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ARTICLES

Market misvaluation driven acquisitions: Contrary Australian evidence – Raymond da Silva Rosa, HY Izan and Ji Shan

Theories of merger and acquisitions (M&A) activity based on market misvaluation are supported by United States findings. We test the theories in Australia, where mandatory “delay and disclose” provisions arguably reduce the scope for market misvaluation driven bids. We find that, as in the United States, Australian M&A activity clusters by industry and occurs in waves but, unlike in the United States, cash bids predominate and the industries with the highest incidence of stock bids do not exhibit greater dispersion in their constituent firms’ valuations. Our analysis is consistent with the “delay and disclose” provisions imposed on bidding firms by the *Corporations Act 2001* (Cth) which substantially reduce the information asymmetries that promote misvaluation in M&As. 75

European takeover regulation and Directive 2004/25/EC – Blanaid Clarke

This article critically examines key features of Directive 2004/25/EC on Takeover Bids with particular emphasis on the manner in which it will be implemented in the United Kingdom. The Directive introduces some familiar features of takeover regulation such as a mandatory bid, squeeze-out rights and a prohibition on frustrating actions. It also introduces new and controversial concepts such as a break-through rule, designed to allow bidders break-through capital and control structures that grant disproportionate control rights to specified shareholders. A similarly controversial concept is the reciprocity rule allowing Member States to exempt companies that apply the Directive’s provisions on break-through and frustrating actions from applying these provisions if they become the subject of an offer launched by a company that does not apply similar provisions. Finally, this article attempts to evaluate the success of the Directive in achieving its objectives, particularly in light of a late amendment optionalising the provisions on break-through and frustrating actions. 93

Contemporary challenges in takeovers: Avoiding conflicts, preserving confidences and taming the commercial imperative – Andrew Tuch

This article discusses contemporary legal, commercial, ethical and other issues that arise in the context of corporate takeover transactions. These transactions are of national and international economic significance, and in Australia their occurrence has reached

unprecedented levels as many industries have consolidated. However, due to their complexity and the numerous parties – including deal advisers – they involve, and because of Australia’s relatively small size, the loyalties of company directors and advisers, including lawyers, are frequently tangled, creating legion opportunities for conflicted interests and breached confidences. At the same time, the high status of advising on takeovers and the financial lure they provide produce powerful incentives that inevitably inform the application of legal principles to these issues. The article adopts a hypothetical case study approach to focus on the challenges confronting the parties involved in takeovers and offers practical guidance for how they might prudently respond. 107

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