

Takeover Regulation: Lessons from Europe

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EU Takeover Regulation

- Fore-runner was UK City Code
- City Code served as model for
 - Many European countries
 - Asian countries (Malaysia and Singapore)
- Main principles of City Code
 - Mandatory tender offer
 - Principle of equal treatment
 - Board neutrality of targets
 - Management cannot install anti-takeover devices without shareholder approval
 - Code is enforced by Takeover Panel

EU Takeover Regulation

- EU Takeover Bids Directive
 - Since late 1980s EU Commission had tried to work out common takeover rules
 - Draft of directive modelled on City Code
 - Mandatory-bid rule
 - Principle of equal treatment
 - Squeeze-out rule and sell-out right
 - Principle of board neutrality
 - Break-through rule

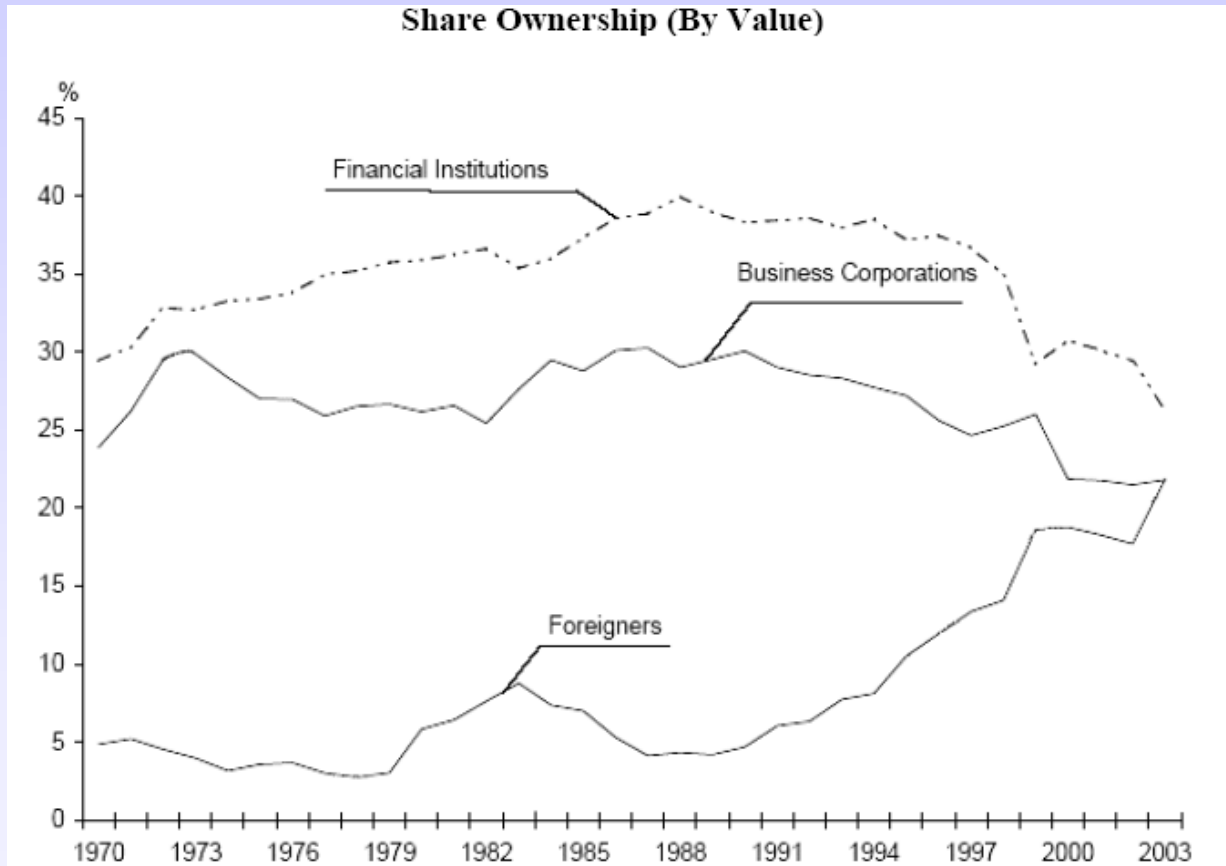
EU Takeover Regulation

- Strong opposition from several EU countries
 - Germany did not want to remove anti-takeover devices
 - Still stunned by takeover of Mannesmann by Vodafone
 - Worry about Volkswagen falling into foreign hands
 - Major stumbling block was break-through rule
 - Sweden was also worried about its sacred cows

EU Takeover Regulation

- EU Takeover Bids Directive was adopted in 2004
 - Breakthrough-rule does not apply where
 - Member States hold special rights
 - National law confers special rights
 - The courts are the *ultimate arbiter*
 - Targets can launch lengthy law suits to stall hostile bids

The Case of Japan



Source: Milhaupt (2005)

The Case of Japan

- Fligstein (2001)
 - *“There is no market for corporate control in Japan, and there is not likely to be one.”*
- Massive increase in M&A activity
- During 2004-5 there have been several hostile bids
 - Mitsubishi Tokyo Financial Group-UFJ-Sumitomo
 - Livedoor-Nippon Broadcasting-Fuji TV
 - ...

The Case of Japan

- Emotions are running high
 - Old Japan vs New Japan
 - Livedoor is run by college dropout in jeans and t-shirt
 - American capitalism/vulture capitalism
- Use of new tactics
 - Litigation
 - Proxy fights
 - Poison pills
 - ...

The Case of Japan

- Japan has adopted the Delaware model
 - Japanese courts have made decisions similar Delaware court decisions
- Why not the UK City Code?
 - Its rules are relatively straightforward and easy to enforce
 - Delaware is a complex legal doctrine
 - Japan's tender offer procedure is modelled on City Code

The Case of Japan

- So why Delaware?
 - Familiar to Japanese lawyers, judges and bureaucrats
 - Delaware law is more protective of management (Milhaupt 2005)
 - Managers may be able to use anti-takeover devices
 - More in line with the Japanese stakeholder model

Conclusions

- Goergen, Martynova and Renneboog (2005) argue that
 - Reforms of takeover rules need to be placed in wider context of reforms of corporate governance system
 - Similar rules may have very different impacts on ownership and control in EU countries
 - Initial institutional setting, ownership and control do matter
 - Rules may reinforce existing systems
- Japanese system may
 - Experience further convergence towards shareholder-based model
 - Anti-takeover devices and increases in ownership concentration may reinforce existing system