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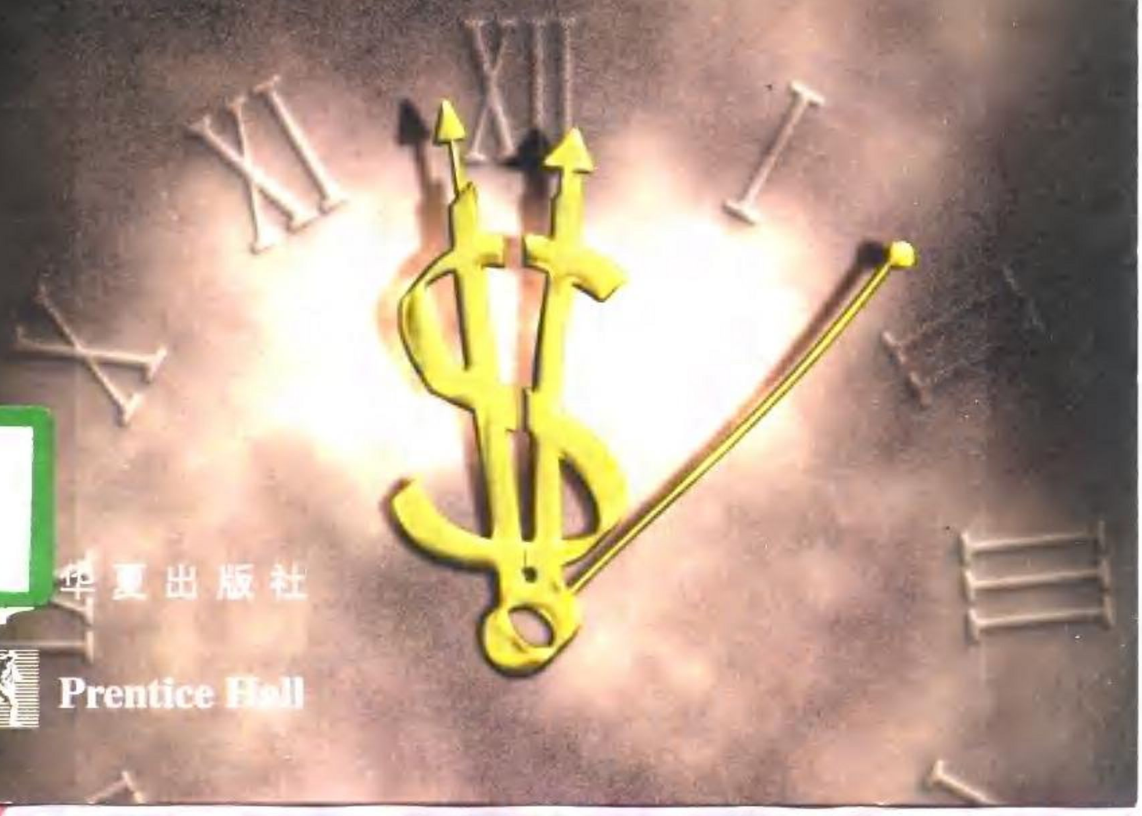
并购的异化

A Not-So-Tender Offer

Isadore Barmash



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A NOT-SO-TENDER OFFER

AN INSIDER'S LOOK AT MERGERS AND THEIR CONSEQUENCES

ISADORE BARMASH

PRENTICE HALL
Englewood Cliffs, New Jersey 07632

For Sarah, Elaine, Stanley, Marilyn, and Pamela

前言

标购——按照合同规定给付资金或履行合同，如果它被毫无理由地拒绝，拒绝的一方将被置于毁约的境地，同时构成毁约行为。

《金融服务手册》，琼斯·伍顿 著

每天甚至经常是一天有几次，美国公司都在以一种越来越迅猛的态势合并或收购其他公司，这种态势似乎不可遏止。有时其理由显而易见，有时又需要尽力去推知。但总是有戏剧性的一面，当业者艰难地试图拓展其业务时，相应地，这会影响到其他许多人，他们的家庭、他们的生活方式以及他们所在城镇的经济状况。

并购中所涉及的隐含的和明确的因素的组合事实上是丰富多变的：规模、行业、内部条件、外部环境、政府的严格检查、证券市场价值、对股东的影响、对雇员的影响、对地方经济的影响、吸纳交易的能力、交易的最终成本以及许多其他需要考虑的因素。不管是在善意收购中还是在敌意收购中，所有这些因素在每一案例中形成各不相同的

等式。

在并购狂潮中，没有哪一个重要的产业部门可以幸免。比如国防、电信、银行、新闻出版、医药、卫生保健、铁路、零售、娱乐、计算机以及包装物品等行业都无一例外。并购目的是扩张规模、提高市场份额、获得规模经济效益、降低成本、为全球性扩张做好铺垫。从 1920 年的第四次公司并购浪潮开始，令人诧异的一点是——看起来很少有人关心这一问题——所有的兼并与收购都可能造成无节制，抑制竞争，引起人们的谴责。政府的反对是最小的，学术界不再口诛笔伐，活跃人士平静了，社团组织仅仅是偶尔谨慎地说几句。可见，在兼并机器隆隆运转的时候，社会是平静的。

事实上，正像人们在电视和报纸上乐观地看到的那样，最近的"标购"——由于购买比新建更为廉价和快捷——很难将其排除到国民经济体系之外。并购带来了持续的增长并且很有希望最终成功。这一观念已经如此美国化，富有逻辑性，易于理解并且从业务经营和一般意义上的观点来看都是合理的，以至于现在已经成为美国公司施展其经营手段的一件重要武器。自从我于 1971 年发表了关于兼并的著作——《欢迎加入我们集团——你被解雇了!》之后，兼并这一行当发生了许多事情。那些在六七十年代成立新公司的集团，在 80 年代通过杠杆收购取得了成功，在八九十年代通过集团分立也取得了成功。现在，对于已经出现了数十年的并购业务来说，战略性兼并则极有可能成为最有发展前景的并购方式。

也许仅仅是因为有太多的兼并以及太多的业绩优良的公司的兼并，或者是因为人人都相信美国非常需要一次经济震荡、一个经济再循环，许多人认为并购是在新的世界经济中有效进行竞争的一个途径。没人对此提出质疑。而对近来左右着并购趋势的公司——比如 AT&T、贝尔大西洋、洛克希德、马丁马里亚塔、电子通信、McCaw 电子、时代华纳、通用电器、CBS、NBC、Eli Lilly 以及 Merck 等公司来说(这些公司只是其中的很小一部分)，确实存在着极大的合理性。就单从并购的合理性而言，它也是可以被接受的。

仅从单纯的数量上讲，并购涉及的金额在 1989 年达到最高，为 4570 亿美元(注：最近几年并购总额又有上升趋势，1997 年并购总额为 9380 亿美元，比 1996 年上升 40%)，很大一方面原因是垃圾债券的普遍发行。1990～1992 年，并购交易额急剧下降，但在 1993 年略微反弹至 3590 亿美元。在 1994 年的头 8 个月，并购交易额约为 2100 亿美元。但主要的

区别是近几年来规模愈来愈巨大,比如纳贝斯克公司支付了300亿美元进行并购,以及贝尔大西洋电信公司计划花330亿美元并购,这些并购计划虽然不幸流产了,但规模大小对兼并发起者来说从来不成其为问题。

本书的写作有两个目的,一方面试图说明从集团中逐渐成长的"90年代各种类型的美国公司",是如何通过大肆并购从而在美国的大部分经营业务中与通过内部扩张成长的公司平起平坐的。并购使得相关的业务彼此联系,效率更高,但要注意并购后,整体上不要显得太臃肿。问题主要有:为什么合并后的集团几乎都不能正常工作,并且它们是如何从先前热衷的领域慌慌张张地撤出的?什么是真正的战略兼并?兼并有其内在理性吗?实践中一个典型的兼并是如何形成并以一种成功的方式结束的?为什么有如此多的涉外交易?敌意交易真的卷土重来了吗?

本书的另一个目的是指出并购活动给人所带来的影响的有关问题,以及并购蔓延的规模是否并不是一个应该关心的问题。因此,有几章是关于某些兼并的"马戏"气氛的,同时还有关于工作机会减少的预言以及美国8位颇有见地的并购专业人士对于并购前景的展望。这一目标的核心问题是,大些就好吗?甚或是,愈大愈好吗?

本书列举了许多事件及人物:100余个实例、案例、轶事;华尔街上不断涌现的新人;并购大腕以及来往于较小的城市之间的"小并购者"。这些人将小型的业务撮合在一起,而这些业务正是美国经营的真正精髓。

阅读本书时,希望你能体味到本书的多种营养价值:大量的信息、轶闻趣事、精神的食粮以及一点点悬念。

Preface

Tender—The offer of money or performance in connection with a contract, if unjustifiably refused, places the party who refused in default and gives rise to an action for breach of contract. (Financial Services Handbook, Jones Lang Wooton)

Every day and often several times a day, American corporations are merging with or acquiring companies in a breeding frenzy that seems to have no end. Sometimes, their reasons are obvious and sometimes they strain logic. But always, they contain a dimension of drama, business people trying desperately to expand their business in aggressive moves that in turn affect many other people, their families, livelihoods and the economies of their cities and towns.

The mosaic of implicit and explicit factors involved in mergers is rich and varied indeed: size, industry, internal conditions, external conditions, government scrutiny, stock market values, the effect on stockholders, the effect on employees, the effect on the local economies, the ability to digest the transaction, the ultimate cost of the transaction and many other considerations. All these form equations that differ in each case, not unlike the protagonists themselves regardless of whether it is a friendly or unfriendly deal.

In the buying binge, no major industry is omitted. Defense. Telecommunications. Banking. Media Book publishing. Pharmaceuticals. Health care. Railroads. Retailing. Entertainment. Computers. Packaged goods. The goals are expansion, boosting market share, achieving the benefits of economy of scale, reducing costs, preparing for global expansion. In this fourth wave of corporate mergers since 1920, one of the surprising differences this time around is that few people seem concerned that all the mergers and acquisitions—M&As—might be creating excesses, anticompetitive forces and people abuses. Government opposition is minimal. Academics are no longer militant. Activists are quiescent. Unions only occasionally clear their throats. So silence reigns amid the rumble of the merger machine.

In fact, as television viewers and newspaper readers blithely take in the latest "tender offer," it's hard not to accept that it is all woven now into our national fabric—buying is cheaper and faster than building. It brings instant growth, and hopefully certain, eventual success. This concept has become so intrinsically American, so logical, sensible and "decent" from a business and common-sense standpoint that it is now a vital weapon in the American business armament. Much has happened in the merger arena since my earlier book on mergers, "Welcome to Our Conglomerate—You're Fired!" (1971). The conglomerates which created new corporate formations in the 1960s and 1970s were succeeded by leveraged buyouts in the 1980s and deconglomerization in the 1980s and 1990s. Now, it's the strategic merger, quite possibly the most promising concept in M&As that has appeared in decades.

Maybe it's because there just have been too many mergers and too many with blue-chip names or because everyone is convinced that the American economy badly needs a shaking out, a recycling, that most people see it as a way to compete more effectively in the new global economy. No one would argue with that. But there's considerable legitimacy in the names that dominate the recent M&A trend—AT&T, Bell Atlantic, Lockheed, Martin Marietta, Tele-Communications, McCaw Electronics, Time Warner, General Electric, CBS, NBC, Eli Lilly, Merck & Company, for just a few. And legitimacy, let's face it squarely, leads to acceptance.

In terms of pure numbers, the peak year in M&As was 1989 when the value of such business consolidations totalled $457 billion, a lot of it due to the popularity of junk bonds. The value of transactions fell sharply in the years from 1990 through 1992 but partly bounced back to $359 billion in 1993. In the first eight months of 1994, M&As had a value of about $210 billion. But the main difference is the immensely larger size of such recent-year deals as the RJR Nabisco merger for $30 billion and the Bell Atlantic Tele-Communications deal for $33 billion which happened to abort. But size was—and is—no problem to merger makers.

The aim of this book is two-fold. One objective is to show how the "species mergers Americanus circa 1990s" evolved from the conglomerate binge into one that has assumed equal rank with internal expansion in much of American business—the merger or acquisition which adds related businesses to each other to create a better, but somehow leaner whole. Among the subjects covered: Why the current batch is different from past versions. Why conglomerates mostly didn't work and how they are scurrying to divest what they once dearly craved. What really is a strategic merger? Is there intrinsically a philosophy of mergers? How an actual, typical merger evolved and was successfully concluded in a surprising way. Why are there so many foreign deals? And, are hostile transactions really coming back?

The book's second objective is to raise some questions about the effect of M&A's on people and whether rampant size might not be a matter of concern. Hence, there are chapters on the "circus-like" atmosphere of some mergers, as well as predictions of job losses and forecasts about the outlook by eight of the nation's most thoughtful professionals close to the merger scene. The point of this second objective: is bigger good and even bigger better?

There are many stories and people here: a hundred or more actual stories, case histories, ancedotes; Wall Street's new, newer and newest breeds; the big M&A players and the "little players" who ply the more modest cities of America putting together the small businesses that are the real marrow of American business.

As you read this book, I hope you will enjoy a nutritious combination: a lot of information, an anecdotal feast, food for thought and—a little suspense.

Prologue: The Ultimate Acquisition

As he waited tensely by the high-priority telephone in the Oval Office, the young man who had carried 240 million Americans on his back for the last year with a smiling, toothy ease was extremely annoyed with himself.

He should have known or sensed, he told himself, what was about to happen. Not that he really knew what it was, only that undoubtedly it would be unpleasant, threatening, possibly dangerous. "Shoot," he kept repeating, "shoot." Rueful but sympathetic smiles appeared on the faces of the three men who sat facing him. They knew when he was really upset and he was.

The warnings, they responded, were clearly connected now in retrospect but had not been individually linked before.

The first—was it really only two weeks ago?—had been a most unusual blip in the purchase of Treasury notes and bonds by a new investment company with offices in the American Virgin Islands. Several hundred millions of dollars worth in the original purchase had mushroomed in a few days to more than $10 billion worth. Government and media curiosity had proved fruitless. In the end, they had decided that the Caribbean financial company was merely a cover for some Mideast sheiks and bankers to shore up a fund in the event the fading dollar would finally show some ambition and strengthen.

The next sign, all so clear in retrospect, was a similar, large-scale purchase of common stock in the bluest of blue chips—IBM, AT&T, General Electric, General Motors, Wal-Mart Stores, Procter & Gamble. But since the original buy was placed on one of the year's heaviest trading days on Wall Street, the purchase by a new Swiss pension fund aroused little attention. Nor had it when the same buyers continued to remain active for days afterward.

The third sign was a rare, one-day scooping up of considerable available real estate through private transactions and from the Resolution Trust Corporation auctioning of distress properties enmeshed in the tangle of savings-and-loan companies. Since many of these transactions were by different, obscure companies, they, too, like the others, slid under the door without arousing more than a glimmer of scrutiny. After all, didn't everyone want the real estate business to revive?

The fourth, and what should have been the real tipoff that something very odd and sinister was brewing, was a series of advisories from principal U.S. allies that some of their primary banks and insurance companies were being surveyed by a new Luxembourg consulting group about whether they would consider funding major purchases of certain American assets. These included the Chrysler and Woolworth buildings in New York, the Sears Tower in Chicago, the John Hancock Center in Boston and such shopping centers as the Mall of America in Bloomington, Minnesota, the King-of-Prussia Shopping Center in Pennsylvania and the Ala Moana Mall in downtown Honolulu. But since this had involved only inquiries but not purchases, it had generated little concern at the White House so that the matter was directed to the Secretary of Commerce. But he was otherwise engaged in Tokyo where he was again vainly twisting arms to open Japan to more reciprocal trade.

That had been the penultimate signal.

However, neither the President nor the core of his staff failed to miss the ultimate signal that followed the initial four.

The message was direct, if cryptic. Received on a low-priority computer line into the White House communications network, the message had produced increasing consternation as it had proceeded up through the White House communications hierarchy. It was addressed to "The President" and consisted of a baffling but concise nine words.

"Treasuries. Equities. Properties. Advisories.

Expect call Friday, 5:30 p.m. EST."

They waited expectantly, but no call came.

Finally, on Sunday, the overdue message of explanation arrived not by telephone but by fax. Its quiet appearance, however, belied its import. In the Oak Office, the President and the three men read it together, hardly believing what it said. The sheer audacity of it caught in their throats so that for a few moments each found it difficult to breathe. After they had all read it once, the President read it again out loud:

Mr. President—

"This will serve notice that an international consortium formed for the purpose of acquisition wishes to make a friendly offer to acquire the United States of America. By anonymous transactions in the last two weeks, we have already acquired a very substantial stake in the American infrastructure and intend to add to it. Other than the United States government and its citizens, we are the largest owner of American properties although the share at present is still quite small. Make no mistake and do not scoff at our intentions. We are very, very serious. What we propose is a meeting to take place at any mutually agreeable site to discuss our plan with you and your administration in a productive manner so that the American citizens receive full value for their constitutional rights. We suggest that you make a public announcement of this and also of your decision. Once we see what that is, you will hear further from us."

It was unsigned.

Everything at the White House went into high gear. The top-level meeting was transferred from the Oval Office to a conference room with a long table where the President sat at its head, puffing thoughtfully on his cigar and finally more at ease than he had been since the earlier message had arrived hours and hours ago. "A wild, crazy-all threat to take over the whole ball game," he told the 20-some faces. "Who would have thought it? An' what the blank kind of 'international consortium'? Where do they get the guts to do it? There's no precedent for it in history!"

The Commerce Secretary and the Treasury Secretary both spoke at once.

"Mr. President, business consolidations are running rampant everywhere and it's a virus that can strike anywhere," pontificated the Commerce Secretary. "Who can place parameters of size and degree on it? There's no such thing as just a mega-merger anymore—but mega, mega, mega!"

"Mr. President, this event is a function of our weak dollar," the Treasury Secretary began. "Wild they may be but these people have captured the very best timing to make a stab at us. Our dollar is the weakest it's been in two years. Sir, we are simply a great bargain!"

"Bargain my foot!" snapped the Secretary of State, who was uncharacteristically undiplomatic. "Let's tell these countries or radicals to take a flying leap! What are they talking about? You can't acquire a country, can you?"

"You can by military force," said the Secretary of Defense.

"The other big countries look at us as a fading giant," said the Treasury Secretary, the Cabinet's pragmatist, "and the little countries are snapping at our heels. This idea of buying the U.S.—absolutely ridiculous at the very least—is a natural development considering our loss of international stature. I say—"

A metallic voice pierced through his meditation. It was the President's communications director, a former Texas newsman who had been with him since the President had been a lowly state legislator. "Mr. President, if we keep a lid on all this," the P.R. man said in his rasping voice (the President in 20 years had never really gotten used to it) "how will this international consortium know what our reaction is?"

The common-sense question abruptly cleared the President's mind and caused everyone slumping around the table to straighten up. No one had any suggestions. Finally, the President said, "Maybe the best approach is to ignore them. That should either smoke them out or make them go away. Right?" Everyone slowly nodded.

During the next few days, the President took action aimed at shoring up the "American defense." And he put some considerable heat under other investigative efforts to determine who or what group had generated the message and various purchases. But, again, nothing. When the following Sunday arrived without any developments, he told his closest associates, "Whoever it is either is playing a game of nerves or has gone back into his booby hatch to play basketball with his head. Personally, I favor the second."

But he was wrong. That night, top executives of the New York Times, the Washington Post and the Wall Street Journal call him to inform him of a full-page "tombstone" advertisement appearing in the next morning's pages. Amazingly, they told him—and later read him—the announcement to "The Great American Public" that each American family would be offered $1 million to sign a release of its ownership rights in The nation's assets. In addition, the still unidentified consortium was making a direct offer to the United States government of $50 trillion in "the hardest of currencies and most reliable notes" to surrender its ownership and holdings. The ads assured the public that any transaction of the kind would be entirely legal. More details would be forthcoming in a week, the ads said, during which time Americans could discuss the matter with their families, their legislators, attorneys and spiritual advisors. The ads also noted that the $1 million payment per American family, most of whom had never earned more than $20,000 a year, was lavish indeed and could even be made tax-free if the government would cooperate.

Bitterly swallowing his disappointment that the initiative had been stolen from him, the President went on national television and radio at 10 that night.

"My fellow Americans," he said, finding his vision misty but trying to keep the raw emotion out of his voice, "you and I have received an unusual offer to sell what we own as a natural birthright. It is what is known as a 'tender' offer. But in this case, my friends, it is a 'not so tender' offer because if enough of you accept it, you will lose everything..."

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