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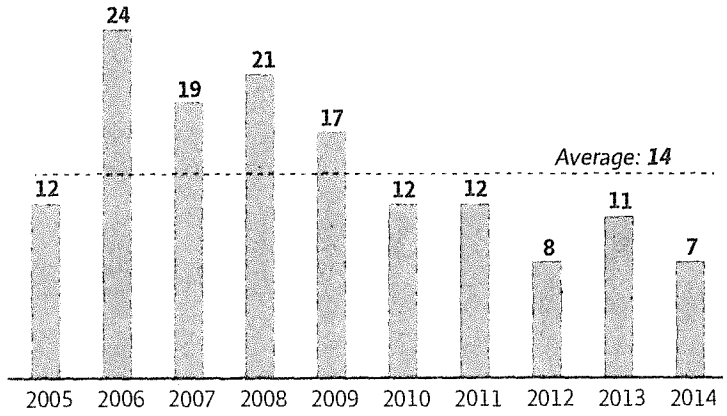
M&A

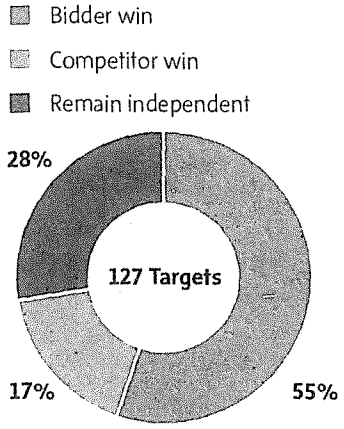
Hostile bids not always successful in Canadian cases, study shows

NUMBER OF UNSOLICITED BIDS FOR LEGAL CONTROL

By year of initiation



OUTCOMES IN FIRST-MOVER BIDS



JOHN SOPINSKI/THE GLOBE AND MAIL » SOURCE: FASKEN MARTINEAU

JEFF GRAY LAW REPORTER

With securities regulators poised to issue new rules to help boards of Canadian companies fend off hostile takeovers, a new study says 28 per cent of firms have actually been able to emerge independent after facing an unsolicited bid under the current rules.

The findings, from a study of hostile bids over the past decade conducted by Fasken Martineau DuMoulin LLP, appears to question the conventional wisdom around corporate takeovers in Canada, which holds that the current rules leave companies too vulnerable and that almost all targets "put in play" by a hostile bid end up sold off.

"That was definitely a surprise to us," said Aaron Atkinson, a lawyer at Fasken Martineau who co-authored the study, which looked at 143 hostile bids dating back to 2005.

The study shows that the first bidder to launch a hostile takeover succeeded 55 per cent of the time. Add in situations where a target company succeeding in bringing in a "white knight" buyer to fend off a takeover bidder, and 72 per cent of companies put in play by a bid ended up with new owners. But in 28 per cent of cases, the company remained independent, meaning it was not acquired by another party during the bidding processes.

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>
> **Bradley Freelan**
> *Study co-author*

The idea that Canadian companies were too vulnerable to hostile - and particularly foreign - takeovers, resulting in the "hollowing out" of corporate Canada, has driven policy discussions in recent years.

The study's authors are quick to say they don't believe their numbers refute the need for rule changes, however.

"I am not sure we want to say there is no problem, but maybe the problem is not as large as people would perceive," said Faskens partner Bradley Freelan, the other co-author of the study.

The proposed reforms, outlined last September and expected to be officially announced soon, will likely be discussed Thursday at an annual retreat for Bay Street securities lawyers and provincial regulators at the Langdon Hall resort in Cambridge, Ont.

The new rules would extend the amount of time boards have to seek alternative white-knight bidders to 120 days, from the current 35 to 60 days securities commissions typically allow.

The proposals come after a series of contradictory rulings from securities commissions in recent years on whether companies could use so-called "poison pill" strategies to block takeovers; provincial securities regulators proposed new rules to allow boards of directors more leverage in fending off hostile bids. (Quebec's securities regulator backed away from a separate proposal that would have allowed boards to "just say no," to a takeover proposal, as is the case in the United States.)

Edward Waitzer, a partner at Stikeman Elliott LLP and a former chairman of the Ontario Securities Commission who has called for sweeping changes to the takeover bid regime, said he was also surprised at the number of Canadian companies in the study that remained independent after a hostile bid.

However, he points out that compared with the United States, Canada's regime produced many more successful takeovers for initial hostile bidders. In the United States, according to numbers compiled in 2013 by Bloomberg News, those who launch hostile bids fail in 65 per cent of cases.