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Hostile Acquisitions and Financial Methods to Counter them

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ABSTRACT:

Protection methods from hostile takeovers to prevent a change of control over the company and therefore, protect it from competition from other market horrors. The variety of existing methods of protection against hostile takeovers is associated, in first of all, with the individuality of each company, the development of new methods conducting mergers and acquisitions, the emergence of new market instruments capital, etc. The authors come to the conclusion that the effectiveness of preventive methods of protection in comparison with operational ones, since. much harder to deal with already taking place, we want to prevent it. In order for the methods protection worked most effectively, it is necessary, first of all, to competently assess the available resources and build protection based on their availability, as well as to live other factors influencing the choice of protection strategy.

KEYWORDS: M&A market, hostile takeovers, motives acquisitions, competition, corporate controls.

Introduction. Mergers and acquisitions are a special form of business consolidation and capital concentration for companies that have chosen an aggressive development strategy. Under Mergers and acquisitions are usually understood as a way of "combining the economic potential of companies" [18] or a special mechanism for transferring ownership and control rights over an organization [19]. Author of Mergers, Acquisitions and Company Restructuring by P. Gohansees a merger as "the union of two corporations in which one of them survives, and the other ceases to exist" [8]. In today's world, such an association can be friendly and hostile As Setchenkova L. and Kustin D. note, if a decision on a merger or acquisition is made in the course of civilized negotiations between two companies, then we are talking about a "friendly acquisition." But also the acquiring company can behave aggressively and not want to conduct any negotiations with the "target" company. This absorption can be called hostile [16].

M.G. Iontsev considers a hostile takeover as a process of establishing full legal and physical control over the acquired company or asset outside depending on the will of the owners [12]. However, as R.O. Voskanyan, takeover its essence is a transaction, and both owners must give consent to its conduct (both seller and buyer) [5]. But at the same time, the actions of the management of the acquiring company are aimed at creating such new conditions under which the owners of the acquiring company companies are forced to sell their shares or completely liquidate the organization [15].

Demchenko A.S. notes that hostile takeovers are often seen as the acquisition of any, even an insignificant share in the authorized capital of the company. However, the absence of a dominant share in the acquiring company cannot lead to a legitimate change management, alienation of property, reorganization of a legal entity [11].

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Thus, we can say that a hostile takeover is a transaction implemented within the legal framework, the main purpose of which is the strategic development of the absorbing organization, improving its financial performance and providing competitive advantages.

Research methods. As A.I. Gulyatkin, the main motive for the implementation hostile takeover is to obtain operational or financial synergies. Operational synergy can manifest itself in the form of combining different functional forces, business diversification, economies of scale, accelerated growth in new or existing markets, etc. This type of synergy contributes to an increase in growth rates and the level of operating income of the company [9]. Financial synergy is reflected in the form of stabilization or increase in cash flow, lowering the cost of raising capital, saving on taxes, etc. [4].

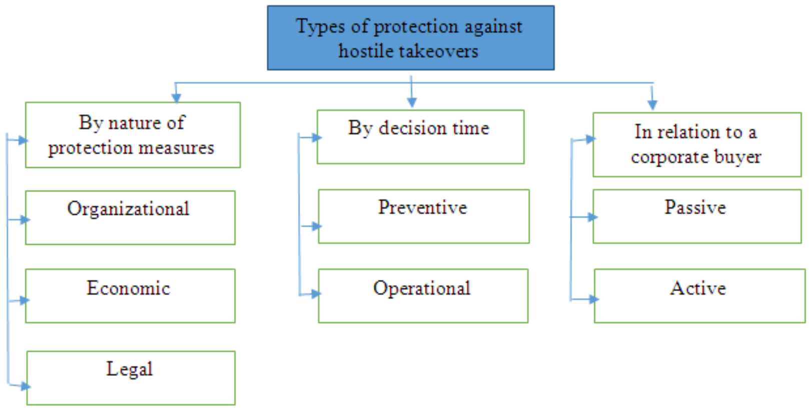
Another motive for the takeover, according to O.V. Glinkina, is the desire to eliminate competitor in the market. The acquiring company seeks to create or strengthen its monopoly position, thereby reducing price competition [7].

We can say that the economic and organizational motives of the takeover are aimed at consolidation of an economic entity in order to obtain a synergistic effect, employment dominant position in the market and reduce the pressure of destructive market forces [20].

Each company carries out its economic activities in a competitive environment, which may entail the risk of capture by competitors [1]. In connection with the existing risk of a hostile takeover, the company's management needs to worry in advance about measures and means of protecting your organization.

Takeover protection is a set of measures taken by the company's management in order to reduce the likelihood of an organization's takeover. How note Z.E. Tarkhanova and A.V. Bekoev, in most cases, these activities allow increase the value of the company so much that the corporate buyer cannot establish necessary control over the organization due to the lack of sufficient for absorption the amount of resources [17].

Defense against hostile takeovers should be based primarily on confidence in clear and organized work of the company as a whole, its management and governing bodies as the main driving force that overcomes any interference in the activities of the organization. Depending on various criteria, the following types of protection can be distinguished (Fig. 1) [13]



Pic . 1. Types of protection against hostile takeovers

(compiled by: Kormshchikov S.V. Protection against hostile mergers and acquisitions)

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Organizational protection methods can be implemented in the following forms:

- synchronization of the attack using special economic, organizational and legal methods of influencing the invader;
- negotiations with the management of the acquiring company;
- merger with a friendly company, which involves the involvement of "white knight" - a strategic investor

Economic measures to protect against hostile takeovers are manifested in the form of restructuring the assets and liabilities of the enterprise-object, fund protection, as well as share buyback proposals [2].

Legal protection of the company should be based on clearly developed internal documents, such as the Articles of Association, Regulations on Governing Bodies, etc., which should be consistent with the company's chosen defense strategy and exclude internal contradictions [6].

Considering the protection measures on the part of the attitude towards the corporate buyer, one can identify measures of passive and active protection [3]. Passive protection measures do not affect the status of the buyer and are implemented solely for the purpose of protection. The actions of the company's management are aimed at ensuring that the corporate buyer would buy the required amount voting shares at the price most favorable to shareholders of the corporate seller,

or failed to acquire them at all. In the case of active protection measures, the company is transformed from a corporate seller into a corporate buyer. Such measures include the following:

- a proposal to merge with a friendly company;
- accusation of a corporate buyer in violation of antimonopoly law

  and organization of litigation;
- acquisition from a corporate buyer of a block of its shares with a premium relative tothe current market price in response to the offer of the latter to purchase shares of the company atmarket price with a premium, etc.

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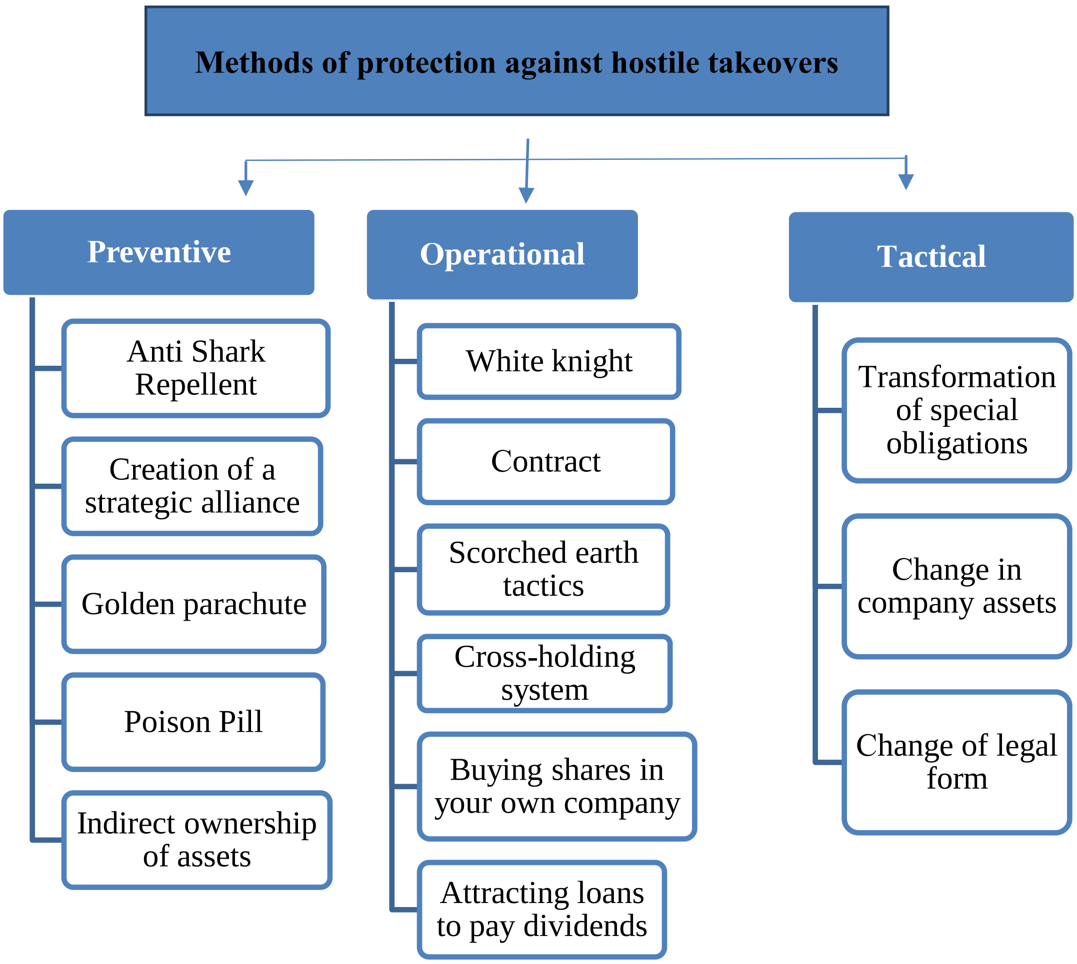

Pic. 2. Methods of protection against hostile takeovers

Protective measures can be carried out by the company's management both in advance; before the beginning of actions in the corporate control market, and after information about a corporate buyer existing on the market appears [10].

After analyzing and summarizing the results of research scientists, let us single out the most common methods of protection against hostile takeovers (Fig. 2) [7].

Preventive measures are aimed at timely detection of the risk of hostile takeover. In the case of the appearance of information about the upcoming takeover, the company's management should resort to operational measures [8]. Let us consider in more detail the essence of the selected methods and determine the consequences of applying each of them (Table 1).

Table 1 Essence and consequences of the application of methods of protection against hostile takeovers

	Method	**The essence of the method**	**Consequences of applying the method**
Preventive Methods	strategic alliance	Two or more independent companies come together to achieve	Helps protect against hostile absorption, allows you to achieve various

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		certain business goals and obtaining synergies	Strategic goals (for example, strengthening market positions, etc.)
	"Anti-shark repellent"	The method includes corrections: 1) a divided board of directors; 2) supermajority condition; 3) fair price condition Special amendments to the company's articles of association contribute to the maximum complexity gaining control of the organization	A split board restricts the acquiring company from taking full control of the company immediately after the acquisition
	"Golden Parachute"	Top managers are assigned certain cash guarantees, paid in case of change company owner	Significantly increased purchase price organizations, due to the need making payments on created compensatory parachutes
	"Poison Pills"	Issuance of special securities, which can be used by shareholders companies in a hostile takeover to buy common company shares at a price below market	Securities may be presented for buyout of the target company, which significantly reduce in the eyes of the aggressors the investment company attractiveness
	Mediated asset ownership	Expensive property and real estate is fixed on the balance sheet of a friendly company, and transferring company is only a tenant	The method makes it possible to ensure the protection of the main production facilities from a hostile takeover
Operational Methods	Counterattack	The target company puts forward counteroffer of the acquiring company	In most cases, the company being acquired is trying to convince the invader of high the chances of success in applying this method if he does not give up his intentions

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	Tactics of "scorched land"	The method is similar to the "poisonous pills", but is applied after how the company received the offer to buy	Securities may be presented for buyout of the target company, which significantly reduce in the eyes of the aggressors the investment company attractiveness
	Attracting loans for dividend payments	Dividends are paid from debt capital, which contributes to the attachment of shareholders to shares	The use of such a measure can worsen the financial position of the acquired company in the eyes of the aggressor company
	"White knight"	Involvement of a strategic partner in the company's activities	The activities of the "white knight" can contribute to countering the hostile takeovers

If the absorption process has already begun, there is a use of tactical measures

Results . The most preferable is the use of preventive or operational measures. They make it possible to ensure the stability of the company's functioning and prevent the growth of debt resulting from the use of tactical measures.

Preventive and operational defense methods can be grouped by the availability of information about the actions of the attacking company, by the impact on competitiveness, and also by availability of resources (Table 2).

Table 2. Classification of preventive and operational methods hostile takeover protection

Resources	Preventive methods	Operational methods
By availability of resources		
Enough resources	Supermajority, Golden Parachute, Poison Pill, Strategic Acquisitions	Counterattack, Scorched Earth Tactics, Litigation, Purchase of shares in own company
Insufficient resources	Creation of a strategic alliance, asset protection	"White Knight", Litigation
According to the availability of information		
Enough information	"Poison Pill", strategic acquisitions, asset protection	Counterattack
Partial Information	"Golden Parachute", "Poison Pill", Creation of a Strategic Alliance	Scorched earth tactics, share buying own company, "white knight

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Lack of information	Supermajority	Purchase of own company's shares
Influence on competitiveness		
Affecting negatively	Supermajority, "poison pill"	Scorched earth tactics
Non-negative	Asset protection	Asymmetric methods

From Table. 2, we can conclude that the more resources a company has at its disposal, the more alternative options it has.

In the case where the company has complete information, the methods used are aimed at To counter a specific threat. If the company has partial information about the aggressor, management should concentrate on the threat sufficiently, but don't overestimate the costs. In the absence of information, the best methods of protection will be those that lead to the concentration of power and authority in the hands of the owners, which will increase the cost of decision-making [14].

Classification of protection methods depending on their impact on Competitiveness Company is based on the fact that if the method of protection contributes to increasing competitiveness, then its application is possible without the threat of absorption. However, the impact of most protection methods on a particular transaction depends on how exactly these methods will be implemented, and can be both negative and neutral and even positive.

Conclusions. Having considered methods of counteracting hostile takeovers, one can make following conclusions. Hostile takeover defenses are tools that continuously created by the corporate control market in response to the current situation in this market. Hostile takeover defenses prevent changes in control of a company and therefore protect it from competition from other market participants.

The set of methods, on the one hand, is quite well-established, and on the other hand, it is constantly being improved and modified under the influence of both the market itself and the regulatory action of the state. The variety of existing methods of protection against hostile takeovers is also explained by the individuality of each company, the development of new methods

Conducting mergers and acquisitions, the emergence of new capital market instruments, etc. However, despite the existing variety of methods, today It is common practice to use only one way to protect the company. In our opinion, preventive methods of protection are more effective than operational ones, since it is much more difficult to deal with an already ongoing takeover than prevent it.

In order for protection methods to work most effectively, it is necessary, first of all, to correctly assess the available resources and build protection based on their availability, as well as take into account other factors that affect the choice of protection strategy.

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