The Economist

Swiss takeover law

Avalanche in the Alps

A controversial takeover attempt has exposed a gap in shareholders' rights

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SIKA, one of Switzerland's most successful family-controlled firms, was founded 105 years ago by Kaspar Winkler, a cobbler's son who invented the compound used to waterproof the Gotthard railway tunnel under the Alps. Until recently his heirs owned just 16.1% of the capital in the building-materials company, through their investment vehicle, Schenker-Winkler Holding (SWH), but controlled 52.4% of the voting rights. Other shareholders' rights are less watertight than the firm's products. A French rival, St Gobain, struck a deal in December to pay the family handsomely for their stake, but offer nothing to the rest.

Switzerland has a rule, similar to those in other European countries, by which any investor who gains more than one-third of the voting rights in a company must offer to buy out the remaining shareholders, at the same price or better. (America has no explicit mandatory-bid rule but outside investors have much scope to sue if they feel short-changed.) However, unlike in other places, there is a loophole as wide as the Gotthard tunnel: a firm can opt out of this rule if shareholders vote to amend its articles of association. Such an opt-out had already been approved at Sika, just as it has been at 58 other quoted Swiss firms.

The other shareholders would of course like to be offered what the family got—an 80% premium over market value. But some institutional investors say they are less concerned about this than about the risk that Sika will end up being run for the benefit of St Gobain, rather than for shareholders as a whole. The French firm is set to gain control of an enterprise with annual sales of more than SFr5 billion ($5.4 billion) and net profits of SFr345m, in return for SFr2.8 billion given to the five family members. St Gobain insists that it will manage Sika at arm's length and fairly, but the 30% fall in the price of Sika's free-floating shares when the deal was revealed suggests that some investors have their doubts.

Sika's management and most of its board are opposed to the deal. So the firm's annual meeting, in April, promises to be lively. The Ethos Foundation, which advises and represents Swiss pension funds, will seek to abolish Sika's opt-out from the rule on equal treatment of shareholders.

Whether it gets its way, or whether SWH can use its special shares to frustrate it, may depend on another peculiarity of Swiss corporate law: companies are allowed to impose voting caps on shareholders, to discourage unwanted takeovers. Sika has a limit of 5%, which had hitherto been waived for the founding family. The board argues that the deal with St Gobain has created a new shareholder group, so the waiver no longer applies. If so, the French firm would have paid dearly to become just a minority shareholder.

The family maintains that it is SWH that has changed hands, not the shares themselves, so no change in status is justified. A judge in Sika's home canton of Zug is mulling over this question. The family has asked the federal Takeover Board for a ruling on whether the deal could trigger a mandatory bid for all shares.

Swiss lawmakers are currently working on a reform of corporate law. Until now there had been no plan to strengthen shareholders' rights in takeovers. But the Sika case "came as a thunderbolt", says Jean Christophe Schwaab, a Socialist legislator. Shareholder democracy is in vogue in Switzerland these days: in a referendum in 2013 voters chose to make investors' votes on executive pay binding, starting this year. So it is possible that opt-outs from equal shareholder rights will be abolished.

That would please Ethos's boss, Dominique Biedermann, who has been campaigning for this for ages. Other businessmen are more cautious, however, and they include Sika's chairman, Paul Hälg. "This is an extreme case where there is family abuse after 100 years of trust," he says. "I think we shouldn't jump to change the law. It could hurt families who act in the best interest of their companies."

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