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Takeover Defenses in the United Kingdom

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Abstract:

The present paper provides a framework of takeover defenses in the United Kingdom and analyzes the role of takeover defenses in the UK that has implemented the EU Takeover Directive in its jurisdiction.

There is an analysis of UK hostile takeovers and takeover defenses regulation, along with the case law that formulated it. There is a presentation of takeover defenses involving frustrating actions, such as restructuring defenses, target repurchases, litigation, as well as defensive actions, including strategies such as the defense document strategy, lobbying, seeking alternative bids, profit forecasts.

The analysis of takeover defenses in cases of hostile takeovers in the UK market aims to enhance the understanding of their application framework and to provide further insight on the way the structure of the economy influences takeover defenses and vice-versa.

It, also, intends to provide feedback for the assessment of economic processes on potential restructuring and normalization in the UK as well as the EU, especially in the light of Brexit that will likely create extensive negotiations on future policy implementation both in the UK and EU.

Keywords: *Takeover defenses, hostile takeovers, legal framework, economy structure, frustrating actions, defensive actions, restructuring, greenmail, litigation, defense document, lobbying, white knight, white squire, profit forecasts, Brexit.*

JEL Classification: *K20, K22, K23.*

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1. Introduction

Takeovers could be divided into two categories; friendly and hostile. In the case of hostile takeovers, the target board employs certain defenses, called takeover defenses, in order to obstruct the hostile takeover that may be implemented either before or after the announcement of the takeover bid.

The analysis of takeover defenses employed in hostile takeovers in the present article will be categorized in frustrating and defensive actions. The former involves acts obtained by the board that result to a material corruption of the decision-making process or to the deprivation of the right of shareholders to decide on the matter (Ogowewo, 1997).

However, there is the 'no frustration' rule that prevents the board from acquiring such defenses. The only instance where the board is permitted to use frustrating acts is when the target shareholders or the panel has given its approval for the use of such defenses, meaning that it has rejected the takeover offer (Kraakman, 2009) or when the actions frustrate only the bidder and not the target shareholders. Defensive actions on the other hand, involve acts that board is permitted to employ to influence the target shareholder with the aim to obstruct the takeover bid.

2. UK Takeover Regulation

The European Takeover Directive 2004 (Directive 2004/25/EC), which provides for the regulation of takeovers in the European Union, defines a 'takeover bid' as "a public offer…made to the holders of the securities of a company to acquire all or some of those securities…which follows or has as its objective the acquisition of control of the offer company in accordance with national law" (Article 2(1)(a) Takeover Directive 2004).

The 2004 Directive has been implemented in the UK with the UK Takeover Code via the Companies Act 2006. The UK Takeover Code involves the regulation of takeovers, as well as takeover defenses in the UK which are the focus of this paper. Rule 21.1 of the UK Takeover Code sets the framework for frustrating actions which are taken after the announcement of a takeover offer is made public or when the offer is imminent and are not permitted without the approval of the shareholders. The UK Takeover Code also, regulates defensive actions taken by the board, which can be employed in order to obstruct a takeover bid.

3. Frustrating Actions

3.1. Rule 21 UK takeover code

According to Rule 21.1, the board of directors of the target company is not allowed without prior shareholder approval to employ defenses that can frustrate the takeover bid or deprive from the target shareholders their right to decide in relation to the merits of the bid. It is the 'no frustration rule' or 'neutrality rule' and is supported also, by General Principle 3 of the UK Takeover Code that states that target shareholders have the right to decide on the merits of a takeover offer. The triggering point for the adoption of defenses is when there is evidence to believe that a takeover offer is imminent or after the announcement of the bid.

There are also, limited circumstances in which approval could be given by the panel. These limited circumstances are found in Rule 21.1 of the UK Takeover Code, where it is stated that if there is a doubt as to whether a takeover defense falls within Rule 21.1 prohibition, the Panel should give advice on the matter beforehand. Moreover, advice should be given by the Panel in the situations referred to in Rule 21.1. A) and B). The former, i.e. Rule 21.1(A), refers to takeover actions that involve a contract which had been entered earlier or a 'pre-existing obligation'. The latter i.e. Rule 21.1(B), involves a decision to employ a specific takeover action which had been taken before the period mentioned in Rule 21.1(A). This action was either completed fully or partially before the period in Rule 21.1(A) or was not completed but is part of ordinary course of business. In the circumstances, the Panel should give its own approval without requiring consent from the shareholders in a shareholder meeting.

Rule 21.1(a)-(b) provides a non-exhaustive list of takeover defenses that the board of directors is not allowed to use without the permission of the shareholders. In particular, Rule 21.1(a) prohibits defenses that will frustrate a possible takeover offer, or an offer already made by a bidder, as well as any actions that will not give shareholders the opportunity to decide on the merits. Rule 21.1(b) prevents more particular type of actions that cannot be taken if the shareholders have not given their approval. Rule 21.1(b)(i) prohibits the board from issuing, transferring, selling or purchasing any shares, including shares of the company, (ii) contains the same rules but for unissued shares, (iii) prevents the creation or issuing of securities that could be converted later into shares, (iv) forbids the sale, acquirement or disposal of a material amount of the target company's assets, and (v) does not allow the board to enter into contracts that are outside of the ordinary course of business. Also, the Notes on Rule 21.1 of the UK Takeover Code provide further guidance in relation to the prohibitions on takeover defenses. Therefore, under UK law the target board of directors is not permitted to take any defenses that would frustrate a takeover offer if the shareholders or the panel has not given approval beforehand.

A landmark decision is *Kraft – Cadbury* case (Case No COMP/M.5644), which resulted in the acquisition of Cadbury by Kraft and led to a lot of criticism that UK Takeover law permits a high chance of hostile takeovers to succeed. As a result, the UK Takeover Panel prepared a consultation report which was later implemented into reforms in the Takeover Code in September 2011. The reforms had as their primary aim the enhancement of powers of the target company when faced with a takeover offer (Clerc, 2012). Additionally, the reforms included the ability of the target board to offer its view on the takeover bid and it should receive impartial advice when deciding. More disclosure was also, considered as an additional element in the reform process. Although the Kraft – Cadbury case was heavily involved in the political background, it resulted in the aforementioned important changes to the UK takeover law.

3.2. Restructuring defenses and target repurchases framework

Restructuring defenses (changes to the assets of the company) are takeover defenses used to frustrate a bid and they are considered corporate actions; acts which result to an actual alteration of the company's securities. They are defenses that require prior shareholder approval. This category of defenses includes several corporate restructuring methods, such as sale of crown jewels, privatization, defensive acquisition and liquidation (Johansson and Thortensson, 2008). The mechanism in which the stock of the company is altered and thus, the takeover bid is frustrated is examined below.

To begin with, the crown jewels defense involves the sale of the most valuable assets of the target company (Zarin and Yang, 2011). In particular, the target company owns important and high valued assets and divisions. The bidder company has researched the target company, has identified these valuable assets and then commences a hostile takeover because it is interested in their acquisition. In response, the target company employs the crown jewels defense and sells its important assets and divisions to make the company less attractive to the bidder. Since the assets are no longer property of the target, the bid has been frustrated and the bidder is no longer interested in pursuing a hostile takeover for the acquisition of the target.

The target company can sell its assets either to a third party or to a white knight (Zarin and Yang, 2011). The latter is a friendly company and gives the option to the target company to acquire back its shares at a price agreed beforehand when there is no longer the threat of a takeover. A 'sale and lease-back agreement' can also, be implemented in this case (Johansson and Thortensson, 2008).

Although the crown jewels defense is an immediate response to a hostile takeover and can obstruct the bid, it is also associated with risks (Zarin and Yang, 2011). Firstly, the target company by selling its valuable assets, it might receive high amounts of cash in return. This might make the target company even more attractive towards the bidder, hence the purpose of the crown jewels will have been defeated. A solution could be to use the profit made to finance other takeover defenses, for instance special dividends to shareholders. Another risk is that if the target company decides to sell its assets to a friendly white knight, it has to be certain that it will buy them back. Detailed agreements should be drafted, stating the terms of the lease of the assets and their re-acquisition price.

Nonetheless, the crown jewels defense is a strategic and rapid response to an imminent takeover and its risks could be challenged by carefully drafted agreements and by carefully employed techniques after the sale of the crown jewels.

Furthermore, another method included under corporate restructuring defenses is privatization (Tachmatzidi, 2017). It involves the conversion of a public company to private and thus, its shares cannot longer be traded on the stock market as such (Johansson and Thortensson, 2008). This method is very successful because the directors can retain their positions and the shareholders make a profit from the premium received. However, to avoid unfair treatment and lawsuits from certain shareholders, the premium paid needs to reflect a considerable to the existing market price.

There are two more corporate restructuring defenses that are used in situations of imminent takeovers; the defensive acquisition and liquidation (Johansson and Thortensson, 2008). The former involves actions that reduce borrowing, as well as exaggerations in cash balances. Liquidation is used as an ultimate corporate restructuring method and brings the company to an end, as it stops trading and its assets are liquidated. Additionally, this defense includes the creditors' pay off as well as the 'liquidation premium' payment to the shareholders. Though, liquidation of the target company is employed only in situations where the liquidation premium paid is higher than the premium that the bidder offers (Johansson and Thortensson, 2008).

Another takeover defense that requires prior shareholder approval is target repurchase or otherwise called 'greenmail' (Zarin and Yang, 2011) and involves the target company buying back its shares from the bidder company at a premium which is more than the price currently on the market (Shah, 1996). The premium is of significant nature and is paid in exchange of a standstill agreement. According to this agreement, the bidder is prohibited from acquiring shares from the target company for a specific time period. If such an agreement is not made, greenmail will not have any positive effect for the target company and the bidder will most likely make a takeover bid again (Johansson and Thortensson, 2008). The aim of the greenmail defense is to frustrate the bid with the ultimate result of obstructing a hostile takeover attempt (Stokka, 2013).

Greenmail is an effective defense against bidders that are interested in short-term profits. This is because bidders are induced from the high premium paid by the target company to re-acquire its shares (Zarin and Yang, 2011). In contrast, target repurchases are not very effective against bidders that aim for control of the target and long-term profits.

A disadvantage of target repurchases used as takeover defenses is that they might create an agency problem (Shah, 1996). Since the aim of a company is increase of its wealth and the directors are acting as agents for the shareholders, the directors should perform actions that aim to increase shareholder profits. However, greenmailing benefits the directors since they manage to obstruct a takeover and retain their job positions. This theory is referred to as 'Management Entrenchment' (Engle, 2007).

In contrast, because the premium surpasses significantly the current market price (Johansson and Thortensson, 2008; Nenkov, 2016; Theriou, 2015; Lyasnikov *et al.*, 2017), target repurchases might not benefit the shareholders whom are not able to pay the premium price for the shares, resulting to unfair treatment (Hanly, 1992). Because directors are willing to pay an extremely high price to keep their jobs, some shareholders cannot afford it. Therefore, the interests of the directors might conflict with those of the shareholders, creating an agency problem. In any case, conflict of interest between managers and shareholders should not be an obstacle for the activation of greenmail defense (Engle, 2007). There are other governance and monitoring strategies shareholders can employ in order to protect the suppression of their own interests created by premium payment.

The recent years there has been a decrease in usage of this takeover defense because of the tax imposed on capital gains and a few corporations have also, inserted provisions against greenmailing in the company's constitution (Bruner, 2004).

Restructuring defenses and target repurchases are considered as frustrating defenses because they can materially corrupt the decision-making process and can deprive from the shareholders the right to decide on the merits of the offer. Therefore, they are prohibited under Rule 21.1 (b) of the UK Takeover Code if there is no shareholder approval. Moreover, if these two defenses are taken without shareholder approval, they might be considered as a breach of fiduciary duty from the directors. Moreover, under the UK Listing Rules 10.5.1, shareholder approval may be required for major transactions.

3.3 Litigation framework

Takeover litigation is another possible frustrating defense the target board of directors might use, if it has obtained prior approval from the target shareholders. Tactical litigation, also called obstructive, is employed before a takeover contest, simultaneously with it, or after it, and it does not involve ruling on significant legal matters that have arisen between the claimant and the defendant (Ogowewo, 2007). It aims to impede or completely block a hostile takeover offer (Underhill and Austmann, 2002).

Litigation involves several actions such as, 'restraining orders', 'legal injunctions', 'antitrust litigations' or 'filling a law suit' (Zarin and Yang, 2011). While the hostile bidder tries to prove that the takeover is legal, the board takes advantage of the time to adopt another defense and obstruct the bid. The board can also, negotiate with the bidder and make an agreement that the target shareholders will receive make higher profits from the takeover and in return, the target company will cease the litigation proceedings (Zarin and Yang, 2011). Furthermore, litigation as a defense might lead to the strengthening of the shareholders opposition towards the acceptance of the bid, since they might consider that the bidder has other motives than the ones shown and for instance, is only interested in the acquisition of the targets' assets. Tactical litigation can also, result to the hostile bidder disclosing the strategic plan that will be employed in a case of a successful takeover. If the plan is not in accordance with the targets' plan, it can provide the board a strong defense against the bidder.

Litigation could be brought as a defense before a Court. However, a body of case law discussed below, proves that Courts are unwilling to interfere with a takeover, thus the board will most likely not bring the case to the Court. The European, as well as the Competition Commissions could also, deal with tactical litigation (Stokka, 2013). Nevertheless, if the sole reason for referring it to the Commission is for the delay of the takeover process, it will not affect it significantly.

The definition given by United Kingdom's Department of Trade and Industry (DTI) is that tactical litigation is legal proceedings taken by bidding parties with the aim to frustrate or obstruct a takeover offer or a defense towards the offer (Department of Trade and Industry, 2005). However, there are two ways in which tactical litigation can be discussed; one in relation to Rule 21.1 of the UK Takeover Code and one that does not engage it (Ogowewo, 2007). As a result, there has been a debate whether litigation should be considered frustrating or not. According to *Consolidated Gold Fields* (The Takeover Panel [1989/7]), litigation will engage Rule 21.1 if the target board of directors is the one to commence litigation and the target shareholders will be frustrated as a result. This is based on both objective and subjective examinations and it usually involves a corruption in the decision-making process or a deprivation of the shareholders' rights to decide on the takeover bid. Though, only the target board is responsible to follow the requirements of Rule 21.

On the other hand, tactical litigation that does not engage Rule 21.1 is litigation that has received prior approval by the target shareholders and does not frustrate the target shareholders, such as the litigation that took place in *Marks and Spencer Plc v Freshfields Bruckhaus Deringer* ([2004] EWHC 1337, Ch.) case. Hence, tactical litigation can have both a frustrating and non- effect on the target shareholders depending on their prior authorization.

A disadvantage of litigation is that there are costs associated with it (Ogowewo, 2007). Firstly, the hostile bidder suffers from delay costs from the underwritten shares, since the target board tries to delay the takeover process by using tactical litigation and since the cost from underwriting shares in the marketplace is based on the amount of time that these shares are underwritten. Other costs occurring due to tactical litigation are social costs that involve court and compliance costs, as well as costs relating to the justice system and the parties in the litigation case.

Tactical litigation also, has a negative impact on the market for corporate control (Ogowewo, 2007). If the target board succeeds and the hostile bidder revokes the offer, the shareholders of the target company face a big amount of loss of profit. As a result, there is a decrease of the market's disciplinary nature. Another disadvantage of

litigation is that it has not been proven efficient towards bidders that invest in the long-run (Zarin and Yang, 2011).
On the contrary, there have been studies that prove that tactical litigation is successful for the target company resisting a hostile takeover (Ogowewo, 2007). A study states that considering 45 hostile takeovers, most of them, in particular 39, where unsuccessful for the bidder due to the employment of litigation from the target, besides other defense strategies used (Ogowewo, 2007). The effectiveness of tactical litigation can also, be a maximization of the profit of the target shareholders (Ogowewo, 2007). This is because litigation produces delays to the takeover process and this allows other bids, which might be more profitable for the target, to be made. Studies have proven that more than 75% of companies that have employed litigation as a defense have been acquired for a much higher bid (Ogowewo, 2007).

Despite the several costs that go along with tactical litigation, it is a technique that helps the target company delay the takeover process, thus creating a bidding contest and giving more time to the target for other defenses to be employed as well, often resulting to profit enhancement of the target board and shareholders.

4. Defensive Actions

4.1. Defense document framework

Rule 25.1(a) of the UK Takeover Code requires the target company to issue a circular which is considered as a defense document when the takeover is hostile. This action needs to be done usually within 14 days of the announcement of the bid and it is issued to all target shareholders and people with information rights equally (Stokka, 2013). Furthermore, the pension scheme trustees and the representatives of the employees should also, have access to the circular (UK Takeover Code, Rule 25(1)(a)). According to Rule 25.2, the defense document must contain the target board opinion for the takeover offer, as well as the board's view on the results the takeover offer will have if it occurred. It should also, include the strategic plan of the hostile bidder and the consequences it might have on the target company. Under Rule 25, the target board is required to distribute information equally to all the shareholders.

There are some additional legal requirements that are needed to be complied with when the target board issues a defense document (Stokka, 2013). Rule 19 of the UK Takeover Code states that any published documents need to be drafted with due consideration and care. It requires that the documents need to be correctly and excellently drafted with a fair and sufficient presentation of all the relevant information. Notes to Rule 19.1 include more specifications such as responsibilities for financial advisers and requirements for sources, quotations, diagrams and other media usage. Another requirement is Rule 23.1, which states that the target shareholders have the right of access to adequate information in relation to the takeover offer, as well as advice in order to assist them to make an appropriate consideration of the advantages and disadvantages of the takeover offer.

An interesting case is the unsuccessful attempt of NASDAQ Stock Exchange to takeover London Stock Exchange (Brennan, 2010). There were two hostile bids made, but they were heavily fought. NASDAQ claimed that the defense document issued by LSE had misleading statements. However, LSE's shareholders did not accept the takeover bid, as they were not convinced with the hostile bidders' arguments and the takeover price of the second hostile bid was not increased compared to the first one. As a result, the hostile takeover was not successful.

4.2. Lobbying framework

Another defense strategy is that the board can use the competition authorities in order to lobby for appeal (Shearman and Sterling LLP, 2015/16). It can be employed by the board of directors and prior shareholder or panel approval is not required.

The purpose is to notify the competition authorities and generally the marketplace about possible unfair competition matters (Kraakman, 2009). Furthermore, the board can lobby to the media and to financial analysts, which is crucial when a hostile takeover involves a foreign company attacking a national company because stronger support will be promoted for the national company through the media and the financial market (Stokka, 2013). Therefore, the board of directors tries to influence the shareholders, the relevant authorities, as well as the general public, that the takeover offer made by the bidder is not fair according to the standard rules of competition in the marketplace.

In *BAT Industries* (The Takeover Panel [1989/20]), it was held that lobbying is not considered as frustrating action. Hoylake Investments Limited ("Hoylake") made an offer to B.A.T. Industries p.l.c. ("BAT") for the latters' share capital. BAT also, owned indirectly Farmers Group Inc ("Farmers"), which was a US company, and since the offer included regulatory approvals, these needed to be also obtained by Farmers' State of operation. There was extensive lobbying involved by BAT and Farmers in the United States and Hoylake claimed that the BAT board was frustrating the takeover bid through this process.

However, the Panel stated that lobbying does not directly obstruct the takeover bid (The Takeover Panel [1989/20]). Additionally, counter lobbying is permitted, which proves that lobbying is a process that aims for both sides of the argument to be presented in order to make a considerate decision on the takeover offer. Therefore, it was held by the Panel that the actions by BAT and the Farmers of lobbying in the United States people of public influence such as politicians and others that can have an influence on the takeover offer did not frustrate that takeover bid. Nonetheless, it should be borne in mind that such extensive lobbying might not be consistent with the decision of the UK to opt for a mandatory board neutrality rule, thus if such extensive lobbying occurred in the UK, it might have been considered as frustrating (Ogowewo, 2007).

4.3. Seeking alternative bids framework

The target has an option to seek for alternative bidders which will be friendly and will cooperate with the current board of directors; White Knights and the White Squires (Stokka, 2013). These competing bidders are used as takeover defenses that do not require shareholder or panel approval for the target board to employ them. The reason is because they are not considered corporate actions, meaning that their usage does not result to an actual and material change in the company’s stock. Thus, they are not frustrating actions.

To begin with the White Knight defense, it is considered a friendly, to the target, company or individual that is approached by the board of directors and requested to assist with the obstruction of an imminent hostile takeover by making a counter bid and defending the target company against the hostile bidder (Johansson & Thortnsson, 2008). This bid has to out-bid the original offer of the hostile company for the threat of the hostile takeover to be removed. The justifications for using a White Knight vary from excellent previous cooperation with a company, friendly relations, mutual trust and negative stance towards dismissals (Zarin and Yang, 2011). Furthermore, the White Knight may be chosen because of the agreement on offer; the target company will not be divided, not sold separately and/or the board of directors will retain their jobs in the new company (Johansson and Thortensson, 2008). The White Knight defense is considered as one of the most effective strategy against hostile takeovers.

Despite the benefits of using the White Knight as a takeover defense, there are risks and disadvantages associated with it (Johansson and Thortensson, 2008). Firstly, instead of keeping the independence of the target company, the White Knight takes control and overtakes the company (Zarin and Yang, 2011). This can lead to adverse to the purpose of the defense results. An example is ‘Lady Macbeth strategy’, which involves the White Knight acquiring the target company and later, selling the shares to the hostile bidder (Johansson and Thortensson, 2008). Thus, the target is eventually acquired by the hostile bidder due to the cooperation of the White Knight with the initial bidder. The risk stems from the basic problem of finding and cooperating with a trustworthy White Knight (Zarin and Yang, 2011).

Another disadvantage is that the shareholders of the White Knight might be deprived from profits due to the pressured acquisition of the target company and the possible short-term only plan for management of the target company (Shah, 1996). The board of directors of the target might also, not be able to support a strong defense document, since it includes arguments in favor of the independency of the target, and the board is already seeking another bidder (Stokka, 2013).

The White Squire is a similar defense to the White Knight, which involves a friendly company acquiring a significant block of shares from the target company, as opposed to the White Knight which the friendly company acquires the target (Johansson and Thortensson, 2008). This block of shares is called ‘corner’. By buying the corner in the target, the White Squire has an important position in the company and has the power to vote against the hostile takeover. Hence, it cooperates with the target board and obstructs the imminent takeover. There are agreements signed which state requirements and benefits for each party involved; the White Squire might be prohibited from selling the acquired shares and in exchange, it is promised a position on the target board, a dividend or a reduced price on the block of shares.

The White Squire defense faces similar problems to the White Knight defense that were mentioned earlier. Finding a trustworthy White Squire that will not reverse its role and help the hostile takeover is a difficult process. However, a White Squire can also, be produced through funds from institutions, for instance investments funds and banks, which are considered as important and helpful White Squires (Zarin and Yang, 2011).

The aforementioned defenses do not fall under Rule 21.1 of the UK Takeover Code, because they are not considered corporate actions; no alteration in the stock of the company occurs and the target shareholders are not deprived of their rights (Stokka, 2013). Hence, the target board can employ them in a case of a hostile takeover.

However, the target must comply with certain provisions of the UK Takeover Code in relation to disclosure requirements and competing bids when using this type of defenses (Stokka, 2013). Firstly, fair competition needs to be protected, thus Rule 20.2 states that the target board has the duty, if requested, to give the same amount of information to the hostile bidder as the information given to the white knight. Secondly, there are requirements relating to competitive bidding contests, according to Rule 32.5; where bidding competition is still ongoing in offer's subsequent phases, the final bid revisions need to be stated 46 days after the official announcement of the competing bid. However, offer revisions are allowed to be brought as a counter-offer to the aforementioned revision.

4.4 Profit forecasts framework

Profit forecasts are another way for the target board to influence the shareholders negatively against the takeover bid and they are regulated by Rule 28 of the UK Takeover Code. In particular, Rule 28.1(a) requires that if, without Panel consent, the target company issues a profit forecast, it needs to include a report from the targets' accountants that the forecast has been issued according to the target's official accounting procedures (UK Takeover Code, Rule 28.1(a)(i)). Another report from the targets' financial advisers is also, required stating that the forecast was produced responsibly (UK Takeover Code, Rule 28.1(a)(ii)).

Moreover, Rule 28(b) states the profit forecast to be repeated according to Rule 28.1(a)(i) and (ii) requirements, if the target company had produced another forecast when it received a takeover bid but before the start of the offer period. If however, the target company had published a forecast before a takeover offer was made, any document which was issued during the offer period and contained a reference to the forecast has certain requirements according to Rule 28.1(c). The document needs to repeat the forecast and contain directors' confirmations in relation to the validity or the document to contain a director statement that the forecast is invalid and provide reasons or the document to contain a new forecast according to the requirements of Rule 28.1(a)(i) and (ii).

'Profit forecast' encompasses a wide definition, because even if the word 'profit' is not mentioned or there is no figure stated, it can be included under Rule 28 as 'profit forecasts (Ogowewo, 2003). Furthermore, *Vantona Group Ltd/J. Compton, Sons & Webb* (The Takeover Panel [1978/13]) held that it is not necessary for the statement made by the board to be during the offer period for it to be considered as a profit forecast. In *Guinness plc/The Distillers Company plc (*[The Takeover Panel [1986/11]) it was also, stated that if the person making the statement claims that it is not a profit forecast, his declaration is irrelevant; it is still treated as a forecast.

It is crucial to regulate profit forecasts, because if there is a misleading statement, it could influence negatively the decision-making process of the target shareholders (Ogowewo, 2003). Consequently, it would be a frustrating action, thus prohibited by Rule 21.1.

5. Conclusions, Proposals, Recommendations

The UK has regulated takeovers and the relevant takeover defenses with the UK Takeover Code that has implemented the EU Takeover Directive via the UK Companies Act. The board of directors of the target company is able to employ takeover defenses in a potential hostile takeover. According to their characteristics, these defenses can either be frustrating or defensive actions and include defenses such as restructuring defenses, target repurchases, litigation, defense document strategy, lobbying, seeking alternative bids and profit forecasts.

Since takeover defenses are heavily regulated in the UK economy, the directors and shareholders of both biding and target companies, usually are aware of what to expect regarding a possible takeover or takeover defenses respectively. Within this framework, the regulation of the economic processes and market structure avoids upsetting events and provides a secure economic environment.

However, considering the Brexit processes, the present paper aimed to provide the existing framework of takeover defenses. There is a possibility for significant changes on the existing UK Takeover Code and an extensive consideration both in the United Kingdom and the European Union that may require extensive policy consideration and implementation.

Takeovers and takeover defenses operate on an economic structure that has specific market characteristics. The European Union attempted to harmonize the economic regulation and issued the relevant Directive on takeovers. Within this framework, takeover defenses are significantly affected by the structure of the economy in which they operate. It is suggested that future research could study the application of takeover defenses in economies of different structure or scale and examine the interplay of influence between economy and takeover defenses.

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