**Thwarting the market for corporate control: takeover regulation in India**

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The general view, now widely accepted, that contemporary capitalism is characterized by a conflict between shareholders and management has to be drastically modified when applied to markets like India, where shareholdings remain concentrated in the hands of family business groups who control the management of 'their' companies. These controlling or 'dominant' shareholders do not face a problem of accountability in the same way that shareholders in the Anglo-American markets do because they *are* the management in the companies they control. On the other hand, the vast majority of these companies are public corporations, that is, listed on the local stock exchanges, so that here the issue of governance becomes, potentially, a conflict between two categories of shareholders – non-controlling and controlling or minority and dominant – and is played out in terms that are only partially and imperfectly reflected in Cadbury. The historical assumption behind Cadbury was a dispersal and re-concentration of shareholdings that dramatically altered the balance between family business and finance capital, transforming the nature of British and American capitalism through most of the twentieth century. This trajectory (of the evolution of 'shareholder capitalism') has not been replicated elsewhere, and certainly not in India, where the sweeping changes ushered in by international (finance) capital since the nineties have, paradoxically, produced a *re*-consolidation of family businesses. E.g., by 2004 the aggregate share of 'promoter' holdings in the listed company sector stood at roughly 55%, substantially higher than pre-liberalisation levels. Far from encouraging the evolution of widely held companies and, in this sense at least, of a more professionalised corporate sector, the 'economic reforms' era has led to a massive consolidation of equity in the hands of dominant shareholders and the emergence of *more* concentrated ownership structures.

The crucial mediation here, I'd like to suggest, is regulation. In other words, 'liberalisation' does not work in the abstract but as a parallelogram of forces, and regulation is a crucial and intrinsic part of the way individual capitals seek to manage the process.[1] Perhaps the best illustration of this is the way India's market regulator, the Securities and Exchange Board of India, has set about introducing a market for corporate control, that is, framing rules for the orderly conduct of takeovers. Hostile takeovers are rare in most countries of the world, and the only jurisdictions with active corporate control markets themselves embody major differences of approach to the issue. In the US, regulatory competition combined with weak shareholder governance has engendered a corporate control market hemmed in by powerful legal restrictions that strongly favour incumbent management and, in theory at least, make hostile bids more difficult.[2] In sharp contrast to that situation, the UK City Code on Takeovers and Mergers set out to embody a self-regulatory framework for the regulation of takeovers that aimed at informality of procedures and flexibility in application as well as the equitable treatment of all shareholders, strongly discouraging or even prohibiting the use of defensive tactics.[3] The SEBI regulations are based, ostensibly, on the City Code, yet incorporate features that replicate the American bias towards entrenched management.

The OECD Principles of Corporate Governance recognise that policies designed to encourage better governance of companies imply, among other principles, that 'Markets for corporate control should be allowed to function in an efficient and transparent manner'. From the regulatory standpoint, the general issue is: how far does SEBI's takeover code meet the criteria of being an efficient and transparent mechanism for the conduct of hostile takeovers? Hostile takeovers have been next to non-existent in India, as they have in Continental Europe and East Asia, but with liberalisation destroying the shibboleths that have sanctified the control of businesses by individual families and encouraging an increasingly furious pace of consolidation, it is widely believed that contested takeover bids will become less uncommon in the years to come.

General criticisms of the takeover code

No piece of regulation drafted by SEBI has been subjected to sharper public criticisms than the takeover regulations that were first issued in draft form in 1996. The takeover regulations have been criticised both in general terms for skewing the balance in favour of incumbent management and indeed making hostile takeovers *more* difficult, and in detail, on a variety of grounds related to the wording and specific provisions of the Code. On the other hand, the very existence of the Code is widely perceived as a watershed in the history of Indian business, and powerful corporate lobbies are worried by the prospect of hostile takeovers.

Preliminary research shows that the most controversial aspects of the takeover regulations concern (a) the standards of proof required to establish a presumption of acting in concert under the provisions of the Code; (b) the size of the mandatory public offer (which is currently pegged at 20%); (c) the provision allowing "promoters" to consolidate their holdings through 'creeping acquisitions' (Regulation 11); and (d) crucial exemptions from the purview of the Code, notably, preferential allotments and so-called inter-se transfers (Regulation 3 (1) ) and the enormous discretion allowed to the panel in granting exemptions to 'acquirers'. Though the committee drafting the takeover code borrowed the idea of 'persons acting in concert' from the City Code on Takeovers and Mergers, it has been argued that 'even in the UK, where the code can be interpreted with a lot of liberty, it is found that it is very difficult to prove that parties are acting in concert'.[4] The key point here is that the self-regulatory style of the City Code with its reference to the Panel on Takeovers and Mergers and the central role of the latter in giving 'general guidance on the interpretation of the Code' could scarcely have less in common with the deeply litigious and legalistic culture of regulation in India, where even the strongest circumstantial evidence may fail to satisfy the courts that parties presumed to be acting in concert were in fact doing so.[5] On the size of the open offer, two very different considerations intersected to create a certain amount of confusion. Justice Bhagwati's later explicit and publicly stated rationale for pegging the size of the open offer at 20% was that if acquirers were required to bid for all the shares tendered, 'Since bank finance is not available to Indian companies, only the foreign companies will have the money to take over companies'.[6] The level of the mandatory open offer was seen as enabling Indian companies to play an active role in the market for corporate control. The opposition to a public offer of this size has come from two very different quarters, however. Merchant bankers have objected on the grounds that a '20% bid is unfair to minority shareholders' in the sense that a key objective of any takeover code must be the provision of an exit option to *all* shareholders.[7] By contrast, the industry associations representing the top echelons of Indian business lobbied for a 51% or even 100% open offer size precisely in order to make hostile bids *less* viable. Here is an issue, then, where regulation leaves considerable room for both ambiguity and lobbying, and the prevalence of pragmatic considerations over any fundamental principle has actually served to enhance the vulnerability of Indian promoters.

The widespread perception that the takeover regulations skew the balance in favour of incumbent management (and, to this extent at least, make hostile takeovers more difficult) stems from the two remaining features mentioned above.[8] The regulations still allow managements to consolidate at the rate of 5% in any given 12 month period.[9] What the creeping acquisition clause does, effectively, is to allow managements to consolidate up to 51% without paying a control premium. In spite of this, there has been a strong business lobby in favour of scrapping the creeping acquisition limit altogether, possibly because the staggering of purchases drives up the average cost of acquisition for incumbent blockholders. Scrapping the limit would both sanction the idea that controlling shareholders are under no obligation to pay a control premium and unleash huge insider trading opportunities. Indeed, the (then) chairman of SEBI had to point out that such a step 'might pre-empt takeover bids completely'![10]

Finally, the exemptions allowed under the Code have been fully exploited, so that the bulk of acquisition activity in the recent past has come about outside the provisions of the Code, that is, without the formal requirement of an open offer. While acquisitions through open market purchases are restricted to a ceiling of 5% in any 12 month period, and outside acquirers are thus restrained in their assault on incumbent management, there seems to be no limit on the controlling group increasing its stake through preferential allotments.[11] Again, there is a view that 'Exempting acquisition of shares through the preferential offer route is not fair to the non-management shareholders'.[12] The bias seems even more evident in the exemption of inter-se transfer of shares among family members, group companies, etc., as if these are unlikely to have any implications for the future of the company.[13]

The Code has invited criticism on various other grounds: that it is poorly drafted and contains major loopholes, encourages excessive litigation, allows for ambiguous or arbitrary interpretations, and 'vests too much discretion in the SEBI board'. Application of the Code is fraught with difficulties of interpretation (such as what constitutes 'change in control', whether 'acquirers' in the sense defined by the code includes 'promoters' in the sense defined by the code, etc.), and these have been compounded by the practice of granting partial waivers and by the more recent and damaging habit of taking legal opinions. All of this contrasts sharply with the functioning of the City Code in the UK, the proclaimed inspiration behind the SEBI regulations.[14]

In spite of the obvious drawbacks of the Code, the evidence suggests that the open offer mechanism has worked well, further *fuelling the anxiety of entrenched management*.

Corporate pressure on the framing and implementation of regulations

What makes the Indian takeover code an extraordinary piece of formalism is that despite its moorings in the regulatory rhetoric of the nineties and the ostensible desire to replicate best practice in this field, attention to the *details* of regulation would show that crucial features of the code were designed to encourage promoters to consolidate their hold on companies with the eventual aim of *defeating* any possible bids for control. This conservative intent would have been much less apparent, on the surface anyway, had the head of the takeover panel (the committee responsible for drafting the regulation), Justice Bhagwati, not taken it upon himself to state publicly, on repeated occasions, that the code was in fact designed to shore up existing businesses against the threat of hostile takeovers (read: foreign companies). Far from legitimising the contestability of control, India's takeover regulation has been the single most important enabling factor in the consolidation of promoter stakes against any possible takeover threat.

The regulation was first issued in draft form in the middle of 1996 and notified in February 1997. [15] When the regulation was still in draft form, the committee had initially suggested *two* public offer sizes – 10% for incumbent blockholders or existing management, and 20% for outside acquirers, the rationale for this being that a low public offer size would help Indian promoters consolidate their holdings! As Bhagwati told the *Economic Times* in December 1996, 'Banks do not assist Indian promoters in their bid to consolidate holdings. This is not the case with foreign companies which can raise overseas funds. A 20 per cent limit in this light would make it very difficult for *existing managements* to consolidate their holdings'.[16] In other words, the public offer size was linked to the needs of incumbent management, not potential bidders. A month later, in January 1997, addressing a meeting of the Indian Chamber of Commerce in Calcutta, Bhagwati stated that Indian companies do not have adequate defence mechanisms to cope with hostile takeover bids, especially when these are made by overseas players. 'The former chief justice pointed out that in the absence of a facility for buyback of equity, Indian companies will not be in a position to thwart hostile takeovers'.[17] Later the same month, Bhagwati defended the retention of a creeping acquisition clause against the Finance Ministry's hesitations on this point and stated, 'The new code gives an opportunity to existing management to consolidate its holdings. *This is being done to protect Indian entrepreneurs from the big multinational corporations* [my emphasis] as the former cannot match the latter in financial strength… The new code will provide a level playing field'.[18] In 1998, when the committee was toying with the idea of raising the creeping acquisition limit to 5%, to accelerate consolidation of promoter holdings, (and of course it did so soon enough), Bhagwati argued that in India entrepreneurs have built up their industries over a period of time but still hold a small stake. 'They should be given an opportunity to consolidate their holdings'.[19]

Given these public declarations of intent, it is hardly surprising that the business press described the takeover code as a 'blueprint for shielding Indian managements'.[20] Three features were particularly important to the regulator's zealousness in encouraging promoters to ringfence their companies against the possible evolution of a takeover market. First was the Code's permissiveness on the issue of creeping acquisitions (that is, share purchases by controlling shareholders that were exempt from the obligation of a public offer), a clear departure from international best practice. During the first round of debate in 1996, investor associations had pressed for a reduction of the creeping acquisition limit to 1% (from the existing 2%), arguing that 'allowing existing promoters to consolidate their shareholding in a company is unfair to ordinary (i.e. minority) shareholders'.[21] The committee, by contrast, proceeded to *raise* the limit by a very substantial margin – to 5% in October 1998, and to 10% in October 2001, retaining it at the 10 per cent level for two successive six-month periods, till SEBI was compelled to bring it back to 5% from the end of 2002 – against the wishes of the panel, which wanted the higher ceiling to be retained for a further 18 months.[22] The background to all this was repeated lobbying by established business houses for a total abolition of the ceiling, an argument the committee was even willing to go along with,[23] suggesting that controlling shareholders should 'be allowed to consolidate till they reach 51 per cent, after which they would have to make an open offer'.[24] As the business press commented, wryly, 'To have a takeover code where a public offer will be mandatory only when someone wants to take his stake beyond 51 per cent, is to make public offers the exception rather than the rule'.[25]

The second mechanism through which the takeover regulation has defied its own ostensible purpose of structuring a market for corporate control is the exemption of two major classes of control transactions from the provisions of the code, that is, preferential allotments and so-called 'inter-se transfers'. Both exemptions date from the earliest period of the Code. Like creeping acquisitions, preferential allotments simply allowed controlling shareholders to shore up their stakes, that is, *reinforce* control, without paying a control premium. Moreover, unlike creeping acquisitions, there was no limit on the controlling group raising its stake through preferential allotments.[26] These were blatantly unfair to minority shareholders in the sense that they openly violated the requirement that 'no group of shareholders should be able to acquire shares or rights which are not at the same time available to all other shareholders on the same terms',[27] and the fact that the exemption was only finally removed in late 2002, after a full six years, speaks volumes for the quality of regulation in India. Indeed, inter-se transfers (share transactions between family members or group companies) are still exempt from the takeover regulation.

A third crucial concession concerned industry's successful campaign to amend the Companies Act to allow buyback of shares. The business chambers had argued that 'Buyback of shares will help companies combat hostile takeover'.[28] That presumed of course that buybacks would not be covered by the code and, sure enough, when the share buyback guidelines were first announced in the latter part of 1998, Justice Bhagwati clarified that the committee had decided 'to amend the takeover code so that the term "acquirer" excludes a company making an offer for buyback'. 'Both the buyback and the takeover offers would be treated as mutually exclusive and hence governed by [their] respective regulations'.[29] In 2001 the Union Cabinet, then under BJP control, approved an ordinance to amend Section 77A of the Companies Act to allow buybacks of up to

10% of equity without shareholder approval. As the press commented, 'The ordinance is designed to make it easier for promoters to secure their hold on companies, to the detriment of independent shareholders. It reinforces the favour the government did to promoters when it raised the creeping acquisition limit. Creeping acquisition permits a promoter to raise his share of the equity capital by buying shares in the market; buyback makes it possible for him to use the company's own money to achieve the same objective'. [30]

Thus creeping acquisitions, preferential allotments and share buybacks exempt from takeover regulation were convergent elements of a strategy designed to encourage incumbent managements (that is, promoters) to reinforce control over companies in a sort of massive pre-emptive operation that worked on the underlying assumption that hostile takeovers were inevitable in the long term. What is extraordinary about this whole episode is that the government allowed the exercise to be conducted through a regulatory agency that was committed, in principle at least, to the opposite, namely, fairness, transparency, and protection of minority shareholders.

## The contestability of control: capitalism at last?

In all markets outside the US and UK, takeover regulations emerged as part of the pressure exerted by foreign institutional investors for convergence on global standards of accounting and corporate governance. *Convergence* of standards was an essential part of the agenda chalked out by finance capital for the less well integrated capital markets of Continental Europe and Asia. But the dramatic defeat of the European Takeover Directive in July 2001 was a stark reminder of the huge stakes involved in an even partly successful implementation of that agenda. Indeed, exactly a week after the failure of the European Directive in the European parliament, Germany published the official draft of its new Takeover Act reversing the principle of board neutrality. [31] What those debates and their protracted divisions reflect is the underlying sense that the emergence of a globally integrated hostile takeover market would radically transform the nature of capitalism throughout Europe, loosening the grip of the large *blockholders* who dominate the corporate sector and a substantial part of the economy with their labyrinth of control devices and concentration of voting rights.[32] Whether and how soon that happens will depend on the kind of corporate governance pressures and regulatory consistency that international investors are able to inject into domestic markets. The example of Sweden shows that strong pressures on the corporate governance front *can* lead to dramatic changes in the governance of family businesses – the elimination of dual-class shares, the disappearance of cross-holdings, even, possibly, the unravelling of those great 'pyramids' that gird entire corporate empires. Were a strong version of the Thirteenth Directive in operation, these changes would be occurring even more rapidly. The Swedish example is less remote from India than it seems because the dilemma facing Indian business is remarkably similar to that confronting Swedish capital. 'The fundamental problem for the Swedish model is how to attract more institutional, particularly foreign, capital while maintaining the closely held, family-dominated governance structure'.[33] Indian companies have relied heavily on foreign institutional investments since the 1990s, and today FIIs constitute the second largest block of investors in a wide range of these companies, second only to promoters.[34] In spite of this, institutional investors have had much less of an impact on the quality of regulation in the Indian market than they have, evidently, in Sweden.

If 'convergence' or the globalisation of the capital markets really were to culminate in a globally integrated market for corporate control, its undermining of the dense networks of family and large blockholder capitalism would not just replace one set of capitalists with another but dismantle the whole culture of clandestinity that surrounds the operation of business in most markets in the world today. Transparency of control is one area where the regulatory push for disclosure has probably yielded the least by way of actual transparency. That rules governing the transparency of shareholdings are pivotal to the proper functioning of a corporate control market has been forcefully argued in the recent Report of the Advisory Group on Corporate Governance set up by the Reserve Bank of India in 2000. Here it is argued: 'In the absence of correct information on the arrangements of the promoters for management control, the "markets for corporate control" do not "function in an efficient and transparent manner" in India. Currently, considerable debate has been going on in this area after some corporate raiders became active. One of the important points being debated is, whether the promoter groups should also be allowed to have a level playing field with the raiders by stepping up the creeping acquisition limit to 15%. *Much of this debate becomes opaque in the absence of any meaningful information on promoter shareholding in respect of the companies listed on the stock exchanges. If the promoters under attack resort to other ways of strengthening their shareholdings, it is very difficult to know whether they are abiding by the existing guidelines*… Shareholders have a right to know about all the dealings of the promoters in the shares of the company in as much as they [promoters] know the holdings of others [acquirers] as soon as they acquire more than 5% shareholdings.'[35]

There is a great deal of clandestinity about the true extent of promoter holdings in Indian companies, despite the rapid extension of the depositories. This is because lack of transparency is an endemic part of the way control is *structured* to 'ensure control over the largest possible amount of outside capital with the smallest possible amount of one's own capital'.[36] In India investment companies and trusts have been a crucial part of this "structuring" of control and have never been subject to proper regulation. For example, of the 46.67% generally said to be owned by the Ambanis in Reliance Industries, the country's largest private sector enterprise, over 34% was controlled through at least 14 investment companies and another 7.5% through the Petroleum Trust.[37] In December last year it had to be specially clarified that this 7.5% stake was not part of the promoters' holding, as stated (by the company, presumably) on the BSE website.[38] The promoters' direct holdings were only 5.13%. To avoid this kind of confusion (opacity), SEBI has been debating the issue of a more reliable format for disclosure of promoter shareholdings. 'Among other things, the new format replaces the term "promoter holdings" with "holdings of the controlling group". This will, at one stroke, bring into the open the total stake that is, in effect, under the control of the promoter group, and will impact promoters who control companies through nominal shareholdings in their own name but significant stakes through trusts and other legal entities'.[39] Indeed, the essential purpose of the investment companies is to 'mask the way a company is controlled by a promoter'.[40]

The Indian family-controlled business houses have been under pressure to clean up their balance sheets and rationalize their businesses, including the crossholdings that have traditionally acted as their takeover defence, and there *has* been a great deal of restructuring in the past decade. But the sheer ability of the system to survive through a period that has seen a substantial increase in levels of competition is due less to any intrinsic strengths or capabilities it may have than to the role played by regulation in structuring the rules of competition. Indeed, regulation itself can be a means of speeding up the rationalization of family capital. E.g., the term "promoter" has now been expanded to include all persons or entities in control of a firm, directly or indirectly, including spouses, parents, brothers, sisters, children, etc. 'Thus entities that come under the new definition of promoters can avail themselves of the benefit of *not having to make an open offer when making inter-se transfers of shares*'.[41] This is a good example of the nuances of regulative practice and the way they can be used to speed up consolidation within family businesses, that is, actively shape the nature of business. Other definitions have been notoriously less easy to apply, for example, what constitutes a "change in control"? When Gujarat Ambuja acquired an 11%+ block in rival cement maker ACC in two separate transactions with the Tatas and also got two seats on the board (Sekhsaria, the Ambuja promoter, taking over as vice-chairman of ACC), SEBI decided this was *not* a 'change in control' and therefore did not warrant an open offer to other shareholders of ACC. But it was through Sekhsaria's stake in ACC that Holcim entered the Indian cement market in 2005, with plans to invest close to $2bn in the company! If the ACC acquisition goes through, it will make Holcim the world's largest cement manufacturer, ahead of Lafarge.[42] Acquisitions have played a pivotal role in the consolidation and globalisation of the Indian cement industry, showing that the forces at work in the expansion of international business can never be completely forestalled by domestic regulatory practice.

To sum up, the evolution of the takeover code illustrates a fascinating feature of the regulatory process in India, namely, the conflicting pressures under which much of the new financial market regulation has evolved and the immense leeway given to established promoter groups to shape the regulatory agenda to their own advantage. That the takeover committee has lived (or had to live) with a great deal of corporate pressure is suggested both by the statements of individual members and by the extraordinary displays of corporate solidarity that greeted the raids launched by the jute baron Arun Bajoria late in 2000. It is even more extraordinary that the chairman of the panel seemed to think there was no conflict of interest involved in making repeated public declarations to the effect that the Code was designed to 'protect Indian entrepreneurs from the big multinational corporations'[43] and that Indian entrepreneurs '*should* be given an opportunity to consolidate their holdings'.[44] The obvious question this raises about the nature of the regulatory process in India is whether any regulatory system can credibly be designed to serve partisan interests and whether takeover regulations designed in this way can meet the criteria we began with. A more interesting issue is why institutional investors, both foreign and domestic, have had so little impact on the regulations themselves.

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[1] Critiques from the left tend to reduce liberalisation to 'neo-liberalism', conflating the reality of capitalism ('many capitals') with its ideal (self)representations.

[2] See Lucian A. Bebchuk and Allen Ferrell, 'Federalism and takeover law: the race to protect managers from takeovers', in D. C. Esty and D. Geradin, eds., *Regulatory Competition and Economic Integration* (Oxford, 2001) 68-94, P. J. Kozyris, ed., *Corporate Takeovers through the Public Markets* (Kluwer Law International, 1996) 29-44, and Joseph A. Grundfest, 'Subordination of American capital', *Journal of Financial Economics* 27 (1990) 89-114, esp. 90ff. But see J.N. Gordon, 'An American perspective on anti-takeover laws in the EU', in Guido Ferrarini et al., eds., *Reforming Company and Takeover Law In Europe* (Oxford, 2004) 541-59, arguing that in practice managements use the defences to bid up the price.

[3] The Panel on Takeovers and Mergers, *The City Code on Takeovers and Mergers* (Sixth ed., July 2000), esp. General Principle 7, and Rule 21.

[4] Jayant Thakur, 'Tangled in take-over tape', *ET* 21.10.00.

[5] A good example of this is the litigation surrounding Spic's attempted takeover of the Bank of Madura, see Jayant Thakur, *Takeover of Companies: Law, Practice, and Procedure* (Bombay, 1995) 40-3.

[6] Bhagwati cited *Economic Times (ET)* 21.1.97, with reference to the note of dissent by the merchant banker Nimesh Kampani.

[7] E.g., Nicholas Butt of Jardine Fleming, interviewed *Business Standard (BS)* 4.9.96.

[8] One should also note that the trigger of 15% is substantially below that prevailing in other regulations: 30% in the UK, France and (recently) Italy, 50% in Germany.

[9] Of course, the same option is open to any acquirer, with the difference that acquirers not in control of a company are obliged to make a public offer once their holding, taken with that of persons deemed to be acting in concert with them, reaches 15%.

[10] D. R. Mehta, cited *BS* 19.12.00.

[11] S. K. Barua in *ET* 5.9.96. In fact, SEBI's own data show that over 70% of acquisitions have taken the preferential offer route.

[12] M. R. Mayya, 'Get the code to cover preferentials', *ET* 20.9.96.

[13] Exemption of inter-se transfers attracted a note of dissent from an eminent member of the panel, *ET* 22.1.97.

[14] Cf. A. Paul, 'Corporate governance in the context of takeovers of UK public companies', in D. D. Prentice and P. R. J. Holland, eds., *Contemporary Issues in Corporate Governance* (Oxford, 1993) 135-49, at 140: 'There are (thankfully, most UK practitioners would say) few cases in UK takeover practice where the bid outcome is dependent on legal proceedings, and none where an action has been successful in the UK courts to prevent a takeover.'

[15] Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations 1997, together with the Amendment Regulations 1998.

[16] *ET* 21.12.96; emphasis mine.

[17] 'Buy-back crucial to beat hostile bids: Bhagwati', *ET* 8.1.97.
[18] 'Takeover code to create level playing field', *BS* 20.1.97.
[19] 'Sebi panel may suggest hike in creeping acquisition limit', *ET* 29.8.98.
[20] 'Takeover panel drafts plan to shield local firms', *BS* 26.11.96.
[21] 'Peg promoter acquisitions at 1%, investor associations tell watchdog', *ET* 27.9.96.
[22] 'Sebi sets creeping acquisition limit at 5%', *ET* 13.9.02.
[23] 'Creeping acquisition cap must go: Panel', *BS* 24.3.01.
[24] 'Ease creeping acquisition limit, says panel', *ET* 28.3.01.
[25] 'Killing the takeover code', *BS* 27.3.01, editorial.
[26] Barua, *ET* 5.9.96.
[27] Euan MacDonald, then with SBC Warburg, in an interview to *Business Standard* 7.9.96 (discussing the code).
[28] 'FIs must protect robust companies from hostile bids: CII', *ET* 13.2.97, reporting the views of the Confederation of Indian Industry.
[29] 'Buyback can be used to thwart hostile bids: Panel', *ET* 14.11.98.
[30] 'Promoting promoters', *BS* 18.10.01, editorial.
[31] William Underhill and Andreas Austmann, 'Defence tactics', in Jennifer Payne, ed., *Takeovers in English and German Law* (Oxford and Portland, 2002).
[32] Fabrizio Barca and Marco Becht, *The Control of Corporate Europe* (Oxford, 2001)
[33] Jonas Agnblad et al., 'Ownership and control in Sweden: strong owners, weak minorities and social control', in Barca and Becht, *Control of Corporate Europe* (n.32), 228-58, at 254.
[34] *ET* 7.5.04, 27.7.04.
[35] RBI, *Report of the Advisory Group on Corporate Governance* (March 2001) pp. 16-17.
[36] R. Hilferding, *Finance Capital*, p. 119.
[37] *BS* 22.11.04.
[38] *BS* 9.12.04, 11.12.04.
[39] *BS* 6.2.04, cf. *BS* 22.12.03.
[40] Pandya and Rajawat, 'Lifting the veil on the world of investment companies', *ET* 11.12.04.
[41] *BS* 25.1.05.
[42] *BS* 7.2.05.
[43] Bhagwati cited *BS* 20.1.97.
[44] Bhagwati cited *ET* 29.8.98.

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