

Research impact: making a difference

Contributing to post-Cadbury rule changes for UK corporate takeovers

The Law and Financial Markets Project at LSE helped drive reform that strengthened the hand of UK companies targeted for takeover

What was the problem?

In May 2010 the American food giant Kraft completed a controversial takeover of venerable British confectioner Cadbury in a deal worth an estimated £11.5 billion.

The Kraft-Cadbury deal was seen as a watershed in UK corporate takeovers, only in part because it involved the foreign acquisition of one of the nation's best-loved brands. Just a week after promising to keep Cadbury's Somerdale factory open, Kraft backtracked and said it would close the plant, which at the height of its operation employed more than 750 people. The plant was closed in 2011.

Kraft's *volte-face* over the Somerdale factory sparked an outcry over the perceived imbalance of power in the UK corporate takeover process. UK regulators and industry wanted to ensure that takeovers were more transparent and that companies targeted for takeover in the future had stronger regulatory support.

What did we do?

The Law and Financial Markets Project, based in LSE's Law Department, was established 'to explore the interactions of law, regulation, financial markets and financial institutions, principally within the EU and the UK'. It also aimed to provide LSE academics with a platform to communicate the findings of their research and to discuss their ideas with regulators, practitioners and judges.

After the Kraft-Cadbury deal, the Takeover Panel, a statutory body regulating all UK mergers and acquisitions worth more than £10,000, opened a consultation and reform process. The Law and Financial Markets Project engaged in this process via a public seminar on the Panel's consultation document. The seminar involved Panel presentations from the Deputy Director of the Takeover Panel; a partner from multinational law firm Herbert Smith; a chairman of a FTSE 100 company; and David Kershaw, LSE Professor of Law. Kershaw was a specialist in company law whose work on post-Enron regulation received the 2005 Modern Law Review Wedderburn Prize.

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Kershaw also spoke on issues of takeover reform at an event on the Consultation process organised by Herbert Smith. This event included members of the Panel, and Kershaw's presentations encouraged them to give serious consideration to the need for legal mechanisms that increased the difficulty in gaining control over UK companies.

What happened?

Following his presentations at the Herbert Smith event, Kershaw was encouraged by the Takeover Panel to submit a written response to their consultation document. As a result, Kershaw was asked to attend a meeting of senior civil servants at the Department of Business to discuss the ideas set forth in his response document.

Kershaw was asked to join the Government's Corporate Strategy Review Group, which met in December 2010 to discuss issues relating to corporate governance and takeover regulation. He was also asked to comment on a draft of the Department of Business's Consultation on the Review of Corporate Governance and Economic Short Termism, which also contributed to the Panel's process.

The Takeover Panel's subsequent reforms provided greater scrutiny for future takeover bids by requiring more information from bidders about their post-purchase intentions, particularly in areas like job cuts. These reforms were in effect during US pharmaceutical company Pfizer's failed bid in 2014 for UK company AstraZeneca, a deal valued at £69 billion.

The Law and Financial Markets Project also informed discussions of reform of the European Commission's Takeover Directive, which dealt with EU-wide standards for takeovers and mergers. Paul Davies, formerly LSE Professor of Law (now Emeritus Professor at Oxford University) and Edmund Schuster, LSE Assistant Professor of Law, together with Emilie van de Walle de Ghelcke, Principal Associate at the international law firm Freshfields, produced an empirical study on the impact of the Directive on the takeover laws of EU member states. This study was considered by the Commission as part of its 2012 review of the Takeover Directive.

Related to this issue, Kershaw along with Carsten Gerner-Beuerle, LSE Assistant Professor of Law, and Matteo Solinas, Senior Lecturer in Corporate and Financial Law at the University of Glasgow, published a paper critical of the Commission's approach to board neutrality, which allowed board members of takeover target companies to remain neutral in a bidding process. The Law and Financial Markets Group, together with the Oxford Law Faculty, held a conference to debate the issues raised by this scholarship with the individuals responsible for the Takeover Directive review and reform process.

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