specialists work:

a) Individually or in teams when providing corporate financial advice?

Individually/In Teams

b) If both, under what circumstances do they work individually and what, in teams?

14) In giving advice to your client, do you deal with:

☐	the company chairman (chief executive)
☐	the managing director
☐	the financial director
☐	the corporate planner
☐	others (please specify)

15) Under what circumstances, if any, would you undertake a preliminary business negotiation for an anonymous client represented by a third party?

16) Before you commit yourself as a financial advisor to a new client, what <u>screening process</u> do you adopt?

(B) BIDDING STRATEGIES

1) Who is responsible for the formulation of the acquisition idea?

2) In executing an acquisition study and evaluation for your corporate client, do you undertake the following activities?

☐ History of the company
☐ Capabilities of the board of directors
☐ Market analysis
☐ Financial appraisal using extracted/extrapolated data
☐ Computer simulation
☐ Others (please specify)

3) Do you have:

a) A specimen pre-acquisition checklist? Yes/No
b) Could we have a copy? Yes/No

4) Do you sometimes provide loans to facilitate an acquisition?

5) What factors influence the timing of the offer?
(Q: Do you subscribe to the 'sighting shot' strategy?)*

6) In making a bid, what factors influence the terms of consideration or acquisition financing?
(Q: Do you favour building up a pre-bid stake in the target company?)

7) What factors influence the premium pricing?

8) What percentage level of premium pricing over the market price would you pitch your bid price?

	below 20%
	above 20%

9) What factors determine the advice you give subsequently on increases in the bid price?

10) Do you favour securing the agreement of the board of the biddee company before announcement of the bid? Yes/No

11) Do you make an effort to access the key shareholders of the target company before announcement of the bid?

12) Who, within your merchant bank draws up the offer document?
(Q: Could you please describe and elaborate on the main features of draft meetings?)

13) What factors influence the choice of prime emphasis in the bid circular?

/ * Denotes question asked during the second merchant banking survey. /

14) What are the most important factors in determining whether a bid is successful or not?

(C) DEFENSIVE STRATEGIES

1) How do you go about devising your defensive strategies?

2) Listed below are some basic defensive strategies (applicable before or during the currency of a takeover bid) advocated by the various literature of corporate finance. Please kindly mark those that you feel are practical and viable.

- [ ] asset revaluation
- [ ] sale of corporate assets (before/after)
- [ ] capital reconstruction
- [ ] increase dividend
- [ ] bonus issue
- [ ] profit forecast
- [ ] instituting legal action
- [ ] appeal for shareholders' loyalty .
- [ ] share placing
- [ ] undertake an acquisition (before/after)
- [ ] acquire shares in the bidder
- [ ] others (please specify)

3) In developing your defensive strategies, how do you take into account:

a) Equity held by the board of directors or family?

b) Equity held by institutional shareholders?

c) Equity held by members of the general public?

4) What factors bear upon the choice of defensive strategy?

(Q: How important is the media in times of contested take-overs?)

5) What salient information or line of emphasis do you normally incorporate and stress in your defence documentation?

6) What factors do you take into account in advising your client's board to accept the terms offered?

- [ ] the shareholders interest
- [ ] the interest of the board
- [ ] the interest of the employees
- [ ] the interest of the local community
- [ ] your own banking reputation in the City
- [ ] national interest e.g.effects on imports/exports

7) What other conditions, apart from price, would you advise a corporate client to take into account when deciding whether or not to accept an initial or final offer?

8) Do you feel that a profit forecast will greatly influence the shareholders' opinion in accepting or rejecting a bid? If yes, why?

9) What difficulties do you perceive associated with the review of your client's profit forecast?

10) In reviewing your client's forecast, are you confronted with problems such as:

- [ ] limited market data
- [ ] insufficient time for analysis
- [ ] extent of confidentiality required
- [ ] the nature of the business
- [ ] unreliable forecasting methods
- [ ] unreliable accounting methods

11) Do you monitor the results of the profit forecast? Yes/No

12) What happens if you find there is a deviation from the forecast?

(D) ROLE AS TAKEOVER SPECIALISTS

1) As a professional corporate entity, how do you see yourself vis-a-vis other professionals like stockbrokers or corporate lawyers who also provide comparable advisory services to the corporate sector?

2) What factors give you the distinctive advantages as merger and takeover specialists in the UK?
(How closely do you work with the Takeover Panel and do you favour self-regulation?)

3) How do you perceive the tenure of your relationship with your client?

.... Respondent's Name (please print)

.... Banking Title

.... Division Attached

.... Name of Merchant Bank

We wish to record our formal gratitude and appreciation for your kind assistance and co-operation.

Thank You.

Yours faithfully,

ROBERT CHIA
Doctoral student
City Uni.Business Sch.
London.

Prof.Peter H.Grinyer,
Esmee'Fairbairn Prof.
of Finance & Investment.
St.Andrews.

Appendix C.2: Questionnaire (Stock-broking Survey)

The City University Business School

LIONEL DENNY HOUSE, 23 GOSWELL ROAD, LONDON EC1M 7BB 01-253 4399

COMPLETELY CONFIDENTIAL: CORPORATE FINANCE QUESTIONNAIRE FOR UK STOCKBROKERS

1) Do you have a corporate finance advisory department/unit within your stockbroking firm?

   Yes/No

2) What is the full name of this department/unit?

3) What are the main functions of this department/unit?

4) What is the title of the head of this department/unit?

5) Who are the specialists staffing this department/unit?

6) Do your corporate finance specialists work individually or in teams when giving corporate advice?

   Individually/In teams

7) How closely do you work with merchant banks in providing corporate financial advisory services?

   not closely (1) closely (2) quite closely (3) very closely (4)

8) How involved are you in corporate acquisition activities?

   not at all (1) involved (2) quite involved (3) very involved (4)

9) Please kindly describe the nature of your involvement.

10) Before you commit yourself as a financial advisor to a new client, what screening process do you adopt?

   - [ ] whether the company is financially sound
   - [ ] background information
   - [ ] any major conflict within the company
   - [ ] whether it is a worthwhile business
   - [ ] quality of management

11) Which method of acquisition financing do you normally advise your client to opt for?

12) In executing an acquisition study and evaluation for your client do you undertake an analysis of:

- [ ] History of the company
- [ ] Capabilities of the board of directors
- [ ] Market analysis
- [ ] Financial appraisal
- [ ] Computer simulation
- [ ] Others (please specify)

13) Listed below are some basic defensive strategies (applicable before or during the currency of a takeover bid) advocated by the various literature of corporate finance. Please kindly mark those that you feel are practical and viable.

- [ ] asset revaluation
- [ ] sale of corporate assets (before/after)
- [ ] capital reconstruction
- [ ] increase dividend
- [ ] bonus issue
- [ ] profit forecast
- [ ] instituting legal action
- [ ] appeal for shareholders' loyalty
- [ ] share placing
- [ ] undertaking an acquisition (before/after)
- [ ] acquire shares in the bidder company

14) What are the distinctive factors that favour you as corporate financial advisers vis-a-vis merchant banks?

.... (PLEASE PRINT) ....
Name | Title

....
Name of Firm

....
Division Attached

We wish to record our gratitude and appreciation for your assistance and kind co-operation.

Yours faithfully,

ROBERT CHIA
Doctoral researcher
City University

PROF. PETER H. GRINYER
Visiting Professor.

<u>Appendix Table C.3</u>: Merchant Bankers' Bid Inclination: "One-Shot" Offer Versus the "Sighting-Shot" Approach.

Bid Approach	(a) Bid No.	(b) % of Total Bid (n = 30)	(c) Failure rate No.	(d) (c) as % of (a)
one shot offer	7	23%	3	43%
sighting shot	23	77%	6	26%
Total	30	100%	9	-

Statistical Results:

Chi-Square = 0.673, critical value = 3.84, df = 1
significant at 5%

Appendix C.4: Specimens of Bid Documentation

- Guthrie Corporation
- British Sugar Corporation
- Royal Bank of Scotland
- T.W.Ward

THE GUTHRIE CORPORATION LIMITED

(Registered in England No. 840899)

M. J. Gent, O.B.E., *Chairman and Joint Managing Director*
I. L. Coates, *Joint Managing Director*
P. V. Collings, M.B.E., D.S.C., R.D.
Sir Peter Gadsden, G.B.E.
J. M. Gullick
D. R. L. Hankinson, F.C.A.
J. G. Hogg
B. G. Lewis,
J. A. Logan (U.S.A.)
Sir Ernest Woodroofe

Registered Office:
P & O Building,
122 Leadenhall Street,
London, EC3V 4PU.

8th September, 1981.

To the Ordinary Shareholders and, for information only, the Preference Shareholders.

Dear Shareholders,

PROPOSED OFFER BY PERMODALAN NASIONAL BERHAD

I am writing to advise you that the following announcement was made yesterday:—

"The Guthrie Corporation Limited acknowledges the announcement made today by Permodalan Nasional Berhad that it now owns 50.41% of the issued ordinary share capital of Guthrie and that it intends to make an offer for the remainder of the ordinary share capital.

The Board of Guthrie, together with its advisers, Baring Brothers & Co., Limited, is considering the proposed offer and will advise shareholders in due course."

Yours sincerely,

Carl Openshaw

Secretary.

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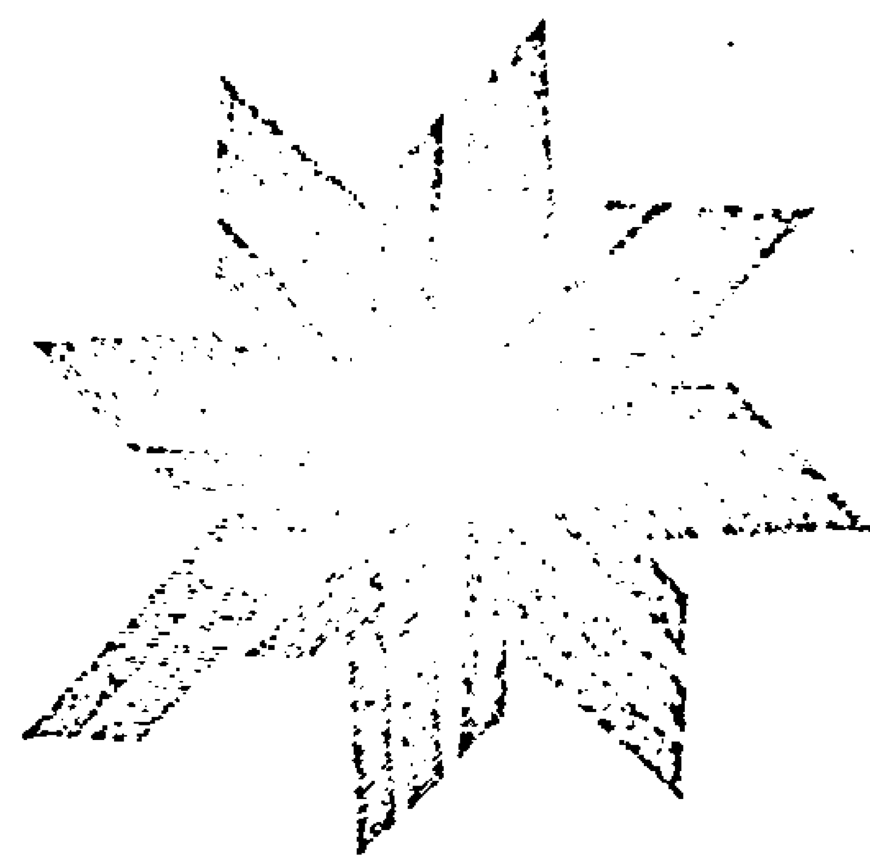
Chairman



BRITISH SUGAR CORPORATION LIMITED

PO Box 26 Oundle Road
Peterborough PE2 9QU
Telephone Peterborough (0733) 63171
Telex 32667

2nd July, 1981

Letter to Shareholders

from Sir Gerald Thorley, TD, Chairman

Dear Shareholder,

I am delighted to be able to tell you that the bid from Berisford has now lapsed. Net acceptances of the bid amounted to only 2 per cent. — the vast majority of Berisford's 38 per cent. shareholding having been acquired through the market raid.

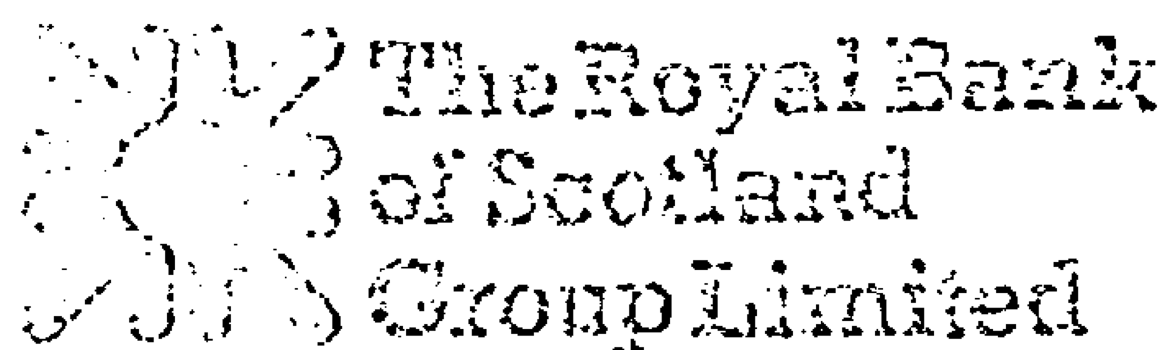
The prolonged period of uncertainty is now over. We are once again concentrating on developing British Sugar as an independent Company.

I would like to thank all shareholders for your staunch support. You will not regret it.

Yours sincerely,

Gerald Thorley

Chairman.



36 St Andrew Square
Edinburgh EH2 2YB
telephone: 031-556 8555

18th February 1982

Dear Shareholder,

I am sure that you will be aware that on 15th January, 1982 the Secretary of State for Trade announced that the Monopolies and Mergers Commission had concluded by a majority that the proposed merger between The Royal Bank of Scotland Group Limited and Standard Chartered Bank Limited and the proposed take-over of The Royal Bank of Scotland Group Limited by The Hongkong and Shanghai Banking Corporation might be expected to operate against the public interest and recommended that they should not be allowed to proceed. In accordance with the advice of the Director General of Fair Trading, the Secretary of State accepted the Commission's majority recommendations.

Naturally your Board, which recommended the merger with Standard Chartered, is most disappointed at this outcome. In our view a valuable and unique opportunity has been lost. However, your Board will follow its alternative strategy for the future development of our domestic and international business. This strategy is based primarily on the acceleration of the expansion programmes which both the Royal Bank of Scotland and Williams & Glyn's Bank are already undertaking.

In order to provide for the development of the Group's strategy and for the direction and co-ordination of its activities, the Group Board has created a new post of full-time Group Chief Executive. Mr. S. Procter, at present Chief Executive of Williams & Glyn's Bank, has been appointed to this position and will be supported by a small compact planning team. Mr. Procter will operate from the Group's Head Office at 36 St Andrew Square and from its London Office, which will move to 24 Lombard Street when those premises are completed later this year. He will cease to be Chief Executive of Williams & Glyn's.

To allow me to devote more time to Group affairs, Mr. J. B. Burke has been appointed full-time Deputy Chairman of the Royal Bank of Scotland. In taking on this new and important role, Mr. Burke will relinquish his positions as Managing Director of both the Royal Bank and of the Group, but will remain on the Group Board.

Mr. C. M. Winter, at present Deputy Managing Director of the Royal Bank, will succeed Mr. Burke as Managing Director of the Bank.

Mr. M. H. Davenport, at present an Executive Director of Williams & Glyn's Bank, has been appointed Managing Director in place of Mr. Procter. The change of title from Chief Executive is to achieve uniformity.

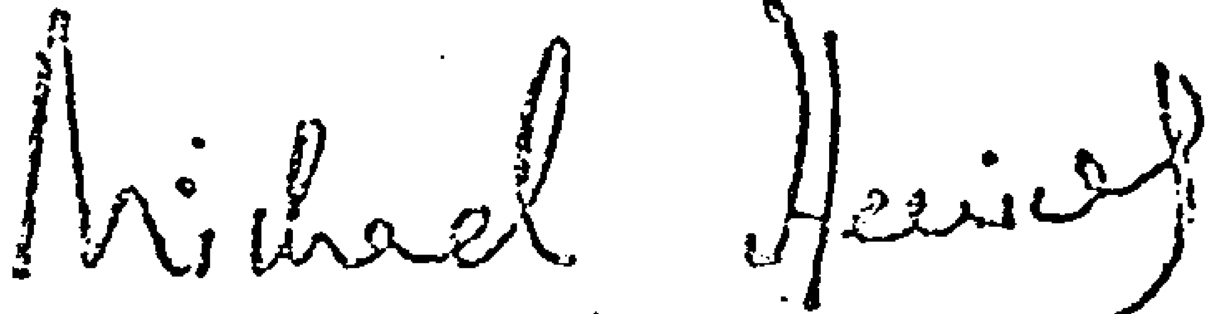
Mr. W. J. A. Dacombe, who is already a Director of the Group, will assume responsibility for Group planning and development, and will relinquish his post as Assistant Chief Executive of Williams & Glyn's. The importance of these functions is reflected in this full-time appointment.

All these appointments will take effect on 1st April 1982.

The Group Board and the Directors of both banks are all agreed that the two banks must work closely together so that we can draw the maximum benefits from closer co-operation now and in the future.

Your Board has no doubt that we have the determination and the human and financial resources to continue to grow and prosper and we shall pursue these objectives vigorously in your interests as well as those of our staff and customers.

Yours sincerely,



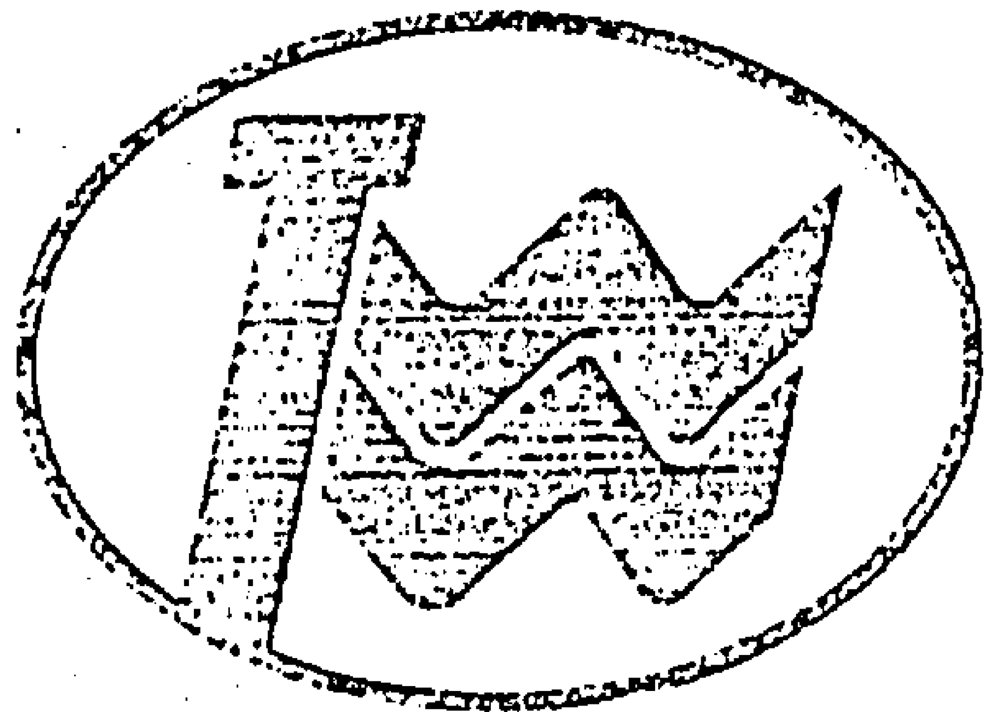
MICHAEL HERRIES
CHAIRMAN

Burrup, Mathieson & Co., Ltd

THIS DOCUMENT IS IMPORTANT. If you do not understand it, please consult your stockbroker, bank manager, solicitor, accountant or other professional adviser immediately.

Thos. W. Ward p.l.c.

RTZ's increased bid is still inadequate and should be rejected to the end



Ward's share price is well supported by earnings and dividend

IN BRIEF

RTZ's INCREASED BID IS STILL INADEQUATE AND SHOULD BE REJECTED BECAUSE

- The prospective dividend yield of 7.0 per cent. and price-earnings multiple of 7.4 times forecast earnings fully support the Ward share price without a bid.
- The bid price is no more than a reasonable stock market trading price with no premium for control of 23 per cent. of the U.K. cement market and other substantial and valuable businesses.
- RTZ have still not had the confidence to say that this is their final offer and have left open a means under the Take-over Code to increase it.
- RTZ are irresponsible to try to cast doubts on our profit forecast. They have not challenged a single figure or assumption making up the forecast.
- Ward's dividend cover of 2.75 times is hardly "extravagant" and leaves plenty of room for capital expenditure plans.
- We stand by the value of 265p per share for our construction interests alone.
- The value we put on our holding in Tunnel, equivalent to 94p per Ward share, is either correct or RTZ are planning to make an unacceptably low bid for Tunnel.

Appendix Table C.5: Comparative Highlights of the of the 30 Case Studies

BIDDER(S)	BIDDER'S BUSINESS	ADVISERS	BIDDEE	BIDDEE'S BUSINESS	ADVISERS	DATE (INITIATED & COMPLETED)	BID CURRENCY	BID VALUE(£m)	OUTCOME	SUCCESSFUL BIDDER
1) BURNS PHILP	trading gp(Australia)	KLEINWORT BENSON	HOFFNUNG	trading & retail	HILL SAMUEL	11/2/80 30/4/80	Cash	17.5m	S[1]	B.P.
2) BTR	rubber, engineering	H.SAMUEL	BESTOBELL	energy engineering	K.BENSON	8/6/79 17/8/79	Share (C)*	28.9m	U[2]	-
3) COWIE	motor dealing gp	S. MONTAGU	EWER	coach operator motor trade	BARCLAYS MERCHANT BANK(BMB)	9/5/80 19/6/80	mixture	9.3m	S	COWIE
4). CAMBRIDGE ROYALTY CORP.	oil & gas	E.F. HUTTON	CAMBRIDGE PETROLEUM ROYALTY	oil & gas	R. FLEMING	22/8/80 25/10/80	Cash	9m	U	-
5) DIXON	textile	B.M.B.	MONFORT	textile	K. BENSON	1/11/79 22/12/79	mixture	2.7m	U	-
6) DALGETY	agriculture & food	LAZARDS	SPILLERS	flour & food	S. WAGG	16/8/79 13/10/79	Share	73.6m	S	DALGETY
7) FRANCIS INDUSTRIES	packaging & industrial	MONTAGUE LOEBL, STANLEY	EVERED	engineering group	MORGAN GRENFELL	24/12/80 24/2/81	Cash	1.29m	U	-
8) GRAND METROPOLITANT/STANDARD BRANDS	hotel, drinks leisure	WARBURGS & MORGAN STANLEY	LIGGETT	tobacco & Liquor	MERRILL LYNCH WHITE WELD	15/4/80 8/6/80	Cash (S)**	248m	S	G.M.
9) GEC	electrical engineering	M. GRENFELL	AVERYS	weighing machine & instrument	S. WAGG	14/9/79 23/11/79	Cash (S)	98m	S	GEC

10) GEC/RACAL	electrical engineering/ defence electronics	M. GRENFELL/ HILL SAMUEL	DECCA	defence & consumer electronics	COUNTY BANK	19/1/80 15/2/80	Share (C)	101m	S	RACAL
11) HIRAM WALKER	Canadian distiller	LAZARDS	HIGHLAND DISTILLERS	Scotch whisky distiller	BARINGS	5/12/79 25/1/80	Cash (S)	80m	$U(r)^3$	-
12) HANSON TRUST	industrial holdings	ROTHSCHILDS	LIN-DUSTRIES	engineering & textile	S. WAGG	2/8/79 8/9/79	Share	25m	S	H.T.
13) HANSON TRUST/ CAPARO	industrial holdings/ private investment holdings	ROTHSCHILDS/ K. BENSON	CMT	engineering & industrial service holdings	R. FLEMING	10/2/81 26/3/81	Share (C)	145m	S	CAPARO
14) HUNTING GIBSON/ TURNBULL SCOTT	shipowning/ broking & shipping	R. FLEMING K. BENSON	STAG LINE	shipowning	KEYSER ULLMAN	15/1/81 13/2/81	Cash (S)	5.3m	S	H.G.
15) HARRIS QUEENSWAY	carpet & furniture	COUNTY BANK	HARDY & COMPANY	furniture	BMB	19/5/79 26/7/79	mixture	28.5m	S	H.Q.
16) LONRHO	overseas trader	KEYSER ULLMAN & STANDARD CHARTERED MERCHANT BANK	SUITS	industrial & investment	CHARTERHOUSE JAPHET	21/3/79 26/5/79	mixture	67m	S	LONRHO

17) MARSH MCLENNAN	insur-ance broking	WARBURGS & MORGAN STANLEY	C.T. BOWRING	insur-ance broking	S. WAGG & GOLD-MAN SACHS	18/12/79 15/4/80	mixture	250m	S	M & M
18) MINING SUPPLIES	mining machin-ery manu-facturer	SINGER & FRIED LANDER	LAU-RENCE SCOTT	electr-cal ma-chinery	S. MON-TAGU	9/9/80 24/10/80	Share (C)	6.2m	S	M.S.
19) PROVINCIAL LAUNDRIES	contract laundry	BMB	ST. GEORGE'S LAUNDRY	contract laundry	Close Brothers	23/10/79 17/11/79	Share	1.25m	U	-
20) REDMAN HEENAN INTER-NATIONAL	special-ised en-gineer-ing	HAMBROS	WELLMAN ENGINEER-ING	thermal & mechani-cal en-gineering	LAZARDS	29/6/79 14/8/79	Cash	8.0m	U	-
21) STARWEST/ ALLIED LONDON PROPERTIES	housing group/ housing developer	TWEN-TIETH CENTURY CORP.	GOUGH COOPER	housing developer	HILL SAMUEL	10/9/80 24/10/80	Cash (S)	11.4m	S	ALP
22) STARWEST	private property & elec-trical	TWEN-TIETH CENTURY CORP.	HAWTHORN LESLIE	ship-builder & marine engineer	S. MON-TAGU	18/12/80 25/2/81	Cash	4.29m	S	STARWEST
23) STANDARD CHARTERED BANK/HONG KONG & SHANGHAI BANK	overseas inter-national bank/HK bank	S. WAGG/ A. GIBBS & HAMBROS	ROYAL BANK OF SCOTLAND	clearing bank	BARINGS	17/3/81 2/5/81	mixture	4.98m	U(r)	-
24) SIME DARBY	planta-tion group	KLEINWORT BENSON	GUTHRIE CORPORA-TION	planta-tion group	BARINGS	12/12/79 28/3/80	mixture	153m	U	-

25) ST. MARTIN INDUS-TRIALS	Kuwaiti Govern-ment agency	EMB	Proprie-tor of HAY's WHARF	property & chemi-cal	MORGAN GRENFELL	2/7/80 23/7/80	Cash	53.7m	S	SMI
26) TDG/ UNIGATE	trans-port/ food manufac-turer	S. WAGG	GILT-SPUR	exhibi-tion, freight & indus-trial	BARINGS	30/4/80 21/5/80	Cash (S)	25m	S	UNIGATE
27) WARD	cement scrap metal motor distri-bution	WARBURGS	TUNNEL HLDGS	cement maker	KLEIN-WORT BENSON	13/3/81 10/6/81	mixture	110m	U	-
28) WEREL-DHAVE/ OLYMPIA & YORK	property group/ private invest-ment group	M. GREN-FELL/ ROTHS-CHILDS	ENGLISH PROPER-TY CORP.	property group	S. MON-TAGU	15/12/78 2/3/79	Cash	60m	S	O & Y
29) WARING GILLOW	furniture & carpet	S. WAGG	MAPLES	furniture retailer	MORGAN GRENFELL	3/3/80 25/5/80	Share	10m	S	W & G
30) YULE CATTO	planta-tion plastics	MORGAN GRENFELL	REVER-TEX	special-ty chemi-cal com-pany	S. WAGG	25/6/80 27/9/80	Share	5.4m	S	Y.C.

TABLE C.5: COMPARATIVE HIGHLIGHTS OF THE 30 CASE STUDIES

Key:
S^1 = Successful
U^2 = Unsuccessful
$U(r)^3$ = Unsuccessful (MMC Reference)
* = Relates to final bid price

Appendix Table C.6: Financial Advisers Connected with the Group 2 Case Studies.

BIDDER	ADVISOR	BIDDEE	ADVISOR
Kangra	A.J.Bekhor[1]	Renwick	S. Montagu
News Intl.	G.Mahon	Wm.Collins	S.Wagg
Dunhill-Logida	Gresham Tst	Asprey	Morgan Grenfell
Churchbury	R.Fleming	Law Land	LBI
Avana	C.B.(Wales)[2]	Robertson	Hill Samuel
Gasco	G.Network[3]	St.Piran	Chtr.Japhet
BICC	M.Grenfell	Higgs & Hill	n/a
BSC	Schroder W.	RHM	Morgan Grenfell
Lonhro	SCMB	HoF	Warburgs
THF	Warburgs	Savoy	Barings

1. stockbroker
2. Commercial Bank of Wales (non-merchant bank)
3. not a licensed dealer nor merchant bank

Appendix Table C.7: "Dawn Raids" and Their Subsequent Developments.

Date	Raider	Target	Pre-raid price p	Raid price p	Current price p	Developments
1980						
16 July	Provincial	Pritchard Services	62	72½	65½	Stake placed with institutions.
18 July	Pergamon Press	BP & Comm	18½	25	33	—
22 July	Starwest	Gough Cooper	76	95	—	Allied London bid 145p Nov. '80.
23 July	Brooke Bond	Mallinson-Denny	62½	80	—	Brooke Bond bid 85.1p Jan. '81.
25 July	NCC Energy	Petrocon	30	36	68	April 1981 NCC sold at 32p.
21 Oct.	Ward White	K Shoes	48	60	—	C. & J. Clark bid at 95p Jan. '81.
14 Nov.	Wavin	Durapipe Intl.	19	25	—	Glynwed 38p bid Oct. '81.
4 Dec.	Cooper Industries	F. H. Lloyd	29	30	40	Stake subsequently taken to 26.5%.
9 Dec.	McLeod Russell	London Shop Props.	88	112	118	Stake went to Rosehaugh.
23 Dec.	Kangra Intl.	Renwick	73	85	84	—
1981						
6 Feb.	Diamond Inds.	Howard Machinery	22	25	23	Investment.
12 Feb.	Bardsey	F. Pratt (Eng)	70	84½	62	600 Group now holds 26.9%.
24 Feb.	J. Cranwood	Gaskell Broadloom	45	64½	44	—
1 June	Allianz	Eagle Star	236	290	380	Allianz holds 28.1% of Eagle Star.
6 July	CRA	Chloride	27	32	32	Investment.
8 July	Mills & Allen	Letraset	87	105	—	Esselte bid 140p Oct. '81.
10 July	Hanson Trust	Berec	70	95	—	Bid 4 Sep—Hanson Trust 150p cash
10 July	Beazer	Westbrick Products	60	75	—	Bid 90p Sep. '81.
14 July	Starwest	Braby Leslie	38	55	56	Investment. May buy more.
15 July	NEI	Amal. Power Eng.	109	140	—	Bid 140p recommended by A.P.E.
17 July	Fieldwood	Braham Miller	12	18	24	Bid—unsuccessful.
22 July	T. Whyte & Assoc.	Sangers	70	*	46	17.4% bought July '81.
24 July	Dennison Mfg.	Ofrex Group	122	130	190	Gallagher 190p bid unconditional.
7 Aug.	Gallagher	Ofrex Group	164	170	190	—
20 Aug.	Caparo Industries	Ductile Steels	60	78	121	Caparo has 20%.
25 Aug.	Pergamon	Solicitors Law	24	26	27	Holding of 25%.
28 Aug.	Esselte	Letraset	120	140	—	Subsequently bid 140p.
7 Sep.	Permodalan	Guthrie	662½	901	—	Bid 901p. See text.
10 Sep.	Glynwed	Durapipe	25	40	—	Bid at 40p cash.
13 Sep.	Warren Plantations	Matthew Clark	134	159½	160	1% acquired. 8% later.
21 Sep.	BTR	Serck	35	60	—	Bid at 60p a share.
24 Sep.	Société Générale	Tanks. Cons. Inv.	375	450	442	Built up to 51.5% stake.
25 Sep.	M.-P. Kent	Federated Land	94	130	153	Bid at 142p Mar. '82.
30 Sep.	McLeod Russell	Warren Plantations	190	215	—	214p bid unconditional Nov. '81.
5 Oct.	General Tire	Hallite Holdings.	163	200	208	200p bid failed Jan. '82.
19 Oct.	Permodalan	Amal. Metal Corp.	410	550	560	Permodalan bid 550p.
2 Nov.	TVW Enterprises (Bell Group)	ACC	44	52½	105	Dawn raid at 60p Nov. '81.
3 Nov.	British Sugar	RHM	60½	68	61½	14.7% acquired.
9 Nov.	RHM	British Sugar	316	385½	420	Bought 10.5%. Berisford has near 40%
20 Nov.	RTZ	T. W. Ward	144	190	225	RTZ 225p bid unconditional.
24 Nov.	Bath & Portland	Braham Miller	26½	33	24	14.9% acquired. Then further 15%.
8 Dec.	Leane Investment	LOF's	41	50	52	Picked up 3.5% stake. Now 17%.
17 Dec.	Alton House Holdings	Henlys	95	125	110	Less than 5% acquired.
18 Dec.	Burmah Oil	Croda Intl.	43½	70	78	70p bid lapsed Mar. '82.
23 Dec.	Rowntree	Huntley & Palmers	86	95½	91	103p bid referred.
1982						
6 Jan.	Internat. Paint	A. Holden	107	150	176	Battle with I.C.I.
20 Jan.	Invest Intelligence	L. & Prov. Trust	148	160	171	—
3 Mar.	G. W. Sament	David Scott	18	22	27	Near 16% stake.

*Undisclosed.

Source: "The Observer," (2/3/82)

BIDDER	FAMILY/ENTREPRE-NEURIAL INTERESTS
Grand Metropolitan	Sir Maxwell Joseph
Hanson Trust	James Hanson
Harris Queensway	Philip Harris
Caparo	Paul Swaraj
Lonhro	Tiny Rowland
Trust House Forte	Sir Charles Forte
Avana	Sir Julian Hodge
Gasco	Jim Raper
News International	Rupert Murdoch
BIDDEE	
Decca	Sir Edward Lewis
Stag Line	N.Robinson
Hardy	Dartnow/Slotover family
Scottish & Universal Investment Trusts	Sir Hugh Fraser
House of Fraser	Sir Hugh Fraser
St.George	Armstrong family
Gough Cooper	John Boardman
Guthrie Corporation	Anderson family
Savoy Group	D' Oyly Carte
William Collins	Collins family

Appendix Table C.8 : Bidder and Biddee Companies Exhibiting Founding Family/Entrepreneurial Influences on their Boards as Reflected in the Case Studies.

TABLE C-9 : COMPARATIVE ANALYSIS OF INTERNATIONAL BANKS RANKED ACCORDING TO ASSET SIZE (1980/81)

RANK	BANK	COUNTRY	ASSETS	TOTAL DEPOSITS	CAPITAL & RESERVES	TOTAL REVENUE	PRE-TAX EARNINGS	PRE-TAX EARNINGS on ASSETS	PRE-TAX EARNINGS on CAPITAL	CAPITAL ASSETS RATIO	REVENUE ON ASSETS	OFFICES	EMPLOYEES
1	Citicorp	USA	109,551*	71,771	3,891	14,211	844	0.80	22.54	3.55	13.39	-	-
2	Bank of America Corp.	USA	106,803	88,426	3,908	12,075	1,025	0.97	27.81	3.66	11.46	-	-
3	Credit Agricole	France	106,648	86,243	3,183	-	-	-	-	-	-	10,025	65,000
4	Banque Nationale de Paris	France	105,584	87,012	1,430	10,301	360	0.38	27.00	1.35	10.74	2,424	57,054
5	Credit Lyonnais	France	98,833	97,599	1,054	10,391	317	0.35	30.97	1.07	11.55	2,283	46,892
6	Societe Generale	France	90,794	82,870	1,444	-	330	0.40	24.52	1.59	-	2,555	44,375
7	Barclays Group	UK	88,474	76,270	4,751	11,586	1,249	1.56	27.93	5.37	14.43	5,000	120,000
8	Deutsche Bank	Germany	88,242	82,371	2,739	13,567	609	0.72	22.90	3.10	16.13	1,361	44,128
9	National Westminster Bank	UK	82,447	75,890	5,118	10,897	978	1.29	20.38	6.21	14.39	3,818	73,668
10	Daichi Kangyo Bank	Japan	79,451	61,971	2,783	6,178	352	0.47	12.97	3.50	8.28	334	24,255
11	Chase Manhattan Corp.	USA	75,722	56,646	2,688	8,003	543	0.78	21.67	3.55	11.43	-	-
12	Fuji Bank	Japan	70,265	56,495	2,689	5,285	443	0.67	16.71	3.83	7.94	244	18,826
13	Sumitomo Bank	Japan	68,749	55,554	2,450	5,143	391	0.60	15.60	3.56	7.94	265	18,390
14	Sanwa Bank	Japan	64,239	51,870	2,283	5,105	336	0.55	15.02	3.55	8.35	263	18,520
15	Dresdner Bank	Germany	62,841	59,299	1,774	5,721	211	0.34	12.02	2.82	9.19	1,154	31,402

* All figures in $ million (columns 4 - 8) or percentages (columns 9 - 12).

Sources: compiled from "Fortune" (August 10, 1981) and "The Banker," (June 1981).

Appendix Table C.10: Merger Trend in the USA 1975-1981.

Year	Number of transactions at $100m or more	Number of transactions at $500m or more	Total amount paid for all transactions (in $bn)
1975	14	1	11.8
1976	39	4	20.0
1977	41	2	21.9
1978	80	5	34.2
1979	83	14	43.5
1980	94	15	44.3
1981	55	12	35.7

Source: The "Financial Times," (15/1/82)

Appendix Table C.11: Acquisitions Handled by a Leading U.S. Investment Bank, Credit Suisse First Boston, 1981.

	ACQUIRING COMPANIES	ACQUIRED OR DIVESTING COMPANIES	BID VALUE ($m)
1.	Du Pont de Nemours & Co.	Conoco Inc.	7,570m
2.	U.S.Steel Corporation	Marathon Oil Co.	6,264m
3.	Fluor Corp.	St.Joe Minerals Corp.	2,733m
4.	Freeport-McMoran Corp.	Freeport Minerals Co.	2,540m
5.	Kuwait Petroleum Corp.	Santa Fe International	2,537m
6.	Union Pacific Corp.	Missouri Pacific Corp.	1,000m
7.	Ensource Inc.	Oil & Gas Interests	625m
8.	CSR Limited	Delhi International Oil	610m
9.	Allegheny International	Sunbeam Corp.	548m
10.	Sulpetro Ltd	St.Joe Minerals Corp.	460m
11.	Prudential Insurance	Bache Group Inc.	385m
12.	Du Pont de Nemours & Co.	N.England Nuclear Corp.	348m
13.	Prudential Insurance	CGMRI	340m
14.	Allied Corp.	Fisher Scientific Co.	320m
15.	Consolidated Gold Fields	Newmont Mining Corp.	309m
16.	Chemical New York Corp.	National Banks of Florida	291m
17.	Credit & Commerce N.V.	Financial General Bankshares	241m
18.	Brascan USA Inc.	Scott Paper Co.	235m
19.	MIM Holdings Ltd	ASARCO Inc.	198m
20.	Bucyrus-Erie Co.	Western Gear Corp.	175m

Source: adapted from, "<u>Financial Times</u>," (27/1/82)

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