CHAPTER - III

TAKEOVERS & MERGERS - TRENDS IN OTHER COUNTRIES
Mergers and acquisitions are old hat in the U.K. The hostile take-over bid was developed and gained credibility in the 1950's and 1960's well before such practice became common and acceptable in the U.S and in continental Europe. Evidence of significant merger and acquisition activity can be seen from the fact that the number of U.K listed companies has declined from some 5000 in the mid 1950's to the current level of approximately 2,200 although the market capitalisation in real terms of today's U.K listed companies is vastly greater than what it was 20 or 30 years ago.

The age of the U.K Mega-Bid (Bids in excess of pound sterling 1 billion) dawned in 1985. In 1987 the UK take-over panel reported the announcement of nearly 240 merger and acquisition proposals and the pace of merger and acquisition activity has continued unabated in 1988.

After the traumas of the collapse of major equity markets world-wide in October 1987, there has been a good recovery in the U.K equity market in common with other stock markets world-wide. Contrary to all expectations, the "Crash of 1987" did not herald the sudden and to the great wave of merger activity in the U.K which commenced in the Mid 1980's. But, Black Monday of October 1987 did mark a watershed both for the kind of company making takeover bids and the manner in which those bids were conducted. The stability or otherwise of the U.K securities market, has not, however, altered the
rationale underlying the acquisition of one company by another, be it on an agreed or contested basis.

Companies will always want to acquire better management skills, diversify into new product areas, achieve economies of scale by acquiring a company in the same line of business and, above all, to lessen their dependence on any one market place. The ultimate objective of any company chairman seems to be the reduction, if not elimination of competitive pressures on his business and thus, although the earnings or the assets of that business. Such objective has more often been achieved by the acquisition of an existing business where management is considered to have failed to utilise that business assets to the full and thus, maximise its earnings potential.

Expenditure on acquisitions and mergers by Industrial and Commercial companies within the U.K in 1988 is estimated to have been pound sterling 22.1 billion - 44% higher than the previous record annual total of pound sterling 15.4 billion in 1987. The volume of activity likewise reached record levels, 1224 acquisitions were reported exceeding the previous record of 1210 set in 1972.

Whilst merger and acquisition activity within the U.K did indeed scale record heights in 1988, the type of company that engaged in such activity and more particularly, the financing methods employed changed dramatically. Prior to the crash, small, aggressive, high profile companies, which tended to
enjoy premium ratings on the stock market at the highest point the bull market, indulged in what may be described as an unprecedented paper chase. During 1987, cash accounted for only 32.2% of total expenditure on acquisitions, a level not seen since the early 1970's.

Takeovers and mergers in the U.K are governed by a complex web of regulatory, statutory and government controls. All listed and unlisted public companies deemed to be resident in U.K and the channel islands are governed by the city code on takeovers and mergers, the rule book of the panel on takeovers and mergers. All companies be they public or private, are however, governed by the relevant provisions of the Companies Act 1985 and the Financial Services Act 1986. At the government level, the monopolies and mergers commission and the Department of Trade and Industry assume responsibility for reviewing and where necessary controlling the effects of take overs and mergers on such issues as competition policy. There is as yet no provision for systematic merger control at the European Economic Commission level.

Whilst the take over panel is a designated activity under the Financial Services Act, the city code on take-overs and mergers does not have, and does not seek to have, the force of statute. It has, nevertheless been acknowledged both the government and other regulatory activities that companies seeking to take advantage of the U.K securities markets with a view to takeover should conduct themselves in accordance
with best business standards and, thus, in accordance with the code.

LONDON CITY CODE:
The genesis of the code too lies in the little regard paid by many large companies, some of them very large and respectable, to the rules and regulations of the London stock exchange council. It is reported that of 2126 manufacturing firms outside the steel industry quoted on U.K stock exchanges in 1954, over 400 had been merged, acquired or taken over six years later. Apart from vitiating the spirit of the stock exchange rules and regulations, these also confronted the London Stock Exchanges with a whole batch of new and uncomfortable ethical questions.

Until 1959, the whole business of mergers and takeovers was largely unregulated, handled by reputable merchant banks subject to the self discipline imposed simply by the danger of losing a reputation if the deal went wrong. With the battle for control of British Aluminium in 1959, it became obvious that something stronger than this self imposed code of discipline was needed. A working party was then set up by the Governor of the Bank of England and a code of conduct on takeover bids described as "Notes on Amalgation of British Business" was published in October 1959. These were revised four years later and published under the title, "Revised notes on Company Amalgamations and Mergers" known popularly as the "Queensberry Rules". These were later endorsed by the
London Stock Exchange Council.

A series of bids and battles, again involving very large and reputed companies in 1966 and 1967 were conducted in a manner which flagrantly violated the spirit of these rules. Ignoring the call of the Financial Press for the suspension of some of the companies concerned in this series of bids, the London Stock Exchange Council created yet another body, on which institutions were represented, to inquire into the need for a more rigid code of procedure for takeover bids.

The report of this committee which was published in March 1968, laid down a more stringent set of rules to be observed by companies in a takeover bid and recommended setting up a permanent takeover panel. Although these rules were again incorporated in the "General Undertaking" of the London Stock Exchange, they were abused in spirit if not in letter on the ground that these were ambiguous.

It was clear that the takeover panel (based on its functioning) was powerless to enforce the takeover code because it lacked sanctions and this led to further revision of both the powers of the panel and the code. These revisions were completed in April 1969 and permanent takeover panel was established and empowered to make recommendations to the stock exchange council, the Issuing House Association and the Board of Trade regarding the action that could be taken against offending companies, brokers, jobbers and bankers.
At the same time, the rules of the code relating to market deals during bids were tightened.

Because of the failure of the panel to regulate a number of abuses, the code has been further revised in 1972, 1976 and 1981. The present code was issued in 1985 and its object is to lay down general principles in the conduct of take-overs to ensure that the shareholders of the target company are not misled or do not suffer as a result of a change in the control of the company. It is not necessary to go into the contents of the code, but it may be noted the general principles that have been laid down for the conduct of takeovers.

UNITED STATES OF AMERICA

In U.S., the first phase of mergers occurred between 1898 and 1906, the second during the 1920’s and since the mid 1950’s, the third phase is on.

The period between 1898 and 1906 appears to have been a period of consolidation and horizontal diversification and resulted in the emergence of a number of companies dominant in industries which were formerly before the merger a number of small enterprises. Some of the giant companies of today which were the result of merger at this time are Standard Oil Company of New Jersey, U.S Steel andBethlehem Steel etc.,

Some of these merger efforts also were directed towards the
control of the market which ultimately led to a reaction leading up to the passing of Antitrust Legislations and Ultimate dissolution of some of the larger units.

Between 1926 and 1930, there was another wave of amalgamations and mergers. The mechanics and pattern had changed slightly and during this period, mergers were effected by formation of holding companies which acquired the controlling shares of a large number of small companies over relatively broad range of products. Among the important companies which had mergers during this period were Radio Corporation of America, National Dairy Products and Allied Chemical and DVF.

There was another spate of mergers since the second world war. This era may be considered to be an era of conglomerate mergers.

The Ford Motor Corporation acquired the assets of Dearborn Motors Limited in 1953. In 1961 Ford purchased the Philco Corporation and certain other assets of Electric Auto Light Company and thus emerged as one of the giant companies dealing with a large range of commodities.

The takeovers in the U.S are covered by the Williams Act and the Hart-Sutt-Rudino Act.
Williams Act: The Williams Act, 1968, was introduced with the object of preventing practices that resulted in the shareholders of the target company being short changed. The Act, like the London City Code, introduced an "offer period" and made certain disclosures mandatory to enable the shareholders to take a proper decision regarding the offer made to them. The major principles of the Act are:

1) The offerors must disclose their identity, where they will obtain the money to pay for the tendered shares, their plans, if any, to change the target company and special agreements that they have concerning the take-over with other shareholders or the existing management of the target company.

2) The disclosure must be made not only to the shareholders of the target company but also to all the stock exchanges, the securities and exchange commission, the target company and other bidders of the target company as well.

3) The management of the target company need not comment on the tender offer and may leave it to the shareholders to accept or reject the same. If, however, the management chooses to support or oppose the offer, they are also required to state their interests and object in the transaction.
4) The offer must be open for a minimum period of 20 days. The offeror must accept any share tendered during the first ten days but any person tendering may withdraw the shares through the company by the 15th Day.

5) False or deceptive statements to encourage or discourage purchases or sale of shares is prohibited. The prohibition applies to "All Persons".

6) Any person who acquires more than 5% of the target company voting shares through open market or through negotiated purchases must disclose, within 10 days of reaching the 5% limit, the same information as a person who makes a tender offer. Thus any person who acquires a 5% stake in the equity has to make detailed disclosure not only to the target company and the shareholders but to the stock exchanges and the securities and exchange commission.

The general criticism of the Williams Act is that it is often the starting point of tactical litigation where-by the disclosures made by the acquiring groups of persons is challenged just before the expiry of the 20 day period, thus postponing the acquisition of shares for more days. This delay is often used to get a better price often in the form of a competing bid from a "White Knight".
HART-SCOTT - RODINO - ANTI-TRUST/IMPROVEMENTS ACT:

The other important U.S legislation is under the anti-trust provisions which are similar to our MRTP Laws. The object of anti-trust legislation, like the MRTP Act, is to prevent the creation of a monopoly or to avoid the elimination of competition. The HART-SCOTT-RODINO ANTI-TRUST improvements Act 1976 was passed to provide the justice department and the Federal Trade Commission, an opportunity to review the proposed Mergers and acquisitions.

This act requires the persons acquiring shares to notify Federal Anti-Trust Agencies as well as the target firm of the proposed acquisition or merger and file information about the volume and nature of business conducted by the purchaser company as well as the target company. On the basis of the information submitted to the anti-trust agencies, the authorities are given 15-30 days to determine whether the transaction might violate the anti-trust laws. If there is doubt that there could be infringement or violation, the anti-trust officials are empowered to call for additional information by way of a "Second Request".

Under this Act, all transactions having a value of over $15 Million must be submitted for the scrutiny of anti-trust officials. It may be seen that there is a waiting period of 20 days under the Williams Act whereas it is only 15 days under the Hart-Scott-Rodnino Act. The latter Act may take more time if there is a "Second Request" for information.
Japanese industry long has considered corporate buyouts an unwelcome, even illegitimate business strategy. Executives who believe in old line entrepreneurship - creating a big enterprise from the bottom up, often call takeovers "Nottori" or Hijacking.

Nottori is still used today - but with fewer negative connotations needing international business expansion and enriched by the higher exchange rate of the Yen, an increasing number of Japanese corporations have begun snapping up foreign enterprise.

Japanese buyouts of foreign firms rose to 228 in 1987 from 44 in 1984, according to Yamaichi Securities company, Japan's most active mergers and acquisitions mediator. The number reached 141 after the first six months of 1988 and is expected to hit a record high.

Recent buyouts included such mega deals as Dainippon Ink & Chemicals US $3.535 million purchase of Reichhold Chemicals Inc.; Aoki Corps $1.3 billion acquisition of Westin Hotels and Resorts; Sony's $2 billion buyout of CBS records and Bridge-Stone's $2.6 billion takeover of Firestone Tire and Rubber Company the largest acquisition ever by a Japanese entity. Dainippon presents a typical Japanese merger and acquisitions strategy.
Following the acquisitions of Kohl and Madden Printing Inc., in 1974 and Polychrome Corporation in 1979, Dainippon obtained the graphic art division of Sun Chemical Company for $550 Million in August 1986 and Reichhold Chemical, the top thermoplastic maker, a year later. These buyouts instantly established integrated U.S. production bases both for Ink and resins and Dic became the world’s largest printing Ink supplier holding 15% of total market share.

One strong incentive for Japanese buyouts has been the Yen’s sky high rise against the U.S. Dollar. Sanwa Bank, for instance, decided to buy Lloyds Bank California in the summer of 1985 when the dollar was equivalent to 240 Yen. By August 26, 1986, when Sanwa bought the bank for $263 Million, the Yen’s rate had climbed to 154, pushing down Sanwa’s Yen payment burden to 40.5 billion yen from the initial value of 63.2 billion yen.

The unprecedented mergers and acquisitions has also given rise to new moves in investment banking business. While powerful mergers and acquisitions organisers from Wall Street such as First Boston, Goldman Sachs and Morgan Stanley, have reinforced their Tokyo bases, Long Term Credit Bank of Japan has expanded its investment banking network by obtaining a stake in Peer’s & Co., a New York based mergers and acquisitions adviser. Nomura Securities Company, the largest Japanese brokerage house, has tied up with Wasserstein Perella & Co., one of the most aggressive mergers and acquisitions firms on Wall Street.
Foreign buyouts, a new unfamiliar strategy for many Japanese companies, sometimes cast dark shadows over ambitious dreams. To buy Firestone, for example, Bridgtstone forked over a sum 3.5 times greater than it had originally planned to outbid Italy’s Pirelli. Its winning bid was greeted with an unexpected announcement by General Motors, a big client of Firestone, that it would stop purchasing automobile tires from Firestone in two years. Many industry observers say the Firestone buyout has brought new hardships to the Japanese tire producer.

EUROPE

Peter D. Sutherland, the European Commission's Commissioner for competition policy, explains from Brussels, Belgium. EEC drive to strengthen regulation of mergers and acquisitions among members.

EC TO SEEK GREATER CONTROL OVER MERGERS

The present proposal is based on one which was first put to the council in 1973, the member states having agreed on the principle at the Paris summit in 1972. Changing circumstances in recent years have given the issue added significance. The rapid internationalization of trade and the restructuring of European industry in response to the developing single market is being reflected in increasing numbers of cross border mergers and acquisitions and has clear implications for competition within the community. The community strategy of achieving a single market by 1992 requires the adoption of
merger control legislation. It is difficult to see how the Internal market could properly function in a legal environment which continues to subject community scale operations to different and perhaps conflicting, national laws.

**EC MERGER PLAN**

Mergers subject to control by the commission should only be those with a community dimension.

The system should provide legal certainty for companies and its should be a "one-stop-shop" operation.

There should be provision for authorization of mergers where they benefit the wider economy or improve the competitive structure.

There should be adequate consultation with the member states in the decision-making process.

**INCREASE OF Mergers AND ACQUISITIONS WITHIN euROPE**

Intra-community cross-border mergers and acquisitions involving at least one of the community's 1000 largest firms have increased from 29 in 1983-84 to 75 in 1986-87. Furthermore, in almost 60 percent of the total mergers monitored by the commission in 1986-87, the combined turnover of the companies concerned exceeded 1000 million ECU's. This is a significantly higher percentage than in previous years and points to an increase in the rate at which concentrations are occurring.
IMPACT OF MERGERS AND ACQUISITIONS ON ECONOMY

It is obvious that merging undertakings always expect to benefit from the operation, but some studies show that this is not always "beautiful". Experience also shows that mergers, which are motivated by restructuring, may lead to job losses in the short term. If mergers achieve their micro-economic objectives, an increase in jobs may be expected in the long run. One thing is clear that maximum efficiency can only be exploited when we have the stimulus of competition.