Fighting economic nationalism in deals

Many companies do not properly consider that national governments protect key stakeholders, such as shareholders and workers. They should.

Laurence Capron and Mauro Guillon on why they should.

The battle over steelmaker ArcelorMittal has inspired an exceptional media frenzy, but it is not an isolated case. To give just two examples: Germany and Japan, where labour laws have given employees powerful purchasing power and effectively allowed sitting in the board of directors in national champions and where workers are heavily protected, make it extremely difficult for acquirers to restructure deals.

All this may be changing. US-based takeover specialist T Boone Pickens is attempting to restructure Pirelli & Cerruti, the venerable Italian tyre manufacturer. His objective is to ensure that when the acquirer is from another country, shareholders and employees of the target are protected.

The case for protecting national champions dates back to the rise of an active market for corporate restructurings in the 1980s. One of the key reasons was an increase in the political protection of national champions by governments who were acquiring protection from US-style takeover activity. This was done by enacting national laws to protect shareholders and employees of national champions from the sharp practices of US-style takeovers.

In the 1980s, the European Union and the US United States sought to limit the use of all-out hostile bids and to prevent acquirers from taking control of the target company. The US government, for example, started to publicise its takeovers in 1975, while the European Union started to do so in 1979.

By the late 1990s, it was clear that the rise of an active market for corporate restructurings had led to the need to protect national champions. These were often important for the country’s economic strength. In 1997, the UK government passed a law to allow the takeover of British Steel in 2005.

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