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Directors' Duties in a Changing World– Lessons from the Cadbury Plc Takeover∗

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In January 2010, the board of Cadbury Plc (Cadbury) announced that following 19 weeks of resistance to a takeover offer by Kraft Foods Inc. (Kraft), it had finally agreed to recommend the offer to shareholders. Exactly two weeks later the offer was declared unconditional as to acceptances and success was declared. This news was met with considerable disapproval by many shareholders and by the general public. The popular myth of Cadbury was as "an old fashioned, family business run by chocolatiers with Quaker principles".[1] There were concerns that Kraft would change brands such as Dairy Milk and Creme Eggs and undermine the Cadbury commitment to corporate social responsibility. The media referred to the loss of an "iconic" British manufacturer to a "foreign conglomerate" and the likelihood of an ensuing "takeover jobs bloodbath".[2] The Prime Minister Gordon Brown felt it necessary to emphasise publicly his determination that the levels of investment that take place in Cadbury in the UK would be maintained. Since then, a parliamentary committee has reviewed the Cadbury takeover and made a number of recommendations.[3] In addition, the UK Panel on Takeovers and Mergers ("the Panel") is currently engaging in a consultation exercise reviewing certain aspects of the Cadbury takeover[4] and the new government is reported to be preparing a review of takeover regulation.[5] As one of the key elements of the review will be stakeholder welfare, it is timely to consider the responsibilities of directors to stakeholders in the context of a takeover offer.

As directors of a UK registered company, the directors of Cadbury were subject to a duty pursuant to the UK Companies Act 2006 "to promote the success of the company". The introduction of a statutory duty of this kind in that Act marked the acceptance of the concept of "enlightened shareholder value" and reflected the results of years of debate and consultation.[6] This duty applies to directors at all times. In addition, during the course of the offer directors are subject to certain additional obligations pursuant to the City Code on Takeovers and Mergers (the Code). In particular, directors must act "in the interests of the company as a whole." This duty stems from the Takeovers Directive 2004/25/EC (the Directive") and thus a similar obligation is imposed on directors of every company registered within the EU whose securities are admitted to trading on a regulated market and which is the subject of a

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[1] Roger Carr, *Cadbury: Hostile bids and takeovers* (Saiid Business School, 15 February 2010). Available at http://www.sbs.ox.ac.uk/newsandevents/previousevents/Pages/RogerCarrCadbury.aspx.

[2] Sunday Times 19 January 2010 and the Daily Mail 20 January 2010.

[3] House of Commons, Business, Innovation and Skills Committee, Mergers Acquisitions and Takeovers: the Takeover of Cadbury by Kraft, Ninth Report of Session 2009-2010 (HC 234). Available at http://www.publications.parliament.uk/pa/cm200910/cmselect/cmbis/234/23402.htm.

[4] Takeover Panel, *Review of Certain Aspects of Regulation of Takeover Bids*, 2010/16.

[5] "Vince Cable bids to overhaul City takeover regime" Guardian 19 July 2010.

[6] See for example the *Company Directors: Regulating Conflicts of Interest and Formulating a Statement of Duties* (Law Com No.261, Cm4436,1999) Pt4, the Company Law Review, *Modern Company Law for a Competetive Environment: Final Report*, Vol.1, Annex C.

takeover offer. This article considers the manner in which these duties were applied in the context of the Cadbury takeover and their consequences for stakeholders.

Facts of the Case

On 7 September 2009, Kraft announced its intention to purchase the entire issued share capital of Cadbury. The offer valued Cadbury at approximately £10.2bn or 745p a share in cash and stock. This price constituted a premium of 31% on the Cadbury's share price just a few days earlier. There appeared to be good news for other stakeholders as in the announcement, the CEO of Kraft, Irene Rosenfeld stated:

> "Our current plans contemplate that the UK would be a net beneficiary in terms of jobs. For example, we believe we would be in a position to continue to operate the Somerdale facility, which is currently planned to be closed, and to invest in Bournville, thereby preserving UK manufacturing jobs."

The closure of the Somerdale factory had been announced by the Cadbury Board in October 2007 with the forecast loss of 500 jobs. It announced at that time that production at the factory would be transferred to its Bournville plant in Birmingham and by 2010, to a plant in Poland. Like the initial private approach, the Cadbury Board rejected this proposed offer on the basis that it undervalued Cadbury and its prospects. In a more detailed response five days later, the Board again emphasised that the offer would undervalue the company and it stated that "the delivery of value to our shareholders remains at the top of our agenda".[7] By the time a firm offer was announced in November 2009, because of the movement in Kraft's share prices, this offer was worth only 717p. Speculation of a bidding contest was rife at this stage as rivals Ferrero Group and Hershey both indicated that they were considering making offers. Although Cadbury's share price continued to rise, reaching 819.5p at one stage in November 2009, the offer was not revised at this stage and at the time the offer was actually posted to shareholders on 7 December 2009 it was worth only 713p per share. In its defence document published one week later, the Cadbury Board again recommended rejecting this offer as it undervalued the company. It emphasised its commitment to maximising shareholder value and its view that this was best achieved through "the strong continuing performance of an independent Cadbury." Not surprisingly the take-up on the first closing date was a mere 1.52%. During this period, and despite the efforts of the media and the unions, very little information was available on the plight of the company's 45,000 employees worldwide. The Unions were concerned because in the previous 10 years, Kraft were reported to have made 60,000 employees redundant and closed over 30 sites. The relevant Cadbury trade union, Unite was quick to point out that a US company was more likely to cut jobs abroad than in the US.

Under the timetable prescribed by the UK Panel on Takeovers and Mergers ("the Panel") which administers the Code, Kraft had until 19 January 2010 to revise its offer. Further discussions took place with the Cadbury Board and on January 19 it finally agreed to recommend the offer at a revised price representing 840p per share

[7] Press Release 12 September 2009. Available at http://www.cadburyinvestors.com/cadbury_ir/press_releases/2009press/2009-09-12/.

plus a 10p dividend per share. This constituted a 50% or £4 billion premium to the pre-offer value of Cadbury. At this time, Roger Carr, the Cadbury Chairman stated:

> "We believe the offer represents good value for Cadbury shareholders and are pleased with the commitment that Kraft Foods has made to our heritage, values and people throughout the world. We will now work with the Kraft Foods' management to ensure the continued success and growth of the business for the benefit of our customers, consumers and employees."[8]

On 9 February 2010, one week after the offer was declared wholly unconditional, Kraft announced that following extensive talks with senior management, it had reluctantly accepted that Cadbury's plans in respect of the Somerdale operation were too far advanced and that it was unrealistic to reverse them. It explained that the investment required to reverse the closure programme would be so significant as to be unviable.

Section 172(1) of the Companies Act 2006

Section 172(1) of the Companies Act 2006 provides that a director must 'act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole'.[9] The reference to "members" clearly gives primacy to the interests of shareholders. Furthermore although the term "success" is not defined, the UK DTI's guidance to the Act suggests that a success in relation to a commercial company is considered to be its "long-term increases in value"[10]. However, in keeping with the desire to adopt a more inclusive approach to other non-shareholder stakeholders, section 172(1) continues by stating that in fulfilling this duty a director must:

> "have regard (amongst other matters) to—
> (a) the likely consequences of any decision in the long term,
> (b) the interests of the company's employees,
> (c) the need to foster the company's business relationships with suppliers, customers and others,
> (d) the impact of the company's operations on the community and the environment,
> (e) the desirability of the company maintaining a reputation for high standards of business conduct, and
> (f) the need to act fairly as between members of the company."

Although, this section highlights the importance of long termism in corporate decision making, *Palmers Company Law* states that "the new wording makes it clear that the interests of employees are secondary to promoting the success of the company for the benefit of its members as a whole".[11]

Two questions arise. Firstly, what is the effect of this provision on the directors' duties in opposing a hostile offer? *Weinberg and Blank* states the duty to promote "the

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[8] Reported in the Kraft Press Release 19 January 2010 and in the Revised Offer Document.
[9] While this superseded the common law fiduciary duty to "act in the interests of the company", it is important to note that the older case law remains relevant to the interpretation of the new statutory provisions.
[10] Ministerial statements, *Companies Act 2006, Duties of company directors* (DTI, 2007) pp7-8 available at http://www.berr.gov.uk/files/file40139.pdf. See also Lord Goldsmith, Lords Grand Committee, 6 February 2006, col. 255.
[11] *Palmers Company Law* (Thomson Sweet & Maxwell,2007) para.8.2621.

success of the company" and the requirements to have regard to the various interests "suggest that the directors may be entitled to have regard to the company as a continuing entity and not the realisation of an immediate profit for shareholders through acceptance of a takeover offer. The requirement that directors look to the benefit of member as a whole does not change this analysis."[12] This may be good in circumstances where the company has an independent future. It may also be useful where directors are deciding between two bids and wish to base their recommendation on a criteria other than price. However, by mid-January 2010 Roger Carr explained that "Independence as an option had gone". He opined that the hedge funds would have sold their shares to Kraft at 830p and his board's negotiations was focused on price and succeeded in getting Kraft to increase its offer to 850p. Thus he concluded "The cause was lost … the decision then was to negotiate for what I and the board felt was the recommendable price."[13] In this situation where the company was going to be sold and there was no alternative offer, it is submitted that the Board's statutory duty was indeed to the shareholders to obtain the best price.

This brings us to the second question, assuming that the focus is on shareholders' interests, what type of constituency is this? What the Cadbury takeover illustrates in stark fashion is that the changing nature of the markets means that the type of shareholders that directors responding to a bid are required to consider may be different from the type of shareholders in a company which is not under siege. It may be considered that the latter can appreciate more readily the benefits of an enlightened shareholder value approach where the interests of shareholders can be advanced only where consideration is also given to the interests of non-shareholders. It is a fact however that the announcement of a takeover is marked with a frenzy in market activity and in the case of the Cadbury offer, many so-called "long term investors" sought to capitalise on the takeover premium by selling shares which were then bought by short term hedge funds. By the time the offer was finally recommended, hedge funds and other short-term investors owned almost 30% of the company's shares, up from just 5% before the offer was made. Acting in the interests of these shareholders clearly pointed towards a recommendation of the offer.[14] Lord Mandelson, the then Secretary of State for Business, Innovation and Skills complained that "In the case of Cadbury and Kraft it is hard to ignore the fact that the fate of a company with a long history and many tens of thousands of employees was decided by people who had not owned the company a few weeks earlier, and probably had no intention of owning it a few weeks later."[15] Jack Dromey the Deputy Secretary General of trade union Unite put the case more emotively arguing that Cadbury's

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[12] *Weinberg and Blank on Takeovers and Mergers,* par.4-7136.

[13] Roger Carr, *Cadbury: Hostile bids and takeovers* (Saiid Business School, 15 February 2010). Available at http://www.sbs.ox.ac.uk/newsandevents/previousevents/Pages/RogerCarrCadbury.aspx.

[14] However, not all shareholders were happy. Institutional investors voiced their concern that Cadbury had given in too easily. Standard Life indicated during the offer period that Kraft would need to bid over 900p per share to get its support. Cadbury's second-largest shareholder, Legal & General issued a statement afterwards saying the final price did not "fully reflect the long-term value of the company" and that it was "disappointed" management had recommended the offer.

[15] Mansion House Speech March 2010 Available at http://archive.bis.gov.uk/newsarchive/nds/clientmicrosite/content/Detail.aspx-ReleaseID=411720&NewsAreaID=2&ClientID=431.html.

future was decided "by hedge funds in the form of boys wearing red braces who move in to make a quick buck at the time of a British Icons vulnerability."[16]

It is often claimed that fund managers have shorter term horizons than individual shareholders not just because of the desire to make a quick profit, but because of a greater need for liquidity and because of the structure of their bonus arrangements. However, one cannot lay all the blame on the shoulders of the hedge funds. We must remember that ordinary shareholders were involved in selling to the hedge funds during the offer period. Clearly these shareholders did not have a long term focus and were happy to take the same "quick buck". (It is also a fact that these same long-term shareholders through their board had two years before sanctioned the Somerdale closure.) Carr complained about the historic lack of interest from UK institutions in the stock. In September 2009, UK institutions owned around 28% of Cadbury while US institutions owned nearly 50% and Carr suggested that the latter might be less worried than their British counterparts about Cadbury falling to an American rival. "The seeds of destruction for this company lay in its [shareholder] register…If you've only got 28% long domestic funds owning this company, then you know that in a bid the rest are likely to sell." [17] However, this is simply a fact of the market. There are many reasons why the share price was under value. For example, its management team may have been considered inefficient by the markets. It could be argued thus that the Cadbury acquisition is an example of the operation of the market for corporate control theory where the disciplinary force of the marketplace leads to the replacement of inefficient managers who have caused the share price to decline below the company's potential value.[18]

The Code [and the Takeovers Directive]

Under General Principle 3 of the Code, the board of the target company "must act in the interests of the company as a whole and must not deny the holders of securities the opportunity to decide on the merits of the bid". This gives effect to Article 3(1)(c) of the Directive. In fulfilling obligations under the Directive,[19] the Code also requires the target board to advise their shareholders on the offer[20] and to avoid taking any action which might frustrate the bid or deny shareholders the opportunity to decide on the merits of the bid.[21] One of the controversial issues during the long and tortuous debates which preceded the adoption of the Directive was the need for it to provide for the protection of employees in a target company and there was much discussion as to the manner in which this should be done. Indeed one of the reasons why the Parliament rejected the Commission approved proposal in 2001 was that there was inadequate protection for employees. At one stage in the drafting process, an obligation was imposed on the board of the target company "to act in the interests of

[16] House of Commons, Business, Innovation and Skills Committee, Mergers Acquisitions and Takeovers: the Takeover of Cadbury by Kraft, Ninth Report of Session 2009-2010 (HC 234) p.22. Available at http://www.publications.parliament.uk/pa/cm200910/cmselect/cmbis/234/23402.htm.

[17] Roger Carr, *Cadbury: Hostile bids and takeovers* (Saiid Business School, 15 February 2010). Available at http://www.sbs.ox.ac.uk/newsandevents/previousevents/Pages/RogerCarrCadbury.aspx.

[18] Manne, H. (1965) "Mergers and the Market for Corporate Control." 73 *Journal of Political Economics* 110 at p.113.

[19] Article 9(5) and 9(2) of the Takeovers Directive 2004/25.

[20] General Principle 2, Rule 3.1, Rule 23 and Rule 25.1 of the Code.

[21] Rule 21 of the Code.

the company as a whole, including safeguarding jobs." [22] This was subsequently amended to refer to an obligation "to act in all the interests of the company, including employment".[23]However, by the time agreement was finally reached and the Directive was adopted, the reference to employment was deleted on the basis that this was dealt with adequately by the information rights provided for in the Directive.[24] General Principle 3 of the Code thus omits any reference to employees.

Article 6(3)(i) of the Directive which is implemented by Rule 24.1 of the Code requires the offeror in its offer document to state: "the offeror's intentions with regard to the future business of the offeree company and, in so far as it is affected by the bid, the offeror company and with regard to the safeguarding of the jobs of their employees and management, including any material change in the conditions of employment, and in particular the offeror's strategic plans for the two companies and the likely repercussions on employment and the locations of the companies' places of business". Rule 24.1 also requires the offeror to include in the document information on "its intentions regarding any redeployment of the fixed assets of the offeree company" and "the long-term commercial justification for the proposed offer". Article 9(5) of the Directive which is implemented by Rule 25.1 of the Code requires the target board in its response document to set out "its opinion of the bid and the reasons on which it is based, including its views on the effects of implementation of the bid on all the company's interests and specifically employment, and on the offeror's strategic plans for the offeree company and their likely repercussions on employment and the locations of the company's places of business as set out in the offer document in accordance with Article 6(3)(i)". A provision in Article 9(5) of the Directive which is implemented by Rule 30.2 (b) of the Code also provides that the target board must append to the document containing its opinion a separate opinion from the representatives of its employees on the effects of the offer on employment, provided such opinion is received in good time before publication of that circular.

In the context of the offer for Cadbury one might question whether this information was provided and if so, whether it proved useful in safeguarding employees. When the Kraft offer document was published in December 2009 the section on information pertaining to employees contained therein was predictable and it is submitted, of little value to anyone. It stated that because of the complimentarity of fit between the two companies, there would be "opportunities for talented employees" arising from the acquisition. It indicated Kraft's intention to establish joint teams after the acquisition "to conduct integration process reviews" as a result of which it anticipated "the streamlining of operations and some consolidations in certain areas of the business of the Combined Group." It reiterated Kraft's belief that it would be in a position to continue to operate the Somerdale facility and to invest in Bournville. The section also contained the normal boilerplate provision: "Kraft Foods has given assurances to the Cadbury Directors that, on the Offer becoming or being declared wholly unconditional, the existing contractual employment rights, including pension rights, of all employees of Cadbury and its subsidiaries will be fully safeguarded." Kraft expressly reserved the right to make "any changes that it deems necessary, appropriate or convenient to optimise Cadbury's potential in conjunction with Kraft

[22] *Official Journal C 222 , 21/07/1997 P. 0020.*
[23] COM/97/0565 final C 378 13.12.1997, p. 0010
[24] In the Statement of the Council's reasons for the Common Position adopted by it - 8129/00 ADD 1 22/5/2000.

Foods businesses in light of Kraft Foods' review or in light of future developments." The revised offer document published on 19 January expressly drew attention to this section of the original offer document. The Cadbury response document was even less useful than the offer document in regard to information on employees. It stated:

> "The Board can only comment on the details of the Offer that have been provided in the Offer Documents. The Board notes Kraft's statements … regarding its plans in relation to Cadbury's management, employees and locations of business. The Board notes the strategic importance to Kraft of seeking to acquire Cadbury. However, there is insufficient information in the Offer Documents about Kraft's plans in relation to Cadbury to comment further."

The failure of the Directive and the Code to lead to the production of useful information on employees in this case rests on the fact that this was a "hostile bid". Let us be clear though, it was not that Cadbury could not disclose this information to Kraft, it was that it choose not to do so. Once information is distributed to all shareholders at the same time (in accordance with the requirements of the Directive and the Code), there is no prohibition on dissemination. However in a hostile bid from a competitor, there are sound commercial reasons why sensitive or even useful information would not be handed over. For this reason, Kraft had access to very little information concerning the manufacturing operations – solely that which was available in the public domain. In relation to Somerdale, Kraft subsequently stated that they believed the transfer was not scheduled until the latter part of 2010, that it could use the plant instead to meet its need for additional capacity in Continental Europe and that it could continue the current use of the Somerdale plant. It emphasised that the statement was merely one of belief and was expressed as such. It subsequently emerged that the first time representatives from Kraft had even touched upon the Somerdale closure was on the night of 18/19 January after the Cadbury Board had publicly recommended the bid. At that meeting, Cadbury informed Kraft that it considered that it would be difficult to continue to operate the Somerdale plant. Later Kraft discovered that more than £100 million had been invested in the Polish facilities. [25]

The Panel has since criticised Kraft for its statement in relation to Somerdale on the basis that it did not meet the standard of care and accuracy required by Rule 19.1 of the Code.[26] This rule requires that every document and statement during the course of the offer be prepared with "the highest standards of care and accuracy." In response to Kraft's defence that the statement was expressed merely as an opinion, the Panel stated that where a party to an offer makes such a statement, the party must not only "honestly and genuinely hold that belief (a subjective test)", but they must also have "a reasonable basis for so holding that belief (an objective test)".[27] In summary, it concluded that they simply did not have sufficient information on which to base this belief. The Panel went further than this though. It then stated:

> "In this case, in view of the statements' prominence and the significance attached to them by Kraft and Cadbury's employees, and given that they repeatedly raised the prospect of Kraft reversing a high profile and contentious

[25] Panel Statement, Kraft Foods Inc. Offer for Cadbury Plc 2010/14.
[26] Panel Statement, Kraft Foods Inc. Offer for Cadbury Plc 2010/14.
[27] Panel Statement, Kraft Foods Inc. Offer for Cadbury Plc 2010/14.

> decision taken by Cadbury some two years previously, the Executive considers that particular case was required in relation to the statements regarding the Somerdale facility".

This is interesting because in one sense it amounts to applying a subjective test to what it said was the objective assessment. The Panel also critisised Kraft for not taking the opportunity to take mitigating action once it had gained access to senior management on 18/19 January. Damning though this criticism is, it has no impact on the employees and for Kraft, it merely involves reputational damage.

However, even if this information on employees had been publicly available, what real value would it have been? It is hard to sustain the argument that it would have mattered to shareholders given that the company itself had decided to let these employees go just two years before. What would the employees have done? The trade unions might have used it in their discussions with Kraft during the offer period but the Code prohibits any special deals being reached with certain classes of shareholder on the basis that they would breach the Code's [and the Directive's] equality provisions.[28] Would the Cadbury directors have used the information? In terms of their section 172 duty, for the reasons set out above they could not have accorded priority to employees in these circumstances. In terms of their duty under the Code, while it is arguable that a more pluralist interpretation of "the interests of the company as a whole" is possible, it is unlikely. The Code expressly acknowledges its primary responsibility to be the protection of shareholders.[29] That is not to say however that in a different case a different interpretation could not be taken of the duty by a Member State implementing Article 3(1)(c) of the Directive. However, while it is possible that this might fit better in a less shareholder centric corporate governance system, it remains the case that the Directive itself would not seem to support such an interpretation. Although Recital 1 expresses the stated purpose of the Directive to be to coordinate certain safeguards required by Member States of listed companies "for the protection of the interests of members and others", the main focus of the Directive is clearly on shareholders. The fact that, as noted above, the reference to employees was specifically removed from an earlier draft of Article 3(1)(c) on the basis that there were specific information rights would seem to substantiate this argument..

Conclusion

The Cadbury takeover has had a significant effect on how takeover regulation is perceived in the UK and has led to calls for change in a number of areas.

Initially the debate, fuelled perhaps by the media, focused on the need to introduce measures to protect British companies from foreign acquisition. The idea of a new form of public interest test was mooted. At the time, Lord Mandleson was cautious noting that the UK benefits from inward investment and an open market for corporate control internationally and that "a political test for policing foreign ownership runs the risk of becoming protectionist, and protectionism is not in our interests". Similarly Lord Mandleson's replacement in the Department for Business, Innovation and Skills,

[28] General Principle 1 and Rule 16 of the Code.

[29] The Introduction to the Code states "The Code is designed principally to ensure that shareholders are treated fairly and are not denied an opportunity to decide on the merits of a takeover and that shareholders of the same class are afforded equivalent treatment by an offeror." (The City Code on Takeovers and Mergers, Introduction A1)

Vince Cable was emphatic in welcoming foreign investors and rejecting “economic nationalism”.[30] This, it is submitted is consistent with the UK’s commitment at the time of implementing the Directive to an open market for corporate control.[31] However, the Government’s response to the House of Common Committee, expected in July 2010, is likely to deal with this issue further. The Panel’s consultation exercise deals inter alia with proposals mooted to deal with the potential dominance of shareholders seeking to cash in on the takeover premium. One proposal is that voting rights should be withheld from shares in a target company which are acquired during the course of an offer period. Another is that the mandatory acceptance condition threshold in the Code should be increased from 50% to 60% or above. The former in particular is unlikely to be accepted.

In relation to the duty of directors, Lord Mandelson stated that the various duties set out in section 172 “should be understood in the fast-moving circumstances of a takeover, when some of the company’s newest shareholders may not have a long term commitment to the company”. He maintained that “we need directors equipped to be stewards rather than just auctioneers”. In what is clearly an acknowledgment of the problems averted to earlier in the article, he stated “If this requires re-stating the 2006 Companies Act, then I am willing to do that.” (Interestingly, Lord Mandleson directly linked directors’ duties to the informational deficit, claiming that “one of the key ways to strengthen consideration of these wider issues in takeovers is to strengthen the ability of all shareholders on both sides to scrutinize the planning, financing and intentions behind deals” in order to “better weigh the long term prospects for the merged company”. [32] He suggested for example that offerors set out “transparently and publicly their long term plans for the assets they propose to acquire, including company headquarters, R&D sites and main plants.” [33] However, as explained above, offerors are unlikely to have this information in the context of a hostile takeover. This is the reason why these provisions in the Code and the Directive are of only very limited value in this kind of takeover.) In terms of stewardship, Lord Mandleson emphasised the need to build a stronger culture of “long term commitment to sustainable company growth.” Institutional shareholders were identified as playing a crucial role in this sense. The goal is clearly to balance the need for an open market with an acknowledgment that management need “scope to plan and build without the excessive demands for quick returns that characterise too much modern public company ownership.”[34] While only time will tell whether the new Government would contemplate such further reform of the statutory duties of directors, tellingly Vince Cable has echoed Lord Mandleson’s views on the importance of adopting a long term and sustainable approach to corporate decision making. He suggested that takeover reform should be about “changing the way in which unfettered short term speculation can have damaging long term consequences.” He explained:

[30] Commenting on the launch of the Panel’s consultation on 1 June 2010. Available at http://nds.coi.gov.uk/content/Detail.aspx?ReleaseID=413590&NewsAreaID=2.

[31] For example, the UK did not avail of the optionality and reciprocity provisions the Directive allowed in respect of the prohibition in Article 9 of defensive actions by target boards.

[32] Peter Mandelson, Mansion House Speech (1 March 2010). Available at http://archive.bis.gov.uk/newsarchive/nds/clientmicrosite/content/Detail.aspx-ReleaseID=411720&NewsAreaID=2&ClientID=431.html.

[33] Peter Mandelson, “Going for Growth” Speech to The Work Foundation (6 January 2010).Available at http://webarchive.nationalarchives.gov.uk/+/http://www.bis.gov.uk/speech-going-for-growth.

[34] Peter Mandelson, “Going for Growth” Speech to The Work Foundation (6 January 2010).Available at http://webarchive.nationalarchives.gov.uk/+/http://www.bis.gov.uk/speech-going-for-growth.

> "It is about responsibility. It is renewing a sense that a company is an enterprise, not just a set of paper assets. It is about insisting that running a company and owning shares in a company should be an important responsibility, and never more so than when a company changes hands."[35]

Article 20 of the Directive provides that the Commission in 2011 must examine the Directive "in the light of the experience acquired in applying" it and, if necessary, propose its revision. One might also consider whether in light of Member States experience applying the Directive to hostile takeovers such as Cadbury, there is also a need to re-open the question of employee protection in this review process. If the information rights provided for in the Directive fail to produce useful, adequate or reliable data on employees, is further regulation required? Though beyond the scope of this article, possibilities could include a reconsideration of the duty imposed on directors in the Directive to act "in the interests of the company as a whole" or the appointment of a national supervisory authority to consider the consequences of a takeover on employment in the same way its effects on competition or more recently "financial stability are considered. What is clear at this stage however is that this issue has not been settled and further review both at national and supranational level is likely.

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[35] Vince Cable, Speech to the Cass Business School, June 3 2010. Available at http://nds.coi.gov.uk/content/Detail.aspx?ReleaseID=413641&NewsAreaID=2.