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Defensive Tactics

In Hostile Takeovers

Master thesis within Corporate Finance

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Sammanfattning

Bakgrund: Fusion, förvärv och företagsuppköp har varit en del av affärsvärlden i århundraden. I dagens dynamiska miljö, står företag ofta inför olika beslut angående detta. De flesta företagsuppköp kan förknippas som vänliga och uppkommer när ledningsgrupperna av två företag tillsammans kommer överens om en uppgörelse. Men långt ifrån alla företagsuppköp är vänliga och har ädla förhandlingar, vilket gör att företag vill använda sig av olika försvarsstrategier för att undvika fientligt företagsuppköp. Ett exempel på detta ämne som är högaktuellt; är företaget Skandia AB. De försöker, just i skrivande stund, att undvika företagsuppköp från företaget Old Mutual PLC och använder sig därmed av olika försvarsstrategier.

Syfte: Syftet med denna uppsats är att beskriva och analysera försvarsstrategier genom att använda fallstudier, för att utforska vilken försvarsstrategi de utvalda företagen har använt sig av och att även undersöka effekten av deras val.

Metod: För att nå en djupare förståelse i det valda ämnet så har författarna bestämt att använda sig av tre fallstudier som kommer att framhävas för att undersöka olika fientliga företagsuppköp och de försvarsstrategier som används av de utvalda företagen från empirin.

Resultat: En sammanställning av de utvalda fallstudierna visar att shark repellent är den mest frekvent använda försvarsstrategin i de utvalda företagen. Dessutom, försvar som poison pills, white knight, standstill agreement, crown jewels och parachutes är också använda i fallstudierna och många av dem är använda i kombination med andra försvarsstrategier. Med fallstudierna som en grund i denna uppsats, kan författarna komma fram till att ett företags försvarsstrategier kan leda till ett förebyggande av fientliga företagsuppköp eller en märkbar ökning av priset på budet.

Master's Thesis in Corporate Finance

Title:	**Defensive Tactics**
Authors:	**Jennie Berggren and Carina Engström**
Tutor:	**Gunnar Wramsby**
Date:	**2006-01-09**
Subject terms:	**Merger, acquisition, hostile takeover, defensive tactics**

Abstract

Background: Mergers, acquisitions and takeovers have been a part of the business world for centuries. In today's dynamic economic environment, companies are often faced with decisions concerning these. Most takeovers can be referred to as friendly and occur when the management of the two firms works out an arrangement that is agreeable from both sides. But far from every takeover involves friendly transactions and noble negotiations, which will in turn make firms be willing to use defensive tactics to avoid these hostile takeovers. One example that in this topic is highly topical is the company Skandia AB that is at the moment trying to avoid a takeover and uses defensive tactics towards the company Old Mutual PLC.

Purpose: The purpose of this thesis is to describe and analyze different defensive tactics by conducting case studies, in order to find out what kind of defensive tactics selected companies have applied as well as investigate the effectiveness of their choice.

Method: To reach a deeper knowledge in the chosen subject the authors have decided to use case studies that will be carried out to investigate different hostile takeovers and the defensive tactics that is used by the chosen firms in the empirical part.

Result: A compilation of the conducted case studies shows that shark repellent is the most frequently used defensive tactic in the chosen companies. Moreover, defenses like poison pill, white knight, standstill agreement, crown jewels, and parachutes are also used in the case studies and many of them are used in a combination of other defensive tactics. On the basis of the case studies conducted in this thesis, it can be established that when a target firm takes defensive action this will lead to prevention of a takeover or a noticeable increased amount of money concerning the bid.

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1 Introduction

This master thesis is written within corporate finance and the authors have chosen to focus on defensive tactics in hostile takeovers. This chapter will begin by providing the reader an introduction to the subject of interest by presenting a background that directs to the problem discussion and to the purpose of the thesis.

One bid that is currently highly topical today is the hostile bid from Old Mutual PLC, which is trying to takeover the Swedish company Skandia AB. The fight between Skandia and Old Mutual started in the beginning of September 2005 and is, until this day, still continuing. Skandia is still stuck out, but how are they defending themselves from Old Mutual? Old Mutual is absolutely determined to acquire Skandia and have increased their bid several times. But for a company like Skandia, what sort of defense tactics are there to implement? In this master thesis a numerous defensive tactics will be presented.

1.1 Background

Mergers, acquisitions and takeovers have been a part of the business world for centuries. In today's dynamic economic environment, companies are often faced with decisions concerning these actions and through this a firm can develop several competitive advantages and also increase the shareholder value (Ross, Westerfield & Jaffe, 2005).

The phrase mergers and acquisitions (M&A's) refers to an aspect of corporate finance concerning merging and acquiring of different companies. Usually mergers occur in a friendly manner where executives from the respective companies participate in a due diligence process to ensure a successful combination of all parts.

On the other hand, acquisitions can happen through a hostile takeover attempt by purchasing the majority of outstanding shares of a company in the open stock market. In the United States, business laws vary from state to state whereby some companies have limited protection against hostile takeover (Wikipedia, 2005). The term takeover is broadly defined by both corporate and securities law. It is considered to be an offer to all shareholders to purchase shares of a target corporation, where the acquirer, if successful, will obtain enough shares to control the target company (Mason, 2006).

Corporate takeovers are currently gaining popularity. In the last decade the frequency as well as the value of the recorded takeovers far surpassed those of any other era in history. The motivations underlying acquisitions are ranging from the potential revenue stability of diversification, to the cost-savings of economies of scale, to the ego-oriented desires of business leaders to own a whole empire (Mason, 2006).

Most takeovers are referred to as friendly, and occur when the management of the two firms works out an arrangement that is agreeable from both sides (McKenzie, 1998). But far from every takeover involves friendly transactions and noble negotiations, which will in turn make firms be willing to use defensive tactics to avoid these hostile takeovers (Ross et al., 2005).

There are many reasons why mergers have been increasing. Many companies are good purchases because of their stock are priced below the value of their assets. Another reason for the growth is that a purchase of a company is often much cheaper than building a whole new business (Hennessy, 1988). Today, mergers and acquisitions are an integral part of many organizations' long-range growth strategy. When firms begin to make unfriendly or less desirable overtures the reaction is to put together a defensive plan (Marken, 2005).

The target company has several methods of defensive tactics to avoid a takeover if desired (Wikipedia, 2005). If the case in point is in fact hostile this is of great importance. There are several defensive tactics that can be used by the target-firm to resist unfriendly takeover attempts, which will be presented in this thesis.

1.2 Problem discussion

Today a considerable number of takeover attempts are not successfully completed. When it comes to hostile takeovers a reason for this can be not having an effective raid strategy enough but can also be explained by effective defensive tactics by the acquired firm.

What is defensive tactics and when/how can firms use this?

There are many different defensive tactics that a firm can use, and it is not easy to know how and when to use them. Having the theoretical part as a foundation of knowledge, the authors want to get a deeper understanding within the field of mergers and acquisitions. When a company becomes a target for a takeover, they have to have some sort of defensive tactic to overcome and not be acquired.

Is it possible to identify the different techniques, used by the selected firms, and is it possible to establish and motivate the choice of defensive tactics used?

The authors are going to use these research-questions above through the thesis to reach the purpose.

1.3 Purpose

The purpose of this thesis is to describe and analyze different defensive tactics by conducting case studies, in order to find out what kind of defensive tactics selected companies have applied as well as investigate the effectiveness of their choice.

2 Method

This chapter describes how the authors have carried out this thesis and to motivate the case studies of their choice. This chapter will end up with some discussion about the reliability and validity of the thesis.

2.1 Theoretical starting points

The chosen method should be chosen in consideration with the purpose that needs to be fulfilled as well as the research questions. Choosing method alternative leads directly to consideration of the relatively strengths and weaknesses of qualitative and quantitative data (Patton, 2002) and it is, according to Holme and Solvang (1997), very important to be able to differ between the qualitative and the quantitative methods. Since qualitative and quantitative methods involve differing strength and weaknesses, they constitute alternative, but not mutually exclusive, strategies for research (Patton, 2002).

In this thesis, the authors have chosen to focus on the qualitative approach. Holme and Solvang (1997) describe the mainly difference between qualitative and quantitative approach and it is explained by the use of statistics and the use of numbers as well as the closeness of the investigating objects. Since the authors do not use neither number nor statistics in the case studies, the authors believe that the qualitative approach has preference.

2.2 The thesis' frame of reference

To be able to get a deeper understanding in the chosen topic as well as to get a good foundation to be capable of conducting an analysis of the case study a wide range of literature studies have been carried out. The authors have searched for relevant theories which have involved both American and English literature in the library of the university as well as the e-resources that is available on the website. Swedish literature was not easily found which can be explained by historical facts. The number of hostile takeovers has been significantly higher in America and England compared to Sweden which naturally will be reflected in carried out researches.

The authors have summarized the obtained knowledge which they present in the frame of reference. In this presentation the authors have tried to use many different resources to be able to give a balanced picture and to enrich the presentation as much as possible.

Databases that have been used are mainly ABI/Inform Global, that the authors have access to on the webpage to the library on Jönköping University. Many words have been used to search information about the topics of this thesis. The most common ones are: merger, acquisition, hostile takeover, and defense tactics. The separately tactics have also been used.

2.3 The case studies

To reach a deeper knowledge in the chosen subject case studies will be carried out to investigate different hostile takeovers and the defensive tactics that is used by the chosen firms in the empirical part.

According to Stake (1995), the presentation of the case studies is qualitative through conducting a deep analysis of a small case and concentrated the analysis on the defensive tactics that have been used in the attempt to a hostile takeover. To increase the understanding the authors have described the actual circumstances which are typical for the qualitative approach. The authors have also used source analysis in this thesis. In research and case studies it is necessary to adopt a critical attitude towards all kinds of sources. The authors tend to be biased, and have selected sources with high credibility. By carefully analyzing the collected data, with attention to issues of validity and reliability, the authors' ambition was to select as trustworthy material as possible. It is sometimes claimed that case studies tend to be subjective and biased (Stake, 1995, p.7). Stake (1995) claims that the credibility of qualitative study is especially dependent on the credibility of the researcher, because the researcher is the instrument of data collection and the center of the analytic process. Thus the researcher's task is to explain his valuations and beliefs in selecting data, so that the reader has greater possibilities to form an individual opinion of the selection and use of sources.

2.3.1 Credibility of case studies

One of the barriers to credible qualitative findings comes from the suspicion that the analyst has shaped findings according to predispositions and biases. Even if this may not be conscious or intentional it is important to counter such a suspicion before it takes root. To be able to report that a systematic search for alternative themes, divergent patterns, and rival explanations has been engaged enhances credibility. This can be done both inductively and logically. Inductively involves looking for other ways of organizing the data this might lead to different findings (Patton, 2002, p. 553) which the authors consider they have used in this thesis to draw general conclusions from one individual case.

2.3.2 Choice of case studies

A case study has a variety of data collection techniques (Yin, 1994, p.8). Since finding cases concerning hostile takeovers have been hard the authors did not have many cases to choose from. One way that could be a way to find different cases was on the Harvard Business School homepage. On their homepage it is possible to buy cases and the authors found a few cases about hostile takeovers. These cases where however often split into three peaces, more or less, and every peace cost. Every case costs about $20-25, and since the authors have limited economy this was not an option. The authors instead found the homepage www.ssrn.com, which stands for Social Science Research Network. On this page it is possible to find different cases from different school, some of them for free and some of them for the publisher's fee, 3.5 dollars, for a whole case. On this homepage the authors got hold of three different cases about hostile takeovers.

3 Frame of reference

Chapter 3 will give a description of mergers and acquisitions. It will also give a comprehension of takeover and hostile takeover. The chapter will end up with different defensive tactics that target firms can use to defend themselves from hostile takeovers.

3.1 Mergers and acquisitions

The most dramatic or controversial activity in corporate finance is the acquisition of one firm by another firm or the merger of two firms (Ross et al., 2005). The fundamental role of mergers and acquisition activities is to enable firms to adjust more effectively to new challenges and opportunities. If this is done efficiently this may not only increase market shares and revenues, but also improve profitability and enhance enterprise values (Weston, 2001). The number of mergers and acquisitions continue to grow exponentially. This phenomenon is now taking place in countries throughout the world and has become one of the most important corporate-level strategies in the new millennium (Hitt, 2001, p. 10).

The acquisition of one firm by another is an investment that is made under much uncertainty and can be made in several different ways (Ross et al., 2005). A firm is a prime acquisition target when the value of its shares does not fully reflect the potential value of the business (Weston, 2001). The basic principle of valuation is that a firm should be acquired only if it generates a positive Net Present Value (NPV) to the shareholders of the acquiring firm, even if this can be difficult to determine (Ross et al., 2005).

When a firm acquires another it must choose the legal framework, the accounting method, and the tax status. This can be a bit complex when one firm is acquired by another and will be explained below (Ross et al., 2005).

3.1.1 Three legal forms of acquisition

There are three basic legal procedures that one firm can use to acquire another firm:

- *Merger and consolidation*
  From a legal standpoint this is the least costly alternative to arrange. On the other hand it requires a shareholder vote of approval.

- *Acquisition of stock*
  This is done via a tender offer and does not require a vote from the shareholders. To get a 100-percent control is very difficult to obtain with a tender offer.

- *Acquisition of assets*
  This form of acquisition is comparatively costly in view of the fact that it requires more difficult transfer of asset ownership (Ross et al., 2005).

3.1.2 Benefits from acquisition

The benefits from acquisitions are called synergies which on the other hand can be a bit difficult to estimate using discounted cash flow techniques (Ross et al., 2005).

According to Ross et al. (2005), possible benefits can be:

- Revenue enhancement
- Cost reduction
- Lower taxes
- Lower cost of capital

The Net Present Value of an acquisition is the difference between the synergy from the merger and the premium to be paid. The premium that is paid for an acquisition is the difference between price paid and the market value of the acquisition prior to the merger. The premium is depending on whether cash or securities are used to finance the offer price (Ross et al., 2005).

The empirical research on mergers and acquisitions is extensive and its basic conclusions are that the shareholder of acquired firms fare very well at the same time as the shareholder of acquiring firms do not gain that much (Ross et al., 2005). The role of mergers is to enhance the value of the firm. The theories of mergers can be summarized into three different groups and within this framework the main source of value increases is efficiency gains (Weston, 2001).

- *Synergy* or *efficiency*, in which total value from the combination is greater than the sum of each value of the firms operating independently.
- *Hubris* (the second category) is the effect of the winner's curse, which is causing bidders to overpay. It postulates that value is not changed. In a synergistic merger, it is possible for the bidder to overpay as well.
- The third category of mergers is those in which total value is decreased as a result of mistakes or managers who put their own preferences above the well-being of the firm, *the agency problem* (Weston, 2001, p. 83).

3.1.3 The change forces

The increased speed of merger and acquisition activities in the recent years has reflected large changing forces in the economy of the world. Following ten change forces has been identified:

1. The pace of technological change has accelerated
2. Costs of communication and transportation have been significantly reduced
3. Consequently markets have become international in scope
4. The forms, sources, and intensity of competition have expanded
5. New industries have emerged

6. While regulations have increased in some areas deregulation has taken place in other industries
7. Favorable economic and financial environments have kept on from 1982-1990 and from 1992 to mid-2000
8. Within a environment of strong economic growth problems have developed in individual economies and industries
9. Inequalities in income and wealth have been widening
10. Valuation relationships and equity returns for 1990s have significantly above the historical patterns (Weston, 2001, p. 12-13)

Overriding all are technological changes, which include personal computers, computer services, software, servers, and the many advances in information systems as well as Internet. Improvements in communication and transportation have led to a global economy (Weston, 2001).

3.2 Takeovers

If the price of a firm's stocks drops too low because of poor management, the firm may be acquired by another group of shareholders, another firm, or an individual. This is defined as a takeover. This is a general term referring to transfer control of one firm from a group of shareholders to another. The firm that takes over another firm is referred to as the bidder or the acquirer. The bidder pays either in cash or in securities to obtain the stock or assets of the target firm and this will lead to that this firm gives up the control over its stocks/assets in exchange for consideration (Ross et al., 2005, p. 798).

In a takeover, the top management of the acquired firm may find themselves out of a job which puts pressure on the management to make decisions in the stockholders' interest. Fear of a takeover gives managers an incentive to take actions that will maximize stock prices (Ross et al., 2005).

Takeovers can occur in different forms which the figure below (figure 2.1) demonstrates.

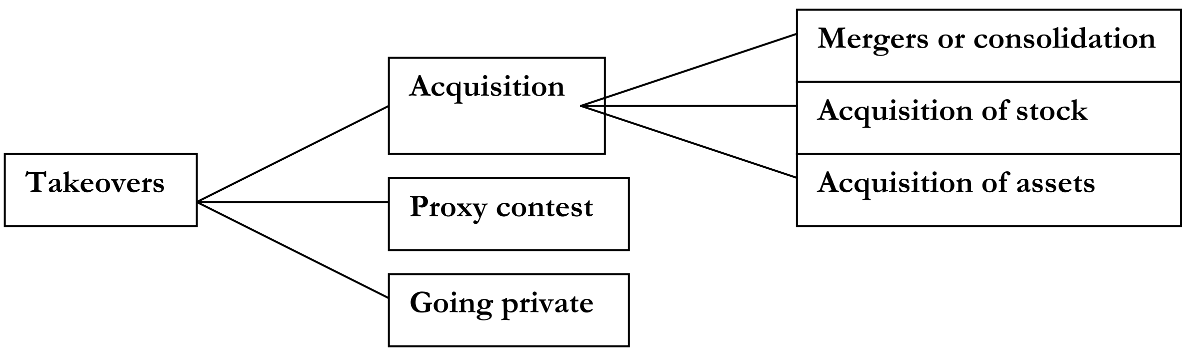

Figure 3.1 – Varieties of Takeovers. (Ross et al., 2005, p. 799).

As presented above, the takeover can be achieved by an acquisition. If so, it will be via a merger, an offer for shares of stock, or a purchase of assets. In mergers and offers the acquiring firm buys the voting common stock of the acquired firm (Ross et al., 2005, p. 799).

Takeovers can also occur with a proxy contest, which takes place when a group of shareholders tries to gain controlling seats on the board of directors. A proxy authorizes the proxy holder to vote on all matters in a shareholders' meeting. In a proxy contest, proxies from the rest of the shareholders are solicited by an insurgent group of shareholders (Ross et al., 2005, p. 799).

In going private transactions, all the equity shares of a public firm are purchased by a small group of investors. This group usually includes members of incumbent management along with some outside investors. The shares of the firm are not listed in the stock exchanges and can no longer be purchased in the open market (Ross et al., 2005, p. 799).

3.2.1 Hostile takeovers

Mergers and acquisitions sometimes involve unfriendly transactions. When one firm attempts to acquire another it does not always involve quite and gentlemanly negotiations (Ross et al., 2005). These takeovers are defined as "hostile" takeovers and are unfriendly takeover attempts by firms that are strongly resisted by the target firm's management and are usually not good news for the employee morale at the targeted firm. This can quickly turn to enmity and bitterness against the acquiring firm (Investopedia staff, 2005).

Hostile takeovers can result in negative feelings between the management and professional groups of the two firms and it can produce a hostile culture in which integration and synergy are difficult to achieve (Hitt, 2001). Hostile takeovers are in general tougher to pull off than friendly mergers (Investopedia staff, 2005) thus in friendly takeovers, the environment leads to a much easier and faster integration of the firms and a higher probability of achieving synergy will be produced (Hitt, 2001).

If directors always prioritized the interest of the shareholders, and in the situation of an inefficient and hostile takeover, the managers of the target corporation would then be against a takeover only if it could not provide benefit to their shareholders and those of the acquiring corporation. However, if the shareholders could depend on the managers to always act in the interest of them, there would be no need for corporate arrangements. The most favorable argument for hostile takeovers is that they bring the interests of managers more in line with those of shareholders. Even though there are not many such takeover attempts, just the threat of a hostile takeover provides a strong disincentive for managers. These affect the managers in many ways, and one of them is that they would go as far as they would like in pursuing personal advantages, at the expense of their shareholders. This suggests that there are efficiency advantages from hostile takeovers, and this is a proposition that is much debated. The issue of efficiency is not unrelated, however, to the primary concern of this chapter, which is why hostile takeovers are less hostile than they are commonly depicted (McKenzie, 1998).

According to Chan (1996), there are many combines to constitute the attractiveness of a target:

- Environmental factors, such as inflation and interest rates that cannot be controlled by the target.
- Industry factors, such as high growth markets make a target attractive to a cash-rich firm that wishes to grow.
- Firm factors that are specific for a firm and are related to the asset profile and the earnings profile.

3.3 Restructuring

The firm can reorganize the assets, operations, and ownership structures to enhance organizational values. The main forms of restructuring are divestitures, equity carve-outs, spin-offs, and tracking stocks (Weston, 2001).

3.3.1 Divestitures

Firms not only acquire businesses but also sell them. Divestitures are part of the market, and in recent years the number of divestitures has been half the number of the mergers (Brealey, Myers & Marcus, 2004). Weston (2001) states, that these divestitures present the sale of a section of a company to another unit. The divestiture by a seller usually produces focusing on a narrower of activities. The buying firm seeks to strengthen its strategic programs. According to Ross et al. (2005), the basic idea of divestitures is to reduce the possible diversification discount connected with commingled process and to increase company focus.

3.3.2 Spin-offs and equity carve-outs

According to Ross et al. (2005), with a spin-off the parent company distributes shares of a subsidiary to its shareholders. The consequence is that the shareholders end up with an investment in the parent as well as the subsidiary. Typically, the stock in the subsidiary is distributed pro rata[1] to the parent company shareholders. No actual asset sale is involved, and the subsidiary turns out to be a completely separate company. A variant of the spin-off is called an equity curve-out (Ross et al., 2005). In an equity carve-out the company sells up to 20 percent of the stock of a segment (Weston, 2001). Ross et al. (2005) also states that occasionally a spin-off and an equity curve-out are combined.

3.3.3 Tracking stock

A tracking stock is separate classes of the common stock whose value is connected to the performance of a particular segment of the parent company's business (Weston, 2001; Ross et al., 2005). Each tracking stock is considered as common stock of the parent company for voting purposes (Weston, 2001). Tracking stock is similar to a spin-off, which gives their shareholders a pure play on a particular part of the firm (Weston, 2001; Ross et al., 2005).

[1] Shared or divided according to a ratio or in proportion to participation. (http://financial-dictionary.thefreedictionary.com/pro+rata)

The difference is, in the tracking stock relationship the committee of the parent company continues to control the activities of the tracking segment; but the spin-off becomes an independent company. Companies with tracking stocks trade separate, so dividends that are paid to shareholders of each company then can be based on their individual cash flow. One criticisms of tracking stocks is that the subsidiary is still subject to control of the parent company (Weston, 2001).

3.4 Takeover defenses

According to Weston (2001), any company can be exposed for a potential takeover. For the target company the first step is to have a plan prepared, before an acquisition attempt is made. What will the board's response be to an unfriendly takeover and what is the different between a friendly and an unfriendly acquire? Before an attempted acquisition, what steps are appropriate to take and what steps is the company willing to take after the unwanted overture is made? According to Ross et al. (2005), target-firm management possible will take corrective action to increase stock price in order to reduce the takeover benefits. There are several of defensive tactics that can be used by target-firm managements to resist unfriendly takeover attempts.

3.4.1 Antitakeover Charter Amendments

One category of defensive tactics is referred to as antitakeover amendments to a firm's corporate charter[2] (Weston, 2001, p. 230). According to Ross et al. (2005) the corporate charter establishes the situations that allow a takeover. Firms frequently improve corporate charters to make acquisition more difficult. An acquirer do not necessarily have to gain control of a target firm after acquiring more than 50 percent of its stocks (Grinblatt & Titman, 2002).

An example is supermajority voting amendments that require two-thirds, sometimes as much as 90%, of the shareholders of record must agree before a change in control can be put into practice (Grinblatt & Titman, 2002; Ross et al., 2005; Weston, 2001). Firms can make it more difficult to be acquired by requiring 80% support by the shareholders (Ross et al., 2005). According to Weston (2001), in most supermajority voting amendments, the board has the right of decision in the supermajority rule. This way the board has flexibility to benefit from the supermajority condition in the case of an unfriendly takeover and to not enforce it in the case of a friendly acquirer.

3.4.2 Repurchase Standstill Agreements

A targeted repurchase may be arranged by the managers to prevent a takeover effort. In a targeted repurchase, a firm buys back its own stock from a possible bidder, typically at a substantial premium. These premiums can be thought of as payments to possible bidders to delay or stop unfriendly takeover attempts (Ross et al., 2005). The criticism of this sort of payment often is an acceptation of a greenmail payment. According to Weston (2001), a greenmail is a performance of "paying off" anyone who acquires a big block of the company's stocks and increases threats of acquisition. To lighten those threats, a company can

[2] A document, filed with a U.S. state by a corporation's founders, describing the purpose, place of business, and other details of a corporation, also called articles of incorporation or charter. (http://www.investorwords.com/1133/corporate_charter.html)

simply pay that individual a premium over what he/she paid when collecting the company's stock. This sort of technique can be used in a hostile takeover situation (Weston, 2001). In addition managers of target firms may at the same time negotiate standstill agreements, which are contracts where the bidding firm agrees to limit its assets of another firm. These agreements usually lead to cancellation of takeover effort, and the message of such agreement has had a negative effect on stock price (Ross et al., 2005).

3.4.3 Greenmail

As mentioned above, greenmail is a performance of "paying off" anyone who acquires a large block of the company's stock and increases threats of acquisitions (Weston, 2001). In practice, greenmail is about buying back shares at a higher market price in order to block a hostile takeover (Hanly, 1992). Stock prices generally drop when firms pay greenmail to large shareholders who are trying to take over the firm (Grinbltt & Titman, 2002). Greenmail means that shares are repurchased by the target at a price which makes the bidder happy to agree to leave the target alone. This price dose not always makes the target's shareholder happy (Brealey & Myers, 1996). However, paying greenmail may be a way to prevent the productive with less than desired effects, and it could also result in other possible acquirers stepping in to receive their greenmail as well. But on the other hand it can be a very expensive method (Weston, 2001).

3.4.4 Poison pill

According to Dolbeck (2004), poison pills can also be called shareholders rights plans, and are for example a way to make it harder for a investor to sell shares because it makes it more expensive to acquire firms shares (Dolbeck, 2004). Poison pills represent a class of securities that grant special rights to firms' holders in the event of an attempted takeover. These rights impose financial costs on possible acquirers, thereby making takeovers more costly and thus less likely (Higgins & Nelling, 2002).

Grinblatt and Titman (2002), states that this defense is the most effective takeover defensive tactic. Poison pills are rights or securities that a firm issues to its shareholders, which are giving them the precious benefits in the event that a significant number of its shares are acquired (Grinblatt & Titman, 2002; Weston, 2001). According to Ross et al. (2005) it is generally a right to buy shares in the merged firm at a good deal price (Ross et al., 2005). Poison pills have many variants, but all share the basic characteristic that they involve a transfer from the bidder to shareholders who do not offer their shares. This makes increasing of the cost of the acquisition and decreasing the reason for target shareholders to bid at any given price (Grinblatt & Titman, 2002). Two variants are flip over and flip in plans, which may be used together. The first variant provides for a good deal purchase price of the acquirer's shares, when the second variant provides a good deal purchase price of the target company (Weston, 2001).

Flip in:

Flip in provides shareholders with the right to purchase common or preferred stock. If the tender offer for the firm is imminent, the rights allow the holder to purchase stock at a substantial discount. The holder might turn around and sell the stock at the much higher tender offer price, or might use the newly acquired stock to increase the quantity of stock needed in order for the acquirer to gain control of the firm. The rights are valid only for the original holder (Meade & Davidson, 1993).

Flip over:

Flip over Rights Plans is according to Grinblatt and Titman (2002) the most popular poison pill defensive tactic. The target shareholders receive under this plan the right to purchase the acquiring firm's stock at a considerable discount in the event of a merger. An example can be that Alpha acquires Beta shares and then proceed with a merger. The existing Beta shareholders will then receive the rights to purchase Alpha stock at 50 percent of its value in the event the merger is completed. This would make the merger prevent expensive for Alpha, which would be unwilling to proceed with the merger unless the poison pill was annulled (Grinblatt & Titman, 2002). According to Weston (2001), a poison pill does not prevent an unwanted takeover but the board's negotiating position will be strengthened. Poison pills can in the most cases be annulling by the board of directors at an unimportant cost to allow mergers which they believe are in the shareholder's interest to be applied (Grinblatt & Titman, 2002; Weston, 2001).

3.4.5 White knight and White squire

The target company seeks for a "friendly" acquirer for the business, when using a white knight defense (Ross et al., 2005; Weston, 2001). Firms that rescue a target from unwanted bitters are called white knights. White knight dealings clearly are friendly (Hitt, 2001). The target firm may prefer another acquirer because it believes there is better compatibility between the two firms. Another bidder might be required because that bidder promises not to break up the target or to dismiss employees.

A white squire is similar to a white knight, but the white squire does not take control of the target firm. Instead, the target firm sells a block of stock to a white squire that is considered friendly and who will vote his/her shares with the target firm's management. There are other conditions that may be forced, such as demand the white squire to vote for management, there can also be a standstill agreement there the white squire cannot acquire more of the target firm's shares for a specified period of time, and a limit on the sale of that block of stock. The limit on the sale of that block of stock usually includes that the target company has the right of first refusal. The white squire may get a discount on the shares, a seat on the target's board, and extraordinary dividends (Weston, 2001).

3.4.6 Crown Jewels

Firms often sell major assets when faced with a takeover threat (Ross et al. 2005). Instead of publicizing hidden values, the firm should eliminate those values. Rather than making the firm beautiful and the firm's market value high, the firm should make it seem as ugly, poor and worthless as possible. Crown jewels, that are the firm's most valuable assets, represent the largest reason that companies become takeover targets (Arbel & Woods, 1988, p. 36). Although, a defensive tactic for a target firm is to sell its most valuable line of business or division, which is referred to as the crown jewels. Once this business has been divested, the proceeds can be used to repurchase stock or to pay an extraordinary dividend. Once the crown jewels have been divested the hostile acquirer may withdraw its bid (Weston, 2001).

3.4.7 Pac-Man

This defensive tactic is named after the popular game in which the hunted becomes the hunter. In the game, and also in real life, the objective is to eat the attacker to avoid being eaten yourself. This defense is carried out by purchase in the attacker firm, either in the open market or through a good offer. If your firm is able to acquire enough shares, you might be able to secure a position in the attackers' board of directors, and therefore gain a valuable inside position or even a vote (Arbel & Woods, 1988; Weston, Siu & Johnson, 2001).

A Pac-Man defense is an extremely aggressive and rarely used defensive tactic; in this defense the target company offers versus and launches its own acquisition attempt on the potential acquirer. An example of this is if company A begins an unfriendly takeover attempt of company B. To prevent these advances company B launch its own acquisition attempt of company A. This defensive tactic is also effective when the original acquirer is smaller than the original target company, therefore providing the original target the opportunity to finance a potential deal. This sort of defense is extremely risky. It tones down the antitrust defenses that could be offered by the original target company. The Pac-Man defensive tactic basically suggests that the target company's board and management are in favor of the acquisition, but that they disagree about which company should be in control (Weston, 2001).

3.4.8 Parachutes

Parachutes are employee's agreements that are triggered when a change in control takes place (Weston, 2001). Parachutes are guarantees that incumbent management will receive certain benefits if a firm is taken over and the executive are fired or their jobs are eliminated (Hanly, 1992).

According to Weston (2001), the purpose is to give the firm's managers and employees with peace of mind during acquisition discussions and the changeover. It helps the firm keep key employees who may feel threatened by a possible acquisition. The manager also gets help by the parachutes to deal with personal concerns while acting in the best interest of the stockholder. The present board and management team set up the parachutes that become effective when a possible acquirer exceeds a particular percentage of ownership in the firm. Parachutes may be establish without the agreement of stockholders and may be annulled in the case of a friendly takeover (Weston, 2001).

Parachutes can come in three different variants; the golden, the silver and a tin parachute. The first mentioned, golden parachute, is designed for the firm's most high-ranking management team, like the top 10 to 30 managers. Under this type of plan, a substantial lump sum payment is paid to a manager who is ended following an acquisition Weston, 2001). The presence of golden parachutes is prevention to hostile takeovers, because such benefits make it more expensive to purchase a firm (Arbel & Woods, 1988, p 33).

The second mention is the silver parachute is a much wider of protection to a large number of employees and may also include middle managers. The terms of a silver parachute often cover equal to six months or one year of payment (Weston, 2001). Since the silver parachute is a large number of middle managers and employees these parachutes cost more than golden parachutes (Arbel & Woods, 1988).

The last variant is a tin parachute may be put into practice, which covers an even wider circle of employees or even all employees. This program provides limited payment and may be structured as payment equal to one or two weeks of payment for every year of service (Weston, 2001). This parachutes are broad-based and are even more effective than silver or gold parachutes in prevent firms in hostile takeovers (Arbel & Woods, 1988).

3.4.9 Litigation

After a hostile takeover bid has been received, the target company can challenge the acquisition through litigation. Litigation is started by the target company based on the antitrust effects of the acquisition, missing material information in SEC[3] filings or other securities law insult. The target sues for a temporary order to forbid the bidder from purchasing any more shares of the target's stock until the court has an opportunity to decide on the case (Weston, 2001).

3.4.10 Shark repellent

Any tactic that makes the firm less attractive to a potential unfriendly offer is called a shark repellent (Ross et al. 2005). Firms that are making a public offering usually include a range of shark repellent, which are requirements that intended to guard against hostile takeover attempts. While planned to stop outside takeovers, shark repellent requirements can also limit the flexibility of a firm's shareholders to funding a stop to a buyer or get a control premium not shared with other stockholders. This is an example of rights plans, also called poison pills, that makes it harder for a shareholder to sells shares (Dolbeck, 2004). According to Brealey et al. (2004, p. 602), a firm often will influence shareholders to agree to shark repellent, and an example can be that any merger must be approved by a supermajority of 80 percent of the shares rather than the normal 50 percent.

[3] The U.S. Securities and Exchange Commission, is the United States leading body which has primary responsibility for overseeing the rule of the securities industry. (http://encyclopedia.thefreedictionary.com/U.S.+Securities+and+Exchange+Commission)

3.5 Summary of the defensive tactics

Name:	**Explanation:**
Antitakeover Charter Amendments	An example is supermajority voting amendments that require two-thirds, sometimes as much as 90 percent, of the shareholders of record must agree before a change in control can be put into practice
Repurchase Standstill Agreements	A firm buys back its own stock from a possible bidder, typically at a substantial premium. These premiums can be thought of as payments to possible bidders to delay or stop unfriendly takeover attempts
Greenmail	Is a performance of "paying off" anyone who acquires a large block of the company's stock and increases threats of acquisitions
Poison pill	For example a way to make it harder for a investor to sells shares because it makes it more expensive to acquire firms shares. Poison pills are rights or securities that a firm issues to its shareholders, which are giving them the precious benefits in the event that a significant number of its shares are acquired
White knight and White squire	Firms that rescue a target from unwanted bitters are called white knights. White knight dealings clearly are friendly. A white squire is similar to a white knight, but the white squire does not take control of the target firm. Instead, the target firm sells a block of stock to a white squire
Crown Jewels	Crown jewels, that are the firms' most valuable assets, represent the largest reason that companies become takeover targets Firms often sell major assets when faced with a takeover threat, to make the firm seem as ugly, poor and worthless as possible.
Pac-Man	The objective is to eat the attacker to avoid being eaten yourself. This defense is carried out by purchase in the attacker firm.
Parachutes	Parachutes are employee's agreements that are triggered when a change in control takes place
Litigation	The target company can challenge the acquisition through litigation. The target sues for a temporary order to forbid the bidder from purchasing any more shares of the target's stock at the moment.
Shark repellent	Any tactic that makes the firm less attractive to a potential unfriendly offer is called a shark repellent

Table 3.1 – A summery of the different defensive tactics.

4 Empirical study/Case study

In this chapter, the authors are going to present three different cases studies concerning hostile takeovers.

The first case is about Oracle and PeopleSoft, where Oracle is trying to acquire PeopleSoft. This case study is done by David Millstone and Guhan Subramanian (Harvard Law School). The references about this case (chapter 4.1) are Millstone and Subramanian (2005), if nothing else states.

The second case is about Hotel Hilton Corporation and ITT Corporation, where Hilton is trying to acquire ITT. This case study is done by Robert F Bruner and Sanjay Vakharia (University of Virginia). The references about this case (chapter 4.2) are Bruner and Vakharia (2001), if nothing else states.

The third case is about Olivetti and Telecom Italia, where Olivetti is trying to acquire Telecom Italia. This case study is done by Timothy A. Kruse (University of Arkansas). The references about this case (chapter 4.3) are Kruse (2005), if nothing else states.

4.1 Oracle versus PeopleSoft

Since this case concerns many events, the authors have chosen to conduct a timeline to make it easier to follow (figure 4.1). The specific dates are not mentioned in the body text but only in the timeline to make the body text easier for the reader.

4.1.1 Background

Oracle and PeopleSoft were competitors in the enterprise application software business, it accounted for about 20% of Oracle's revenues (the remainder was database) and 100% of PeopleSoft's.

Oracle:

Oracle was founded in 1976 by Larry Ellison. In 2003, Oracle sold products all over the world, 120 countries, and had more than 41 000 employees.

PeopleSoft:

PeopleSoft was founded in 1987 by David Duffield. He had approximately 8 300 employees. When Duffield was 59 years old, in 1999, he retired as CEO[4] and brought in Craig Conway as his successor. PeopleSoft's dramatic growth over its first ten years had slowed down, and Conway was viewed by many as the person capable of taking the company to the next level.

[4] Chief Executive Officer. (http://dictionary.reference.com/search?q=CEO)

June, 2002	The first contact
2 June, 2003	PeopleSoft mergers J.D. Edwards
6 June, 2003	Oracle's hostile bid of PeopleSoft, with $16.00
9 June, 2003	PeopleSoft introduce CAP
13 June, 2003	PeopleSoft are suing Oracle
18 June, 2003	Oracle raised the bid to $19.50
August, 2003	PeopleSoft get parachutes
4 February, 2004	Oracle increase the bid to $26.00
10 February, 2004	Department of Justice intended to sue Oracle
13 May, 2004	Oracle decrease the offer to $21.00
30 September, 2004	Conway resigns from CEO
4 October, 2004	The trial begins in Delaware
1 November, 2004	Oracle increase their bid $24.00
19 November, 2004	Deadline for the last offer
12 December, 2004	PeopleSoft votes to accept the offer
7 January, 2004	The merger was completed

Figure 4.1 – The timeline through Oracle versus PeopleSoft.

4.1.2 June, 2002

One year before the takeover contest unfolded, Conway was thinking about how to build critical mass in application software. Conway approached Ellison, with his board's approval. Conway proposed a merger of PeopleSoft with Oracle's enterprise software business. The new company's majority shareholder would be Oracle and the CEO would be Conway. Ellison was enthusiastic about the combination.

Teams from each company met in San Francisco to go through the details of Conway's offer. There was an optimistic mood at the meeting, which lasted most of the day. Although there were some technical complications, both sides thought that overall the deal made sense. The two companies agreed to meet again with larger teams; this was the last thing that the two companies would ever agree on. The second meeting never happened.

4.1.3 June, 2003

One year after PeopleSoft's and Oracle's meeting in San Francisco, PeopleSoft and J.D. Edwards (JDEC) agreed to do a merger. After this merger PeopleSoft was the second biggest operator on the market within business application. This merger will have consequences for Oracle's attempt to merger with PeopleSoft.

The big day for PeopleSoft and Oracle came in the beginning of June. Oracle opened its "war game in a box". The attack from Oracle was surprising. Oracle's publicized tender for PeopleSoft at $16.00 per share which meant almost no premium to the market price at the time. Oracle's bankers on the deal, CSFB, had opined that $16.00 was too low and would be a tactical mistake, but Oracle wanted to go through with the $16.00 offer and explained it by:

> "*When PeopleSoft suddenly moved to buy JDEC, it was obvious that they had come to a conclusion that they couldn't possibly stay independent. Their shareholders were now presented with the question: what do we do? So this was the perfect time to give those shareholders another option.* "

The offer was not well received, investors considered it suspicious and almost absurdly below market. Many of PeopleSoft investors said that it was not believable. Conway quickly contacted PeopleSoft's outside legal counsel named Bogen. Bogen shorted the board on its responsibilities under Delaware law in the face of a hostile offer. The Delaware law requires board members to carefully evaluate any good faith offer. Bogen thought that Conway's fast rejection of the offer and that he stated unwillingness to consider any offer, could created as violations of the board's entrusted responsibilities. In order to protect the company from those comments, Bogen recommended that the board should create a "Transaction Committee", to evaluate and respond to Oracle's offer.

Conway's expression was worrying and needed to be toned down. The board accepted Bogen's recommendation to form a Transaction Committee, with five members. The Transaction Committee was an easy call. It was more difficult to decide how to deal with Oracle. As the board saw it, the problem was that Oracle's actions did not make any sense. If Oracle were interested in a deal, why did they not come up to the board privately first? If they actually wanted to buy PeopleSoft, why did they offer such a pathetic premium?

Hostile bids are always troublemaking; Oracle's bid was an even more serious threat to PeopleSoft. PeopleSoft's customers, likewise for Oracle, do not just purchase software the way a person might purchase a video game. Their customers are purchasing a relationship with the vendor. Anything that is supposed to threaten that relationship in the long term will damage business in the short term. If PeopleSoft's customers believed in a winning Oracle would stop support for the products at some point in the future, they would probably stop purchasing products right now. A source stated that Oracle's strategy was "either incredibly evil or incredibly stupid". If the strategy was evil, Oracle's bid was not serious and was calculated to hurt PeopleSoft.

Conway insisted that Oracle was trying to acquire PeopleSoft for the purpose of killing it. In the middle of June, just one week after Oracle's announcement, PeopleSoft handed in a suit file of Oracle where this accusation was formalized. The suit was filed in Alameda County in California, PeopleSoft's hometown.

Because of the financial community and the bad writings in the press, Oracle quickly changed course. Oracle increased its bid with 20% to $19.50, for a total offer value of $6.3 billion; just a few days after that PeopleSoft had handed in the suit of Oracle. Oracle explained that the reason was:

> *"That we were told that $16.00 was not enough and that it made us look like we weren't serious and that we were just trying to muck up their deal with J.D. Edwards. We were spooking to the holders of a majority of the shares and they said that if we give them $18.00 then it is over. So we decided that at $19.50 we were comfortably above the clearing price."*

Now it was too late, only one day after the offer from Oracle, PeopleSoft's board rejected it and said that the offer was an undervaluation of the company.

The poison pill that PeopleSoft had was: if any individual or entity acquired more than 20% of PeopleSoft's shares without the approval of PeopleSoft's board, all other shareholders would have the right to buy shares at 50% of the current market price. The exercise of these options would reduce the hostile bidder from 20% to 1, 4%. Most academic analysts today, consider the pill to be a "show stopper" against a hostile bidder. The poison pill was already in place when Oracle launched its bid; PeopleSoft quickly up righted some other defenses. One of them was also almost launched when Oracle came into the picture, which was:

The J.D. Edwards Deal:

Oracle's offer had immediate consequences for PeopleSoft's during acquisition of J.D. Edwards. For PeopleSoft, closing the JDEC deal would increase the size of the potential deal for Oracle by almost 30%, and would force Oracle to acquire an additional company which it might not be interested in, at least at the price it was prepared to pay for PeopleSoft.

Another defense that PeopleSoft up righted was:

The Customer Assurance Program (CAP):

Three days after Oracle announced its bid; PeopleSoft came with a new product. PeopleSoft offered a big discount on the PeopleSofts' support service if they purchase the new program. The support would last for two years from the customer contract date, even if PeopleSoft would be acquired by any company. The CAP received attention in the press, but Oracle did not worry about the CAP. Oracle explained:

> *"The moment we saw the CAP, our initial reactions was "No problem". We are going to support the products. Why would we not support the product?"*

For the next eighteen months, the program evolved through five different versions, and the length of the protection doubled to four years instead of two years. In November 2003, the CAP permission was 2 billion dollars in payments to PeopleSoft customers if Oracle acquired PeopleSoft and then reduced support for its products. One fear of the CAP was mainly notable. PeopleSoft's antitrust defense, unlike the poison pill, was that the CAP could not be pulled back by PeopleSoft because it was a contract term embedded in customer's contracts. Therefore, the CAP could not be used as a good dealing chip against Oracle, which PeopleSoft could not remove if Oracle came with a better bid that PeopleSoft liked.

The next defensive tactic that PeopleSoft procured was:

Antitrust:

The Department of Justice (DOJ) must, in any proposed merger or acquisition larger than $50 million, determine whether the deal is anticompetitive or not. If the DOJ concludes that the deal is anticompetitive, it can sue to block the transaction or negotiate with the parties to find divestment of certain assets after the ending of the deal. Private parties can lobby the DOJ to try to influence its decision, during the review process. A couple of days after the Oracle bid, PeopleSoft launched a massive campaign to encourage the DOJ to block it.

Only a couple of days after the first hostile bid from Oracle, PeopleSoft had a meeting where the antitrust were dominating. The board was careful towards getting too public with an antitrust campaign and they argued that it could backfire and give Oracle an argument in the Delaware courts that PeopleSoft was not open to a deal. PeopleSoft hired Gary Reback as its lead antitrust counselor. Reback together with Conway, did an antitrust show, which immediately had payoffs. One of PeopleSoft's biggest customers sued to block the merger.

4.1.4 August, 2003

Another defensive tactic that PeopleSoft established was:

Golden and Tin Parachutes

Two months after the initial offer, PeopleSoft's board accepted amendments to its separation policies to provide large cash payments to senior manager, called golden parachutes, in the occasion of a change of control. Logical with PeopleSoft's egalitarian character, the program was expanded to cover all employees, named tin parachutes. In view of Oracle's announced expectations regarding staff decrease, the cost of the new separation package was estimated of $200 million.

By the end of summer 2003, all of these defenses were arranged against Oracle. A tender offer could not make Oracle buy PeopleSoft. Oracle thought that PeopleSoft was unwilling to negotiate. The directors of PeopleSoft felt that they had reasons not to negotiate. They were not convinced that Oracle actually wanted a deal. If Oracle purpose was to damage their business then negotiation would play right into Oracle's hand. When Oracle did not have anyone to negotiate with, Oracle turned to shareholders.

4.1.5 November, 2003

Almost half a year after the initial offer, Oracle nominated five candidates to vote for the PeopleSoft board of directors, and proposed a bylaw change that would expand the PeopleSoft's board of one seat, from eight to nine. For shareholders to successfully pass the bylaw change and fill the seat in one meeting, the challenge offered Oracle the opportunity to take control of the PeopleSoft by voting for a majority of its directors at its annual meeting on March 25th, 2004.

4.1.6 February, 2004

To collect support for its nominees in front of the annual meeting, Oracle raised its offer to $26.00 per share in cash in the beginning of February. An increase of 63% compared to the initial bid and $9.4 billion in total value. Oracle declared in the press that this was their final price.

A week after Oracle increased the offer, PeopleSoft received the message that the DOJ[5] intended to sue them. In the end of February, the DOJ sued to block the deal on antitrust grounds. Knowing that they could not win shareholders support in the face of this proceeding, Oracle removed its nominees and dropped its proxy contest the same day.

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[5] Department of Justice.
(http://dictionary.reference.com/search?q=DOJ)

4.1.7 March – May, 2004

The first goal for Oracle was to take away the antitrust. To those who had at first doubted Oracle's honesty, the company's willingness to go step by step with the DOJ was surprising. The government's decision to block a bid usually causes the bidder to withdraw, in most takeover contests, but Oracle did not do that. Oracle said that it was not just about PeopleSoft in this case, the future was on stake for Oracle's industry. In May, Oracle decreased its bid to $21.00 per share and said that it was because of changes in the market conditions and in PeopleSoft's market valuation. It was highly unusual step in a takeover contest to reducing a bid, but PeopleSoft's stock had been declining since the DOJ statement in February.

4.1.8 September, 2004

One year and three months after Oracle's first offer, the Judge of California, Vaughn R. Walker, handed the DOJ an opinion about that DOJ had failed to prove that a merger between Oracle and PeopleSoft would be likely considerably to reduce competition in the business request software market. In an email from Conway to the employees it was written, that antitrust concerns were never the focus point. It was only one of many issues and that the court's ruling does not mean that Oracle will acquire PeopleSoft. PeopleSoft's and Conway's situation was getting desperate.

Conway often acted without discussing with the board and also wanted to control the information flow. PeopleSoft's board faced a dilemma when Conway grew increasingly out of control. The public face of PeopleSoft was still Conway. To dismiss Conway in the middle of a takeover would probably be a bad message. But Conway finally went too far. Almost in the middle of September, 2004, Conway said:

> *"I don't think the Oracle bid is a current issue. It is a movie that is been playing for a long time. I think people have lost interest in it. The last remaining customers whose business decisions were being delayed have actually completed their sales and completed their orders. So I don't see it as a disruptive factor…"*

The company did not formally take back the statement, but the board and PeopleSoft managers knew that this was not true. In the end of September, the other board members voted unanimously to remove Conway as CEO. Conway agreed to resign from the board, and because he was fired without causes he received a $13.7 million severance package. The next day PeopleSoft had a conference call to declare Conway's dismissal, and did the best to reduce the damage. Later that day the DOJ selected not to appeal the antitrust decision. Sixteen months after announcing its bid, Oracle had finally regained the initiative.

4.1.9 October - November, 2004

When the antitrust case was now resolved, it all turned to Delaware. Oracle had brought a suit of seeking the elimination of PeopleSoft's poison pill and a command to stop the CAP program. Hearing the case would be Vice Chancellor Leo Strine.

The trial in Delaware began in October. The trial took about two weeks, but Strine requested more days of testimony on specific aspect of the CAP and on PeopleSoft's use of the poison pill. Strine told Oracle, before the court would meet again, that he needed to have a final offer on the table. Oracle increased its cash offer in the beginning of November from $21.00 to $24.00 per share and declared that this was the best and the final offer that Oracle would give to PeopleSoft. When Oracle had given the "final offer", they also added that they would have withdrawn their offer unless majorities of PeopleSoft shares accepted their offer before the deadline in the middle of November. Oracle thought that this was enough to hold up PeopleSoft's stock price with this bid and then Oracle heard that their bid was insufficient because of the stock price. Now Oracle had put their best and final offer on the table, and it was finally time for everyone to decide a side. PeopleSoft declared that the $24.00 offer was insufficient and recommended shareholders not to accept the offer.

If Oracle gets 65%, 68%, 70%, Oracle has no motivation to raise the price, since they will probably win the takeover. But if it comes in at 55%, 58%, 60%, Oracle can not walk away, because they have said that they will stay in the deal. There were two or three shareholders that actually voted some yes and some no to get a middle-ground result. Days before the deadline, the vote got as high as 70%, but the final count was 61% of PeopleSoft's shares. After that some had pulled back shares in the last minute. Oracle had now achieved the majority of the shares in order to stay in the game, which meant that the poison pill was gone.

4.1.10 December – January, 2004- 2005

PeopleSoft shareholder started to suspect that Oracle was wiling to offer $26.50 in cash to acquire PeopleSoft. Then in the middle of December, PeopleSoft's board got the message that Oracle's were willing to accept $26.50 per share in cash, or $10.3 billion in total consideration. Only a couple of days after, one day before the Delaware trial were planed to resume, the PeopleSoft board formally voted to accept the offer. The merger was completed on January 7th in 2005.

4.2 Hilton versus ITT

4.2.1 Background

Hilton and ITT were competitors in the lodging and gaming industry. In 1997, both ITT Corporation and Hilton Corporation were in a race to dominate in this business area. They more or less, competed for the same customers, in the main business segments, lodging and gaming. Both were airing hotel properties in the luxury and mid scale market (it was cheaper to acquire than build in the 1990s). In 1995, ITT acquired Caesars Worlds Inc. In 1996 Hilton outbid ITT to acquire Bally Entertainment Corporation; this was not the only time that ITT and Hilton had crossed paths directly. ITT had approached Hilton to acquire its hotel business in 1960 and its hotel and gaming business in 1994, on both occasions ITT's offer was rejected.

Hilton Hotel Corporation:

In 1996 Hilton Hotel Corporation was the seventh-largest hotel company, sales for about $3.9 billion and assets for about $7.6 billion. Hilton Hotel Corporation developed, owned, managed, and franchised hotel-casino, resort, hotel properties and vacation-ownership resorts. The firm managed 241 Hilton hotels, casino-resorts and riverboat casinos in 40 states, and around the world the company had 11 Conrad International hotel-casinos in ten countries.

ITT Corporation:

ITT was formally a totally owned subsidiary of a Delaware corporation known as ITT Corporation (Old ITT). On December 19th in 1995, Old ITT (renamed ITT Industries) distributed to its shareholders all the outstanding shares of common stock of ITT and ITT Hartford Group, Inc. In 1998, ITT Corporation was no longer connected with ITT Industries or ITT Hartford Group, Inc.

In 1996, ITT Corporation was one of the world's largest hotel and gaming companies. The company had sales for about $6.6 billion and assets of about $9.3 billion. Its core assets included ITT Sheraton, one of the world's largest companies, which had 410 hotels and resorts in 60 countries. It also included Caesars World, the leading brand name in the gaming industry, with major in casinos in Atlantic City, Las Vegas and Lake Tahoe.

4.2.2 Hilton's Hostile Offer

It all began in the beginning of 1997. Hilton offered to pay $55 per share in cash for 50, 1% of ITT share and for the rest $55 per share in stock. The acquisition would be accounted as a purchase deal, and if this deal would be successful it would be the biggest takeover ever in the accommodation and gaming industry. Many analysts believed that if Hilton was allowed to acquire ITT, it would make Hilton the world's biggest hotel and Casino Company. With ITT Sheraton's larger international existence, Hilton would be in a much stronger position to compete in the worldwide hotel industry. Also ITT's Caesars brand name would make Hilton's presence in Atlantic City and Las Vegas. One gaming and lodging analyst said:

> *"The combination of Hilton and ITT represents an once-in-a-lifetime opportunity to create an unduplicatable global franchise twice as large as any hotel rival and four times as large as any gaming company."*

Wall Street[6] was though excited about this tender offer, Hilton's shares increased 10% just because the offer, an unusual move for the stock of an acquiring company.

ITT management had declined to negotiate a friendly acquisition by Hilton, so the hostile offer was no surprise. ITT management refused to have a meeting with Hilton management, even after the offer. ITT thought while there was no negotiation it will be harder start any fight. ITT's chairman, Rand Araskog, said that they did not bother to talk with Hilton, and that ITT's board has turned down Hilton's bid because ITT think that they are a much better company with a brighter future.

4.2.3 ITT's response

ITT management rejected Hilton's offer in the beginning of February, arguing: "The interests of ITT shareholders as well as ITT employees, suppliers, creditors and customers would be best served by ITT's continued independence". The following reasons were cited to support their decision.

1. The Hilton offer did not reflect the natural value of ITT. ITT's response stated, "In the opinion of our financial advisers the Hilton proposal is not enough".

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[6] Can be used when talk about the stock exchange situation. (http://susning.nu/Wall_Street)

2. The merger would lead to conflicts among properties managed by Sheraton and Hilton.

3. Hilton's proposal to license the Sheraton and Four Points names for franchising could lead to killing of numerous contracts.

4. The offer increased several potential antitrust and gaming-law questions.

Following the unwanted $6.5 billion bid by Hilton, ITT started an aggressive effort to sell assets. The objective was to raise its stock price and keep Hilton from winning the takeover battle. In effect, ITT management wanted to take the kinds of actions that Hilton management had proposed to do after the merger.

- February: Decrease in headquarters staff from 200 to 75.
- February-March: Sale of investment for $830 million.
- April: Sale of interest in Madison Square Garden for $650 million.
- May: Sale of interest of the company WBIS[7]+ for $128.75 million.
  Sale of five Sheraton hotels for $200 million.

After ITT sold assets for a value of $2 million, the president and CEO of Hilton sent a letter to ITT's management where he warned to withdraw the offer if the sale continued (Grover & Laderman, 1997). In July the management of ITT informed that the company was going to be split into three separate companies.

- ITT Destination — A hospitality and gaming company
- ITT Corp. — Publisher of overseas Yellow Page directories
- ITT Educational Service — A group of technical schools

At the same time, ITT announced that ITT were going to repurchase shares in the company for $70 per share, a value of $2.1 million (Saporito, Tassel & Voorst, 1997). In July, President and Chief Operating Officer of Hilton knew that Hilton would have to fight this battle. ITT announced that ITT was going to repurchase shares in the company for $70 per share, which convinced Hilton to raise its bid for ITT.

ITT's hypothetically split of the company made Hilton sue ITT. A judge in Nevada announced that ITT could not implement the reorganization without approval from the shareholders. This resulted that ITT had to wait with their reorganization until they had a meeting with the shareholders (Malley, 1997a).

4.2.4 Hilton forced to give up

In the end of October 1997, the company Starwood Loodging came as a white knight and gave an offer to ITT with $82 per share. The board of ITT thought this was a good idea since it was $12 above Hiltons offer (Malley, 1997b). But Hilton did not give up on an acquisitioning of ITT; in November Hilton increased their offer to $80 per share worth $9.4

[7] World Biographic Information System.
(http://susning.nu/WBIS)

billion. Although Hilton's bid was the lower of the two, Hilton offered more in cash, $44 against $15 from Starwood (Do not pass go, 1997). Hilton forced to give up on the fight about ITT just a couple of days after that Starwood had increased their offer from $82 to $85 per share. ITT's shareholder voted to accept Starwood as an acquisition of the company (Johnson, 1997).

4.3 Olivetti versus Telecom Italia

4.3.1 Background

During the 1990's it did not go very well for Olivetti. The company had tried some different sales areas like: typewriter, computer and eventually mobile telecom. Olivetti lost a lot of money and almost went bankrupt in 1996. Since 1996, when the company began in the mobile Telecom, the company was going very well. In 1999, the company was trying to acquire a seven-time bigger company, Telecom Italia, which have had an enormous development and was the seventh biggest Telecom Company.

4.3.2 The hostile offer

The Italian company Olivetti announced in the middle of February 1999, that the company had an offer for 100% of the sharers in the company Telecom Italia. The offer was €52.8 million, which was about €10 per share.

The offer that Olivetti announced had been prepared for a long time between the Olivetti's management and the company's financial adviser. Olivetti's financial adviser consisted of four big investment banks. They thought that an offer of 100% of the shares was an important move for the international reliability. The purchase would be a leveraged buy-out, which meant that Olivetti would buy Telecom Italia with borrowed money. The big problem was now to collect the big loan that was needed for the acquisition. The four big investment banks carried this out, and the result was that Olivetti had access to the biggest loan for a European company ever, €22.5 million.

4.3.3 The defense

Just after Olivetti had announced their bid, Telecom Italia had to do the same as Olivetti, gather their team of financial advisers that also consisted of four big investment banks. The four investment banks put forward their proposal of defense. After a while, the management of Telecom Italia was convinced that they had to carry out some defense. The management decided to implement a plan in three stages to increase the cost of the company for any possible purchaser with 30%. The first measure was a stock offer on Telecom Italia Mobile. This was a pure size-strategy, by increase through a purchase of the company Telecom Italia Mobile. The second measure was to repurchase 10% of the voting shares using cash on hand. This meant that the company would repurchase their own shares. The result was that the liquid assets of the company were decreasing, which made the company less attractive. A repurchase also meant that the share price increased, which made it more expensive for hostile bidders to go through with the acquisition. The third and last measure was to convert the saving shares into voting shares. The company was going to convert the saving shares into voting shares. These three measures were defensive strategies that helped the company to prevent hostile companies to implement the acquisition.

The second and third strategy was supported by the shareholders, but the strategy to buy a stock offer on Telecom Italia Mobile, was not appreciated. The investments did not want to trade their already evaluated shares in Telecom Italia to worse shares in Telecom Italia Mobile. The management of Telecom Italia was convinced to buy out the shares in Telecom Italia Mobile with cash. This gave the investors cash directly in their hands, which also made the company's debt to be double as much compared with before.

In the end of March, Telecom Italia offered the shareholders in Telecom Italia Mobile €22.5 million in cash for their shares. Two days after that, the management of Olivetti increased their offer with 15% to €60.4 million or €11.5 per share. At the same time Olivetti warned the shareholders, that if they supported the defense strategy on the meeting in May, they would take back the offer.

The management was convinced that they had the support from the shareholders on the defense strategy on the meeting in May. It turned out that not enough of the shareholders showed up on the meeting to implement the voting about the defense strategy, only 22% came. Telecom Italia therefore could not implement any strategy.

Telecom Italia therefore had to try another defense strategy. Short after the failed meeting, they announced that they had started a negotiation concerning an acquisition with the German company Deutsche Telekom. This appeared not to be free from problems, since the German government had the majority of the share in Deutsche Telekom, with 72% and the Italian government owned a certain percent in the former government Telecom Italia. To make the acquisition go through, both governments had to agree about how the proposed acquisition would be done. They did not succeed with this; this resulted that Telecom Italia's white knight disappeared.

The only thing left was Olivetti's offer with €11.50 per share. Because of Telecom Italia's failure, Olivetti succeeded with their bid and took over the majority of the shares (51, 9%) in Telecom Italia. The result was the biggest hostile takeover ever in European history, with a cost of €34 million.

5 Analysis

In this part of the thesis the authors are analyzing what kind of defensive tactics that have been used by the different companies and in what way they used it. The authors will here tie the frame of reference together with the case studies.

A compilation of the three conducted case studies above shows that shark repellent is the most frequently used defensive tactic in the chosen companies. Moreover, defenses like poison pill, white knight, standstill agreement, crown jewels, and parachutes are also used in the case studies and many of them are used in a combination of other defensive tactics.

When mergers and acquisitions involve unfriendly transactions and one firm attempts to acquire another it does not always involve quite and gentlemanly negotiations nor good news for the employee morale at the targeted firm. When these hostile takeover attempts occur there are grounds to find different defensive tactics useful.

There are several defensive tactics that can be used by target-firms to resist unfriendly takeover attempts. Some of them can work as a preventive measure and other as a more immediate measure. In the three case studies selected, the poison pill and some of the shark repellent tactics are used as preventive measures. With help from these defensive tactics the companies are, to a certain degree, prepared against hostile takeover attempts. Despite of this, the companies use more drastic measures to make the defense even stronger and immediate. An example of an immediate strategy that is used in a faster and more effective way is the white knight that involves help from another company.

When a target firm is using defensive tactics the most obvious purpose is not to be acquired. If this is accomplished the defensive tactics are considered as successful. However, if this result is not achieved it does not mean that the defensive tactics were not successful. This can be the case only if the hostile takeover was carried out without any problems or increased costs. In the case that the takeover is successful but with a noticeable higher cost than initially was offered, the defensive tactics is considered as partly successful. The use of the defense have not gotten the acquiring firm to reconsider the takeover but have, on the other hand, given the shareholders better benefits.

On the basis of the three case studies conducted in this thesis it can be established that when a target firm takes defensive action this will lead to prevention of a takeover or a noticeable increased amount of money. It is then, in the target firm's perspective, advantageous to use defensive tactics. As stated in the theoretical frame of reference the concept defensive tactic consists of many different defensive and preventive measures. Moreover, to bear in mind that these tactics can be used in a combination of other defensive tactics it is not easy to measure the level of effectiveness just though the statement that the tactic is favorable for the target companies. That is why the authors of this thesis will try to conduct a deeper analysis concerning the effectiveness of the chosen defensive tactics used in the thesis' three case studies.

Concerning the quantity of case studies conducted in this thesis, it is important to emphasize that the analysis carried out is not general for the defensive tactics but related to the cases that are chosen for this thesis.

In order to fulfill the purpose the authors will begin trying to establish what kind of defensive tactics selected companies have applied, and after that to go on investigating the effectiveness of their choice.

5.1 The poison pill

In the theoretical background is stated that this defense is the most effective takeover defensive tactic. Poison pills are rights or securities that firms issue to its shareholders, which are giving them the benefits in the event that a significant number of its shares are acquired. Poison pills have many variants, but all share the basic characteristic that they involve a transfer from the bidder to shareholders who do not offer their shares. This makes increasing of the cost of the acquisition and decreasing the reason for target shareholders to bid at any given price

The poison pill that PeopleSoft had prepared was that if any individual (or entity) acquired more than 20% of PeopleSoft's shares without the approval of PeopleSoft's board, all other shareholders would have the right to buy shares at 50% of the current market price.

Even in the third case this strategy was used by Telecom Italia. Telecom was converting the saving shares into voting shares that can be seen as a poison pill. This was supported by the shareholders. Through the increase in size it prevented the hostile bidder to go through with the acquisition.

The fact that poison pill may not work as an immediate tactic in an emergency does not make the tactic ineffective or useless since it can be used as a good preventive method. It can be compared to the shark repellent since it is used as a preventive method that becomes topical as soon as the bid has been launched. The poison pill will be placed before any hostile bid has occurred and the effect will come when a firm is trying to acquire it. This is an effective method since they have to reach control of the board to make it possible to remove costly poison pills.

5.2 Shark repellent

In the frame of reference any tactic that makes the firm less attractive to a potential unfriendly offer is called shark repellent. It is also stated that firms that making public offering usually include a range of shark repellent, which are requirements that intended to guard against hostile takeover attempts. While planned to stop outside takeovers, shark repellent requirements can also limit the flexibility of a firm's shareholders to funding a stop to a buyer or get a control premium not shared with other stockholders.

The first defensive tactic that PeopleSoft used were almost launched when Oracle came into the picture. One year after the first friendly meeting with Oracle PeopleSoft merged with J.D. Edwards (JDEC). After this merger PeopleSoft was the second biggest operator on the market within business application and has big consequences for Oracle's attempt to merger with PeopleSoft. This is called shark repellent since PeopleSoft merged with a company that oracle not considered as interesting, definitely not for the price that they were willing to pay for PeopleSoft. This made the firm less attractive for a possible hostile takeover.

The second defensive tactic that PeopleSoft used, the authors also refers to as a shark repellent. PeopleSoft offered rebates of two times money in the event an acquirer discontinued new sales of the PeopleSoft product line or "materially reduce support service" for

PeopleSoft products within two years from the customer contract date. This also made the target firm less attractive for a possible acquirer. The CAP received attention in the press, but Oracle did not worry much about the CAP which made this a less effective defense in this case.

Another example that the authors consider as a shark repellant is when the management of ITT informs that the company is going to be split into three separate companies to make it less attractive. ITT's hypothetically split of the company made Hilton to sue ITT. A judge announced that ITT not could implement the reorganization without approval from the shareholders, and the result was that ITT had to wait with their reorganization until they have had a meeting with the shareholders.

Telecom Italia's first defensive strategy was a pure size-strategy by increase through a purchase of the company Telecom Italia Mobile. This can be compared to the strategy that PeopleSoft used and is called shark repellent and is done to make the target less attractive. This strategy was not appreciated by the shareholders. The investments did not want to trade their already evaluated shares in Telecom Italia to worse shares in Telecom Italia Mobile. The management of Telecom Italia was convinced to buy out the shares in Telecom Italia Mobile with cash. This made that the investors got cash directly in their hands, it made also the company's debt to be double as much compared with before.

Shark repellent is in these conducted studies the most frequently used defensive tactic. Reasons for this can be that they can be used as a preventive method that becomes topical as soon as the bid has been launched. This is shown to be an effective method in the authors' case studies. Even if this does not stop the hostile bidder it causes problems and makes it tougher for the acquiring firm. Another reason can be that this tactic is easily used in a combination with other defenses.

To merge with other companies or another way to make the company bigger seems to be a good and logical strategy. This can both be carried out in a preventive purpose before a hostile bid occurs. Compared to other defensive tactics this seems to be a less complicated strategy avoiding hostile bids. However, in the cases it did not stop the hostile bid but made it more expensive for the acquirer. The fact that it may not work as an immediate tactic in an emergency it does not make the tactic ineffective and useless since it can be used as a good preventive method.

5.3 The golden and tin parachutes

As mentioned in the theory parachutes can come in three different variants; golden, silver and tin parachute. Golden parachute is designed for the firm's most high-ranking management team. Under this type of plan, a substantial payment is paid to a manager who is ended up following an acquisition. The presence of parachutes is prevention for hostile takeovers, since such benefits make it more expensive to purchase the firm.

Referring to the theory the tin parachute covers a wider circle of employees or even all employees in the company. It is broad-based and even more effective than silver or gold parachutes in preventing hostile takeovers attempts.

PeopleSoft's board accepted amendments to its separation polices to provide large cash payments to senior manager, golden parachutes, in the occasion of a change of control. Logical with PeopleSoft's egalitarian character, the program was expanded to cover all employees, tin parachutes. In view of Oracle's announced expectations regarding staff decrease, the cost of the new separation package was estimated at 200 million. This, of course is consider less attractive for a possible hostile takeover.

On order to make this defensive tactic effective the authors of this thesis consider the number of employees to be an important factor to work as a good defensive tactic.

5.4 Crown Jewels

According to the theory, firms often sell major assets when facing a takeover threat. Instead of publicizing hidden values, the firm should eliminate the values. Instead of making the firm's market value high, the firm should make it seem as ugly, poor and as worthless as possible. The reason for this is that the Crown Jewels, the firm's most valuable assets, represent the largest reason that companies become takeover targets.

The first that ITT did after have received the bid from Hilton was to start an aggressive effort selling assets (crown jewels) with the objective to raise its stock price and keep Hilton from winning the takeover fight. In effect, ITT management wanted to take the kinds of actions that Hilton management had proposed to do after the merger. The purpose of all of this was for making ITT less attractive in Hilton's eyes.

The use of this defensive tactic seems to be a more extreme and drastic in the way it is functioning. To sell major assets can be expensive and not always favorable for the target company itself. It the second case, about Hilton and ITT, it did not restrain the bidder from the hostile takeover, instead needed help from the white knight that finally came to the rescue.

5.5 The white knight

The defensive tactic that involves the target company to search for a friendly acquirer for the business (white knight) is also presented in the frame of reference. Firms that rescue a target from unwanted bitters are called white knights which have clearly friendly dealings. The target firm may prefer another acquirer because it believes there is a better compatibility between the two firms.

ITT gets rescued by Starwood Loodging, their white knight. They gave an offer on ITT which the board of ITT considered as a great idea. ITT's shareholders voted to accept Starwoods as an acquisition of the company and the hostile takeover attempt from Hilton was over. This defensive tactic can be considered as risk free since it does not involve high costs for the target company. It is also an effective method and this case is a good example of how this method can work as a more immediate strategy.

Telecom Italia also tried this defensive tactic. They started a negotiation concerning an acquisition with the German company Deutsche Telecom as the white knight. To make this acquisition to go through, both of the governments had to agree how the proposed acquisition should be done. Since an agreement could not be reached; this resulted in Telecom Italia's white knight to vanish.

5.6 Litigation

The frame of reference states that after a hostile takeover bid has been received, the target company can challenge the acquisition through litigation. Litigation is started by the target company based on the antitrust effects of the acquisition. This was what PeopleSoft did. They sued Oracle to the Department of Justice; they had to determine whether the deal is anticompetitive or not. But Oracle succeeded to hand in the opinion that DOJ had failed to prove that a merger between Oracle and PeopleSoft would be likely considerably to reduce competition in the business request software market. Later DOJ chose not to appeal the antitrust decision. One of PeopleSoft's purposes starting the litigation was to stop Oracle from buy more shares from PeopleSoft. According to the frame of reference a sue is for a temporary order to forbid the bidder from purchasing any more shares of the target's stock for the moment.

5.7 Repurchase Standstill Agreement

As presented in the frame of reference a targeted repurchase may be arranged by the target firm to prevent a takeover effort. In a targeted repurchase, a firm buys back its own stock from a possible bidder, at a substantial premium. These premiums can be thought of as payments to possible bidders to delay or to stop hostile takeover attempts

When ITT announced that they are going to repurchase shared in the company the defensive tactics repurchase standstill agreement took action. This means that Hilton has to fight this battle. ITT announced that they are going to repurchase shared in the company for $70 per share, this convinced Hilton that they have to raise the bid for ITT.

A strategy that Telecom Italia used to defend itself is to repurchase 10% of the voting shares using cash on hand. This strategy to buy the companies own shares is stated in the theory as repurchase standstill agreement. The result in that the liquid assets in the company are decreasing makes the company less attractive. A repurchase can also mean that the share price will increase and make it more expensive for hostile bidders to go through with the acquisition, which corresponds in this case.

This is a defensive tactic that may not stop acquirer from going on with the hostile attempt, but on the other hand works well in a combination of other defensive tactics. This method the author believes is not cheap and did not make a major impact on Olivetti's unfriendly bid.

5.8 Other defensive tactics

There are several defensive tactics that is presented in the frame of reference but is not used in any of the thesis three case studies. Example of this is antitakeover charter amendments, greenmail and Pac-Man.

Concerning the small amount case studies no general implications can be done concerning the usualness of the defensive tactics. But, as stated in the theory, green mail is considered as an expensive method and Pac Man as an extremely aggressive and rarely used defensive tactic, which can be reasons for why the companies in the case studies have chosen not to use any of these defensive tactics.

6 Conclusion and discussion

This chapter contains a discussion and a conclusion of the different defensive tactics in the chosen cases. The chapter ends up with some further research that the authors have discovered interesting.

6.1 Oracle versus PeopleSoft

PeopleSoft was prepared with a poison pill long before the bid came from Oracle. This poison pill was if any individual or entity trying to acquire more than 20% and PeopleSoft's shares without approval of PeopleSoft's board, all other shareholders would have the right to buy shares at 50% of the current market price. This exercise of these options would reduce the hostile bidder from 20% from 1.4%. This pill is considered to be a "show stopper" against hostile bidder. In the end when Oracle came with their best and final offer, the shares of PeopleSoft voted. The result of this vote was that 61% accepted the offer, and this mean that PeopleSoft is not using the poison pill that they have prepared.

The fist tactic that PeopleSoft used was shark repellent. This was almost already launched when Oracle gave its bid. This strategy was to increase in size through buying another company J.D. Edwards and to become less attractive, in particular for the price that Oracle wanted to pay. To be a bigger company makes the company to be more expensive for Oracle. Since Oracle were not interested in buying J.D. Edwards, PeopleSoft might thought that Oracle did not want to pay that much for the whole "new" company. But that did not stop Oracle from making a hostile takeover.

PeopleSoft are also using the litigation, which is probably just to slow down the opportunity for Oracle to by shares in PeopleSoft. Since this sue is making that the bidder are not allow to purchase any shares from the target firm, until that the court have decided if deal is anticompetitive. But Oracle is stubborn and finally they succeeded to take away the litigation, and this succeed may be the turning-point for Oracle.

Another defensive tactic that PeopleSoft used was parachutes. In occasion of change in control they provided golden parachutes, and expanded the program and provided tin parachutes, to cover all employees. The cost of the new separation package was estimated to 200 million dollars. These big parachutes were probably established to make Oracle to pull back their offer since it would cost them a lot of money if they changed the control. For Oracle an alternative would be, if they finally win the takeover, that they would not fire any employee and not change the control. If they did in this way, and any employees quitted on their own demand, Oracle had no responsibility to pay out any parachutes. In the end of this case Oracle did win this takeover but it did not stand in the case how they did go through with the parachutes.

6.2 Hilton versus ITT

The first action that ITT took was to start selling assets, Crown Jewels, aggressively. ITT did this to make the company seem as ugly, poor and as worthless as possible. This did not make Hilton to back off, but after that ITT had sold assets for a value of $2 million they stopped. The authors think that ITT did that because otherwise ITT would drop all their value in the company. And also that ITT probably had not expected to sell that many assets before Hilton would stop their hostile bid.

ITT also tried to divide the company in three different parts to make it harder for Hilton take over the whole company, which also is an example of shark repellent. This did not succeed since Hilton sued ITT which led to that this could not go through. The court said that ITT could not implement this reorganization without the approval from the shareholders. ITT then decided to have a meeting with the shareholders, but this meeting took never place since ITT were rescued by the company Starwood Loodging.

The company Starwood Loodging came as a white knight and gave an offer. The board of ITT thought of this as a good idea and even a better offer than Hilton's. But Hilton did not give up on an acquisitioning of ITT; Hilton increased their offer. Hilton forced to give up on the fight about ITT just a couple of days after that Starwood had increased their offer again. ITT's shareholder voted to accept Starwood as an acquisition of the company. ITT probably accepted Starwood's offer because this was a friendly offer and it would also rescue ITT from the hostile offer from Hilton.

6.3 Olivetti versus Telecom Italia

Telecom Italia's first strategy was trying to buy another company to get bigger, shark repellent. Telecom Italia wanted, like PeopleSoft, to become a larger company so acquiring them would cost a lot more, and hopefully to prevent take away the hostile bids. They wanted to buy the company Telecom Italia Mobile. This was not appreciated by the shareholders since they did not want to trade their already evaluated shares in Telecom Italia to worse shares. The management of Telecom Italia was convinced to buy out the shares in Telecom Italia Mobile with cash. This made that the investors to get cash directly, which made the company's debt to be twice as much. Since the debt increased this would make the company looks more worthless to acquire.

The second strategy that they used was to buy back stocks in the company; repurchase standstill agreement and the third part-strategy that was a size-strategy. The company was going to convert the saving shares into voting shares. These two strategies were in the beginning supported by the shareholders, until that Olivetti warned them that if they supported the strategies they would take back the offer. The shareholders did probably at this point realize that the offer from Olivetti was not that bad, but they were not sure. Because of that the shareholders choose to not go to the meeting where they were supposed to vote. The result of that was that not enough shareholders who came to the meeting and that made Telecom Italia to not implement these strategies.

Telecom Italia tried another defense strategy; they announced that they have started a negotiation concerning an acquisition with a German company. This appeared not to be free from problems, since the German government had the majority of the share in Deutsche Telekom and the Italian government owned a certain percent in the former government Telecom Italia. To make the acquisition to go through, the both government had to agree about how the proposed acquisition would be done. They did not succeed with this; this resulted in Telecom Italia's white knight to disappear. This strategy was probably a last minute strategy, since they had not the ability to implement the other strategies and got panic, and had no way of defend them from Olivetti.

The only thing left were Olivetti's offer. Because of Telecom Italia's failure, Olivetti succeeded with their bid and took over the majority of the shares in Telecom Italia and was the biggest hostile takeover ever in European history.

6.4 Summary defensive tactics

The authors consider themselves to have fulfilled the purpose describing and analyzing different defensive tactics in the case studies through finding the defensive tactics the companies have used and also to investigate the effectiveness of their choice.

After conducting this thesis' three case studies it is presented that different defensive tactics work differently for different companies and different cases. Concerning the quantity of case studies conducted in this thesis, it is important to give emphasis to the effectiveness that the authors have tried to estimate is not general for the defensive tactics but related to the cases that are chosen for this thesis. It is clear that some of the defensive tactics have been less effective than others. Some of them have been especially effective. Example of this is white knight, shark repellent, and poison pill.

However, these strategies is rarely used without a combination of other defensive tactics and that is why it is difficult to decide if of the tactics in the case studies are independently effective as a defense or only in a combination of other defensive tactics. The authors of this thesis have wondered if there is a defensive tactic or a certain combination that is more effective than others of if it always depends on the situation. That is why that it is important to emphasize that a defensive tactics are not always comparable. Some of the tactics are good to use as preventive measures and others are only effective to use when the hostile takeover is about to take action. This makes the defensive tactics that are presented in this thesis hard to compare with each other. Nevertheless, methods that can be effective when it comes to preventive measures the authors believe are the poison pill and the shark repellent whereas methods like white knight and crown jewels is favorable in more emergent situations.

Thus, it is the authors' opinion that companies having a well prepared defensive strategy have the best basic condition to resist a hostile takeover. A well organized organization with managers that has prepared defensive measures has not only a better defense but is also more attractive in the eyes of a possible white knight.

6.5 Topic suggestion for further research

Throughout the work of this thesis several interesting topics for further research has been discovered:

- What characterize companies that are in danger for hostile takeovers?
- A quantitative study concerning the most common defensive tactics.
- Investigate whether there is a Swedish market concerning defensive tactics.

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