Motives of hostile takeovers of transport corporations

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Abstract. At the present stage of development of the transport corporations global market, mergers and acquisitions are widespread. Acquisitions are friendly and hostile. The process of friendly takeover is always preceded by negotiations between the parties. In a hostile takeover, the management of the target company is completely disconnected from the share buyback process. Creating protection against a hostile takeover is the goal of any business, it can serve the interests of the shareholders of the target company if the latter wish to maximize their profits from the sale of their shareholding and have additional arguments for the forced sale of the company. Protection a transport corporation against hostile takeover is the whole range of actions that the board of directors and company management take to reduce the likelihood of a company takeover. To build effective defense of a company, it is very important to understand what motives the aggressors are guided by during a hostile takeover. The question of the motives of the hostile takeover is a key one, but it has not yet received adequate coverage in the theory and practice of corporate governance. This article presents patterns of behavior of takeover participants, analyzes their motives, and evaluates the development of the institution of hostile takeovers of transport corporations.

1. Introduction
Mergers and acquisitions, mergers and acquisitions (M&A) - this abbreviation, in our time, is found on the pages of many authoritative magazines devoted to both the Russian and world economies. According to KPMG consulting company, the total volume of the Russian M&A market in 2019 amounted to $ 63 billion, while the global mergers and acquisitions market amounted to more than 3.8 trillion. Dollars [1]. In the field of transport and infrastructure, the total value of transactions in the Russian market in 2019 amounted to $ 4.2 billion. The largest transactions are shown in Table 1.

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Hostile takeover is an offer that the management of a buying company puts forward in the open stock market. The key difference from a friendly takeover is that in a hostile takeover, the management of the target company is completely disconnected from the share buyback process, since the offer made on the stock market is not an offer to the management, but to the shareholders of the target company. If a friendly takeover involves negotiations, then a hostile takeover means their complete absence (in any case, at the initial stage of the takeover). The managers of the buyer company, when submitting a tender proposal for the purchase of a controlling stake, are not interested in the attitude of the management of the target corporation towards this proposal. Most of all, the buyer company at this moment is interested in receiving a block of shares in the property and its price. Nomination of a tender proposal often gives rise to public accusations of managers of the target company in inefficient management, lost growth prospects, manipulation of financial statements, etc.

It is curious that only a small percentage of acquisitions started as hostile end up with the complete isolation of the target company's management. Despite accusations of incompetence, the managers of the acquired corporation are sooner or later involved in the process. All transactions where there are contradictions between the buyer and the seller in terms of the cost of something are associated with a lengthy process of price negotiation. Hostile takeover fully complies with this rule. The buyer company seeks to agree on the price of the ordinary voting shares directly with the shareholders of the target company, bypassing management. The shareholders of the target company are extremely interested in getting the highest absorption premium, that is, to achieve the greatest difference between the buyback prices of one share announced in the tender offer in relation to the current market price of this share. However, often shareholders do not have sufficient knowledge and experience in negotiating the price of shares (especially if they do not participate in the operational activities of their company) and can sell shares at too low a price. Understanding this, shareholders will inevitably attract management for consultations. The better the product information is presented, the higher the price.

The managers, in turn, feeling the risk of a hostile takeover and their subsequent dismissal, will in every way convince shareholders that the price is unfairly low, offer to equip the company with methods of protection against takeovers, in general, do everything to prevent or slow down the process [2]. In this article, we will try to analyze the reasons why corporations make hostile takeovers.

2. Methods
One can often hear that the main difference between a hostile takeover and a friendly one is the attitude of the management of the two corporations. From the point of view of the owner of the ordinary voting shares of the company, the attitude of the management of the purchasing company to management, employees, and activities does not matter at all. And if the buying company offers a double price for its shares, it is unlikely that the shareholder will think about anything else but the benefits of this sale.

Hostile takeover is often defined as a takeover that has not received the approval of the board of directors or management of the target company. What does that mean? The decision on the sale is also made directly by the owner of the block of shares, only he expresses his will through the conclusion of an act of sale of securities. But here we can only talk about the attempts of the management and the board of directors of the target company to convince their shareholders that the merger or tender proposal does not meet the interests of the owners of the company and therefore they should not vote “for” the reorganization or sell their shares. Thus, in reality, the friendliness or hostility of a takeover is determined only at the level of relations between the teams of managers of the two companies, and any takeover that is initially opposed by the managers of the target company will be hostile.

All motives for hostile takeovers can be divided into disciplinary and expropriation. Let us consider in more detail each of the blocks. The economic efficiency of the corporate form of ownership is the result of combining the capital of several shareholders with the managerial abilities of a professional management team. Only companies in the corporate form of ownership have access to the cheapest source of capital - the stock market. It is this property, along with the limited liability of shareholders, that allows corporate ownership to dominate the main capital markets. In order to take full advantage of
the corporate form of ownership, capital owners are forced to delegate the right to control a capital invested in the company to a small group of professional managers. This is where the agent conflict occurs. No one can guarantee that managers will always act in the best interests of their shareholders. In certain sectors of the economy, one can always find corporations whose value is underestimated due to the ineffective work of current management. On the other hand, there are companies with effective corporate governance. If we assume that there is a correlation between the effectiveness of management and the market value of the shares of the company, we get the following disciplining scheme. As soon as the management of the company begins to put less effort to manage the company and manage it less efficiently, the market value of the shares of such a company falls [3]. The low price “signals” managers of other corporations in the industry that management is ineffective. And the lower the price of the company's shares in relation to the industry average, the more attractive the company becomes for absorption. Such a company is absorbed by a corporation with more efficient managers who correct the underestimation of shares and bring their value in line with the market. Rather, these managers do not need to fix anything. The market most often automatically gives a positive reaction to an increase in management efficiency as a result of its change and the company's shares go up. This method, which is not associated with significant costs of creating additional value or returning true value, guarantees the interest of effective managers in conducting hostile takeovers. Thus, hostile takeovers play the role of a mechanism that increases the effectiveness of company management; in addition, hostile takeovers become an element of the competitive managerial labor market.

3. Results
Further, it is necessary to analyze the influence of the mechanism of hostile takeovers on the behavior of managers. Every manager knows that inefficient management of a company can lead to a drop in its market value. The fall in value will attract the attention of managers of other companies in the industry, and if these managers come to the conclusion that the fall is caused by inefficient management, then a tender proposal for the purchase of a controlling stake in the company was immediately put forward. The fate of the managers of the target companies after the takeover is known, they are being fired. Therefore, we can expect that in a market where hostile takeovers are possible, not a single manager will manage inefficiently, which is exactly what business owners need.

A similar scenario is known as the disciplining effect of hostile takeovers. Based on the foregoing, it becomes clear that the disciplining motives of hostile takeovers always meet the best interests of both the shareholders of the purchasing company and the shareholders of the target company.

In addition to the disciplining motives for acquisitions, there are also expropriational motives; however, the border between these motives is blurred. When it comes to expropriation motives, corporate raiders should be remembered. A corporate raider is a person who systematically performs the following actions:

1. Put forward a tender proposal for a controlling stake in ordinary voting shares of Company X;
2. After the acquisition of this block of shares, he initiates the liquidation of the company;
3. Breaks the company into pieces and sells them, earning superprofits [4].

In Russia, the actions of corporate raiders at the beginning of the XXI century were somewhat different and consisted in establishing control over the assets of the company by appointing a controlled general director, after which these assets were quickly withdrawn or sold out. While the courts ruled that corporate actions with shares and the appointment of executive bodies were illegal, nothing remained in the company.

A common feature of all corporate raiders is that they are engaged in the expropriation of the well-being of the shareholders of the target company. Expropriation refers to the forced disposition or seizure of property. A corporate raider looks at some company for some time, evaluates its financial statements, number of employees, technology, management efficiency and other factors of profit. Realizing that the company is promising, the raider begins to look for buyers for various groups of assets of this company. For example, in an airline, you can separately sell a fleet of aircraft and the right to use air routes, in the steel - equipment, production facilities, stocks of finished products.
After potential buyers are identified and preliminary negotiations are held with them, the raider puts forward a tender proposal for the purchase of a large block of ordinary voting shares of the target company. After the buyback, the raider unfolds active campaigning among the remaining shareholders, aimed at changing the board of directors and management of the company. The new management chosen is under the unofficial influence of the raider and his team. After some time, controlled managers begin to urge shareholders to liquidate the company. After the start of the liquidation procedure, the most valuable assets of the company are quickly sold out, and the proceeds are sent to the raiders as liquidation payments for the shares. In the Russian Federation, it is not even necessary to start the liquidation process for the sale of assets, they are simply sold out, and the proceeds are transferred to the raiders’ accounts in the form of dividends because of the distribution of profits. If the raider is not comfortable with the dividend payment format, the funds are transferred to the accounts of persons controlled by him as payment for fictitious services, or according to fictitious loan agreements. Raiders have many options for action and not necessarily, they act as described above. In some cases, the raider is unable to obtain corporate approval for the alienation of assets from other shareholders of the company, then greenmail [5] enters into business and, as a payment for the calmness of management, the raider assigns a premium at which the company will have to redeem its shareholding.

Whatever path the raider takes, the result is always the same. Workers quit with minimal compensation, long-term relationships with suppliers and buyers are destroyed, small shareholders sell their shares on discriminatory terms, and assets are sold to a predetermined group of buyers.

In Russian reality, everything looks a little different. Often the media are of the opinion that raiders can be useful. Raiders (and they can be large corporations) in the media are exposed as teams of high-level specialists in corporate governance, management and finance. They play the role of arbiters. Seeing the ineffective asset management, they enter the share capital, inform business owners that their assets are not well managed. Then they make rationalization proposals, the process of creating benefit goes uphill, it seems that the raider is helping the company, so why can't he get a fair bonus for his help? The liquidation of the company is often explained by the fact that the previous ineffective management has brought the company to such a state that for shareholders the only way to stop incurring losses is to liquidate the company.

Another motive guides the raider. There is a widespread belief that a raider has the unique ability to find undervalued companies. He acquires large blocks of their voting shares, by his actions he eliminates underestimation and makes a profit on the growth in the value of the company's shares. This profit is a fair reward for his investment analysis efforts.

All the motives of the raiders described above end in profit, but this is not illegal and is even encouraged by the market system. So is a raider attack good news for company shareholders. When we try to assess the impact of an event on the well-being of shareholders, we take the reaction of prices as an indicator. If stock prices rise, shareholder wealth increases and vice versa.

4. Discussion
A number of studies [6] analyze the initial reaction of the American stock market to news about the acquisition of a large stake in raiders. Because of the study, it turned out that the market reaction to the described news is more than positive.

“There is no doubt that hostile takeovers are extremely harmful to the economy,” wrote Peter Drucker, guru of modern management, in 1986 [7]. Many today share this view of hostile takeovers. In accordance with it, the companies-buyers after carrying out a hostile takeover are burdened by a huge debt burden, which they often do not withstand in the future. Advocates of a different view of hostile takeovers claim that they create benefit, and the only indicator of value creation may be an increase in the value of the ordinary voting shares of the target company. If stock quotes rise during a takeover, then hostile takeovers create benefit and are useful to shareholders. For the sake of fairness, it should be noted that the only reason the current share price of the target company can be used is to determine the private benefits of the shareholders of the target, but not for the public benefits. In addition, public benefits in most cases do not coincide with private ones. In other words, stock growth reflects a simple
transfer of wealth from one group of individuals to another, so it must be recognized that the estimate given by Peter Dranker is true for most transactions called hostile takeovers.

Considering the motives of hostile takeovers, it is important to identify the ratio of friendly and hostile takeovers among the total number of M&A transactions. Concerning this issue, there is a series of empirical studies proving that there are more friendly acquisitions in the market than hostile ones. In most European countries, hostile takeovers are extremely rare, mainly such takeovers are characteristic of the American market. It is widely believed that hostile takeovers account for 70-80 percent of all transactions in the corporate control market, but this is not true.

The takeover is defined by the researchers [8] as hostile if the management of the target company publicly rejects the takeover or declares it “not agreed with the board of directors”, as well as “unfriendly”. Comparative characteristics of transactions in the American corporate control market conducted between 2009 and 2018 are shown in Table 2.

**Table 2.** Comparative characteristics of transactions in the American corporate control market conducted between 2009 and 2018.

| Description (% of the total number of transactions) | 2009-2012 | 2012-2015 | 2015-2018 |
|---------------------------------------------------|-----------|-----------|-----------|
| Payment only in cash                               | 38.3      | 45.3      | 27.4      |
| Payment only by shares                             | 37        | 32.9      | 57.8      |
| Partial payment by shares                          | 45.1      | 45.6      | 70.9      |
| Hostile takeover                                   | 8.4       | 14.3      | 4         |
| Successful hostile takeover                        | 4.1       | 7.1       | 2.6       |

From the results of the research, it is clear that only 4% of transactions were hostile, while twenty years earlier such transactions were 15%. At the peak of its popularity in the 80-90s of the 20th century, transactions designated as hostile did not exceed 20% of the total. Interestingly, according to the same study, the probability of success or failure of a hostile takeover was estimated at fifty to fifty.

Thus, the discrepancy between real data and the traditional point of view can only be explained by the fact that many acquisitions, which the public considers hostile, are not actually such. Although, even in the academic world, there is no single point of view regarding the existence of a clear relationship between friendly and hostile takeovers. It all depends on the sample used by the researchers and how they determine the hostile takeover. Only the dynamics of the market of hostile takeovers remain unchanged. Approaching modernity determines a decrease in the share of hostile takeovers in the total market. Only this converges all empirical studies conducted according to the US corporate control market [9].

In European corporate control markets, the situation varies from country to country. The UK market in terms of its development ranks second after the US and therefore has similar characteristics. Of all European countries, only in the UK do hostile takeovers often take place. However, the English market of hostile takeovers, following the American one, decreased significantly in the forty-year period. Hostile takeovers, of course, are also carried out in other European countries, but this is more exotic than usual practice. In Russia, at present, such takeovers are isolated cases.

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