

The arguments of corporate directors in takeover bids

Comparing argumentative strategies in the context of friendly
and hostile offers in the UK takeover market

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*A mia moglie Gioia
e ai miei figli Elisabetta e Tito,
con amore, gratitudine e stupore.*

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Abstract

This dissertation analyzes argumentative interactions in the context of corporate takeover bids, representing thus a first systematic study of financial communication from the perspective of argumentation theory. In general, the importance of financial communication is justified by the relevance of information for making sound investment decisions (cf. Healy & Palepu 2001; Williams 2008). But, information is a crucial factor insofar as it is an essential component of the argumentative processes on which decisions are built: the soundness of arguments significantly depends on reliable and shared material starting points (van Eemeren & Grootendorst 1992; Rigotti & Greco Morasso 2009, 2010). Now, several scholars have shown that companies do not simply disclose information as they select, elaborate and even manipulate them in order to induce certain investment decisions (DeGeorge et al. 1999; Dechow & Skinner 2000; Merkl-Davies & Brennan 2007). There is, however, scarce awareness of the argumentative dimension that characterizes numerous activities of financial communication (chapter 2). Through an argumentative discourse, information is inferentially “put at work” in order to justify an opinion, or, as often is the case in finance, in order to persuade an audience of the expediency of a proposed transaction.

The quality of the crucial decisions entailed by takeover bids, in which one company (the bidder) proposes to the shareholders of another company (the target) to tender their shares, largely depends on the information that corporate directors make available (cf. Sudarsanam 1995; Brennan et al. 2010). A relevant question becomes, thus, understanding whether and how corporate directors attempt to influence shareholders’ decision by means of argumentation, inviting them to accomplish a certain inference on the basis of the provided information.

In order to answer this general question and other more specific questions (cf. chapter 1), the dissertation has considered takeover bids made to firms listed in the UK market, which is regulated by the City Code on Takeovers and Mergers.

The takeover bid has been conceived of in terms of activity type (Levinson 1992; Rigotti & Rocci 2006, van Eemeren 2010), undertaken by the bidder in order to obtain the desired modification of the concerned social reality (chapter 3). This reconstruction identifies the communicative interactions aimed to realize these activities, the main interagents involved, the institutional commitments imposed to them, and the contextual constraints on their strategic maneuvering (van Eemeren 2010). The target directors play here a decisive role because they may recommend shareholders accept or reject the offer

(cf. Morck et al. 1988), giving rise to different argumentative situations. Interestingly, the Code not only requires B-and T-directors to disclose relevant information, but also imposes to both of them specific commitments of justification. In particular, B-directors must give the commercial justification behind the offer, while the T-board has to state the reasons for its recommendation.

The analysis of different documents pertaining to 20 cases of takeover bids (launched in the 2006-2010 period) has brought to light how directors, through various strategies, fulfill their informative and argumentative obligations and simultaneously try to persuade shareholders. Crucial differences have emerged by comparing cases in which the offer was recommended by the T-board (friendly bids) and cases in which the bid was opposed (hostile bids).

In friendly bids (discussed in chapter 4), the agreement previously sealed by the two boards brings about a coordinated communication. The bidder justifies the intended corporate acquisition without advancing its opinion about the offer. T-directors argumentatively support the offer's acceptance indirectly, by outlining the reasons having motivated their decision. The arguments chosen from the topical potential pertain both to the strictly financial aspects and to the consequences that the implied acquisition will have on the target company. The often ambiguous presentation of these two types of arguments makes it difficult to understand whether the latter concern also shareholders or only the other stakeholders.

In hostile bids (exposed in chapter 5), both sides develop their own argumentative discourse and partially attack the other's arguments. The arising argumentative battle mainly centers on the financial aspects of the proposed deal. The strategic maneuvering of directors affects all stages of critical discussion, but is particularly important at the level of opening stage. Here, typically, the argumentative dispute comes to affect the endoxical background assumptions relating to which information become relevant for decision (e.g. criteria for valuation, assumptions justifying profit forecasts and other predictions, etc.).

Numerous implication emerges which are relevant to understand the relation between information and argumentation.

These outcomes suggest that argumentation relevantly affects the process through which the eventual decision is made. Further research is needed to verify more in depth this aspect. In particular, the results of this dissertation may be further exploited in interdisciplinary studies aiming to assess financial decisions also in its argumentative dimension.

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1. Introduction

1.1. Financial communication as a an argumentatively unexplored domain

In the different contexts of human life people undertake joint activities which enable them to realize their purposes. The fulfillment of these activities requires, both at the interpersonal and individual levels, numerous crucial decisions which, more often than not, must be taken in situations governed by uncertainty, alternative choices, differences of opinion, and conflicts of interest. All these aspects significantly affect the quality of the decisions and, consequently, the quality and the success of the interactions following these decisions. A “happy interaction” presupposes a sound decision, which is truly such when supported by reasons that ideally take into account all relevant factors at stake, including the available data, the fundamental shared goals and principles, the different opinions, concerns, and interests. In other words, the soundness of a decision is bound to the reasonableness of the argumentation adopted to justify it, or to what has been also named the ‘argumentation rationality’ of a decision (cf. von Werder 1999).

Argumentation intervenes in all social contexts where people, instead of coercively imposing their opinion, try to build consent critically, justifying their position on its merit and on the basis of values and principles shared with the audience-decider (cf. van Eemeren 2002; Rigotti & Greco Morasso 2009a). By promoting reasonable decision-making processes¹, argumentation relevantly contributes to optimally fulfilling the goal of an interaction, as brought to light by recent argumentation studies addressing different social domains where important decisions are at stake, such as law, politics, health and media (cf. Rigotti & Greco Morasso 2009b for a concise overview). Surprisingly, the domain of *finance* has been so far fundamentally overlooked by this

¹ The fundamental contribution that argumentation brings to the fulfillment of social interactions is not limited to the sphere of decision-making: argumentation holds, beside a practical dimension, an extremely relevant cognitive (epistemic) dimension, through which doubtful propositions are ascertained and knowledge is constructed.

research stream (cf. chapter 2). Yet, the high level of uncertainty surrounding investment decisions, as well as the conflicts and controversies affecting many financial interactions, brings to formulate the hypothesis that argumentation, being the form of communication dealing with questionable propositions and differences of opinion, plays a prominent role in finance.

Moved by this hypothesis, the present dissertation investigates the argumentative interactions characterizing takeover bids, which constitute an extremely relevant activity type of the financial context (Weston et al. 1995; Ross et al. 2003). In a takeover bid, one company (the *bidder*) proposes to the *shareholders* of another company (the *target*) to sell their shares in exchange for cash or bidder's shares. The actors mainly involved in this transaction are indeed confronted with difficult and far less than evident decisions: from the managerial strategic choice whether or not to acquire another firm and to formulate a proposal, to the eventual deliberation of (target) shareholders, who receive such a proposal and either accept or reject it (cf. Levit2010).

Besides takeovers, the financial sector, whose social relevance has dramatically grown with the current global crisis, includes innumerable interactions in which people are committed to rationally justify their own position. For example, consider an entrepreneur needing to convince a credit institution to finance its business idea, a fund manager having to justify a low performance, a banker seeking to persuade the client to subscribe a certain financial product, a rating agency giving the rationale for a downgrade, analysts giving the reasons for their valuations, financial journalists providing the basis for their predictions, etc.

These and other communicative activities form the domain of financial communication which, in light of these examples, could hardly be judged as irrelevant for argumentation theory, in particular if we consider that the latter is being increasingly concerned with the relation, by the way constitutive, between argumentation and its context of application. More aware of the context-bound nature of argumentation, argumentation scholars have progressively focused their attention towards the study of *real argumentation*, which brought, over the last decade, to consider more closely the concrete communication contexts in which interpersonal reasoning is applied. Understanding the dynamics of context is in fact indispensable to analyze and evaluate real arguments in their whole significance (cf. Walton & Krabbe 1995; Dascal 2003; van

Eemeren & Houtlosser 2005; Rigotti 2006; Rigotti & Greco Morasso 2009b; van Eemeren & Garssen 2009; van Eemeren 2010) as, unlike abstract logical structures, argumentation, exists only inasmuch as embedded in a contextualized communicative activity.

Exploring various fields of interaction is particularly important for the study of real argumentation because each field of interaction envisages its own specific goals, forms of conflict and relationships, shared values, and available information, which condition argumentative strategies at different levels. Shareholders' decision in a takeover is fundamentally different, for example, from a parliament's deliberation concerning a new law or, to remain within the financial context, from a bank customer's decision to transfer his/her wealth to another bank. Thus, arguers need to design and implement different strategies according to the particular decision at issue, to the argumentative situation in which the decision is critically discussed, and to the specific contextual constraints within which they must maneuver (cf. Sillince 2002; Rigotti 2006; van Eemeren 2010).

In this regard, the still unexplored financial context appears to be extremely interesting and promising, as it represents a field in which the use of reasoning is strongly emphasized. Indeed, the rationality of decisions as well as the contextual factors limiting it represents lively concerns for financial scholars and practitioners. Financial economics has thoroughly defined the criteria for which an investment project (both at the firm and individual levels) is worthy of being undertaken in the perspective of a rational agent (cf. Hirshleifer 1958; Fama & Miller 1971; Ross et al. 2003; Brealey & Myers 2008). In a concrete communicative interaction, these factors can become reasons justifying the desirability of a possible investment. Thus, from an argumentative viewpoint, they actually correspond to finance-specific criteria for sound practical reasoning, i.e. the decision-oriented argumentation (cf. Walton 1990, 2007; Pollock 1992; Hitchcock 2002; Bench-Capon 2003; Rigotti 2008).

At the empirical level, the actual rationality of financial decision-makers represents a central and strongly debated issue. The possibility for investors to make rational decisions has been recognized to be affected by numerous factors, including, time limits, information asymmetries, and conflicts of interest. Similarly, their actual ability to decide in a fully rational manner is conditioned by the various psychological

biases brought to light by behavioral finance scholars (cf. Shleifer 2000; Shefrin 2007; Sewell 2007). The neo-classical rigid assumptions of perfect rationality and completeness of information have been so progressively relaxed, stressing instead the influence that different kinds of contextual constraints may have on the quality of decisions.

However, the influence of such constraints on argumentation has not become an object of investigation. The lack of research in financial argumentation would suggest that, to the students of argumentation, the financial domain could seem less relevant for an argumentative approach than others such as law and politics, for which an already extended treatment exists ever since Antiquity. Arguably, argumentation and finance might be – and often are – perceived as two unrelated or even extraneous realities. This perception may even turn into a prejudice against the study of argumentation in finance, perhaps corroborated with a reductive view over financial economics, which ignores the endless numerous of communicative interactions like those aforementioned. To the laymen, finance often appears as a discipline exclusively made of formulae and models, which could give them the impression that financial phenomena are deterministic in nature. Instead, finance – and, more in general, economics – is a social science, though sometimes it might pass for an exact science². This misconception, brought to light both by philosophers (e.g. Searle 2005) and economists (e.g. von Mises 1962; Simon 1978; McCloskey 1985; Mirowski 1989), is certainly but involuntarily reinforced also by the highly mathematical framework within which economic choices and interactions are usually described and analyzed. Undoubtedly, the development of statistical and econometrical models has brought significant improvements in the discipline (Martini et al. 2008), though it could have induced the belief that the realm of investments is determined by quasi-physical laws³ whose regularities would make pointless the human component and the related communicative interactions. Contrarily, finance represents a fundamental moment of *social reality* (Searle 1995) and is, as such, strongly affected in its substance by language-based joint activities. Not by chance, financial markets are

²Here, the following passage by Ludwig von Mises deserves to be quoted: “The popular ideas concerning the methods the economists employ or ought to employ in the pursuit of their studies are fashioned by the belief that the methods of the natural sciences are also adequate for the study of human action. This fable is supported by the usage that mistakes economic history for economics. [...] But economics is not history. Economics is a branch of praxeology, the aprioristic theory of human action” (1962:73).

³ Interestingly, when financial crises and bubbles occur, they are often defined as catastrophes, storms and other terms denoting natural events (cf. for example Rocci 2009).

often described as communication systems (see for example Luszti et al. 1994), instituted in order to facilitate the flow of information required to improve the quality of investment decisions. In this relation, the importance of financial communication is usually explained in relation to its function of producing, disclosing and delivering good information to the decision-makers (cf. Healy & Palepu 2001; Williams 2008). For example, the US *Securities Exchange Commission* (SEC) justifies the need for disclosure rules by arguing that “only through the steady flow of timely, comprehensive, and accurate information can people make sound investment decisions”. Information become so the starting points for decision-oriented argumentations accomplished by investors.

The numerous communicative activities through which enterprises disclose information to the investors, which are ideally expected to narrow the existing information asymmetries, are affected also by another typically financial constraint, namely the presence of *agency conflicts*. The size of agency problems has particularly emerged after the explosion of a series of “corporate governance scandals” (like *Enron*, *WorldCom*, *Swissair*), which showed that the alignment of interests between agent and principal in public corporations should absolutely not be taken for granted (cf. Ross 2002). Consequently, a lot of pressure has been put on corporate executives, whose behavior and decisions, included those bound to takeovers, require more and more accountability, resulting in an increasing level of disclosure demand from the investment community. In fulfilling this demand, which is only partially determined by disclosure rules, companies not rarely attempt to justify and argumentatively defend their decisions in order to gain, maintain or restore trustworthiness (cf. Ice 1991; Benoit 1995; Massey 2001; Millar & Health 2004; Palmieri 2009) and foster the desired interpretation of the facts and of the issue at stake.

1.2. The relevance of argumentation for a sound takeover decision

A general hypothesis motivating this dissertation is that the dynamics of financial communication can be better and more adequately understood only if account is taken of their argumentative dimension. Indeed, through argumentation, information acquires relevance for decision-making by becoming part of the premises recalled to justify a questionable decision; more specifically, agency problems and other types of conflict can be mitigated or even settled by means of argumentation, which is precisely aimed to

resolve propositional or interpersonal conflicts (Greco Morasso 2011). In order to verify such a general hypothesis, several classes of financial activities could be considered in which communication is relevantly involved. I chose to focus on the communicative interactions supporting takeover bids because the latter unquestionably represent one of the most significant, controversial and intriguing phenomena of the financial context.

Although takeover bids do not coincide with the core dynamics of finance, namely the encounter of the capital with a smart business idea (cf. chapter 3), they are relevantly connected to it for at least two important reasons: (1) they envisage the protagonists of the core financial interaction, namely investors (shareholders) and enterprises (embodied by their managers and directors); (2) they represent for both bidding and target shareholders, though in partially different respects, an opportunity to realize a financial gain deriving from a corporate investment activity expected to create value.

Takeover bids should not be conceived of as isolated events but as activities occurring within a certain interaction field which broadly coincides with the stock market in which the target company is listed. Therefore, the typically financial contextual constraints aforementioned (information asymmetry, agency conflicts, etc.) operate in takeover bids too: target shareholders' decision is made particularly complex by the limited information they possess and, in some cases, also by their poor financial knowledge; for this reason, it seems inevitable for them to partially rely on corporate managers and directors, whose actions and decisions are conditioned, as already said, by agency problems, which undermine credibility, arouse criticisms, suspicions and doubts, thus opening the way to differences of opinion.

Differences of opinion, without which argumentation would be pointless (van Eemeren & Grootendorst 2004), are expected to arise between the two companies' managers/directors when they are engaged in the negotiation of a possible deal. If they reach an agreement, their initial difference of opinion remains undisclosed, otherwise a publicly held dispute takes place (cf. Sudarsanam 1995; Haan-Kamminga 2006). In fact, although these transactions are often *friendly*, meaning that target directors support the bid, recommending its acceptance to shareholders, numerous bids are *hostile*, so called because they are advanced against the approval of the target board, who, thus, recommends shareholders to reject the proposal. In any case, the acceptability of an offer

never constitutes a piece of evidence for shareholders. Rather, it represents, argumentatively speaking, an issue, that is a questionable topic which creates discussion⁴. Therefore, when a bid, either friendly or hostile, is announced, a difference of opinion is always present, in which shareholders assume the argumentative role of *antagonist* in a critical discussion (cf. van Eemeren & Grootendorst 2004), i.e. they represent a critical audience not immediately accepting the director's standpoint and calling for reasons in support of it.

Moreover, a multiple audience is typically involved, as several non-financial stakeholders might be affected by the corporate transformation following an eventually approved bid (cf. Daniels 1993; Chemla 2005). If target shareholders accept the proposal, the control over the company is transferred to the bidder and the two companies may merge to form a single corporation or, more simply, the target becomes owned by the bidding company. So, merger and acquisition⁵ (henceforth, M&A) transactions may bring about positive or negative (and sometimes even dramatic) consequences for people such as employees, clients, and others, who might therefore question the desirability of the deal and, in some cases even try to hinder it. Although takeovers apparently presuppose shareholders' agreement only, their eventual acceptance and their long-term outcome often depend upon obtaining an implicit consent from a wider audience.

Hence, corporate takeovers can be both very complex and highly controversial endeavors, within and beyond the financial markets. Not by chance, the quality of the takeover-related decisions represents an important scientific, professional and even political concern, especially because it appears that numerous deals eventually do not achieve the prospected financial and social benefits, destroying rather than creating shareholders value, cutting numerous jobs, and damaging the business identity and culture of a company. As many authors have remarked, the short and long-term success of M&As is not at all ensured (cf. Auster & Sirower 2002). Throughout the history, several deals proved to be actual debacles, whose causes ranged from conflicts of

⁴ Ancient rhetoricians, such as Cicero and Quintillian, spoke of *res dubia* (doubtful thing), as the object dealt by argumentation.

⁵ Economists as well as financial professionals usually adopt the terms merger, acquisition and takeover interchangeably, because the distinction is often relevant for law or accounting and less or the business and financial implications on the relevant stakeholders. On this point, see also Bruner (2004: p.1); Grinblatt & Titman (1998:666). In chapter 3, I shall deal more precisely with this issue.

interest to lack of thoroughness and reasonableness in decision-making (cf. Bruner 2005). Suffice it to mention some illustrious cases like the Swissair's hunter strategy (cf. Knorr & Arndt 2004) or the RJR-Nabisco leveraged buyout (cf. Burrough & Helyar 1989) to grasp the economic and social damages that may occur when such investments are ill-conceived. Remarkably, in the field of management, scholars concerned with the quality of managerial decisions in takeovers and similar corporate initiatives trace such quality to its argumentation rationality (cf. von Werder 1999; von Werder & Talaulicar 2006).

Despite some authors maintain that bad deals occur more often than not (e.g. Segall 1968; Kitching 1967; Porter 1987), takeovers have continued to be very frequent over the years and even during the current crisis⁶, attracting the attention of economists and business actors, but also of the society in general (e.g. politicians, citizens, communities) and media, which publish numerous stories and commentaries in relation to these events (Weston et al. 1995: xxi-xxii).

The economic-financial and societal significance of takeovers has brought all developed countries to institute, and continually update, severe norms regulating the conduct of these transactions. In Europe, and similarly in other continents, takeover rules have been established moving from the ideal goal of facilitating the realization of deals benefiting economy and society while preventing those damaging them (cf. Haan-Kamminga 2006). To this purpose, both bidding and target directors are required to disclose meaningful information, which should also include the reasons why an offer is made and the reasons why its acceptance or rejection is recommended (cf. chapter 3).

Therefore, beside the disclosure of relevant data, an argumentative attitude is expected from directors who must publicly justify the position they have assumed in relation to such a questionable endeavor. Beyond fulfilling these legal requirements, corporate managers and directors need and aim to convince shareholders to adhere to their particular position, i.e. accepting or rejecting the offer. The following excerpt, taken from one of the cases considered for this study, is particularly illuminating:

⁶ If, on the one hand, the credit crunch could complicate the raising of capital required for financing an acquisition, on the other hand, a corporate combination could allow companies to preserve their competitiveness. It must be said, however, that during the crisis, rather than business consolidations, takeovers have involved public bailouts, with governments acquiring significant or even controlling stakes of a troubled company in order to save it from its bankruptcy.

“Dear shareholder,

On 17 November 2009, KiFin announced an unsolicited cash Offer [...] I am now writing to set out the reasons why your Board continues to recommend strongly that you reject KiFin’s Offer.

[...]

The following data illustrates clearly why KiFin’s Offer undervalues your Minerva Shares:

- As at 30 November 2009, CBRE valued Minerva’s property portfolio at approximately £1 billion.
- This is a net revaluation surplus of £93 million since 30 June 2009, representing an increase of 10% in five months.
- Minerva’s financial gearing and the improvement in the value of Minerva’s property portfolio gives rise to an increase in the Company’s NAV per Share of 101%, from 47p as at 30 June 2009 to 95p as at 30 November 2009 (on a Pro Forma basis as set out in Appendix I of this document).
- Minerva’s Pro Forma NAV of 95p per Share is 89% above KiFin’s Offer of only 50p per Share”.

(Minerva plc, circular to shareholders, 2 December 2009)

In this passage, taken from the introductory letter of a circular to shareholders written by the Chairman of a UK real-estate company (Minerva), at least three participants can be singled out: the Minerva Board of Directors, the shareholders of Minerva, and KiFin, a company which has made an offer to buy Minerva shares. In the opinion of the Board, KiFin’s offer must be rejected by shareholders. It goes without saying that, by making the offer, KiFin claims exactly the opposite. Therefore, two different opinions are at stake, which correspond to as many alternative decisions that Minerva shareholders can make: accept or reject KiFin’s offer. It is a typical situation of hostile bid. What is particularly noteworthy is that the writer is not merely transmitting or exposing information; rather, he is exploiting certain *data* as arguments intended to prove the inexpediency of the offer (“KiFin’s offer undervalues your Minerva Shares”), which would justify the Board’s decision to recommend the rejection of the offer.

1.3. Research objectives

The example just reported illustrates very well the argumentative dimension of takeover bids, only partially acknowledged by a few scholars in economic sciences (cf. Sillince 2002; von Werder & Talaulicar 2006; Green et al. 2008; Brennan et al 2010), whose research however has not relied comprehensively and systematically on the rich instrumentation elaborated so far within argumentation theory. More in general, we

could say that within the extensive takeover literature, encompassing studies in finance, accounting, and management, argumentation is glimpsed but, then, slips away remaining eventually overshadowed (cf. section 2.1- 2.3).

This dissertation intends instead to bring to light and explain the role of argumentation in the communicative activities supporting takeover bids, which, as it will be showed, are characterized by a significant “argumentative rate”⁷. In fact, beside an *informative nature*, bound to the fact that shareholders claim and are legally entitled to receive information to support their decision, the communicative interactions supporting takeover bids seem to hold a *persuasive nature* too. Corporate directors are not neutral providers of data (as for example analysts and rating agencies are expected to be). Rather, they are directly concerned actors (i.e. stakeholders) who assume a particular position (standpoint) on the offer, which should reflect their institutional commitment but which, as agency theory brings to light, may also deviate from it, reflecting instead hidden personal concerns (cf. Walkling & Long 1984; Morck et al. 1990).

It becomes, thus, interesting to investigate how corporate directors attempt to influence the shareholders’ decision by means of argumentation, inviting them to accomplish a precise reasoning on the basis of the provided information: *how information and argumentation are related in the communicative activities supporting takeover bids?* More specifically: *how does argumentation elaborate information in order to rationally support the decision to accept or reject a bid?*

The duties imposed by takeover rules, which include informative and argumentative obligations, are motivated by the ideal goal of favoring target shareholders’ sound decision-making (cf. chapter 3). From an argumentative perspective, a sound decision is the outcome of a reasonable argumentative interaction in which the

⁷ The term *argumentative rate* (cf. also Greco Morasso 2008, 2011) is used here loosely to refer to the extent to which the issues emerging in a context are critically discussed within an argumentative interaction. Hence, one could speak of different argumentative rates in different contexts and activity types. For example, a parliamentary democracy is expected to feature a higher argumentative rate than a dictatorship; similarly a scientific debate compared to a “discussion” in the army. The meaning of “argumentative rate” in this thesis should not be confused with the idea of ‘argumentativeness’ or ‘quarrelsomeness’ (cf. Schulz 1982), which is based on the concept of argumentation in its polemical accent (where *to argue* means *to quarrel*), while we adopt the term ‘argumentative’ to denote a critical and reasonable attitude by discussants (cf. van Eemeren & Grootendorst 2004; Rigotti & Greco Morasso 2009a).

expediency of the proposed action is critically assessed.

Argumentation theory, in particular the Extended Pragma-Dialectical approach (van Eemeren 2010), has brought to light that, in real argumentation, arguers do not simply aim at developing a sound and critical discourse, as they also wish to persuade their audience. Hence, beside a dialectical dimension, argumentation entails a rhetorical undertaking, in which effectiveness is sought for. After the two ground-breaking books by Toulmin (1958) and by Perelman & Olbrechts-Tyteca (1958) were published, contemporary argumentation theory has been strongly engaged with the elaboration of norms and criteria for establishing the reasonableness of natural (non-formal) arguments (cf. Hamblin 1970; Woods & Walton 1989; van Eemeren & Grootendorst 1984, 1992, 2004) but also with the investigation of the persuasiveness of arguments (cf. O’Keefe 2002).

Corporate directors are obviously expected to provide reasonable grounds for their position. This commitment implies also the fulfillment of the requirements for allowing shareholders to make a properly informed decision, i.e. a decision justified by appropriate reasons. At the same time, as the Minerva example shows, directors are interested in influencing shareholders’ decision. The notion of strategic maneuvering (van Eemeren & Houtlosser 2002) emerges here as particularly adequate to describe directors’ attempt to convince shareholders while simultaneously respecting the conditions favoring a truly sound decision. Therefore, a second relevant research question is: *Through which argumentative strategies do bidding and target directors attempt at the same time to allow shareholders to take a sound decision and to persuade them to accept/reject the offer?*

The questions raised so far mainly concern the influence that argumentation brings to the context, namely how argumentation contributes to realize the actors’ goals in the communicative interactions supporting takeovers. In line with the research stream dealing with argumentation in context, this dissertation also intends to shed light on the influence that context exercises on argumentation. As a matter of fact, the analysis of strategic maneuvering necessitates referring to the context at various levels (cf. van Eemeren & Garssen 2009). On the one hand, the consent pursued by argumentation is aimed at producing a context change coinciding with the fulfillment of the arguer’s goal.

Thus, context must be accounted for in order to elicit the goals pursued by arguers, to which their rhetorical aim is subservient (cf. Rigotti 2006; van Eemeren 2010). On the other hand, the structure of context, and in particular its institutionalized dimension, may relevantly determine both the possibility to develop a critical discussion and the opportunities to maneuver strategically, i.e. to develop sound and effective argumentation.

We already underline that the financial context envisages peculiar traits which may act as institutional constraints on strategic maneuvering. One of the objectives of this research is *to assess the extent to which the argumentative interactions in friendly and hostile bids mirror a standard of critical discussion*. This in turn depends upon higher-order conditions (cf. van Eemeren & Grootendorst 1988) and, more precisely, upon:

(1) real arguers' willingness and readiness to act reasonably (second-order conditions), in relation to which the following question emerges: *What argumentatively-relevant commitments are manifested by arguers*;

(2) institutional constraints (third-order conditions). In this dissertation, the institutional framework that is considered is the UK stock market, which represents the most developed takeover context in Europe, with absolutely the highest number of transactions.

In the UK, takeover bids are supervised by the *Takeover Panel* and regulated by the *City Code of Takeovers and Mergers*, which implements the 2005 *European Directive on Takeover Bids*. By focusing on this legal framework, I will attempt to answer the following question: *In the context of UK takeover bids, what institutional constraints are imposed on strategic maneuvering*?

The latter question assumes a rather large perspective as it considers general contextual conditions which are expected to influence all bids launched in the UK market. However, takeover transactions can differ substantially in their structure. In particular, we have already mentioned the crucial distinction between friendly and hostile offers, which appears to be relevant especially from an argumentation point of view. Indeed, friendly and hostile bids envisage two different scenarios or *argumentative situations*, which, for the purposes of this dissertation, must be kept distinct: *how do the*

argumentative situations implied by friendly and hostile bids respectively affect bidding and target directors' strategic maneuvering?

1.4. Method, data and structure of the dissertation

In order to answer these questions, the argumentative strategies adopted in the context of real takeover proposals launched in the UK market are studied.

Without overlooking the rich contribution given by the numerous contemporary scholars in argumentation, three pillars, which will be presented in chapter 2, constitute the “fil rouge” of the study: a model of the communication context of arguments (Rigotti & Rocci 2006), the Extended Pragma-Dialectical approach (van Eemeren 2010); the Argumentum Model of Topics (AMT) (Rigotti & Greco Morasso 2010).

Two main reasons motivate the adoption of the model proposed by Rigotti and Rocci (R&R): (1) by further specifying Levinson's concept of activity type (Levinson 1979/1992) as the mapping of an interaction scheme onto an interaction field, it allows to precisely describe the procedure through which the takeover bid is conducted and the institutional commitments imposed on the arguers, including the communicative and argumentative commitments; (2) by integrating the institutionalized roles with an interpersonal component which generates an agency relationship, it allows to adequately capture the peculiar interaction we are concerned with.

The differences of opinion emerging in the context of a takeover bid are partially handled with in private dialogues, but most of them are publicly discussed. By exploiting the public nature of the bid, the analysis focuses on texts that are published by the bidder and target companies during the offer period, including the documents requested by the City Code and further relevant statements which the companies voluntarily decide to publish.

The corpus of texts has been collected on the basis of twenty takeover bids launched in the UK market, the *London Stock Exchange* (both the Main Market and the AIM⁸) since 2006, the year in which the Code implemented the European Directive on Takeover Bids. In this way, we avoid to confront with different regulatory regimes. The twenty cases include ten friendly bids and ten cases in which the bid was at least initially

⁸ The *Main Market* lists more than 1,600 companies from all over the world including many large corporations. The *Alternative Investment Market* (AIM) is devoted to small growth companies and lists more than 3,000 firms (Source: the LSE website, www.londonstockexchange.com).

hostile, which means that the target directors had sent at least one document in which they explicitly recommended shareholders to reject the offer.

The relatively recent period to which the cases belong has also allowed to find and collect the relevant texts without excessive difficulty, by relying on two main sources: the corporate websites and *InvestEgate*⁹, a Secondary Information Provider (SIP) which enables to retrieve the announcements sent by companies to *Regulatory Information Services* (RIS).

The ten cases of friendly bids were launched in the 2008-2009 period. Since the number of hostile bids is in general inferior to friendly deals, the 2006-2007 period and 2010 have been considered too in order to make the sub-corpus of hostile bids more significant. In this way, important and well-known cases have been included such as the first proposal made by Ryanair to Aerlingus and the NASDAQ's bid to the London Stock Exchange. For such earlier cases, the relevant texts have been found on the website of the companies, whose older versions were retrieved from www.archive.org and, in some cases, by requesting them directly to the company's IR office.

The corpus includes cash, stock and mix offers as well as successful and unsuccessful bids involving companies from different industrial sectors. In Annex 1, the cases are listed in chronological order. The crucial information on the deal and the number of texts collected are also indicated.

Relying on this corpus of takeover documents, the textual segments that manifest the previously identified argumentative interactions are analyzed in their dialectical and rhetorical dimensions. The Pragma-Dialectical approach offers a systematic framework through which both the dialectical and rhetorical dimensions of argumentative discourse can be elicited. In fact, Extended Pragma-Dialectics conceives argumentation as a reasonable interaction which is absolutely not incompatible with the arguers' search for effectiveness (cf. van Eemeren 2010). The rich instrumentation offered by this approach will be applied in order to (1) reconstruct the argumentative interaction as a critical discussion which, through the method of analytic overview (van Eemeren et al. 1993), is characterized in its dialectical stages; (2) analyze the strategic maneuvers in their aspects of topical choice, audience adaptation, and presentational techniques. More specifically,

⁹ InvestEgate was preferred to the Regulatory News Service of the LSE because the latter retrieves only the announcements that have been published within the two year period before the searching day.

through the AMT, the most significant argumentative moves emerging from the analytical overview are reconstructed in their inferential procedure and strategic anchoring to the context-bound shared premises. The AMT allows analyzing the inferential configuration of arguments coherently with the pragma-dialectical meta-theoretical starting points (van Eemeren & Grootendorst 1984) and in line with the requirements of contextualized argumentation. In fact, this model allows eliciting both the strictly inferential-logic (topical) component of the argument, through which the passage from the shared premises to the standpoint can be justified, and the contextual (endoxical) component, which integrates the *argument scheme* with material starting points. The latter are distinguished into *endoxa* – generally accepted premises typically deriving from the interaction field and the concerned culture shared by the arguers – and *data* – factual propositions which, in the financial context, typically correspond to *information*.

The dissertation is organized, consequently, in five chapters (chapters 2-6). Being inserted into the general research stream of argumentation in context, the dissertation necessarily involves an interdisciplinary approach, which integrates argumentation theory with insights from studies in economic-financial communication and studies in finance and other economics disciplines which have been concerned with takeovers. **Chapter 2** aims at eliciting what these perspectives already offer for the purpose of this dissertation. **Chapter 3** elicits the communicative interactions entails by takeover bids and, by distinguishing the friendly and hostile variants, characterizing them argumentatively. The procedure governing takeover bids (both friendly and hostile) is subject to precise regulations which foresee several communicative activities mainly involving the bidder, target directors and the target shareholders, imposing constraints on directors' strategic maneuvering. Moving from the reconstruction made in chapter 3, I analyze the argumentative strategies adopted by directors. **Chapter 4 and 5** present the results of this analysis for friendly and hostile bids respectively. **Chapter 6** summarizes the most important findings of the whole dissertation and discusses to what extent the research questions have been answered. Eventually, future research venues are proposed in relation to the new questions that have emerged from the results.

2. An interdisciplinary framework for the study of argumentation in takeover bids

This dissertation explores the domain of financial communication from an argumentative perspective, by studying specifically the communicative interactions entailed by takeover bids.

In this chapter the “resources” that the involved disciplines already offer for the purpose of this investigation are brought together by referring to the most relevant existing contributions. I will start from the recent developments of argumentation theory, which is increasingly interested in considering argumentative discourse in relation to its communicative context. Because takeover bids, and the connected argumentative interactions, are events occurring in the financial market, the latter is reconstructed in its fundamental traits by relying on the huge literature in financial economics. Then, moving from existing studies in financial communication, the financial market will be interpreted as a communicative domain for which, however, a specifically argumentative approach lacks. Finally, the takeover literature will be considered in relation to the aspects that are pertinent to the scope of this research, in particular: the definition of the phenomenon ‘takeover’ and the discussion about the different hypotheses that would explain bidding and target directors’ positions and decisions.

2.1. Argumentation as a reasonable communicative interaction

The example shortly illustrated in the introductory chapter shows rather clearly the essence of argumentation, in particular when a practical issue is at stake. Minerva shareholders were confronted with a proposal whose expediency was not immediately evident.

A piece of evidence can be immediately obtained by directly observing present states of affairs or by recalling past events. Evidence is, instead, mediated when the truth

of a not immediately evident – thus questionable – proposition is eventually established by means of a reasoning process (an inference) which elaborates existing data, being – or assumed to be – already evident. It is non-sense to pretend to decide whether at a certain moment the sun is shining or not: it is evidence that, as such, cannot be proven but only acknowledged. However, in order to decide for the best solution to escape from a burning heat, it is possible to discuss whether it is more desirable to spend the weekend at the beach or in the mountains. Indeed, few things are directly evident in human experience although we need evidence in order to eventually demonstrate something (cf. Rigotti & Greco Morasso 2009a: 11-12). As this philosophical premise suggests, the expediency of a proposed action, like a takeover, cannot be observed but needs to be assessed on the basis of appropriate information and knowledge. Without them, Minerva shareholders would hardly be capable of taking a sound decision. The aim of the Chairman's letter, however, seems not to be limited to the disclosure of data which might then represent the evidence from which shareholders could reason out themselves their decision. Rather, the data provided in the letter function as premises justifying the standpoint of Minerva directors ("illustrates clearly why KiFin's Offer undervalues your Minerva Shares") who explicitly invite shareholders to accomplish the same reasoning, acknowledging so the inexpediency of KiFin's proposal. Through an argumentative discourse, thus, information is not simply disclosed but is "put at work" in a manner that allows to reach the desired conclusion. In other words, by means of argumentation the speaker invites the hearer to draw an inference (cf. Pinto 2002; Rocci 2006) from the acceptability of what is shared (argument) to the acceptability of a questionable proposition, the standpoint, which can correspond to a decision as well as a statement or evaluation.

As Aristotle suggested in its *Rhetoric* (cf. Ross 1959), the domain of argumentation is represented by "the things that are in a certain manner but could also be in a different way" (Rigotti & Greco 2009a: 19). This applies also to KiFin's offer for Minerva, which could be inexpedient, as the Minerva Chairman claims, as well as represent a good deal for shareholders. The questionable nature of the proposed decision is by the way stressed by the divergent positions assumed by the two companies.

In general, when a difference of opinion emerges in a certain sphere of human life, the argumentative intervention coincides with the activation of a communicative

process, based on interpersonal reasoning, through which a reasonable resolution of the difference of opinion is pursued. The Latin word *argumentum* literally means an instrument (-mentum) to bring another to acknowledge (*arguere*) the reasonableness of a point of view (cf. Rigotti & Greco Morasso 2009a:10). Because it is aimed at resolving a conflict by appealing to the reasonableness of the inter-agents, argumentation constitutes the only alternative to physical, psychical, and moral violence (Greco Morasso 2008; Rigotti & Greco Morasso 2005, 2009a; van Eemeren et al. 1996). Not by chance, it represents the form of communicative interaction which is expected to support decision-making in our democratic society (cf. van Eemeren 2003).

As pointed out by the pragma-dialectical approach (van Eemeren & Grootendorst 1984, 1992, 2004) argumentation always implies some kind of difference of opinion between two parties who attempt to resolve such disagreement in a reasonable way: “Argumentation is a verbal, social and rational activity aimed at convincing a reasonable critic of the acceptability of a standpoint by putting forward a constellation of propositions justifying or refuting the proposition expressed in the standpoint” (van Eemeren & Grootendorst 2004: 1).

2.2. The contextual turn in argumentation studies

2.2.1. Reconciling dialectics and rhetoric: the notion of strategic maneuvering

The study of argumentation experienced a flourishing rebirth in the second half of the 20th century (cf. Chrawshay-Williams 1957; Toulmin 1958; Perelman & Olbrechts-Tyteca 1958; Hastings 1962; Naess 1966; Hamblin 1970). Moving from the discontent with the formal approaches adopted by logicians, several authors have theorized and analyzed argumentation by considering it as a communicative interaction aimed to resolve differences of opinion emerging in the context of a human activity. Between the 80s and 90s, argumentation theory reached a more comprehensive theoretical stance (cf. Hitchcock 1983; van Eemeren & Grootendorst 1984, 1992; Woods & Walton 1989; van Eemeren et al. 1993; Walton & Krabbe 1995; van Eemeren et al. 1996; Johnson 2000) which brought the discipline to elaborate its specific methods of analysis (Freeman 1991; Snoeck Henkemans 1996; van Eemeren & Grootendorst 2004; Walton 2005).

More recently, argumentation scholars started focusing their interest on *real argumentation* (Fisher 2004; van Eemeren 2010), devoting a closer attention to the contextualized communicative interactions in which arguments are exchanged (cf. van Eemeren & Houtlosser 2005; van Eemeren & Garssen (eds.) 2009; Rigotti & Greco Morasso 2009b). As a consequence, important theoretical refinements have been proposed. In this regard, the development of Pragma-Dialectics is noteworthy: in the Extended Pragma-Dialectics (van Eemeren 2010), dialectics and rhetoric, the two constitutive dimensions of any real argumentation, are kept together and reconciled despite a long tradition which considered them as incompatible.

The standard version of Pragma-Dialectics (cf. van Eemeren & Grootendorst 2004), emphasizes the critical dimension entailed by argumentation, which is bound to the adherence to certain constitutive rules of reasonable discussion: “ever since antiquity, the dialectical approach to argumentation has concentrated on the way in which standpoints can be critically evaluated in an argumentative discussion“ (2004: 51-52). Following this approach, argumentation can be considered as part of a *critical discussion* aimed at resolving a difference of opinion on its merits¹⁰, by testing the

¹⁰ Pragma-Dialectics has formulated the ten rules for critical discussion, which stem from the ideal of reasonableness that is pursued in argumentation. In fact, any violation of one of these rules constitutes an hindrance to the achievement of an agreement and, for this reason, is interpreted as a fallacy. Indeed, pragma-dialecticians defend a critical perspective on reasonableness which contrasts with the geometrical view, typically characterizing most of the formal logic approaches (cf. Toulmin 1976) and for which reasonableness is reduced to abstract logical validity, and with the anthropological view, which considers reasonableness in relativistic terms as a variable exclusively depending on the empirical context. The critical perspective, instead, sees reasonableness in connection with the discussants’ attempt to resolve a difference of opinion within a critical discussion, the latter subject to rules holding a problem-solving validity as well as a conventional validity (cf. van Eemeren & Grootendorst 1987). In van Eemeren & Grootendorst (2004) the ten rules are defined as follows:

1. *The freedom rule*: Parties must not prevent each other from putting forward standpoints or casting doubt on standpoints.
2. *The burden-of-proof rule*: A party who puts forward a standpoint is obliged to defend it if asked to do so.
3. *The standpoint rule*: A party’s attack on a standpoint must relate to the standpoint that has indeed been advanced by the other party.
4. *The relevance rule*: A party may defend his/her standpoint only by advancing argumentation related to that standpoint.
5. *The unexpressed premise rule*: A party may not falsely present something as a premise that has been left unexpressed by the other party or deny a premise that he/she him/herself has left implicit.
6. *The starting point rule*: No party may falsely present a premise as an accepted starting point, or deny a premise representing an accepted starting point.
7. *The validity rule*: The reasoning in the argumentation must be logically valid or must be capable

tenability of a standpoint in the light of critical doubts or objection.

In order to analyze an argumentative interaction in its essential phases, the *model of critical discussion* has been proposed (van Eemeren & Grootendorst 1984). In a critical discussion, four ideal stages are foreseen that discussants – a *protagonist* advancing the standpoint and an *antagonist* doubting the standpoint – must face in order to optimally resolve their difference of opinion: (1) In the *confrontation stage*, the difference of opinion is made explicit; (2) in the *opening stage*, the material and procedural starting points are established; (3) in the *argumentation stage*, the protagonist puts forward reasons in support of the standpoint and the antagonist assesses them critically; and (4) in the *concluding stage*, the result of the discussion is determined (either the antagonist accepts the standpoint or the protagonist retracts it).

These four stages, ideal because not meant to perfectly mirror the realization of an actual discussion, trace the constitutive elements of argumentation that we have already brought to light: there must be a standpoint at *issue*, that is a doubtful proposition, in order to trigger an argumentative interaction (confrontation stage); something, however, must be shared by both discussants (opening stage) in order to enter into and progress in an argumentative discussion and, most of all, in order to construct the arguments that are used to support the standpoint (in the argumentation stage); finally, the discussants' critical effort is motivated by the hope to remove the initial disagreement (concluding stage).

Besides attempting to resolve a difference of opinion on the merits, arguers aim at “*winning*” the discussion too (van Eemeren & Houtlosser 2002). As mentioned above, argumentation is aimed at *convincing* the audience to accept the arguer's standpoint. Therefore, real argumentation involves a rhetorical dimension too, without which it would be practically impossible to capture the purpose of argumentation when the latter

of being made valid by making explicit one or more unexpressed premises.

8. *The argumentation scheme rule*: A standpoint may not be regarded as conclusively defended if the defence does not take place by means of an appropriate argumentation scheme that is correctly applied.
9. *The closure rule*: A failed defence of a standpoint must result in the protagonist retracting his/her standpoint, and a successful defence of a standpoint must result in the antagonist retracting his/her doubts.
10. *The usage rule*: Parties must not use any formulations that are insufficiently clear or confusingly ambiguous, and they must interpret the formulations of the other party as carefully and accurately as possible.

operates in human interaction, i.e. when it supports an agent's intervention within a social context where real issues are at stake (Rigotti 2007, 2009). People use argumentation in order to achieve concretely various goals: e.g. a presidential candidate argues during a political campaign in order to be elected; business enterprises argue in their institutional advertising in order to attract new clients or to reinforce their image and reputation with existing clients; an attorney argues in front of the judge in order to persuade the latter to declare the defendant as innocent.

As we shall see, also corporate directors may have strong personal interests when arguing in favor or against a takeover bid. Several financial scholars have suggested that directors' interest not necessarily coincide with the fulfillment of their institutional mandate (in the case of takeovers, to enable shareholders to decide for the best) and may often deviate from this commitment and even be in conflict with it (cf. section 2.3). Viewed from a rhetorical perspective, argumentative discourse, especially when adopted in deliberative activities, is addressed to an audience-decider¹¹, who, from the dialectical viewpoint, usually coincides with the *antagonist*.

The nature of the relation between the reasonable attitude pursued by dialectic and the persuasiveness sought by rhetoric has been one of the most controversial topics since the origins of argumentation theory. Commonly, dialectic and rhetoric have been considered conflicting and even incompatible. Adopting a different approach on this matter, van Eemeren & Houtlosser have extended the pragma-dialectical theory by introducing the notion of *strategic maneuvering* (van Eemeren & Houtlosser 1999, 2002, 2005), to refer to the arguers' attempt to balance dialectical and rhetorical aims. By maneuvering strategically, arguers may conciliate their desire to persuade the audience with the commitment to reasonableness. In this framework, discussants do not only aim at pursue a dialectical aim, as in all stages of a critical discussion, they are also concerned with their rhetorical aim of realizing the specific function of the discussion

¹¹ In Aristotle's Rhetoric, the decision-maker (*krites*) is crucially involved both in forensic (legal) and deliberative genres, while the epideictic genre implies an evaluation by a spectator (van Rees & Rigotti in press). More precisely, the judge of a court is engaged in *cognitive decision-making*, which pertains to past events and inquires whether such events did occur and, if so, what is their quality (good/bad, right/wrong, acceptable, immoral, etc...); instead, the assembly of a deliberation has to realize *practical decision-making*, which concerns the future – the true realm of possibility rather than necessity – establishing whether a certain action is feasible and expedient (cf. Rigotti & Greco Morasso 2005). In KiFin's offer to Minerva, the practical decision-making clearly dominates, as shareholders have to decide whether or not to tender their shares.

stage *effectively*, i.e. in accordance with the particular goal of the arguer. Thus, for instance, in the *opening stage*, “each party will try to establish the procedural starting points it considers most workable, including the most opportune division of the burden of proof, and the material starting points it regards as pertinent to having an effective exchange” (van Eemeren 2010:44).

In the extended pragma-dialectical theory (van Eemeren 2010), dialectical requirements and rhetorical objectives are strategically balanced at three interconnected levels: (1) *Topical potential*. The first aspect to be considered when maneuvering strategically is the selection of the most expedient moves to make one’s own position stronger. Here, arguers may choose among different readings (framings) of the issue and related standpoints and among different arguments for supporting their standpoint (2) *Audience demand*. The second aspect of strategic maneuvering puts the emphasis on the role of the *audience*: he/she is the one who eventually decides whether to accept the standpoint or not¹², therefore arguments must be tailored to his/her knowledge, concerns, expectations, situation, preference, sensibility, etc. The adaptation to audience demand requires from the side of the arguer a large and deep knowledge of the direct and indirect addressees of the discourse. In publicly-held discourse, like the one tackled in this dissertation, this means that a *multiple audience*¹³ is often present (Benoit & D’Agostine 1994; van Eemeren 2010). Therefore, in attempting to persuade the receiver of a message, the sender should also pay attention to the interests of other stakeholders¹⁴ and

¹² According to van Rees & Rigotti (in press), the reconciliation of rhetoric into a dialectical framework, “brings to the fore the strategic function of the addressee of the argumentative interaction that is identified as the audience”. The two other forms of strategic maneuvering – topical potential and presentational techniques – are, they argue, “teleologically ruled by the search of the maximum expediency in relation to the image of the audience activated by the arguer”.

¹³ Goffman (1981) has brought to light that those often being identified as addresser and addressee actually correspond to several different subjects (cf. also McCawley 1999). The listener/hearer, in particular, can be distinguished into the addressee, to whom the message is sent, the ratified recipient, who participates *de jure* in the communicative event, and the unratified recipient, who could be bystanders or over-droppers (Clark 1996). Indeed, corporate communication has to carefully consider all these participants as stakeholders when designing and performing a text (Mazzali-Lurati 2009). One of the reasons why takeovers are controversial resides precisely in the involvement, beside T-shareholders, of several other stakeholders, who, although have no direct decision power about the offer, are significantly affected by the transaction but may also decisively determine the long-term (after-deal) success of the combination.

¹⁴ Indeed, the notion of stakeholder has been introduced exactly for referring to “any group or individual who can affect, or is affected by, the achievement of a corporation’s purpose” (Freeman 1984: vi). Similarly, Grunig & Repper define stakeholders as “people who are linked to an organization because they and the organization have consequences on each other” (1992:125).

the risk of possible negative reactions; (3) *Presentational techniques*. Strategic maneuvering is realized in delivering the discourse through appropriate communicative means. Presentational devices can be very useful means to allow the arguer to achieve the intended communicative and interactional effects (van Eemeren 2010: 119), by guiding the discourse in a direction that is more comprehensible for the addressee, allowing him/her to fully understand the reasoning proposed by the arguer. In particular, presentational techniques show to be very powerful instruments to adapt the topical choices to the audience demand (van Rees & Rigotti, in press).

2.2.2. The role of endoxa in the analysis of contextualized argumentation

In general, an argument constitutes a relevant support of a standpoint only if a correct reasoning warrants the passage from the argument to the standpoint (Garssen 1997; Rigotti 2006). As van Eemeren & Grootendorst (2004) maintain, a successful defense of a standpoint presupposes the application of an appropriate argument scheme (cf. Rule 8 of critical discussion).

In real argumentation, inference is applied to concrete objects and situations bound to the specific context of interaction. This means that, besides abstract conditions for logically valid and inferentially sound reasoning procedures, argumentation envisages a context-bound component, which applies abstract inferential principles to shared premises related to the concrete context of intervention. In fact, the adaptation of a discourse to the audience demand requires, above all, that the premises on which the reasoning is based relate to *endoxa*¹⁵, i.e. principles, values, and assumptions already accepted by the audience.

In order to analyze the inferential dimension of real arguments, the Lugano Group has elaborated a context-sensitive instrument, the *Argumentum Model of Topics* (cf. Rigotti 2006, 2009; Rigotti & Greco Morasso 2009a, 2010; Rigotti & Palmieri

Because the importance of stakeholders other than managers and owners were rather neglected, the first formulation of the notion of stakeholders, made the Stanford Research Institute (1963) tended to stress the fundamental influence of these people on the success and even survival of the organization: "those groups without whose support the organization would cease to exist" (see also Donaldson & Preston 1995:72).

¹⁵ Aristotle introduced the term *endoxa* in the first Book of *Topics* (100b.21): "Endoxa are opinions that are accepted by everyone or by the majority, or by the wise men (all of them or the majority, or by the most notable and illustrious of them)" (cf. Rigotti 2008)

2010), in which not by chance endoxa are central. Specifically, the AMT distinguishes a *topical* and an *endoxical* component. The *topical component* is based on a *locus*¹⁶, i.e. an ontological relation¹⁷ (such as ‘definition to defined’, ‘genus to species’, ‘cause to effect’, ‘means to end’, ‘analogous to analogous’) which generates an inferential connection (named *maxim*), governing the abstract, context-free, reasoning procedure underlying the argument. The *endoxical* component is made of material starting points that need to be shared by the participants to the concrete interaction. These starting points include *endoxa* and *data*, the latter basically coinciding with punctual information and facts regarding the specific situation at hand and usually representing the part of the argument that is made explicit in the text (cf. Rigotti & Palmieri 2010). In other words, an *endoxon* represents a sort of background knowledge, which is often presupposed and left implicit. The AMT’s *datum*, instead, broadly corresponds to the same concept as it is used in the Toulmin’s model (1958) and is typically explicit, representing the information that, is so to say, “put at work” by the arguer.

2.2.3. *Argumentation and its communication context*

The increasing awareness of the context-bound nature of argumentation has brought argumentation scholars to consider more in depth the context in which argumentation intervenes. Indeed, context affects argumentation at different levels. At the most general level, a certain context – being it a culture, a community or a precise institution – envisages its specific argumentative rate, which determines the possibility for the concerned people to argue, to ground one’s own position, and to criticize others’

¹⁶ As Rigotti (2008) remarks, the term *locus* (which, like *topos* in Greek, means ‘place’), which contemporary argumentation theory refers to as argument scheme (cf. Garssen 2001; Kienpointner 1992, 1997; Walton et al. 2008), is to be intended as the ontological domain, from which the argument derives its force (“unde argumenta ducuntur”):

“Cicero’s *Topica* emphasizes this notion [locus] identifying it with the proper place of arguments - *sedesargumenti*- and, more importantly, with the source from which arguments are drawn: *unde argumenta ducuntur*. This emphasis on locus as the source and basis of an argumentative move is interestingly mirrored by the typical preposition *from* introducing any class of arguments (e.g. argument from expert opinion) throughout the tradition of argumentation studies until the current argumentation theory “ (Rigotti 2008).

¹⁷ As Rigotti suggests, the relational nature of loci (see also Garssen 2002) was particularly stressed by Medieval scholars like Buridan, who spoke of *habitudinis*:

“The proper nature of loci emerges, gradually, through the Medieval tradition, where, at a certain moment, locus-difference is presented as one extreme of a relation (in Latin *habitudinis*), whose other extreme coincides with the standpoint itself” (Rigotti 2008).

positions. At a more particular level, each context may involve different kinds of goals, issues, problems, and decisions, which correspondingly require different argumentative processes.

Besides affecting conditioning argumentation, the context is significantly affected by argumentation, as the latter is instrumental to achieve a certain goal which coincides with a more or less fundamental modification of the concerned social reality. Being an agent, the arguer must be understood as a person who, aiming at realizing a goal which corresponds to a change in the present world (context) into a more suitable *possible world* (a new envisaged context), undertakes an activity realizing such a context's change (cf. Rigotti 2008)¹⁸. For the arguer wishing to modify the context according to his/her desires, the knowledge of such context is fundamental in order to elaborate adequate arguments. In fact, the material starting points – endoxa and data – are situated in the context. The knowledge of context is crucial both for the individual agent, who resonates within him/herself in order to decide what course of action to take and, more importantly, for interagents. Indeed, a few goals can be achieved by means of individual actions, requiring instead joint actions¹⁹ (Clark 1996), in particular interactions (Rigotti 2003, 2005a), which involve another agent who must be convinced to accept the standpoint²⁰.

This dissertation adopts the model of social context of communication proposed by Rigotti & Rocci (2006). As Figure 2.1 shows, in the R&R model, context is constituted by an institutionalized and an interpersonal dimension. The crux of this model is the notion of interaction field, which represents the institutional reality into which the concerned speech event is situated (cf. also van Eemeren 2010, ch. 5). The

¹⁸ In practice, the pursuit of the goal may be motivated by a pure desire of changing the actual world into a more fitting possible world or because the agent intends to fulfill a commitment, i.e. an engagement previously taken by (or externally imposed to) the agent to accomplish a certain action. An action can therefore be caused by desire-dependent or desire-independent reasons (cf. Searle 2001; Colombetti & Carassa 2009), although also in the latter case a desire could eventually be ascribed: the desire, the free disposition, to fulfill the commitment.

¹⁹ For Clark, joint actions allow people to advance in joint activities (1996: 59). He defines a joint action simply as “an action by an ensemble of people” (1996:18), later distinguishing between two types of individual actions: autonomous action and participatory action, which are “individual acts performed only as parts of joint actions” (Clark 1996:19).

²⁰ Inter-agents have different but interdependent goals and integrate their respective causal chains so that the realization of one's own goal entails the realization of the other's goal. A co-operation, instead, envisages two co-agents who, having the same goal, coordinate with each other in the activation of the same causal chain (cf. Rigotti 2003, 2005a).

interaction field is a piece of social reality (Searle 1995), that is an institution belonging to a certain domain (cf. van Eemeren 2010), defined by a shared primary goal (often coinciding with its mission) arising from the interagents' individual goals. Examples of interaction field are: a market, a bank, a hospital, a business company, a family, a scientific community, a shop, a tennis club²¹.

All domains of human activity (politics, education, health case, finance, etc.) include different interaction fields whose goal is connected to the point (cf. van Eemeren 2010) that the domain is intended to pursue. Within an interaction field, in order to realize their shared and individual goals, people undertake communicative and non-communicative activities in which they assume mutual commitments and roles.

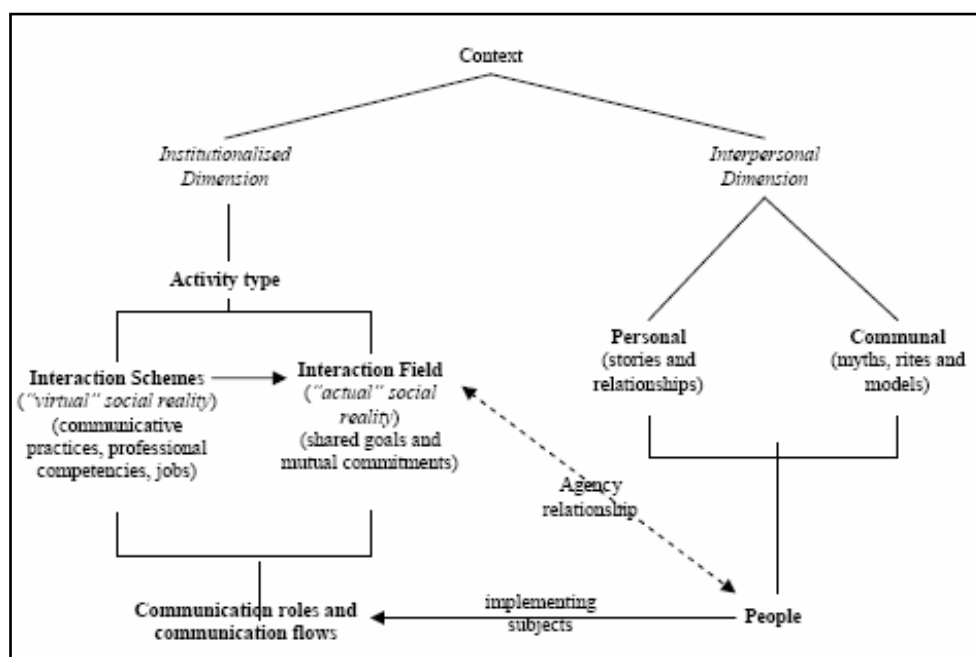


Figure 2. 1. The model of communication context (Rigotti & Rocci 2006)

Any communicative interaction, including argumentation, is embedded into a

²¹ An interaction field can be approached under different levels of zooming (cf. Rigotti & Greco 2005; Rigotti & Rocci 2006; Rocci 2009): general frames, like a financial system, a political system or a religious community, can be further specified into spots, like a bank, a Parliament, a Church, etc. The degree of specificity is also a matter of relevance. For example, a bank can be considered a spot of the financial system but also a general frame including numerous spots, like the segment of private banking.

more or less institutionalized activity type (Levinson 1979/1992)²². A banker trying to convince a client to subscribe to a certain financial product does this within (“in the context of”) an advisory meeting, whose shared goal is to take those investment decisions which best suit the client’s needs and risk profile.

In order to achieve their purposes, interagents typically, but not necessarily, activate an interaction scheme, which the R&R define as:

“culturally shared ‘recipes’ for interaction congruent with more or less broad classes of joint goals and involving scheme-roles presupposing generic requirements. Deliberation negotiation, advisory, problem solving, adjudication, mediation, teaching are fairly broad interaction schemes; while more specific interaction schemes may correspond to proper ‘jobs’” (p. 173).

In this framework, an activity type properly coincides with the mapping of an interaction scheme onto an interaction field. In fact, an interaction scheme only represents a *virtual* social reality, which, in order to constitute a real activity, needs to be applied to an interaction field, which corresponds to an *actual* piece of social reality, where real commitments exist. The implementation of schemes into fields creates roles for the inter-agents and communication flows between them. Indeed, “the roles of the interaction scheme need to be made to correspond to compatible roles in the interaction field” (Rigotti & Rocci 2006: 173)²³.

Several interaction schemes can be applied to the same field (for example, problem-solving and advisory meeting are two schemes potentially at work within a

²² The notion of activity type introduced by Levinson (1979/1992) and resumed, among others, by pragma-dialecticians (van Eemeren & Houtlosser 2005) represents the *institutionalized* dimension of context. Levinson used this notion for referring to “a fuzzy category whose focal-members are goal-defined, socially constituted, bounded, events with constraints on participants, setting and so on, but above all on the kinds of allowable contributions” (1979/1992: 69).

²³ As suggested by Greco-Morasso (2008), the role can derive from the specific format of the interaction scheme, as well as from the institutional hierarchy through which the interaction field is organized. For instance, in a business mediation, the role of mediator is assigned by the scheme of mediation, while in a banking advisory dialogue, the role of banker derives from the concerned banking institution. In the first case, the role is similar to a job description (e.g. a mediator, a judge, a teacher) while, in the second case, roles more precisely correspond to institutional positions (e.g. the CEO of a public corporation, the Prime Minister of a state, the professor of Linguistics at USI, the public prosecutor of Canton Ticino), with specific commitments attributed by the interaction field (cf. Rigotti & Rocci 2006: 173, note 20): the banker is committed to propose financial solutions that best suit the client’s desires and risk profile; doctors in a hospital are committed to cure their patients (or at least to try their best for this); a Prime Minister is committed to represent fairly the interests of all citizens, and so on.

banking institution). Analogously, the same interaction scheme can be mapped onto different interaction fields (deliberation, for instance, can occur within a Parliament, when a certain policy must be voted, as well as within a listed corporation, when shareholders should elect the new Board of Directors). Distinct activity types arise from all these combinations: a banking advisory meeting, a Parliamentary session, a shareholders meeting, etc.²⁴

The roles emerging from an activity type are implemented by subjects who must absolutely be not considered as mere role-fillers: they are *people*, individuals having a personal identity which exceeds the position and commitments imposed by the institution. Beyond mutual commitments, interagents are related to each other by an interpersonal relationship, which is based on a different kind of solidarity (cf. Perret-Clermont and Muller-Mirza 1999).

Therefore, besides the institutional dimension surrounding a communicative interaction, an interpersonal dimension is involved, which can assume a different specific relevance according to the specific activity type. We can imagine, for example, that the interpersonal dimension dominates in the context of a family mediation's discussion (Greco Morasso 2011), unlike the context of corporate announcement, which is expected to be highly institutionalized. Other situations can feature both aspects as very relevant, like a banker advising an investor who has been a client of the bank for 30 years.

As Figure 2.1 indicates, an agency relationship links people to the interaction field. The more institutionalized a context is, the more the interpersonal solidarity diminishes while the tension increases between social commitments and individual objectives, giving rise to the typical conflict of interest (cf. Demski 2003) brought to

²⁴ This way of conceiving the institutionalized context of communication is very similar to the recent elaboration of the Extended Pragma-Dialectics (cf. van Eemeren 2010). Here, the interest in the study of strategic maneuvering within conventionalized communicative practices has brought to the reconstruction of the institutional context in terms of communicative activity types, which arise from the implementation of a genre of communicate activity (e.g. deliberation, adjudication, etc.) in a certain communicative domain (e.g. legal communication, political communication, etc.), in order to realize the latter's institutional point. Not by chance, van Eemeren remarks that the notions of genre of communicative activity and communicative domain fulfill a function similar to that of, respectively, interaction scheme and interaction field (cf. p. 139, note 20). The main difference between domain and field is that the latter indicates a precise institutional place defined by shared goals while the former is a broader category. Perhaps, we could say that the same communicative domain can include more than one interaction field. The interaction field is a sort of institutional "individuum" which inherits the features of the domain.

light by agency theory.

2.2.3.1. *Distinguishing three classes of activity*

An activity may modify the context more or less significantly. The commitments deriving from the interaction field could simply be re-activated, but could also be re-defined and even destroyed²⁵. Obviously, in studying the role of argumentation in context, one is particularly concerned with the modification of commitments accomplished by communicative activity types. Communication itself entails an exchange of commitments (cf. Rigotti 2005b; Walton & Krabbe 1995)²⁶. From a pragmatic viewpoint²⁷, communication must be understood as a social interaction involving, at least, a speaker, a hearer and a message, in which the speaker aims at doing something to the hearer through the message, creating a *habit change*²⁸ in the addressee (cf. Rigotti & Rocci 2001, 2006b; Rigotti 2005b; Rocci 2005). To this purpose, the speaker will perform speech acts²⁹ which, besides expressing beliefs and intentions (epistemic and volitional mental states), entail certain commitments, which involve a

²⁵ Rigotti & Rocci (2006: 172) distinguish operational interactions, which simply activate an existing commitment, from strategic interactions (Mengis & Eppler 2005), which involves a reshaping of the interaction field.

²⁶ This is actually suggested by the very etymology of the term: the Latin ‘communicatio’ literally means the sharing (cum-) of munera, i.e. tasks (duties) and gifts (rights).

²⁷ Communication is emphatically defined as a joint action in pragmatic linguistics since the seminal lectures of Grice (1957, 1975), who formulated the *cooperative* principle and its maxims governing the quest for meaning in conversations, and the foundations of Speech Act Theory (Austin 1962; Searle 1969), for which meaning is constitutively bound to the speaker’s *intentions*, i.e. what he/she aims at doing when applying certain linguistic conventions. The approach by Clark (1996), inserted into a more psychological perspective, goes further by stressing on the fundamental role of the hearer as co-constructor of the meaning. More recently, attempts to reconcile the two perspectives have emerged. Adopting a commitment-based approach, Colombetti & Carassa (2009) propose to distinguish *speaker’s meaning* and *joint meaning* (a joint construal of the speaker and the hearer).

²⁸ The term *habit change* is borrowed from Peirce to mean a modification in the hearer/reader’s disposition toward action (cf. Rigotti & Rocci 2006b; Rigotti 2005a).

²⁹ In the framework of Speech Act Theory (Austin 1962; Searle 1969) numerous speech acts (commands, promises, apologies etc.) have been characterized according to the commitments created, modified or cancelled (Colombetti 2001). Therefore, an assertion commits the speaker toward the truth of the proposition; a promise commits the speaker to make an action in the future which is positive for the hearer; etc. (cf. Searle & Vanderveken 1995). It goes without saying that an exchange of commitments is also entailed by the speech acts performed in argumentative discussions (cf. Hamblin 1970; van Eemeren & Grootendorst 1984; Walton & Krabbe 1995): for example, the protagonist advancing a standpoint is committed to its acceptability and to provide the audience with the reasons grounding it; the antagonist, being a critical interlocutor, is committed to accept the standpoint if the arguments put forward are sound, and so on. In this perspective, argumentation could be defined as an exchange of ‘reasons for acceptance’.

deontic component (cf. Colombetti 2001).

Communication is thus a joint action and, more precisely, that particular joint action which makes all other joint actions and activities possible³⁰: “Language fundamentally is used for social purposes. People don’t just use language, They use language for doing things³¹ [...] two or more people cannot carry out a joint activity without communicating, and that requires language use in its broadest sense” (Clark 1996: 23-29).

The necessity of communicating in order to perform whatever joint activity should not bring us to conclude hastily that all joint activities are communicative under the same respect. In fact, *typically communicative joint activities* should be distinguished from other types of joint activities, which, in any case, necessitate communication in order to be realized. The latter category includes both *physical* activities, which involve a significant change in the material reality (e.g. building a house), and *social* activities, which affect the relationships constituting social reality (e.g. trading securities, getting married), i.e. “portions of the real world, objective facts in the world, that are only facts by human agreement, [...] things that exist only because we believe them to exist [...] like money, property, governments, and marriages” (Searle 1995:1).

In Searle (1995), *brute facts*, which exist outside language and independently from human beliefs, are distinguished from *social facts*, which instead exist only in a system of collectively agreed functions, assigned to physical objects by means of language. A particular type of social facts is represented by institutional facts, which arise from a network of mutual commitments among members of a community who assign determined status functions to brute facts, i.e. functions not strictly related to the physical traits of the object, which counts then as something else³².

³⁰ In the Biblical episode of the Tower of Babel, men relied on a common language for undertaking their ambitious project. In order to prevent such joint endeavor, the Lord confused their languages so that the required co-ordination resulted impossible: “where communication is clogged, joint action is blocked” (cf. Rigotti & Cigada 2004).

³¹ Notably, among the “things” we can do with language, Clark mentions “transacting business” (p. 23).

³² Searle represents the logical structure of institutional facts with the constitutive rule “X counts as Y in context C” (1995:28): that piece of paper (X) counts as a Euro banknote (Y) within the Euro zone (C), a particular move of a piece of wood on a board (X) counts a checkmate (Y) in the game of chess (C), drawing a cross on a ballot (X) counts as a vote (Y) in a democratic country, and so on. Moreover, Searle notes that some institutional facts, called “free-standing Y terms” (2005:15) have a status without any physical object on which the function is imposed (e.g. corporations).

In this respect, money represents a nice case in point, which, not by chance, is deeply discussed by Searle (pp. 37- 43). What makes a certain piece of paper a banknote of CHF 100 is that, within the Swiss economic system, the citizens and the government collectively agree that such a piece of paper counts as a 100 CHF banknote. This agreement is enforced by a legal authority (the Swiss Confederation and its National Bank) which guarantees the respect of the commitments associated with that social reality. Without language, Searle argues, it is impossible to represent status functions attributed to institutional facts. The deriving deontic powers cannot be exercised without status indicators telling us that a certain woman is married, a certain individual is president, etc (cf. Searle 2005: 18). Although the numerous pieces of institutional reality (e.g. marriage, ownership, team captain) can be materially represented through *status indicators* (e.g. ring, contract document, captain armband), their essence lies in their function and the commitments they entail, which are created by discourse-based practices.

In this respect, an important role is played by *performative utterances or declarative speech acts* (Austin 1962, Searle 1969) – the type of speech act which “brings about the state of affairs represented by its propositional content” (Searle & Vanderveken 1985:3) – such as ‘I declare war’, ‘Play suspended’ and ‘I baptize you in the name of ...’. In all declarative speech acts the performance of an utterance does not announce an empirical fact, but coincides with the very creation of a social reality³³.

Therefore, the activities that are performed within an interaction field can be distinguished into the following three classes (cf. Palmieri & Palmieri 2010):

Class 1. Typically communicative activities, in which the speaker aims at obtaining a *habit change* in the mind of the hearer, affecting attitudes, knowledge, desires and other mental states. These activities involve the communicative act in all its constitutive elements: the speaker adopts some semiotic resources to manifest his/her informative and communicative intentions (cf. Sperber & Wilson 1986) by uttering

³³ However, as Searle himself remarks, a social fact is not necessarily created by a declaration. For example, an ‘ace’ by Federer against Nadal is a social fact counting as a point scored by Federer (entailing for both precise commitments like going to play the next point) brought about by a physical event (the ball touches a zone of the court) without any linguistic act. However, in order to be represented, it needs language- constructed facts (e.g. “the court line”, the serving box”)

speech acts. As they are directed towards a habit change, they mainly modify the interpersonal dimension of context (examples: interviews, conference calls, advertising, speeches at the shareholders meeting, banking consultancy, etc.).

Class 2. Institutionalizing activities, which have a deontic power creating rights, duties, permissions, obligations etc. representing *legally enforceable* commitments, thus creating typically institutional facts.

As such, they affect the institutionalized dimension of context by modifying, restructuring and even creating or destroying an interaction field, which can be concerned at the level of general frame or at a particular spot. A town merger, for example, evidently modifies significantly the ontology of the merging towns, while an update in the urban plan affects only particular segments.

Institutionalizing activities tend to be formal, scripted and codified and the institutional facts arising from them feature the typical traits suggested by Searle such as iteration (a marriage is a contract which is a promise which is a speech act which is a sound) and maintenance (the commitments endure and exist also when the concerned people are not aware of it). Possible examples of these activities are: to trade securities, to condemn, to hire, to vote, to buy or sell, to appoint and, as we shall see, to merge with or acquire a company. As made clear by Searle's theoretical treatment, speech acts are fundamental in realizing this class of activities³⁴.

Class 3. Non-communicative activities, corresponding to interventions which address and modify the physical world – *brute facts* in Searle's terms. Examples are: to build a house, to produce cars, to transport commodities, to make a surgical operation. As already stated, the fulfillment of these joint activities necessarily requires communication. Therefore, class 1 activities typically manage these physical interventions – like the surgeon asking the assistant to pass a scalpel – but also class 2 activities can be fundamental for allowing them: the patient and the hospital should have previously signed a paper, thereby agreeing to bring about the envisaged operation.

³⁴ Depending on cultures and communities, the same relationship created by a communicative activity may be considered as merely interpersonal (class 1) or as socially and culturally relevant thus creating rights and obligations whose "binding-power" is comparable to that of legally enforceable commitments (class 2): friendship, engagement, guest-host relation etc. The breach of these relationships, though not sanctioned by the law, may be punished not less seriously through different forms of exclusion from the concerned community. In other words, when someone violates such types of commitment, thereby affecting constitutive values of communities (trust, reputation, honor), his/her belonging to the community is questioned.

More in general, the commitments arising from class 2 activities may further allow or exclude other activities of classes 1, 2 or 3. For instance, by purchasing a house (class 2) the buyer becomes the owner and can, therefore, invite friends and talk with them (class 1), paint and drill the walls (class 3) and also sell the house itself (class 2). At the same time, the buyer, supposing he/she previously lived in an administered condominium, will not meet and chat with people in the laundry (class 1), might no longer claim reimbursement from the administrator if something gets damaged (class 2), cannot use the elevator anymore (class 3).

It goes without saying that, in reality, a joint activity may feature properties shared by more than one of these classes. For instance, writing a book³⁵ is mainly a communicative activity of class 1, but evidently involves a physical dimension³⁶ more than an oral speech but less than a monument, which is also a means for communicating (literally, a device to remember). We also remark that numerous communicative activities of class 1 can be subject to legal requirements for what concerns the quality of the content that is communicated. In these cases, a speaker would perform an activity of class 1 which, however, could bring consequences at the juridical level.

2.3. The domain of financial communication

Numerous investigations have been recently conducted by argumentation scholars which are aimed at verifying whether and how argumentation contributes to the reasonable management and fulfillment of activity types such as court trials (Feteris 1999; Walton 2002b; Alexy et al. 2010), dispute mediations (Greco Morasso 2008, in press), political discourse (Zaresfky 2005, 2009; Ietcu-Fairclough 2009; Lewinski 2010), doctor-patient consultations (Goodnight 2006; Rubinelli & Schulz 2006, 2008; Pilgram 2010; Bigi 2010) and educational activities (Muller Mirza & Perret-Clermont 2009; Andriessen 2009; Greco Morasso 2009; Schwarz 2009).

³⁵ Writing a book can be interpreted as a joint activity to the extent that we consider, in line with Bakhtin, (1975) the actual or potential addressee as relevant not only in the reading of the book but also in determining the author's writing choices.

³⁶ All semiotic activities (class 1) incorporate a material component that may be more or less physically relevant. While activities like speaking, singing, or making a gesture do not create persisting physical objects, writing a book or sculpturing a statue do, somehow causing the persistency of the communicative act ("scripta manent, verba volant"). In activities of class 2, these objects are historically consolidated as typical forms of paper laws and contracts.

As this list shows, several domains have been studied but not that of financial communication, which therefore, needs to be properly characterized in order to accomplish an analysis such as the one proposed in this dissertation.

On the basis of existing economics literature it is immediately possible to define the point of this domain, by describing the *core dynamics* of finance and the main function that communication is presupposed to fulfill towards this point.

2.3.1. The financial market and the network of financial communication

In our contemporary society, the financial sector plays a vital role in allocating stagnant surplus capital in activities aimed at creating value. The core dynamics of finance is thus realized by the meeting between investors and entrepreneurs, which takes place in the *financial market*³⁷. On the one side, savers/investors (surplus units) have capital but no idea; on the other side, entrepreneurs/enterprises (deficit units) figure out potentially profitable business projects but lack the capital to realize them (cf. Healy & Palepu 2001; Mishkin & Eakins 2008). This basic interaction entails the exchange of present commitments for future commitments. The investor gives *now* a certain amount of capital to the entrepreneur who promises, i.e. commit his/herself to repay *later* a higher amount of capital, which the entrepreneurial activity is expected to generate.

As Figure 2.2 shows, the financial meeting can occur in three ways, broadly corresponding to three different, though interconnected, interaction fields of the financial context. A financing interaction can take place directly, through an *interpersonal relationship* between the investor and the entrepreneur. In this case, the strongly interpersonal dimension between the two interagents might strengthen confidence in the entrepreneur's willingness and engagement to create value and repay the investor. However, direct finance through private placement of capital (e.g. private equity, venture capital, angel finance) is often problematic and is, in many respects, practically

³⁷ Although an agreed definition of market is lacking (Rosenbaum 2000; Snehota 2004), it can be in general described as a social reality (in Searle's terms) in which exchanges take place. In this regard, neo-classical economics favors a *product view* of the market, conceiving it as a pricing mechanism: goods and services are exchanged at a price based on their supply and demand. Instead, other approaches, like the *market-as-network view* (cf. Snehota 1993), emphasize the interrelated human interactions between market actors, in which mutual commitments, relationships and trust are the fundamental currency (Hakansson & Snehota 1995, 2000; Snehota 2004).

unfeasible. Several forms of mismatching (size differences, liquidity, risk and time preferences, information asymmetries, etc.) explain the development of organized financial systems (cf. Mishkin and Eakins 2008), whose objective is to “provide channels to transfer funds from individuals and groups who have saved money to individuals and groups who want to borrow money” (Hubbard 1997: 36). Two institutional alternatives to private finance exist, namely *indirect finance* and *public direct finance*, coinciding with two distinct classes of interaction field respectively: (1) banks and other similar financial intermediaries, and (2) organized financial markets (security exchanges).

In indirect finance, investors and entrepreneurs do not meet directly nor they know each other personally. An intermediary borrows from savers and lends to enterprises, acting as a sort of investor for the latter and as a sort of entrepreneurs for the former.

In security exchanges, listed companies raise capital by issuing stocks and bonds to investors. As we shall see more in details, in these forms of transaction there is a direct relation between investor and the enterprise but, unlike private finance, interpersonal relationships are rare and less relevant. What matters most is the institutionalized dimension, namely the commitments established by the security.

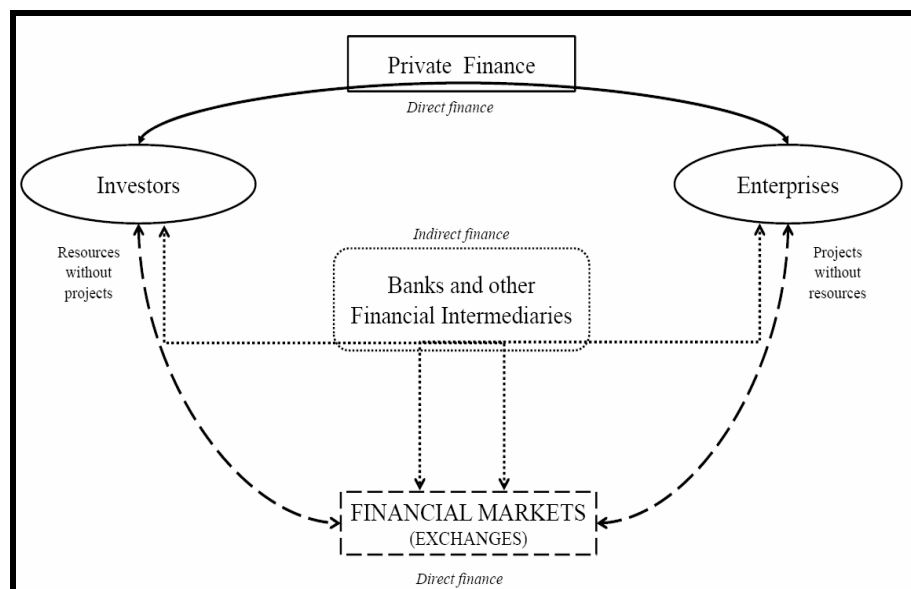


Figure 2. 2. The financial interaction and its routes

Independently from the route through which the capital reaches the idea, financial interagents are always confronted with the necessity of reasonable investment decisions. For example, listed companies have to choose when they should raise capital and under which form (debt or equity); similarly, investors have to decide in which companies and types of security to invest, how to build their portfolio, the right price and the right moment for trading, etc.

Although security markets and financial institutions alleviate numerous problems, investment decisions actually require information, skills and knowledge that most of the investors simply do not have. Apart from the unavoidable uncertainty surrounding investments, which stems from the impossibility to perfectly predict future events, all the various kinds of asymmetry between enterprises and investors, and the sometimes related agency conflicts, create significant problems for people who have to decide how to employ their resources. Beside the required financial expertise, investors need to know as much as possible about the business projects in which their capital is or could be invested, about the quality of the concerned enterprises and the executives managing them. In this respect, communication is evidently essential: “the demand for financial reporting and disclosure arises from information asymmetries and agency conflicts between managers and outside investors” (Healy & Palepu 2001: 406).

Therefore, the point of financial communication is the fostering of sound investment decisions, i.e. decisions to employ capital in value-creating activities.

Investors’ pressing request for information is actually met by constant communications flowing from enterprises to the markets. Through disclosure rules, market regulators impose companies to communicate periodically certain precise data concerning their past and future activities³⁸.

Analysts, rating agencies and media also intervene in the financial market, seeking to improve financial decision-making, by acting as information intermediaries (cf. Healy and Palepu 2001) between investors and companies.

The complex network of interactions characterizing the financial market generates numerous communicative activities which Figure 2.3 summarizes by

³⁸ Interestingly, the rationale for such “forced” communication, called *compulsory disclosure*, is to allow investors to make sound investment decisions, as made explicit by market regulators and supervisors, like the US *Securities and Exchange Commission* (cf. p. 13)

specifying the most important text types, through/in which financial actors interact.

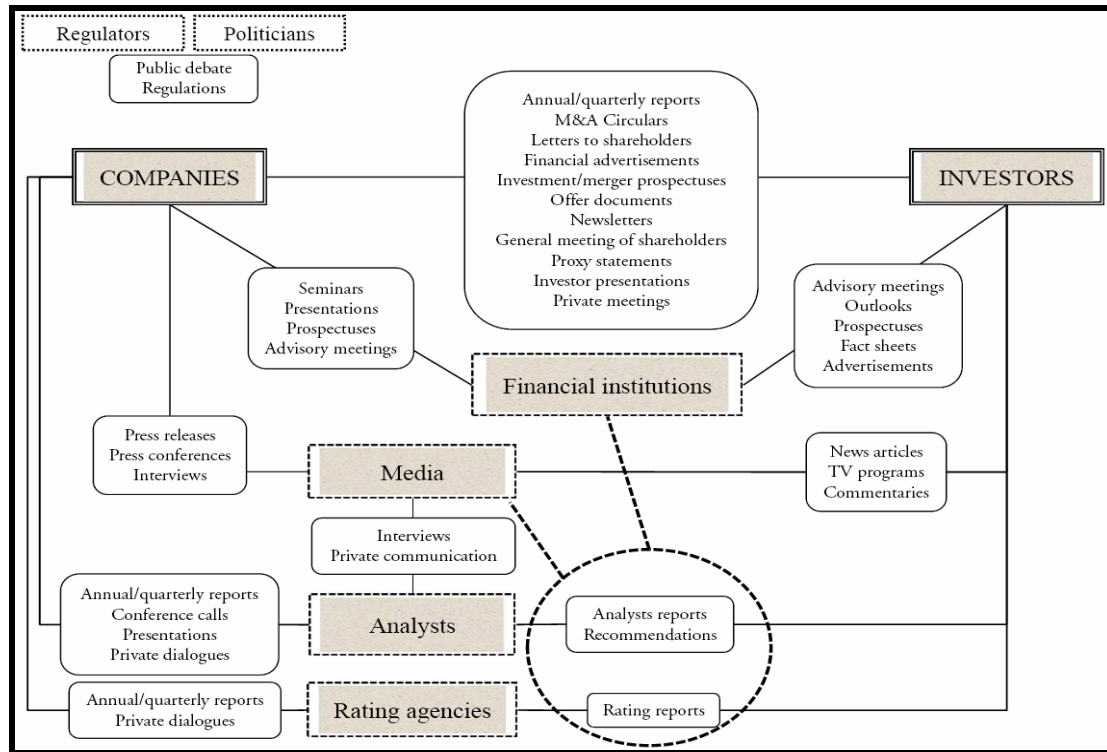


Figure 2.3. The genre system of financial communication

Numerous texts are used by companies in order to communicate directly with investors. Some of these texts typically represent instances of compulsory disclosure (e.g. annual and quarterly reports, proxy statements, offer documents), others refer to discretionary communication (e.g. letter to shareholders, advertisements). As a matter of fact, the same text may feature both compulsorily and voluntarily disclosed information. So, for instance, an annual report includes both the financial statements and some evaluative comments, elaborated by corporate managers for strategic and rhetorical purposes (Malavasi 2006; Filimon 2009).

There are, however, numerous other communication flows, between the companies and the other market participants. All these intermediaries produce their own texts which are made available to investors, who read news, comments and reports and consult bank advisors. Media also interact with analysts and rating agencies to ground the opinions contained in their articles (cf. Rocci et al. 210). Banks make strong use of

analysts' reports in their advisory services.

Therefore, besides typically financial transactions belonging to the second class of joint activities, financial markets feature numerous typically communicative activity types (class 1). Notably, the existence of financial markets is often justified by information needs (Mishkin & Eakins 2008) and markets are even described as communication systems (see for example Lusztig et al. 1994).

2.3.1.1. “My word is my bond”: communicative or financial interactions?

Institutional facts, produced by class 2 activities, are the essence of financial transactions. In fact, despite the fact that finance, and economics in general, might appear as an exact science, the reality addressed by economic disciplines is a social one³⁹. This holds all the more for finance, which is the branch of economics not dealing directly with the production of material goods, but with the investment of money aimed at obtaining a larger amount of money.

As previously pointed out, class 2 activities differ from the typically communicative ones but, in any case, hold a constitutive relation with language. Thus, the financial and communicative realms are not as distant as they could appear to common sense. In this regard, Searle's investigation into the proper ontology of money is particularly illuminating when he notices that, on British pounds' banknotes, e.g. a five pound, the following utterance appears: “I promise to pay the bearer on demand the sum of five pounds” which coincides with a commissive speech act (a promise) constituting the essence of that piece of paper: a contract, signed by the Chief Cashier of

³⁹ Interestingly, Searle too, the author to whom we owe a systematic treatment of the concept of social reality, remarks this explicitly:

“When I was an undergraduate in Oxford, we were taught economics almost as though it were a natural science. The subject matter of economics might be different from physics, but only in the way that the subject matter of chemistry or biology is different from physics. The actual results were presented to us as if they were scientific theories. So, when we learned that savings equals investment, it was taught in the same tone of voice as one teaches that force equals mass times acceleration. And we learned that rational entrepreneurs sell where marginal cost equals marginal revenue in the way that we once learned that bodies attract in a way that is directly proportional to the product of their mass and inversely proportional to the square of the distance between them. At no point was it ever suggested that the reality described by economic theory was dependent on human beliefs and other attitudes in a way that was totally unlike the reality described by physics or chemistry [...] Economics as a subject matter, unlike physics or chemistry, is largely concerned with institutional facts. Facts about money and interest rates, exchange and employment, corporations and the balance of payments, form the very heart of the subject of economics (Searle 2005:1)”.

the Bank of England, by which, the bank of England commits itself to pay the same amount, originally in gold⁴⁰, and which allows the bearer to purchase goods and services carrying the equivalent value. The same goes for all financial instruments exchanged within a transaction, as their lexicon, after all, emphasizes: terms like *promissory* notes, *bonds*, *forwards*, etc. all indicate commitments to future actions. For instance, a bond represents a promise – a promise to repay a certain amount of money at a certain interest rate at a certain time in the future – and not by chance is often defined as such⁴¹. The material dimension is scarcely relevant and the increasing trend to adopt electronic systems and abandon paper contracts further demonstrates that the fundamental traits of these contracts coincide with the commitments exchanged.

It is worth it to recall here the old motto “my word is my bond” of the *London Stock Exchange*, which signals the strongly interpersonal dimension that used to characterize financial transactions. It was through communication that the transaction was performed⁴². In other words, what is essential of a bond, and thus persists over time, is the commitment imposed to its issuer to pay back the borrowed sum. The only relevant difference between *bonds* and *promises* is that the former, at least in the present day, always create legally enforceable commitments while the latter do it only in particular activities of the second class (e.g. marriage).

Interestingly, there are cases in which the financial act and the communicative act essential coincides. As we shall see, an offer document represents at the same time a financial commitment and a communicative move. It is by writing and signing this precise type of text that the offer is performed.

⁴⁰ As Searle himself remarks, with the expiration of gold standards, the promised object becomes nothing but an equivalent banknote. The Bank of England clearly explains this on its website:

“The words ‘I promise to pay the bearer on demand the sum of five [ten/twenty/fifty] pounds’ date from long ago when our notes represented deposits of gold. At that time, a member of the public could exchange one of our banknotes for gold to the same value. For example, a £5 note could be exchanged for five gold coins, called sovereigns. But the value of the pound has not been linked to gold for many years, so the meaning of the promise to pay has changed. Exchange into gold is no longer possible and Bank of England notes can only be exchanged for other Bank of England notes of the same face value. Public trust in the pound is now maintained by the operation of monetary policy, the objective of which is price stability (URL: www.bankofengland.co.uk, last visit: 16 august 2010).

⁴¹ For example, the Library of Economics and Libertystates: “A bond is a promise to pay something in the future in exchange for receiving something today” (www.econlib.org, last visit; 16.08.2010).

⁴² The motto appears still today on the Exchange’s coat of arms, in the Latin form “Dictum meum pactum”.

2.3.2. The strategic function of corporate financial communication

While the role of argumentation in the financial context is scarcely considered both in financial economics and in argumentation theory, numerous contributions exist concerning financial communication. Business-economic disciplines treat financial communication as a segment of *corporate communication*, understood as a set of strategies adopted by organizations to build, develop, and maintain good relationships with their stakeholders (cf. Corvi 2000; Smith 2004)⁴³. The specific task of corporate financial communication is to manage the relations with actual and potential investors and other actors of the financial market such as financial intermediaries and analysts.

In this regard, financial scholars have focused primarily on the role of information disclosure (Healy & Palepu 2001; Barone-Adesi 2002) in allowing investors to take sound decisions and companies to improve their attractiveness in front of actual or potential capital providers and to lower the cost of capital (Frankel et al. 1995; Lambert et al. 2007). However, financial communication is increasingly understood in its strategic function (Brennan & Gray 2000:59) rather than in its function of supplying the information requested by investors to form their decisions.

In this respect, an extensive amount of literature is devoted to the study of earnings management, a crucial reporting activity in which companies elaborate information for persuasive aims (cf. Schipper 1989; Healy & Whalen 1999; Dechow & Skinner 2000). Earnings represent fundamental information for investors' decisions, as they contribute to determine whether the firm is profitable (cf. Degeorge et al. 1999). For this reason, companies have strong incentives to manage them, for example by introducing expedient thresholds (cf. Degeorge et al. 1999), in order to persuade investors either directly or indirectly, by influencing market information intermediaries such as analysts and financial media.

Accounting studies have formulated a crucial distinction between *compulsory* (or mandatory) and *voluntary* (or discretionary) disclosure (Verrecchia 1983; Lev 1992;

⁴³ Corporate communication can be divided in four main areas according to the public involved and the function fulfilled within the organization: managerial communication, commercial communication, institutional communication and financial communication (Fiocca & Corvi 1996; Corvi 1997).

Clinch & Verrecchia 1997; Fischman & Hagerty 2003). The fact that companies are willing to disclose information beyond the requirements imposed by regulations is a sign showing that financial communication represents an effective instrument for generating positive financial outcomes (Hooghiemstra 2000; Williams 2008). Remarkably, acquisition is one of the corporate events for which the information disclosed is considered as *strategic* (cf. Williams 2008: 233).

Accordingly, particular attention is paid not simply to *what* information is disclosed but also to *how* such information is reported, leading many authors to consider a typical practice of financial reporting like accounting as constitutively rhetorical (Carruthers & Espeland 1991; Thompson 1991; Covaleski et al. 1995; Young 2003; Courtis 2004).

Unlike the *incremental information view*, which stresses the function that disclosure plays in reducing information asymmetries between insiders and outside investors, the perspective advocated by the *impression management* approach (Schlenker 1980; Merkl-Davies & Brennan 2007) emphasizes the persuasive function of disclosure: impression management “occurs when management selects information to display and presents that information in a manner that distorts readers’ perceptions of corporate achievements” (Brennan et al. 2009: 1).

An impression management scholar who has explicitly acknowledged the role of argumentation also by using the terms ‘argumentation’ and ‘argument’ is Niamh Brennan. However, in her works, (Brennan 1998, 1999; Brennan & Gray 2000; Brennan et al. 2010), which tackle argumentation and rhetoric in financial reporting⁴⁴, no link is made to argumentation theory, neither in its classical tradition nor in its modern re-elaboration. Indeed, Brennan & Gray explicitly declare that in their research “the terms rhetoric and argument are used loosely” (2000: 10).

Management’s efforts to influence investors’ perception of the firm’s performances and the deriving investment decisions is the object of considerable empirical investigation by scholars adopting a narrative approach. Narrative analysis is applied in particular to annual reports, letters and similar documents sent to investors (cf.

⁴⁴ Noteworthy, their analysis considers takeover documents in the UK context and focuses on managers’ forecasts in bidder or target documents, interpreted as arguments in favor or against the proposed deal. The authors justify their focus on takeover bids as follows: “takeover bids, financial disclosures in takeover documents and, in particular, the competitive nature of contested takeover bids, provide a unique setting in which to study rhetoric and argument in financial reporting” (p. 9).

Jameson 2000) in order to detect various communicative strategies through which the writer seeks to achieve goals that are similar to those pursued by argumentation, namely consent, justification, persuasion etc. although, also here, the notion of argumentation and its theoretical elaboration are marginally considered.

The practice of corporate financial communication largely coincides with the several activities falling under the category of *Investors Relations (IR)*⁴⁵, a sector which has captured the attention of scientific research only in the last twenty years (Ryder & Regester 1989; Lev 1992; Drill 1995; Marston 1996). According to Brennan & Tamarowski (2000), this delay was:

“due in part no doubt to the intellectual supremacy of the efficient markets paradigm, which has lasted from the beginning of rigorous empirical research in finance in the late 1960s until recently. In the idealized setting of the efficient market [...] there is little that the firm or its professional advisors can do about the price” (p. 26).

Interestingly, while the traditional approach considered IR as a financial function, more recently, the attention has also been addressed to its proper communicative function (Laskin 2009). Noteworthy, beside suggesting that IR serve increasing investor familiarity and reducing information asymmetry and the firm's cost of capital (Diamond & Verrecchia 1991), some scholars have indicated that IR aims at enhancing managers' credibility in relation to events questioning such credibility, in particular takeover bids (Brennam & Tamarowksi 2000: 27).

In recent years, financial communication has also attracted the attention of scholars in speech communication, where different kinds of corpus-based analysis have been conducted on various typologies of documents that belong to the broad category of *business discourse* (Bathia 2005; Del Lungo Camiciotti 1998; Bargiela Chiappini et al. 20007, Bondi 1999). However, none of these contributions has assumed the perspective of argumentation theory: argumentative discourse is somehow identified and tackled in terms of rhetorical strategies (e.g. Skulstad 1996; Crawford Camiciottoli 2006; Malavasi 2006). The main goal of these works seems to be that of exploring the economic-financial communication as a specific discourse genre, in which different text types are characterized in their linguistic forms such as annual reports (Jacobs 2003; Malavasi

⁴⁵ Marston (1996) defines IR as “the link between a company and the financial community”.

2006) and earning conference calls (Del Lungo Camiciotti 2002; Crawford Camiciottoli 2006). A specific concern of these authors is the analysis of speech acts prevailing in the economical discourse, in particular predictions (Merlini 1983; Bloor & Bloor 1993; Walsh 2004, 2006; Rocci et al. 2010).

In conclusion, a sort of paradox emerges from the existing literature dealing with financial communication: financial communication tends to be viewed strategically, as an attempt to elaborate information for persuasive aims, and this fact should awaken scholars' attention to argumentative discourse as a form of communication in which information is elaborated to persuade a decision-maker; however, the concept of argumentation, as it has been deeply developed in argumentation theory, has not become an instrument for analysis in the study of the communicative processes supporting the activities of financial market. In other words, financial communication is no longer reduced to information disclosure and is conceived of in its strategic function of elaborating information for influencing decisions; however, there is scarce awareness of its argumentative nature.

2.4. Takeovers, mergers and acquisitions

Among the activities featuring financial markets, takeover transactions represent peculiar phenomena. As a consequence of their financial relevance, their significant social implications, and their procedural and legal complexities, they are treated as "special topics" by academicians (e.g. Ross et al. 2003; Brealy & Myers 2008; Grinblatt & Titman 1998)⁴⁶. In fact, the phenomenon of takeover raises the interest of scholars pertaining to different branches of economic sciences, ranging from finance to industrial and business economics, strategic management and marketing.

The takeover bid is an activity through which one company (the bidder) seeks to obtain the control over another company (the target) through the acquisition of all or the majority of its shares. To this purpose, the bidding company makes an offer to the target shareholders who, in exchange of their shares, receive either cash or new bidder's shares (Ross et al. 2003: 818).

By denoting a transfer of control, the term 'takeover' tends to associated to

⁴⁶ Italian textbooks, for instance, describe them as activities of extraordinary finance ("operazioni di finanza straordinaria"), as indeed they can be understood only if considered widely in their economic-organizational dimension.

‘acquisition’ rather than to ‘merger’. However, if a company is merged into another one, thus becoming dominated by it, a takeover is actually entailed. Although they are not synonyms, the terms ‘takeover’, ‘acquisition’ and ‘merger’ are often used interchangeably⁴⁷, as the following example shows:

“British chocolate maker Cadbury PLC Monday said it rejected a \$16.7 billion **merger offer** from U.S. foods manufacturer Kraft Foods Inc.” (Business Week, 7 September 2009).

“UK confectioner Cadbury has rejected its [Kraft] \$16.7-billion (£10.2 billion) **acquisition offer** to create 'a global powerhouse in snacks, confectionery and quick meals” (Domain-b.com, 7 September 2009).

“Cadbury rejects £10.2bn **takeover offer** from US food maker Kraft” (The Guardian, 7 September 2009).

The combination between Kraft and Cadbury, which was not a merger, has been often described as such. Kraft launched a takeover bid to acquire all Cadbury shares, even though, after the majority of Cadbury shareholders had tendered their shares, the business implications for the two companies were mostly the same than those that would have been entailed by a merger⁴⁸. However, from a legal point of view, acquisitions of shares must be distinguished from mergers, as they constitute two different phenomena.

A *merger* coincides with a legal act (belonging to class 2 activities) which declares the disappearance of one corporation, the *merged company*, and the transfer of all its assets and liabilities into another corporation, the *surviving company* (e.g. Gilson & Black 1995, Ross et al. 2003). As a result, the two corporations combine their assets and liabilities to form a single legal entity. More specifically, the operation is called *statutory merger* when one company survives and incorporates the other, while we properly speak of *consolidation* when a completely new firm is created and the two existing companies are merged into it. The merger is, so to say, validated by a majority vote of the shareholders of both corporations, after approval by the Boards of Directors. Often, a vote by the shareholders of the surviving company is avoided by exploiting the

⁴⁷Ross et al. (2003) consider merger and stock acquisition (or acquisition of shares) as two forms of takeovers, because in both cases a transfer of control takes place; other scholars consider takeovers and stock acquisitions as meaning the same thing and distinguish them from mergers.

⁴⁸ Cadbury has been delisted and re-registered as a private company and is now a subsidiary of Kraft.

mechanism of triangular merger⁴⁹. However, if the company needs to issue new shares for financing the transaction, this requires a shareholders' vote, unless a proxy has been previously obtained for increasing the capital of the firm. Alternatively, Treasury stock⁵⁰ can also be used, at least for small acquisitions. Instead, the approval by the shareholders of would-be merged corporation is always necessary. After a merger proposal is accepted, shareholders cease to hold their shares which are exchanged for cash or shares in the surviving company. Once the transaction is approved, the shares of the merged company are cancelled, while its assets and liabilities are absorbed by the surviving company (see Figure 2.4)

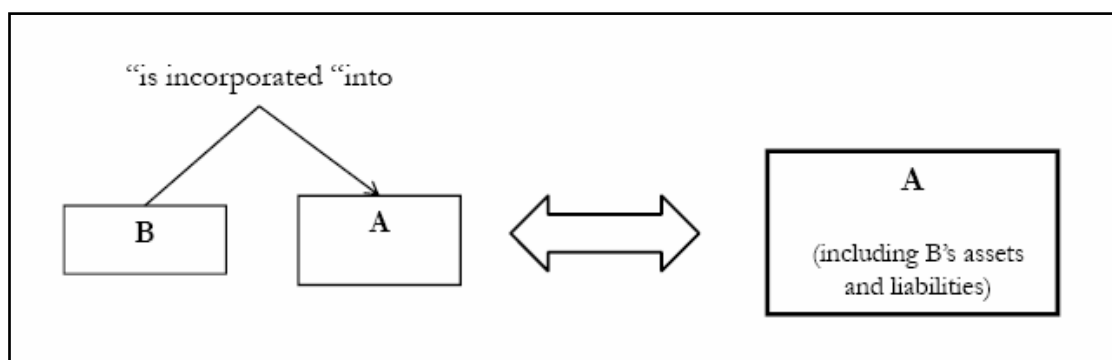


Figure 2. 4. Corporate merger

In order to combine two companies under the same ownership, an alternative to merging is the acquisition of shares⁵¹, by which one company obtains the ownership on another company. The would-be acquirer offers to the shareholders of the would-be

⁴⁹ In triangular mergers, the bidder creates a wholly owned subsidiary (SubCo) that will merge with the target company. When the target merges into the SubCo we properly speak of a *forward* triangular merger; whereas when the SubCo merges into the target, the transaction is called *reverse* triangular merger. In both cases, the final result is that the bidder company takes control over the target.

⁵⁰ Treasury stock are shares bought back by the issuing company but not cancelled from the balance sheet, and as such are available for resale.

⁵¹ The term 'acquisition' could refer to different subjects: acquisition of control, acquisition of shares, acquisition of assets, etc. Literally, 'to acquire' means 'to buy', that is to obtain possession of a good by paying. A semantic analysis of the predicate 'to merge' and 'to acquire' would also reveal a difference in the number of argument-places imposed. To merge is a two-place predicate, presupposing two existing corporations, while 'to acquire', similar to 'to buy', is a four-place predicate, which presupposes a buyer, a seller, a certain consideration held by the buyer and a certain good held by the seller, and entails the buyer and the seller to exchange the respective ownerships: the buyer loses the consideration and holds the good, while the seller loses the good and obtains the consideration (cf. Rigotti 2009).

acquired company to buy their shares in exchange for cash at a certain price, or for a precise number of new shares in the acquiring company, or for a mix of both.

As Figure 2.5 shows, the acquired firm does not disappear but simply becomes a subsidiary totally or partially owned by the acquiring firm.

Unlike mergers, the acquisition of shares⁵² does not require a vote from the would-be acquired shareholders⁵³, who simply decide whether to tender⁵⁴ (sell) or not their shares at the established price. The validity of the offer depends upon some conditions set out in the formal proposal. In particular, offers are typically conditional to a certain acceptance threshold (e.g. the transaction is eventually fulfilled only if at least 51% of shares are tendered).

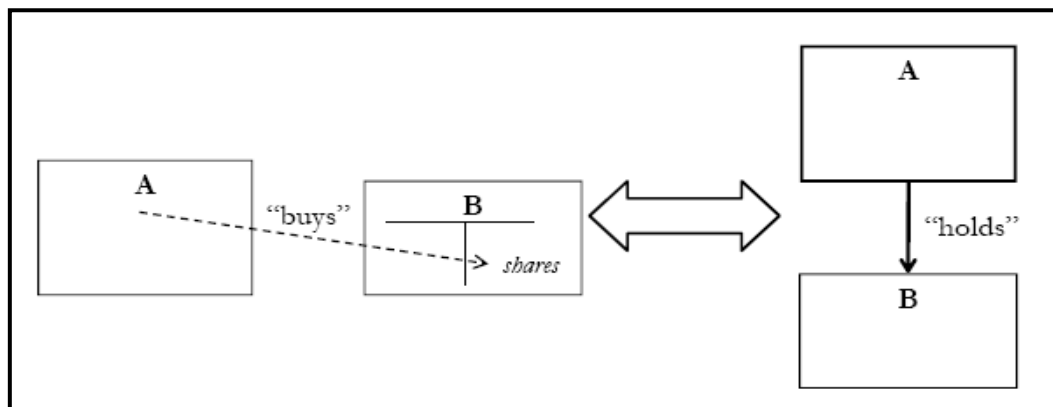


Figure 2. 5. Acquisition of shares

Once the offer is declared unconditional, the acquirer takes the control over the company while the shareholders who accepted to tender receive the agreed consideration. If the acceptance level is at least 90%, the acquirer can proceed to a compulsory acquisition of the non-tendered shares, and a short-form merger, not

⁵² Another alternative, which is not considered by this study, is the acquisition of assets. For an overview of the different modalities of corporate acquisitions, see Ross et al. (2003: 817-819; Bruner 2004)

⁵³ In the UK, shareholders in the acquiring company vote only for large acquisitions. Like in mergers, however, the acquirer may use a vehicle which avoids the shareholders' vote, unless, again, new shares must be created.

⁵⁴ A tender offer is a public proposal made to the shareholders of a company to sell their shares at a proposed price. However, there is an important difference in the meaning of the term between US and UK. In US, a tender offer coincides with a takeover bid, i.e. an offer to buy a controlling stake; while in UK a tender offer addresses a non-controlling stake (less than 30%).

requiring any shareholders' vote, can be executed.

Therefore, we could say that a stock acquisition is a financial transaction which entails a transfer of ownership, while a merger is a legal act, which entails the acquisition of the shares of the merged company and thus a financial transaction. Both mergers and stock acquisitions involve a public proposal to the shareholders of the target (merged, acquired) company.

2.5. The theoretical explanations for directors' decisions in takeover bids

The vast amount of literature on takeovers has devoted little attention to the specific point of the present dissertation, namely the arguments externalized by companies in relation to a bid; but have deeply and widely considered some crucial issues which are relevant for our purpose because they concern the decisions taken by bidder and target directors. Different explanations have been suggested regarding the causes of the bidder's decision to pursue a takeover and of the target directors' decision to support or oppose a bid.

2.5.1. The motives behind takeover proposals

Regarding the "causes" of takeover bids, it is important to distinguish the *motives* behind the bidder managers' decision to pursue a takeover from external, contextual, factors which might condition such a decision. Recalling Aristotle (Metaphysics 5, 1013a, cf. Reale ed. 2000), *final* causes (i.e. motives, ends, reasons for action) should not be confused with *efficient* causes⁵⁵. As takeovers are specific forms of joint action, the identification of their causes should be understood as a quest for typically *final causes*, i.e. motives for which an agent finds takeovers desirable and decides to pursue them. Therefore, takeovers should be interpreted as *rational* phenomena, in the sense that they are ultimately caused by agents who expect to realize a goal and not in the sense that, in

⁵⁵ Efficient causes may correspond both to human beings ("the baker is the efficient cause of the bread") and to natural events ("the earthquake is the efficient cause of the fall of the building"). Instead, the final cause necessarily pertains to actions, i.e. purposeful events, which as such can involve only a human agent who, having envisaged a goal, activates a causal chain able to realize it (Rigotti 2008). Indeed, to speak of the efficient cause of an action is somehow inappropriate because what actually causes an action is an agent with a goal. We cannot speak of action when a man, walking on the street, unintentionally slips on a banana, whereas a soccer player diving in the penalty area represents an action (though the referee might not recognize it, accusing instead the defender of an intentional tackle, thus whistling a penalty free kick).

practice, they are always the effect of reasonable decisions. In fact, it is likely possible that irrational choices drive takeovers, as the *hubris theory* (Roll 1986) or the *process theory* claim (cf. Trautwein 1990). On the other hand, we should not neglect that takeover transactions might be significantly affected by external circumstances that do not deterministically cause a deal, but could make it practically unavoidable. The evidence that, throughout history, mergers used to occur in waves (Bruner 2004; Harford 2005) and cluster around industrial sectors (Jensen 1988, 1993; Morck et al. 1988) suggests that contextual factors also condition the decision of two companies to combine. In this regard, the *disturbance theory* (Gort 1969) has been formulated, according to which merger waves⁵⁶ follow economic shocks that increase uncertainty thus causing valuation discrepancies between buyers (bidder managers) and sellers (target shareholders). Similarly, several authors have more recently suggested that M&A activities may represent reactions to industrial shocks, such as technological changes and deregulation (Kaplan 1987; Mitchell & Mulherin 1996; Andrade et al. 2001; Lambrecht 2005), which require a rapid adaptation to context that M&As can provide⁵⁷.

Numerous theories have been advanced to explain why takeover bids occur, which start from different assumptions on managers' rationality and on managers' fulfillment of their institutional mandate. In an article surveying the theories of merger motives, Trautwein (1990) distinguishes in particular the theories presuming that bidding managers decide to initiate a merger because they believe it will benefit their shareholders from the theories in which bidding managers pursue a deal for personal benefits.

The *synergistic theory* (cf. Jensen & Rubback 1983: 24) posits that the value of

⁵⁶ A merger wave is a time period characterized by a high concentration of M&A activities. Economists have identified five main waves (Bruner 2004; Lipton 2006; Weston et al. 1997): the first one occurred in the 1895-1905 period and was characterized by horizontal mergers, mainly in the railroad sector; the second one took place in the 1920s and involve vertical mergers, though Weston et al. (1998:109) also identify a small wave in the 1940-1947 period; the third important wave is typically associated with the conglomerate mergers in the 1960s; the fourth movement dates in the 1980s when hostile bids and LBOs dominated; the 1990s wave ended with the burst of the tech bubble and featured large deals, mainly paid in stock and often involving cross-border mergers. Some authors also suggest that the 2003-2006 period involved as sixth merger wave, mainly concerning the financial sectors. However, it seems we should wait some years before establishing whether and when the first decade of the third millennium has contained a merger wave.

⁵⁷ Indeed, the contextual changes produced by the actions of other market actors represent, for the concerned company, an efficient cause similar to a natural event, especially when little can be done to influence market forces.

the combined companies is higher than the sum of their standalone values (that is $2+2=5$). Synergies, which can be distinguished between operating, financial and managerial (Trautwein 1990: 284)⁵⁸, constitute “the additional value that is generated by combining two firms, creating opportunities that would not have been available to these firms operating independently” (Damodaran 2008:127).

A related theory in which it is assumed that takeovers are expected to provide more economic efficiency is bound to the view of stock market as a *market for corporate control*⁵⁹ where takeovers assume a *disciplinary* function (Jensen 1986a): an underperforming company is acquired by another company or investor (raider), which replaces the incumbent managers and improves the performances. In some aspects, disciplinary takeovers resemble the managerial conglomerates⁶⁰ created in order to exploit managerial synergies. However, they differ from managerial conglomerates as they do not create value through the concentration of managerial competences or the reciprocal exchange of skills, but by appointing a more efficient and diligent executive team. In other words, disciplinary takeovers presuppose that, in the target firm, agency problems exist, which, once removed, will allow to adequately exploiting the potential of the firm thus increasing its value.

The *monopoly theory*, as the name suggests, states that two merging companies will gain market power and reduce the level of competition within the concerned industrial sector. This generates the so-called collusive synergies (Chatterjee 1986) mainly coinciding with an increase in the price of products and services.

A merger, however, could also allow two troubled companies to survive (“united we stand, divided we fall”) and sustain the high competitiveness characterizing their market sector. It is the task of antitrust authorities to establish whether a certain

⁵⁸ Operating synergies involve economies of scale which reduce costs and enhance revenues; financial synergies include tax and debt optimizations and, by diversifying the business and increasing the size of the firm, result in a lower cost of capital; managerial synergies occur when one company’s superior managerial skills are transferred into the other company (and vice versa).

⁵⁹ The idea behind the concept of “market for corporate control” (Manne 1965; Jensen & Ruback 1983) is that the public listing of companies’ stock facilitates takeovers, thus allowing control to be transferred from one management team to another that claims to run the company better.

⁶⁰ In fact, the 1960s merger waves were characterized by conglomerate mergers, which were not at all classified as disciplinary (Matsusaka 1993). Instead, disciplinary takeovers feature the following wave (1980s) of Leveraged Buy-Outs (LBO) and hostile acquisitions. Other authors (Shleifer & Vishny 1990; Morck et al. 1990) argue that the such disciplinary takeovers were nothing but a correction of the agency problems that would have been manifested by the 60s wave, in which the model of conglomerate firm was not motivated by synergies but by managerialism and empire building.

transaction is potentially harmful for competitors and consumers or if it ensures a more leveled playing field.

The monopoly theory suggests that the gains expected from a takeover might be detrimental to other subjects. Trautwein, for instance, maintains that “collusive synergies represent no efficiency gains but wealth transfer from the firm’s customers” to the company (1990: 286). In fact, a similar discourse is often made about operating synergies: the reduction of costs might actually coincide with the cutting of numerous jobs, thus damaging workers⁶¹.

Valuation theories abandon the assumption that capital markets are informationally efficient and build on the hypothesis that investors undervalue or overvalue a company (cf. Rhodes-Kropf & Viswanathan 2004). If the share price does not reflect the intrinsic value of the firm’s assets, the bidder could buy it for cheap and then enjoy the true value of the assets. In a similar way, takeovers might be pursued because the bidder’s shares are overvalued. In this case, the bidder could decide to use its stock as a currency for acquiring another firm (cf. Asquith, Bruner, Mullins 1987)⁶². In all these cases, benefits do not originate from the strategic combination of the two businesses, but from a sort of arbitrage opportunity offered by markets’ misvaluations. Shleifer & Vishny (2003) call these activities “stock market driven acquisitions”.

Mergers and acquisitions are executed by managers who act on behalf of

⁶¹ Several authors (e.g. Drucker 1986; Lowenstein 1985; Law 1986) have argued that, instead of being created, value is simply redistributed from stakeholders to shareholders. According to Shleifer & Summers (1988), hostile takeovers are more inclined to make this redistribution because, by forcing target managers to leave the company, they cause a breach of trust in the implicit contracts that target managers had previously settled with employees, customers and suppliers. Whether to increase the firm’s profitability at the expenses of employees and clients remains a desirable action or not depends eventually on another crucial and even more controversial question: what is the primary goal of a business corporation? Theories of M&A in general assume, in line with the shareholders view, that the goal of a business corporation is to create value for shareholders by undertaking profitable investment projects, that is, projects with positive net present value. In this framework, any source of net gains followed by M&A deals potentially constitutes a rationale for these transactions. Instead, a different view over the ultimate goal of the corporation, like the stakeholders theory (Freeman 1984) according to which the primary goal of a firm is to satisfy the interests not only of shareholders but of other actors as well, would put some rebuttals. In a stakeholders perspective, M&A deals would keep their rationale only if the pursuit of the envisaged profits does not seriously damage employees, customers or other relevant stakeholders

⁶² This hypothesis would also explain why, in acquisitions paid in stock, the bidder’s share price usually drop after the announcement. The reason would be that the bid would a signal for investors that the stock is overvalued (cf. Bruner 2004: 572; Grinblatt & Titman 1998: 682; Yook 2003) The adverse signaling effect of a new stock issue was first suggested by Myers & Majluf (1984), who formulate the *pecking order theory*.

shareholders and, possibly, other corporate stakeholders. For this reason, these deals are usually seen from the perspective of agency theory (Ross 1973; Jensen & Meckling 1976; Eisenhardt 1989). An agency relationship occurs when one person (the principal) engages another person (the agent) to realize a service on his/her behalf, also delegating a certain discretion in decision-making (cf. Mann 1997). Such delegation may give rise to a problem – called *agency problem* – as the agent's personal goals may not be totally aligned with the institutional duty of realizing the principal's desires, resulting in a typical conflict of interest. The difficulty in solving these problems stems in particular from the principal's lack of information and resources (*agency costs*) for monitoring the agent and for effectively incentivizing her/him to fulfill the fiduciary duties. Because of the agency relationship linking the managers/directors' personal interests to their institutional commitments, the reasons actually motivating them to pursue a takeover don't necessarily coincide with the realization of the primary goal of the corporation. Thus, managers might deviate from their institutional commitments, pursuing a deal for personal objectives⁶³. Morck et al. (1990) describe this problem very well:

“Our view is that when a firm makes an acquisition or any other investment, its manager considers both his personal benefits from the investment and the consequences for the market value of the firm. Some investments are particularly attractive from the former perspective: they contribute to the long term growth of the firm, enable the manager to diversify the risk on his human capital, or provides a manager with particularly large personal benefits, he is willing to sacrifice the market value of the firm to pursue that investment. [...] If shareholders could perfectly monitor and control the investment decisions of managers, acquisitions that reduce shareholder wealth because they deliver managerial benefits would not be allowed [...] However, managers of large public corporations are typically subject to only loose scrutiny. Boards of directors give managers considerable leeway in choosing investment projects, and do not use negative stock market reactions to investment or acquisition announcements as the definitive indicator of long-run value consequences.” (pp. 31-32)

As the author of the above quoted passage indirectly suggests, managers and directors are strongly bound to each other. Although the institutional role of directors is

⁶³Agency theory assumes that both principal and agent are self-interested (Jensen & Meckling 1976, 1994; Jensen 1986b), which entails that, without proper incentives, the agent will always try to maximize his own utility. In reality, it is perfectly conceivable that the two apparently conflicting interests can be aligned and we cannot exclude that managers might pursue both personal and institutional interests. Similar suggestions have been advanced by critics to the self-interests view of agency theory (cf. Eisenhardt 1989; Hendry 2005).

that of mitigating agency problems by appointing and monitoring the executive team, their actual independence is unlikely (cf. Demski 2003). There is an interpersonal solidarity linking directors and managers that is practically impossible with shareholders: far more conflicts emerge with the latter than with the former. Argumentatively, this means that conflicts of opinion between directors and managers will rarely be externalized⁶⁴.

Now, while in the disciplinary theory takeovers are viewed as remedy to agency problems affecting the target firm (see 2.2.2), in the *empire building theory* (cf. Mueller 1969; Rhoades 1983) takeovers are interpreted as symptoms of agency conflicts in the bidding firm. According to this theory, M&As “are planned and executed by managers who thereby maximize their own utility instead of their shareholders’ value” (Trautwein 1990: 287), as they expect to obtain personal benefits such as job security, power and prestige. This is the risk entailed by the separation of ownership and control characterizing modern publicly listed corporations (Berle & Means 1933; Manne 1965; Monks & Minow 2005).

A more specific variant of the theory claiming that managers are self-interested is the *Free Cash Flows Hypothesis* (Jensen 1986b), which maintains that managers prefer to employ excess cash (free cash flows) in acquisitions with negative present value rather than distribute dividends to shareholders.

As said before, there are theories which focus on the contextual factors conditioning the decision to pursue a deal. Among these theories, some suggest that irrational choices may drive managers’ decisions. The *hubris hypothesis*, first formulated by Roll (1986), argues that bidder managers are affected by overconfidence (hubris) which brings them to overpay the target, especially during competitive bidding processes where the eventual acquirer suffers the so-called *winners’ curse* (Roll 1986)⁶⁵.

It is significant that, while the above mentioned theories focus on possible motives and, thus, can be interpreted in argumentative terms, the hubris hypothesis cannot be interpreted as a takeover’s motive, but as the result of imprudent decisions

⁶⁴ Not surprisingly, in the cases analyzed in this dissertation, differences of opinion between managers and directors of the same company do not emerge (cf. chapter 5 and 6).

⁶⁵ A form of self-blinding is suggested by this theory: the bidder is so strongly attracted by the value of his target that he does not realize that the offered price makes the target quite undesirable.

deriving from unsound argumentations⁶⁶.

Auster & Sirower (2002) propose an explanation for merger waves that takes into account managers' bounded rationality. They assume that "individuals have inherent cognitive limitations but still attempt to be ex ante rational" (p.219) and that macro environmental factors bias managers toward choosing to merge as a quick response to change: "to survive competitively in an area of rapid technological change, swiftness of product life cycles, increasing costs of new product development, and formidable barriers to entry, many top managers believe that quick purchases or merger give them the critical size and the nimbleness they need" (p. 223). They suggest that these quick decisions might be vitiated by cognitive simplifications, including weak reasoning (p. 226).

As we can see from this synthetic review, numerous theories have been advanced to explain takeover activities and, in particular, to establish what motivates corporate managers to undertake such business investments. Not surprisingly, this multiplicity of viewpoints has triggered a huge empirical research attempting to establish which theory, among those just exposed, is the most capable of explaining takeovers.

The synergistic theory has been for a long time considered the most robust (Trautwein 1990). The monopoly theory has been poorly supported while valuation theories were initially rejected also because of the widespread presupposition of market efficiency (Brennan & Tamarowski 2000)⁶⁷. In the last decade, also thanks to the growing interest in behavioral corporate finance, the valuation theory has been "recovered" and is gaining consent (Sheifer & Vishny 2003).

Numerous studies claim to have found evidence that managers pursue M&A deals either for personal wealth or for prestige and power (e.g. Amihud and Lev 1981; Rhoades 1983; You et al. 1986; Ravenscraft and Scherer 1987; Black 1989, Morck et al. 1990).

The approach adopted by merger studies typically attempts to infer the causes

⁶⁶ Of course, overconfident managers could sincerely pursue a deal that they wrongly consider value accretive, for example, because they foresee synergies too optimistically (Berkovitch & Narayanan 1993).

⁶⁷ Indeed, already Nelson (1959) suggested that takeover could be driven by perceived market mispricing. Bradley et al. (1983) concluded that synergy explains takeovers better than information because the target share price either drops back to the pre-bid value when the bid fails, or it remains high because another bid is expected. Pound (1988) finds results consistent with the synergy view and not with the undervaluation theory.

from the effects that these deals produce. Basically, the underlying idea is that, if M&A activities are driven by predicted profits, then such profits should be observed on average. In the contrary case, other reasons would be singled out (cf. Segall 1968: 28).

In their review of the empirical tests on M&A gains, Andrade et al. (2001) distinguish studies based on stock prices' reactions(event studies) from profitability studies (or accounting studies), which look at the actual impact on profits. While event studies appear to have shown that, on average, bidders lose, targets gain, and the merged companies gain, profitability studies seem to provide evidence also in favor of bidder's gains⁶⁸.

Berkovitch & Narayanan (1993) consider the theories that we have reviewed above as capable of explaining certain classes of takeovers and, thus, distinguish them into three categories – synergy, agency and hubris – according to the economic effects they are presumed to bring to the bidder and target shareholders. In fact, in synergy deals, it seems that both companies' shareholders gain; in deals characterized by agency problems in the bidding company, losses emerge for the latter; in acquisitions affected by hubris, it is clear that the advantages accrue exclusively to target shareholders.

Bruner (2004) offers a systematic review of the numerous empirical studies investigating whether M&A deals create or destroy value for the concerned companies and their shareholders. In line with many other scholars, he concludes that there is supportive evidence that target shareholders gain significantly, while bidders' at least preserve value. The astonishing result that those who initiate the deal (bidders) gain less than target has been tentatively explained in different ways (from considering it as an evident sign of agency problems or hubris to questioning its reliability and suggesting reasons, like size differences, why these figures should be interpreted with caution), but so far no definitively agreed conclusion exists within the scientific community.

From an argumentative perspective, an interesting implication is that when a would-be deal is announced, uncertainty about its expediency is all the more a serious issue. The empirical research on takeovers is quantitative and, as such, based on large samples. Thus, to know that, *in general* and *on average*, mergers are well or badly motivated and produce gains or losses does not help so much the shareholders (of both

⁶⁸ Significant differences exists according to the specific form a deal assumes, in particular in relation to the means of payment and the mood of the offer: Cash offers show to outperform stock-for stock deals; hostile offers typically include a higher premium than friendly bids.

bidder and target) who need to understand whether the specific transaction involving them is actually desirable (cf. Sirower & Sahni 2006:83).

Interestingly, the profound analysis of merger failures that Bruner (2005) makes leads him to conclude, among other things, that “all M&A is local”: “generalizations about M&A success won’t have much practical content. Useful insights about the likely drivers of M&A profitability are to be found on a more local basis” (p. 26). No matter what the general or most frequent outcome of M&A deals is, when a deal is proposed, it is difficult to know whether such a transaction is part of the “rotten apples basket” or the good one:

We would like to believe that in an efficient economy, there would be a direct link between causes and effects, that mergers would happen for the right reasons, and that their effects would be, on average, as expected by the parties during negotiations. However, the fact that mergers do not seem to benefit acquirers provides reason to worry about this analysis. Part of the issue here may be that an acquiring firm can seek a merger for a mix of reasons. Many firms mention mergers as their main strategic tool for growth and success, and point to possible economies of scale, synergies, and greater efficiency in managing assets. Alternatively, there is the somewhat contradictory evidence that mergers can be evidence of empire-building behavior by managers. If mergers could be sorted by true underlying motivations, it may be that those which are undertaken for good reasons do benefit acquirers, but in the average statistics, these are cancelled out by mergers undertaken for less benign reasons (Andrade et al 2001: 118).

2.5.2. The motives behind target directors’ recommendation

A further relevant issue in the takeover literature concerns the behavior of target directors who recommend their shareholders either accept or reject a takeover bid.

Not necessarily, in fact, target managers and directors agree with bidder’s. In financial economics a crucial distinction is drawn in this relation between *friendly offers*, which arise from the support of target directors, and *hostile offers*, which are made against the will of target directors (cf. Morck et al. 1998).

Indeed, any deal might be desirable because both companies increase their respective value or because it is particularly expedient for the bidder but not necessarily for the target. In fact, the implications of a combination for the target company, its managers, shareholders and other stakeholders could substantially differ from those affecting the bidder⁶⁹.

⁶⁹ As it is the case for the bidder, the evaluation of the desirability of a takeover for the target depends

Target directors could well support a deal because they believe that it benefits their company and that the offered price is good for shareholders; or they could oppose a bid because they believe that either the combination or the offer price (or both of them) is unreasonable (cf. Rhodes-Kropf & Viswanathan 2004).

At the same time, it has been suggested that agency conflicts may significantly affect the decision of target directors (Easterbrook & Fischel 1981; Walkling & Long 1984), who might accept a deal because it increases their personal utility (cf. Baron 1983) as well as reject it because they would have to step down from their position.

Although target directors are not the eventual decision-maker, their influence on the outcome of the bid is significant (cf. Haan-Kamminga 2006: 178). In general, two distinct hypotheses have been put forward to explain target reaction, in particular target resistance, to a takeover bid, namely the *shareholder-welfare hypothesis* and the *management-welfare hypothesis* (Walkling & Long 1984; Ruback 1988; Sudarsanam 1995). The former argues that target directors approve/oppose an offer because they think it is in the interests of shareholders to do so, while the latter maintains that directors will first of all consider the influence of the deal on their personal wealth:

“target management resistance to takeover bids has been interpreted in two opposing ways in the literature. It may manifest either manager-shareholder alignment or management entrenchment. In the former case, the target management acts in the interests of its shareholders and aims to maximize their welfare. In the latter case, the management acts to prevent the takeover bid from succeeding although it might be in the interests of its shareholders” (Sudarsanam 1995: 223-224).

In the shareholders-welfare hypothesis, two goals could explain the board's resistance (1) to maintain the company independent because this provides more value than combining it with another firm; (2) to strike a higher price from the bidder or from a third party. Instead, personal motives are typically related to the loss of position that would be caused by a takeover.

on the definition of the primary goal of the company. Should T-directors accept an overpaying offer made by a bidder affected by hubris which, however, entails a combination that will damage the company from the business and social points of view? Apart from the different theoretical views, it must be said that cultural differences exist on the proper role of T-directors in responding to takeover bid. In the US, it is assumed that the long-term shareholders' interests should be served while in other contexts, in particular Germany, ruled by the principle of co-determination (Mitbestimmung), also other stakeholders' interests are ideally expected to be preserved (cf. Nowak 2001).

In the investigation over hostile offers (cf. Dodd & Ruback 1977; Walkling & Long 1984; Ruback 1988, Sudarsanam 1995), definitive evidence is lacking as to whether the shareholders-welfare hypothesis or the management-welfare hypothesis better explains target resistance.

Independently from the true motives behind target directors' decision, their resistance to a takeover bid has been recognized to occur in three different manners which imply three different "battles"(cf. Haan-Kamminga 2006): in the so-called *financial battle*, target managers and directors activate a series of takeover defenses, such as poison pills, staggered boards, greenmail, etc., which have received considerable attention by scholars (cf. Rosenbaum 2006); in the *legal battle*, the target company sues the bidder and brings the issue before court; in the *communication battle*, indeed focalized by this dissertation, public statements are issued in order to influence the shareholders' decision.

2.5.3. The justifications given by directors: recent relevant contributions

The several theories aimed at explaining takeover bids and target's recommendations coincide with standpoints advanced by scholars within the concerned scientific community. They represent attempts to identify the motives behind the corporate directors' position which must be distinguished from the actual reasons given by directors themselves when a takeover bid is announced. These are arguments in favor of or against the proposed deal, which are part of another kind of controversy that directly involves the firms and their stakeholders. In particular, they concern target shareholders, who are the eventual decision-makers, but also bidder shareholders, on behalf of whom bidder managers are expected to act⁷⁰.

Of course, the alternative theories proposed by economists may refer, at the practical level, to different *scenarios* which shareholders could start from when critically building their decision: is the deal motivated by synergy or is my stock undervalued? Is the price fair enough to justify a tender or not? Etc.

In other words, among the different reasons that could motivate a proposal and

⁷⁰ As we shall see in chapter 3, bidder shareholders usually do not directly decide, but they obviously expect the value of their shares to increase through such corporate investments. Thus, they will, at least, evaluate whether to support the initiative of their management or, instead, mistrust it either by selling shares (exit option) or by attempting to hinder the transaction (voice option).

its recommendation, some of them must become arguments advanced for garnering consent. This relation has been recognized by several authors, in particular Trautwein (1990), who, for each merger motive he presents, discusses whether and to what extent it is used by companies as a rational justification. However, Trautwein does not offer any example as evidence of his claim, limiting himself to quote newspapers' articles. Ross et al. (2003) also clearly distinguish the two aspects: just before discussing the sources of synergies as possible benefits of takeovers, they point out, in a footnote, that "Many reasons are given by firms to justify mergers and acquisitions" (p. 824, ft. 5) and then report, as an example, the agreement of merger between U.S. Steel and Marathon Oil, highlighting how the arguments put forward do correspond to the various sources of synergies identified by financial economists.

Notably, not all theories explaining M&As can "become" arguments. For example, bidding managers would hardly indicate "empire building" as the reason for their proposal (see also Trautwein 1990: 285-290). Auster & Sirower are of the opinion that "executives involved in M&A decisions would argue that their motives are purely rational and in the best long-term interests of their company and shareholders" (2002: 219).

We can keep distinct the bidder and the target's perspectives also when discussing the arguments that are put forward as justification. Target managers and directors should endorse a deal if it improves the target business (or at least does not damage it) and, above all, if the value of the offer for shareholders is not lower than the standalone value of the target shares (Rhodes-Kropf & Viswanathan 2004: 2687). However, their support as well as their opposition to a bid might be motivated by agency conflicts or mistakes in evaluations. Similar to bidder managers, target directors will hardly make explicit some motives, such as concerns for their own job position, as arguments.

Although financial scholars have been more concerned with the motives behind managers and directors' behavior, the attempt made by the latter to argumentatively justify their own position is acknowledged either indirectly, by mentioning the entailed argumentative interactions through expressions which adopt the typical argumentative lexicon (e.g. convince, persuade, give reasons, explain why, etc.)⁷¹; or more directly, by

⁷¹ Some examples are: "target managements that oppose tender bids frequently defend their actions by

referring to classes of arguments⁷² advanced by companies or to specific arguments reported in newspapers' articles⁷³.

Several authors make use of these citations as evidence that the synergistic interpretation represents the most common framework within which arguments justifying a bid are constructed. In this respect, the position assumed by Shleifer & Vishny (2003) is noteworthy: the authors – who reject the neoclassical theory, arguing, from a behavioral finance perspective, that, rather than synergies, misvaluations motivate rational managers to pursue acquisitions – treat synergies just as stories, useful for hiding the truth to shareholders, and persuade them to approve the transaction. Alternatively, in their own words, “just the lubricant that greases the wheels of the M&A process – it might be invented by investment bankers or academics and have little to do with the reality of what drives actual acquisitions” (p. 298). Concrete examples are neither analyzed nor mentioned in order to verify whether managers' justifications are really just stories (i.e. false or insincere statements) or credible arguments. Anyway, it indirectly emerges, from this and numerous other financial studies, that persuading an external decision-maker is a necessary condition for realizing these transactions. The reasons given for these purposes might well be just stories, but constitute, in any case, real commitments which corporate managers have externalized.

A few authors have been concerned with the analysis of arguments, though with different questions and methods than those adopted in this dissertation⁷⁴.

claiming that the bid price is inadequate” (Walkling & Long 1984: 55); “the difficulty that a superior rival has in convincing shareholders of this superiority” (Bebchuk & Hart 2001: 2); “target boards' ability to persuade shareholders to follow their advice is limited and varies across deals” (Levit 2010:2); “it gives the target company's management an opportunity to mount a defense and explain to shareholders its position” (Marnin 1989); “approval of the deal is moved and seconded; there is discussion, and then a vote “ (Bruner 2004: 695).

⁷² See, for example, Trautwein (1990); Shleifer & Vishny (2003).

⁷³ See, for example, Ravenscraft & Scherer (1987:9); Bruner (1998); Ross et al. (2003).

⁷⁴ Moreover, the author of this dissertation has devoted a paper (Palmieri 2008b) to the analysis of an argumentative discussion occurring in the context of an analysts/investors conference call held by Barclays and ABN AMRO after the two banks announced an agreed combination. Here, the intervention by an ABN AMRO's institutional shareholder, critically questioning the decisions taken by the directors, forced the latter to publicly defend their position with an argumentation that proved to be partially unsound. The agreement between the two banks envisaged the sale of a division of ABN AMRO (LaSalle) to Bank of America, with a break-up fee of €200 million. The board was suspected of having adopted, in this way, a poison pill to frustrate a higher bid launched by a consortium of three banks (which eventually succeeded in acquiring the Dutch bank), which did not

Within organizational studies, there is increasing awareness of the crucial role of argumentation and of the context-bound nature of argumentation's appropriateness and effectiveness (Sillince 2002).

In von Werder (1994, 1999) the structure of managerial argumentation during a takeover battle is analyzed, starting from different corporate statements published on the media (cf. also von Werder & Talaulicar 2006).

Monin & Vaara (2005) analyze in depth the case of the failed merger between Pierre Fabre and BioMérieux, and, in the framework of the theory of sense-making (Weick 1995), show how managers invented the concept of 'Théranostique' (i.e. therapy + diagnostic), assigned to it a proper meaning, and communicated it internally and externally to try to give a rationale for the synergies expected from the combination between a therapeutic firm and a diagnostic one⁷⁵.

Olson (2009) considers the takeover struggle between AirTran and Midwest Airlines she discusses *loci communes* and *Burkean Transcendence* as two rhetorical strategies, which have been used by both companies with different outcomes.

In accounting, two studies (Cooke et al. 1998 and Brennan et al. 2010) focus on UK-defense documents in hostile takeovers and adopt quantitative methods to analyze their content. Both assume that the main goal of defense documents is to reduce information asymmetry but also recognize that target managers adopt them to persuade shareholders to accept their view over the offer and reject it. Examples are absent in both papers.

Specifically, Cooke et al. (1998) offer a quantitative study of the information content in 79 defense documents. They codify sentences through 50 characteristics which pertain to five types – adverse comments about the bidder; favorable comments about the target; information of relevant facts; forecasts; and physical aspects. Because they find that no relevantly new information is released, they hastily conclude that "the characteristics of defence documents [...] do not materially affect the outcome of a

involve the sale of LaSalle. The board answered this criticism saying that such a sale had allowed the bank to gain a lot without considering, however, the negative side effect of preventing a higher offer. In this sense, I argued that a fallacy *secundum quid et simpliciter* was committed, in which local expediency was preferred to whole expediency.

⁷⁵ In pragma-dialectical terms, this study is an example showing the importance of presentational devices for realizing directors' rhetorical aims.

hostile bid” (p.136). Instead, they suggest that the main function of the document is to force the bidder to increase the offer price. Brennan et al. (2010) intend to adopt a more qualitative approach, making an exploratory content analysis of ten defense circulars in the framework of impression management. They concentrate on three impression management strategies, called *themes*, *visual emphasis* and *rhetorical manipulation*. The authors conclude that both attacking and defensive themes, supported by visuals and rhetorical emphasis, are adopted by target managers.

It must be remarked that these two studies focus exclusively on hostile bids, apparently because the latter manifest more evidently the companies’ rhetorical attempt to persuade T-shareholders. As Sudarsanam acknowledges:

“during a hostile bid, both bidders and targets engage in furious verbal warfare by advertising their own virtues and the shortcomings of the opposition [...] These forecast and profits reports, predictably, tend generally to be of increased profits and are intended to convince target shareholders that the future performance of the target will be better and that the bid undervalues the target.”. (1995: 227- 228)

These contributions certainly represent an important call for deeper investigation in the matter.

More in general, as Sirower & Lipin (2003) have remarked, the role of communication during the public offer is wrongly ignored, as, they argue, a good communication strategy is fundamental, among other things, to obtain the consent necessary to realize a deal (my bold):

“Dealmakers and students of deal-making alike have treated M&A communications as an afterthought. This is a huge mistake, for several reasons. First, well-conceived M&A communications during due diligence can serve as a litmus test for the prospective acquirer in thinking through whether the transaction is a good idea in the first place, and whether it will give investors more reasons to buy than to sell. Another reason is that investors performing their own due diligence use the information contained in press releases, investor presentations, conference calls and interviews. Also, employees, customers and other vital constituencies scrutinize communications materials for signals on how the deal will affect them.[...] Consequently, communications strategy can make the difference between success and failure on everything from **securing shareholder approval** to meshing the cultures of two distinct organizations”. (2003:26-27).

3. Takeover bids as an argumentative activity type

In the previous chapter, we saw that within an *interaction field*, people pursue shared and individual *goals* by means of *activity types* in which they assume or modify *commitments* and *roles*. These joint activities, which often apply *schemes* of interaction, can be distinguished into *three classes*: communicative, institutionalizing, physical. Argumentation intervenes within a communicative activity type when the goal that interagents aim to achieve requires the consent of a decider and such consent is pursued by means of a reasonable discourse. According to van Eemeren, “in the case of a communicative activity type that is inherently or essentially argumentative we can speak without reservation of an *argumentative activity type*” (2010: 145).

This dissertation focuses on the arguments that bidder and target directors adopt in the context of takeover bids addressed to UK public companies. In this chapter I will therefore characterize the takeover bid procedure, and more precisely, the set of communicative activities entailed by it, as an argumentative activity type. The purpose of this characterization is to elicit the goals that argumentation is intended to pursue and the constraints that the activity type imposes on arguers’ strategic maneuvering.

I will first describe the context change pursued by a takeover bid as an activity type. Subsequently, I will explain the procedure under which an offer takes place. In the UK, the bid procedure is largely defined by the *City Code on Takeovers and Mergers*. In the framework of the City Code, several communicative interactions are entailed by the bid procedure, involving three main actors: the bidding company (represented by its board of directors), the target shareholders and the target board of directors. Depending on the position assumed by directors, the target in particular, an offer may be friendly or hostile, which correspond to two variants of the same general procedure.

3.1. The listed corporation and its institutional constraints

As remarked in chapter 2, the financing interaction that takes place in security markets is strongly institutionalized. Investors and enterprises do not meet personally, as they rather interact through standard forms of contract (securities), in which the reciprocal commitments are established. More precisely, in the primary markets, companies raise capital from investors by selling them either bonds (debt securities) or shares (equity stock); in the *secondary markets*, investors trade already issued securities and also engage in other forms of transactions (in particular by means of derivative securities).

Takeover bids consist of financial proposals that address a particular class of investors, namely shareholders, modifying thus specific commitments exchanged in the financial market. In fact, the positions of bondholders and shareholders are substantially different, and, in many aspects, they might even be conflicting (Jensen & Meckling 1976; Myers 1977; Kalay 1982). Bondholders are wholly external capital providers. They are creditors who lend funds to the company and, at a certain time in the future, they receive principal and interests' payments as agreed in the contract. Shareholders, instead, not only finance the firm, but, by buying its equity, they also become owners. When it issues shares in the primary markets, the company practically sells itself to the market, thereby becoming a public company (whose status also allows it to issue bonds). As Figure 3.1 shows, the ownership of a public company is "located" in the stock market where the shares have been issued. More precisely, the share represents the meeting point of the enterprise and the investor-owner, and establishes the commitments of the one towards the other.

Therefore, since an activity type is the mapping of a scheme onto an interaction field (cf. section 2.2.3), the constraints that the listed corporation imposes on argumentation are, so to say, inherited by a takeover bid.

What characterizes public corporations, and thus the main interaction field in which a takeover bid intervenes, is the separation of ownership and control (Berle & Means 1932; Fama & Jensen 1983). Shareholders own a stake of the firm proportional to the number of shares they hold, but they do not control the business activities of the company. This task is carried out by corporate managers whom shareholders entrust with their capital and expect a return in the form of distributed net profits (dividends).

Shareholders are residual claimants: they receive dividends only after all other claimants (employees, creditors, government) have been paid. The return they get is not fixed, like in bonds, but eventually depends on managers' ability and commitment to make profits and also on their willingness to distribute them to shareholders.

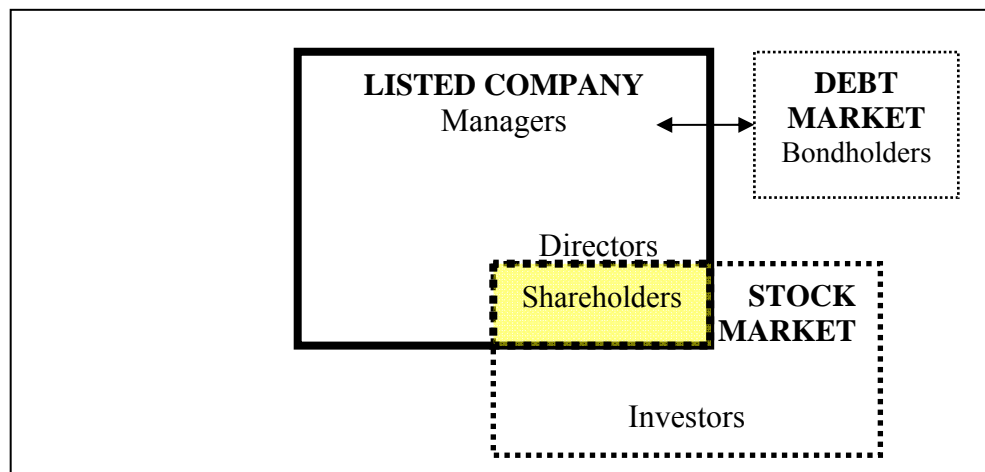


Figure 3. 1. The publicly-listed stock corporation

Therefore, one of the biggest concerns in large public corporations is *corporate governance*, i.e. the set of mechanisms through which shareholders attempt to ensure that the return expected from their investment is not compromised by agency conflicts. The Board of Directors, directly elected by shareholders, has the task of hiring executive managers, monitoring them, and accounting shareholders for the company's performances.

However, directors are also agents who act on behalf of shareholders, so that, instead of being a solution to agency problems between managers and shareholders, the Board could be the source of further conflicts of interest ⁷⁶. In particular, directors might have more incentives to endorse managers' actions than to critically control them. This applies both to inside and outside members of the Board. On the one hand, executive directors (inside), as the word suggests, are also part of the management team, thus

⁷⁶ To recall a famous satire: "quis custodiet ipsos custodes?". This saying is used in general for describing the difficulty to control those to whom power is entrusted and is based on a poem devoted to "The Ways of Women", in which Juvenal remembers his friends' warning that a wife's faithfulness cannot be ensured by guardians because she will "start from them": "Pone seram, cohibe, sed quis custodiet ipsos custodes? Cauta est et ab illis incipit uxor" (Satire 6: 346–348).

holding the paradoxical task of monitoring themselves; on the other hand, non-executive directors (outside) could be so distant from the company that they lack any real interest or effective possibility to influence management's decisions. Their claimed independence could actually mean indifference (cf. Demski 2003). Moreover, cross-monitoring often takes place between two companies, by which X is manager in company A and director in company B, while Y is manager in company B and director in company A.

In the UK, like in the US and other countries, listed companies have a widely dispersed shareholding. The so-called *atomistic shareholders* can do little for controlling and incentivizing managers. Because of the free-rider and other coordination problems, it is difficult and costly to exercise the *voice option*⁷⁷ and directly pressure managers' behavior. Disappointed shareholders may however exercise the *exit option*, which simply consists in selling their stake in the secondary markets. In fact, the presence of a secondary market provides investors with an alternative to dividends: by selling a security to other investors at a price higher than the one paid for purchasing it, shareholders realize a *capital gain*. In this respect, takeover bids can represent unique opportunities for target shareholders to sell their stake at a premium over the market price.

Obviously, after these transactions, shareholders cede their ownership to new investors who acquire the rights entailed by the security. The frequent movements of share prices in the market may offer very rapid opportunities of capital gain (but also risks of loss), which in general speculators and arbitrageurs attempt to exploit.

The separation of ownership and control, the widely dispersed shareholdings, and the relatively easy possibility to sell securities, bring shareholders to largely assume the position of external capital providers, distancing themselves from the idea of owner-entrepreneur, who possesses a good and takes care of it in order to make profit (cf. Monks & Minow 2004:121). The separation of ownership and control may thus diminish the shareholders' personal concern for the intrinsic quality and value of the firm⁷⁸. As a

⁷⁷ The free rider problem arises when many shareholders prefer not to spend resources for incentivizing managers but "parasitically" exploit the action undertaken by other shareholders. This may discourage the latter to implement their strategy so that, in the absence of coordination, nobody will eventually exercise pressure on the management.

⁷⁸ The position of ownership has changed from that of an active to that of a passive agent. [...] Over the enterprise and the physical property in which he has an interest the owner has little

matter of fact, different classes of shareholders exist. Short-term oriented investors (speculators) try to quickly buy and sell shares realizing a capital gain, while long-term shareholders tend to be more concerned with the real development of the company, investing in its growth prospects. Not by chance, the definition of the corporation goal according to the shareholders view often points out that the interests of the *long-term shareholders* are to be fulfilled (cf. Smith 2003). Also institutional investors (such as mutual funds) should be distinguished from individual investors because the former are also agents acting on behalf of other individual investors. This means that, in a takeover bid, while the decision of the individual shareholder is fully personal, the institutional shareholder involves a team of managers having the commitment to create value for their own principal. In the UK, about 60% of shareholders are institutional investors, while the remaining 40% of the shares are held by individual investors.

To summarize, the interaction between companies and shareholders, which is affected by takeover bids, is characterized by peculiar factors having relevant implications for argumentation. The separation of ownership and control distances shareholders from the company and creates asymmetries of information with managers/directors. The lack of information from the side of shareholders means that they might not have at their disposal certain material starting points to develop sound arguments and to advance critical remarks. Analogously, corporate managers/directors might be prevented from advancing certain arguments because these would be based on premises that are not shared, unless they disclose new information.

Knowledge asymmetries might also exist, especially when shareholders are non-expert investors. In these cases, some financial *endoxa* (principles, assumptions, etc.) would be unavailable to the antagonist-decider, requiring the arguers to adapt their discourse.

The presence of agency conflicts, can be strong also during takeovers, as highlighted in the literature (cf. sections 2.5.1, 2.5.2). A human relation potentially affected by conflicts of interest evidently conditions reliability and trustworthiness. If shareholders cannot take for granted that directors will be sincere and honest in

control and he bears no responsibility. [...] The spiritual values that formerly went with ownership have been separated from it. Physical property [...] represented an extension of his own personality" (Berle and Means 1991:64)

recommending to sell or keep their shares, they could require more argumentation and, in particular, arguments in support of directors' credibility. In this way, a new issue is created, whose resolution would be instrumental to resolve the main dispute about the acceptability of the bid.

Finally, the poorly interpersonal relation between directors and shareholders and the high ownership dispersion which discourages shareholders' voice, tend to make argumentative discussions monological rather than dialogical. Thus, during takeover bids, we expect target shareholders to be, more often than not, silent antagonists who decide on the basis of the arguments proposed by bidding and target directors and, perhaps, other reasons emerging in their own reflection or by discussing with other people (advisors, friends, etc.). A dialogue can occur only under certain circumstances in which shareholders, in particular institutional ones, have the possibility to discuss face-to-face with managers and directors. This may happen, for example, during a shareholders meeting, when a merger has to be voted, or during an investors' conference call, in which the directors present the would-be deal and answer to several questions.

3.1.1. The context change introduced by takeovers

An important difference exists between a normal transaction in the secondary stock market and a takeover transaction. The former does not change significantly that social reality coinciding with the public company. Simply, what changes is the person holding the residual claim. The nature of the claim is however unaffected as well as the firm's financial structure, its organizational setting, its managers and directors, its employees, its business, clients, etc.

On the opposite, a takeover is an event that substantially modifies the target company, both in its institutionalized and interpersonal dimensions. At the institutionalized level, the previously dispersed ownership is not held by an individual person. Therefore, the target company cannot be considered a public company anymore and, indeed, it is usually delisted. Even more, if a merger is executed, the company ceases to exist so that the social reality is not merely modified but destroyed.

Furthermore, a takeover significantly modifies the target company in its interpersonal dimension, as the control of the board of directors is assumed by the new owners who appoint a new executive team. Depending on the specific purpose of the

transaction, the corporate combination will create an important organizational change (cf. Balmer & Dinnie 1999; Bastien 1992, Cornett-Devito & Friedman 1995; Demers, Giroux, Chreim 2003; Schweiger & Denisi 1991) which affects the numerous relationships between the firm and its internal and external stakeholders. For instance, employees, if they do not lose their job, could be confronted with a different organizational culture, which, recalling the R&R model, entails new myths, models and rites.

3.2. The takeover bid procedure under the UK regulatory framework

In order to describe the process through which takeover bids may realize the envisaged change, we need first of all to insert the bid into a larger context. Indeed, a takeover deal may wholly coincide with a proposal that is accepted by shareholders, but in most of the cases, such transaction is negotiated privately by the bidding and target directors before being submitted to the shareholders' decision. If shareholders approve the deal, the control over the company is transferred to the bidder and the two companies are combined and integrated according to the actions decided by the new owner.

Therefore, the takeover bid must be understood more generally as a crucial phase of the *acquisition process*. In both mergers and stock acquisitions, "the acquisition process can be separated into two sets of activities: activities that occur before the acquisition is completed (i.e., before the deal is legally "closed"), and activities that occur afterward" (Haunshild et al. 1994: 530). The set of activities occurring until deal completion constitutes the *transaction* involving managers, directors and shareholders; while those activated after completion coincides with the *integration*, occurring within the after-deal organization⁷⁹.

The transaction starts from the intention to combine two companies to the eventual agreement that seals the deal. The integration aims at concretizing the idea

⁷⁹The acquisition process envisages numerous stages. Bruner (2004) takes the perspective of the management of a company wishing to combine with another and reconstructs the acquisition process by proposing an "overview of the deal shaping process" (pp. 685-687), in which he elicits the following eleven stages of an ideal negotiated merger: Strategic planning, search, and target identification; The initial contact with the target management; Confidentiality agreement and related documents; Term sheet and letter of intent; Due diligence and negotiation of a definitive agreement; Affirmative vote by the Board of directors; Disclosure to the public and to regulators; Antitrust filings and permission; Informing the shareholders and gaining an affirmative vote; Closing; Post-merger integration.

behind the agreement, producing the expected benefits.

For the purposes of this dissertation, the acquisition process can be divided into the following phases (cf. Palmieri 2008a):

- Phase 1(a)* Pre-offer negotiations (involving managers and directors)
- Phase 1(b)* Public offer to shareholders
- Phase 2* Post-deal integration

The focus on my analysis is Phase 1(b). Phase 1(a) does not necessarily take place but, when it does occur, it plays a crucial role, as we shall deduce from the results of the analysis in chapter 4. Phase 2 concerns events that presuppose an accepted bid and, as such, takes place only after the interactions focused by this dissertation.

Evidently, without an approved transaction, in phase 1(b), no integration can take place (phase 2). Similar but not identical is the relationship between phase 1(a) and phase 1(b). On the one hand, bidders are not obliged to negotiate with target managers as they can bypass them by dealing directly with shareholders; on the other hand, an offer to shareholders cannot be neither announced nor formally made before target directors have been notified about the intended proposal. Hence, there is always a pre-offer “moment”, although the involvement of target directors can be more or less relevant, depending on the degree of negotiation between the two parties.

In other words, phase 1(a) has a temporal precedence over phase 1(b), but the latter appears to be more essential than the former. Indeed, it is possible to realize a takeover without negotiating with managers, while company cannot be acquired without making a proposal that should be eventually accepted by T-shareholders⁸⁰.

The outcome of a successful pre-offer negotiation is a *friendly bid* made to target shareholders. A *hostile bid* is the case when the offer is not recommended by target directors⁸¹ who invite shareholders not to accept it. Typically, unsuccessful private

⁸⁰ Obviously, it is well possible that a long negotiated but unsettled deal between managers is not followed by a tender offer, thus never reaching phase 1(b).

⁸¹ The concept of hostile bid is not enough well defined to establish whether it concerns both managers and directors' opposition, only managers or only directors. In reality this is a minor problem, because in general, managers and directors, either coincide at the personal level or endorse each other. For simplicity, in this thesis we will generally refer to directors only, except when managers must be mentioned for particular reasons.

negotiations or even no meeting at all precede a hostile bid. Not necessarily, however, a non-negotiated deal turns into a hostile bid. An offer is *unsolicited* when the target board has not been involved in advance but can still decide to recommend the acceptance. Thus, all hostile offers are also unsolicited but not all unsolicited offers are hostile. What makes a bid hostile is the fact that it is proposed to shareholders notwithstanding the formal opposition by the target board.

It is possible also that an initially hostile bid switches into a friendly one because, usually after the bidder has increased the offer price, the target board eventually decides to endorse the proposal. In any case, the eventual outcome is totally entrusted to the free choice of target shareholders whose decision to accept or reject the offer determines whether the change the takeover entails will be fulfilled. Independently from the presence of a previous managerial agreement, a proposal must be made to target shareholders, in accordance with the procedures and the requirements defined by takeover rules.

Therefore, when the acquisition process reaches phase 1(b), the concerned interaction field is already modified, no matter whether the offer will be accepted or not, as new commitments are created. In fact, both bidding and target directors must comply with takeover rules, which impose on them specific obligations. As we shall see, the emergence of these new commitments introduces further and more specific constraints on argumentation.

3.2.1. The City Code and the Takeover Panel

In the European context⁸², national legislations on takeovers are based on the *EU Directive on Takeover bids*. Interestingly, the Directive was proposed “on the assumption that takeovers offer a number of benefits for companies, investors, and ultimately for the European economy as whole” (EU Commission 2007, p. 3). In particular, the Directive acknowledges that takeovers may create value through synergies and by disciplining the management of companies with highly dispersed stock (cf. Haan-Kamminga 2006: 29). One of the main purposes of the Directive was the creation of a

⁸²Switzerland does not apply the EU Directive, but its norms on takeover bids are largely coinciding with those regulating bids in European countries. In Switzerland the relevant normative is the 2008 *Ordinance of the Takeover Board on Public Takeover Offers*, based on the 1995 *Stock Exchange Act* (SESTA).

level playing field for conducting takeovers, by removing significant differences across national regulations (cf. Haan-Kamminga 2006: ch. 3).

In this dissertation we shall concentrate on takeovers in the United Kingdom, the country with absolutely the highest number of bids in Europe (cf. Goergen & Renneboog 2002). An important characteristic of the UK takeover market, which distinguishes it from the US, is that the possibility of pre-offer defense techniques and, in general, of defense pertaining to the financial battle, is more restricted (Sudarsanam 1995; Haan-Kamminga 2006). Thus, hostile bids are more likely to be contested at the communicative level.

In the UK, public companies are subject to Listing Rules and, when involved in a takeover bid, should conform to the *City Code on Takeover and Mergers*.

As the name suggests, the Code intends to regulate both acquisitions of shares and mergers⁸³. In UK, mergers are foreseen by the Companies Act which establishes the schemes through which corporations can consolidate. Notwithstanding their higher legal complexity, mergers are subject to all informative and procedural requirements which are imposed on stock acquisitions.

The UK supervising body on takeovers and mergers is the Takeover Panel, which administers the Code. The Financial Service Authority (FSA), which is the single financial authority in UK, endorses the Panel when takeover issues are concerned. In 2006, after the EU Directive entered into force, the Panel has become a statutory body and acquired much more independence:

“The new Bill provides the Panel with the means to exercise supervision and enforce compliance without having to cooperate with other market parties, such as the FSA and the Exchange, and making it less dependable on the cooperation of the supervised actors” (Haan-Kamminga 2006: 148).

In its *Introduction*, the Code indicates its nature and purpose as follows:

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

⁸³ “the Code is concerned with regulating takeover bids and merger transactions of the relevant companies, however effected, including by means of statutory merger or scheme of arrangement” (City Code: A₅).

class are afforded equivalent treatment by an offeror. The Code also provides an orderly framework within which takeovers are conducted. In addition, it is designed to promote, in conjunction with other regulatory regimes, the integrity of the financial markets.

The Code is not concerned with the financial or commercial advantages or disadvantages of a takeover. These are matters for the company and its shareholders. Nor is the Code concerned with those issues, such as competition policy, which are the responsibility of government and other bodies (City Code: A₁-A₂)

In other words, the Code imposes certain communicative commitments to the concerned interagents and significantly determines the procedure through which takeover bids are conducted.

We notice that the Code does not intend to tackle the issue bound to the expediency of the bid, but only to ensure that those who are concerned with the eventual decision (shareholders) can be allowed to take it properly. In fact, echoing the Directive, the UK Code states that:

The holders of the securities of an offeree company must have sufficient time and information to enable them to reach a properly informed decision on the bid (City Code, B₁).

It is possible to recognize here an attempt made by the legal system to cope with crucial contextual factors, which could hinder a rational and critical decision-making, in particular time constraints and asymmetry of information.

More specifically, Rule 23, concerned with the general obligation as to information, establishes that shareholders should also be advised (by their board) about the expediency of the proposal:

Shareholders must be given sufficient information and advice to enable them to reach a properly informed decision as to the merits or demerits of an offer (City Code, J₁).

In line with the approach taken by this dissertation, the Code assumes that information is crucial for decision and that disclosure is a means to provide shareholders with the premises for grounding their decisions (cf. Haan-Kamminga 2006:71).

The Code intends to reach its purposes not only by imposing precise disclosure duties to companies but also by pretending that information is given appropriately, in particular in accordance with standards of care, which, from a pragma-dialectical perspective, seem to foster the respect of Rule 10 for critical discussion (cf. Note 8, the

usage rule) :

19.1 STANDARDS OF CARE

Each document or advertisement published, or statement made, during the course of an offer must be prepared with the highest standards of care and accuracy and the information given must be adequately and fairly presented. (City Code, I1)

Such standards include the avoidance of ambiguous language, the correct management of sources and quotations, the provision of bases for any comparison made, the non-distorted use of visuals and, more in general, the care not to make misleading and factually inaccurate statements (Rule 19.3).

Following the Code, the public offer phase coincides with the *offer period*, which starts when an actual or only possible offer is announced and ends when the offer is accepted by shareholders or lapses. One of the purposes of the Code is to avoid inequalities of information among investors (see *General Principle 1* and *Rule 20. Equality of information*). This is exactly why the Code emphasizes the importance of absolute secrecy before any announcement (*Rule 2.1*) and requires an announcement to be made if rumors and speculations emerge (*Rules 2.2; 2.5*).

3.2.2. The two fundamental interactions of the bid procedure

In the framework implied by the Code (as well as the by the EU Directive), the main actors directly involved during the offer period are the bidder company, represented by its board of directors (B-directors), target shareholders (T-shareholders) and the target board of directors (T-directors)

The scenario is the following: B-directors offer T-shareholders to tender their shares in exchange of a certain form of consideration (cash or B-shares) while T-shareholders freely decide whether to accept or reject this proposal. At the same time, T-directors must advise their shareholders in relation to the decision they are asked to take.

Therefore, two distinct interactions emerge: one between B-directors (embodying the bidder company) and T-shareholders in which the T-shares are dealt; the other between T-directors and T-shareholders, in which an advice is given concerning the bid.

The first interaction appears, at a first glance, a negotiation, as terms like ‘bids’ and ‘offer’ would suggest. Negotiation is an interaction scheme that is activated in several interaction fields, in particular in contexts where a conflict of interests must be

resolved⁸⁴. Walton & Krabbe (1995) have characterized negotiation as one of the dialogue type in which argumentation can be relevantly involved⁸⁵. Greco-Morasso (2008: 87) considers negotiation as an argumentation-based communicative practice (i.e. interaction scheme) where the parties are co-arguers in a one-to-one (not facilitated) discussion. In this perspective, negotiation seems to be confined to face-to-face, interpersonal, interaction that, as such, could hardly describe the interaction that is activated in a takeover bid. As a matter of fact, a real negotiation can occur only during phase 1(a) of the acquisition process involving corporate directors. The bid is certainly part of a transaction but the highly dispersed shareholding of public companies makes impossible to perform a face-to-face negotiation, in which parties are co-arguers in a strong sense:

“when the shares of a company are not closely held, such as often is the case when companies are listed on the Stock Exchange, it is practically impossible to negotiate with the shareholders. The public announcement of a takeover bid is a mechanism to reach all the shareholders” (Haan-Kamminga 2006: 54).

Therefore, a takeover bid should be considered as a peculiar interaction scheme, in which one party makes an offer to another party who decide, on the basis of the information made available, whether to accept it or not. We can see this scheme combines elements from deliberation and also elements from information-giving dialogues.

The other interaction, involving T-directors and T-shareholders, clearly activates

⁸⁴ Together with mediation, arbitration and adjudication (cf. Uzqueda and Frediani 2002; Goldberg et al. 2007; Greco-Morasso 2008), negotiation falls into the category of alternative dispute resolutions (ADR): “Negotiation can be defined as back-and-forth communication designed to reach an agreement between two or more parties with some interests that are shared and others that may conflict or simply be different” (Patton 2005: 279). Although the presence of a conflict of interests is the typical starting point of any negotiation (Walton & Krabbe 1995; Greco-Morasso 2008), in reality, negotiations can be more or less conflicting as highlighted by the well-known distinction between distributive bargaining and integrative negotiation (cf. Fisher and Ury 1991; Hopmann 1996; Palmieri 2004), by which a negotiation may be a purely zero-sum game or a largely cooperative process, close to problem-solving (cf. Lewicki et al. 1996).

⁸⁵ Assuming that the evaluation of arguments strongly depends on the context in which they are used, Walton & Krabbe propose to distinguish several dialogue types (e.g. negotiation, deliberation, information seeking) to show how the fallaciousness of an argumentative move may depend upon the particular dialogue in which it is performed. For example, they suggest that threats would be unreasonable in many dialogues but perfectly acceptable within a negotiation.

the interaction scheme of advice-giving, in which one party, being an expert or a subject in a better position to know, recommends to another party a prudent course of action.

At the speech act level, the action performed by the bidder is a proposal, while the T-board performs an advice. In fact, T-directors do not propose anything to their shareholders, unless we consider the advice not to sell as a proposal to continue to invest in the company. Indeed, while the semantics of both ‘to propose’ and ‘to advise’ presupposes the speaker’s benevolence towards the hearer (cf. Searle & Vanderveken 1985), in a proposal the speaker refers to a joint action that the hearer should accomplish with the speaker or, at least, in which the speaker is involved too: a man can propose his fiancée to marry him but, properly speaking, not advise her to do it. Instead, her best friend could have advised her to marry or not to marry him.

Therefore, an adviser pretends to be “disinterested” (apart from the compensation he/she receives for making the advice), while a proposal-maker is by definition concerned with what is proposed. Obviously, this does not mean that an adviser will not be subject to biases. On the contrary, if the action on which an advice has to be formulated would have negative side effects for the adviser, the latter could be tempted not to recommend this action, despite being expedient for the advisee. Similarly, the proposer’s involvement in the envisaged joint action could bring him/her to propose a joint action that eventually realize only his/her goal at the expenses of the other (e.g. a young woman marrying an old rich man just for taking out his money and abandoning him).

For what concerns bidders and T-directors, their benevolence is not only expected from the speech act they perform but is entailed, more deeply, by their precise institutional commitments. Interestingly, this does not apply only to T-directors, who by contract have to serve shareholders’ interests, but also to B-directors. In fact, in relation to the general obligation as to information, the Code establishes that:

The obligation of the offeror in these respects towards the shareholders of the offeree company is no less than an offeror’s obligation towards its own shareholders. (City Code, J₁)

Regarding the nature of the advice that T-directors express, we should properly characterize it as an *institutional advice* and not an *interpersonal advice*. To understand the difference, let us consider briefly the prototypical spot of the financial context in

which advices are concerned, namely private banking consultancy. In fact, when we refer to financial advisory interactions, we immediately think to a banker supporting his/her client's investment decisions rather than to the communication flows between corporate directors and shareholders.

An agency relationship links the banker to his/her client, in which the banker is expected to act in the client's best interests. Here, the advices given by the banker pretend to be *tailored* to the specific characteristics and wishes of the client. The private client addresses a banker exactly for this reason. He/she has a certain objective and a certain risk profile and the banker is expected to find out, conceive and recommend him/her the best solutions in this respect. To this purpose, the banker and the client meet regularly, also outside the bank's walls, in order to build a fruitful and long-lasting relationship, based on mutual trust and open communication⁸⁶ (cf. Cottier & Palmieri 2008).

Instead, in our case, this personal tailoring is neither possible nor requested institutionally. Shareholders are numerous and, except for some large institutional investors, do not in general entertain an interpersonal relation with managers and directors (except during the shareholders meeting). Not less relevant, the identity of the shareholder may change rapidly through a simple trading in the secondary market (cf. section 3.2.1).

Moreover, the institutional commitments that the specific interaction field of a public company imposes on directors do not bind them toward each individual shareholder at the personal level⁸⁷, but toward the long-term *shareholding*, imagining an

⁸⁶ These remarks on the banker-client relationship originate from the continuous reflections and discussions made in the context of the course "Interpersonal tools for financial communication", taught by Andrea Rocci, in the Master Program of Financial Communication at USI. The numerous interactions we had also with professional bankers help us in the understanding of this complex world. In particular I am indebted with Corrado Palmieri (Deutsche Bank, Italy) and Giovanni Vergani (Credit Suisse, Lugano), whose active and passionate collaboration with our Institute has significantly contributed and stimulated our interest for this area of finance.

⁸⁷ By the way, corporate directors are expected to be competent in corporate governance – i.e. in monitoring and incentivizing managers to create value for shareholders – not in wealth management. During a conference call, the Chairman of Cadbury seems to confirm that, when replying a journalist who asked whether he was saying to Cadbury shareholders that he expected Kraft shares not to recover:

"You know the one thing we don't do is give investment advice really [...] And we would of course - you know just point our shareholders towards the facts and let them make a conclusions." (Cadbury, Media Presentation Q&A, 14.12.2009. Source: <http://www.cadburyinvestors.com>. Last visit: 27

ideal set of long-term investors, whose goal perfectly coincides with the maximization of the intrinsic value of the company. The Code itself points it out in one of the General Principle:

The board of an offeree company must act in the interests of the company as a whole (City Code, B₁).

While directors' advice is institutional and not interpersonal, the eventual decision taken by shareholders is personal and cleared from institutional commitments (except for those institutional shareholders who, in turn, have a precise mandate towards their own investors). This means that, theoretically speaking, the single shareholder could agree with the evaluation expressed by the board but, for specifically personal reasons, eventually decide differently.

In regulating both the interactions entailed by the proposal the interaction entailed by the recommendation, the Code establishes what kind of texts should be published, what information should these texts include, how this information should be presented and the timing of all these publications. While the Code provides numerous details as to the type of information that must be included in the various documents and how this information must be presented, no disclosure form exists for texts that have been considered in my analysis, namely, the corporate announcements, the offer document and the T-board's circular. The Code requests to send each document to T-shareholders and to the Takeover Panel and to publish all of them on the corporate website.

The offer period starts when an announcement is made and, thus, the transaction moves from phase 1(a) to phase 1(b). The Code specifies the circumstances under which an announcement is required (Rule 2.2.) and with whom, between the bidder and the target directors, the responsibility to make an announcement rests (Rule 2.3.). When rumors spread out, an announcement is required also for stating the intention not to make an offer (Rule 2.8).

It is very important to distinguish between the *announcement of a possible offer*

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(Rule 2.4) and that containing a *firm intention to make an offer* (Rule 2.5): while the former does not commit the bidder (who could even remain anonymous) towards a bid, the latter, unless special circumstances materialize, must be followed by a bid. In other words, only the latter constitutes an activity of class 2. As Haan-Kamminga explains:

What distinguishes the firm intention from the publication of the possibility of a takeover bid? The firm intention consists of the announcement of the conditions of the bid, which do not need to be published in the preliminary announcement. In fact, the announcement of the firm intention of placing a bid is also enough to place the bid (to bring out a legally binding offer). Other methods for placing the legally binding offer are a statement of the companies involved or the publishing of the offer document. Within 28 days after the announcement of the conditions, the offer document should be posted (2006:163)

Not by chance, the firm intention announcement must already include important information bound to the offer (cf. Rule 2.5);

“This announcement contains the terms of the offer, the identity of the bidder, the details of any holding in the target company, details of any outstanding derivative referenced to securities in the target company entered into by the bidder, and all conditions to which the offer is subject” (Haan-Kamminga 2006: 170).

Pursuing to Rule 2.9, any announcement must be published in typed format and sent to a Regulatory Information Services (RIS)⁸⁸ and must also be distributed to not less than two national newspapers and two newswire services in the UK.

An important feature of the firm intention announcement, which often is not present in the preliminary announcement, is the disclosure of the bidder’s identity and the offer price, which represent crucial information significantly influencing the subsequent investors’ trading activity. The offer is officially performed when the *offer document* is published.

Normally, the offer document must be disclosed within 28 days after the firm intention announcement (Rule 30.1). The offer document coincides with the offer. It is a

⁸⁸ On its website, the Takeover Panel indicates the following approved RIS: Business Wire Regulatory Disclosure provided by Business Wire; Announce provided by Hugin ASA; News Release Express provided by Marketwire; PR Newswire Disclose provided by PR Newswire; RNS provided by the London Stock Exchange; marCo – Market Communication Office provided by Tensid Ltd of Switzerland; DGAP IR.COCKPIT provided by EquityStory AG. (www.thetakeoverpanel.org.uk, last visit: 26 August).

text and at the same time a financial offer, which does not exist outside this text and the commitments assumed therein.

The offer document must include, besides important information concerning the financial aspects of the offer (Rule 24.2 and ff.), also other relevant information, in particular about the intentions regarding the two companies:

24.1 INTENTIONS REGARDING THE OFFEREE COMPANY, THE OFFEROR COMPANY AND THEIR EMPLOYEES

An offeror will be required to cover the following points in the offer document:—

- (a) its intentions regarding the future business of the offeree company;
- (b) its strategic plans for the offeree company, and their likely repercussions on employment and the locations of the offeree company's places of business;
- (c) its intentions regarding any redeployment of the fixed assets of the offeree company;
- (d) the long-term commercial justification for the proposed offer; and
- (e) its intentions with regard to the continued employment of the employees and management of the offeree company and of its subsidiaries, including any material change in the conditions of employment.

Where the offeror is a company and insofar as it is affected by the offer, the offeror must also cover (a), (b) and (e) with regard to itself.

Here, it is evident that a takeover bid is more than a mere trading of securities. The Code recognizes this by requiring the bidder to disclose information related to the consequences that the offer, once accepted, would bring to the companies, their business activity and their stakeholders. The fundamental context change, occurring both at the institutionalized and interpersonal dimensions, is so acknowledged.

In particular, point (d) must be stressed, in which the “long-term commercial justification for the proposed offer” must be stated. An argumentative commitment is so assigned to the bidder. To justify the offer in its long-term commercial aspects means to provide the reasons that, in relation to the long-term commercial objective of business enterprises, would make the offer reasonable.

The offer document is sent to shareholders and must also be made available to the representatives of employees (Rule 30.1), who therefore are to be characterized as ratified participants (Goffman 1969; Mazzali-Lurati 2006)

Finally, the Code requests to the T-board to advise T-shareholders on the bid they have received. The T-directors' view can be included into the bidder's document or sent separately, in this case no later than 14 days after the publication of the offer

document. It must be made available not only to shareholders but also to the employees' representatives (Rule 30.2).

Rule 25 specifies the information that T-directors should include in their circular:

25.1 VIEWS OF THE BOARD ON THE OFFER, INCLUDING THE OFFEROR'S PLANS FOR THE COMPANY AND ITS EMPLOYEES

(a) The board of the offeree company must send its opinion on the offer (including any alternative offers) to the offeree company's shareholders and persons with information rights [...]

(b) The opinion referred to in (a) above must include the views of the board of the offeree company on:

(i) the effects of implementation of the offer on all the company's interests, including, specifically, employment; and

(ii) the offeror's strategic plans for the offeree company and their likely repercussions on employment and the locations of the offeree company's places of business, as set out in the offer document pursuant to Rule 24.1.

and must state the board's reasons for forming its opinion.

The last sentence of the passage reported is particularly relevant for this dissertation: not only T-directors should express their opinion (argumentatively speaking, the *standpoint*) but they are also required to give the reasons grounding such opinion. The standpoint defended by the Board concerns the issue whether shareholders should accept or not this offer and, in this relation, coincides with an advice. In fact, in other parts of the Code, the same opinion is referred to as 'advice' (not to be confused, however, with the advice that the directors themselves receive from their advisers).

The advice given by the board is very important even though T-directors do not decide on the bid. By endorsing a bid or opposing it, in fact, T-directors may significantly influence the outcome of the offer (cf. Haan-Kamminga 2006; Brennan et al. 2010).

In writing a document in which they recommend to reject the offer by giving appropriate reasons, T-directors are fighting the battle, entailed by a hostile offer, at the communicative level. The takeover barriers adopted in the financial battle attempt to eliminate the conditions allowing an offer, while bringing the case in front of a court delegates the decision to an external judge. Instead, in the communicative battle, the argumentative approach is chosen, coinciding with an effort to appeal to the reasonableness of the participants, who should critically assess the offer and determine

its (in)expediency by means of rational grounds. Of course, this argumentative attempt may be constellated by manipulative moves, through which an unreasonable consent is pursued.

Remark also that the T-board's view should address both the offer and combination entailed by it (cf. 25.1(b)(i)-(ii)).

3.2.3. The impositions of two relevant argumentative obligations

Following the Code, two important argumentative obligations can be ascribed: (1) in making its offer, through the offer document, the bidder is required to give the commercial justification for the offer, which practically means that the reasonableness of the acquisition underlying the offer should be considered; (2) in recommending target shareholders the T-Board must state the reasons for its opinion.

In other words, the Code, designed with the purpose of fostering the quality of the eventual decision, institutes two argumentative interactions. From the strictly dialectical point of view, we can reconstruct two different critical discussions centered around two distinct, but strongly related, issues. One discussion is about the reasonableness of the acquisition implied by the offer. Here, the Code imposes the role of protagonist to the bidder while the antagonist should be identified with T-shareholders because they are the addressee of the offer document. It goes without saying that B-shareholders, as well as other stakeholders who will be concerned with the after-deal company, are potential antagonist in this discussion. The other discussion is about the expediency for T-shareholders to accept the offer. Here, the Code requests T-directors to argumentatively defend their opinion. Again, T-shareholders should be interpreted as antagonist.

Tables 3.1 and 3.2 illustrate the process through which the Code institutes the two issues and imposes the burden of proof to the directors. On the basis of the specific rule of the City Code, an issue is put on the agenda, on which the directors must take a position. By requiring to justify the offer and its recommendation, the burden of proving their position is imposed: the bidder is obliged to advance a standpoint in relation to issue p_1 and to give reasons justifying such a standpoint; analogously, the T-board is obliged to advance a standpoint in relation to issue p_2 justifying it argumentatively.

It is important to remark that the two issues are strongly related. We could

consider p_2 as a more issue coinciding with the decision dilemma that target shareholders are confronted with: accept or reject? Instead, p_1 covers a specific aspect of the whole deal, namely the commercial rationale behind the offer. This might be a sub-issue of p_2 , as the absence of a good reason for the offer might bring shareholders to reject such a proposal. For example, if the envisaged combination appears as negative for the target company, target shareholders may be inclined to reject the bid, but not necessarily. Indeed, especially if they receive cash in exchange of their stock, they might be less concerned with the after-deal company and more interested in the financial value of the offer price.

LEGAL BASIS	City Code, Rule 24.1(d): the bidder should state the long-term commercial justification for the proposed offer
CREATION OF THE ISSUE	ISSUE p_1 : is the reason behind the offer reasonable?
IMPOSITION OF THE BURDEN OF PROOF	The Code: “Defend your standpoint on ISSUE p_1 in front of T-shareholders”
DERIVING CONFRONTATIONAL SITUATION	Bidder: $+/p_1$ T-shareholders: $?/p_1$

Table 3. 1. The institution of issue p_1 and imposition of the burden of proof

LEGAL BASIS	City Code, Rule 25.1(d) => The T-board should state the reasons for its recommendation	
CREATION OF THE ISSUE	ISSUE p_2 : is the offer expedient for T-shareholders and the target company as a whole?	
IMPOSITION OF THE BURDEN OF PROOF	The Code: “Defend your standpoint on ISSUE p_2 in front of T-shareholders”	
DERIVING CONFRONTATIONAL SITUATIONS	<u>Recommended bid</u> T-board: $+/p_2$ T-shareholders: $?/p_2$	<u>Unrecommended bid</u> T-board: $-/p_2$ T-shareholders: $?/p_2$

Table 3. 2. The institution of issue p_2 and imposition of the burden of proof

It is rather obvious that the bidder's standpoint can only be a positive (+/p₁): the actual reasonableness of the implied acquisition should be considered a *virtual standpoint* (van Eemeren et al. 1993), entailed by the speech act of *proposing* the acquisition. For the same reason, also issue p₂, namely whether T-shareholders should tender their shares, implies the bidder to assume a positive standpoint, although the Code does not request to offeror to defend such an opinion.

The T-board is requested to take a position on issue p₂, which specifically concerns the acceptability of the bid for shareholders. Here, the board is expected to assume the standpoint that better reflects its commitment towards shareholders and the company it represents. Depending on whether T-directors decide to recommend the offer's acceptance or the offer's rejection, two different confrontational situations can be reconstructed, since in the first case, a positive standpoint is advanced, while in the other case the standpoint is negative.

It is important to stress that the regulator is not a discussion participant as it explicitly refrains from entering into the merit or demerits of the offer. Its interest is in fostering a reasonable management of the transaction so that those who have to decide (T-shareholders) can take such decision in a reasonable way, i.e. within an argumentative interaction in which what is proposed to them is shown to be acceptable in the basis of appropriate reasons. In this way, the Code aims at ensuring that the transaction, once reaching the phase of the public offer (phase 1b), is proposed and assessed critically.

The Code does not simply foster a critical (dialectical) attitude, but also constrains the rhetorical undertaking of the involved arguers, influencing the strategic maneuvering in all its three aspects. The topical potential is affected by the imposition of certain points that must be covered in the offer document and target circular (e.g. the price, the destiny of the company and its employees, etc.); the audience is partially imposed, by requesting to address T-shareholders and informing also other subjects (employees); the use of presentational devices is also conditioned by the several rules that regulate the way in which information should be written.

3.3. Characterizing argumentatively the takeover bid's communicative interactions

The Code's obligations that have been just brought to light indicate that the communicative interactions activated in the context of a takeover bid involves

argumentation in a relevant way. These obligations should be considered as constraints on the strategic maneuvering that corporate directors implement in order to obtain the desired consent from the shareholders. However, both bidding and target directors' strategic maneuvering may well exceed the fulfillment of the commitments that the Code imposes on them. For example, B-directors are not requested to handle with issue p_2 , but since they are highly concerned with the outcome of the bid, one could imagine that actually they will address this issue argumentatively.

In the previous sections, the difference between the bidder and the target directors' perspectives, in particular regarding issue p_2 , has been highlighted. Only the T-board can advance a negative standpoint. Depending on target directors' standpoint, a specific argumentative situation arises.

Therefore, how the two argumentative interactions unfold and how these obligations are fulfilled, significantly depends also on the mood of the offer, namely whether the bid is friendly or hostile.

If we consider the bid procedure as an activity type, the friendly and the hostile bids must be interpreted as two variants of such a procedure, which need two different argumentative characterizations. As van Eemeren suggests, "the theoretical model of a critical discussion can be instrumental in this endeavor because in the various argumentative activity types the argumentative dimension can be substantiated in different ways, depending on the specific institutional requirements ensuing from the arguers' mission to realize the institutional point of the communicative activity type: the initial situation, the starting points, the argumentative means, and the outcome of argumentative discourse" (2010: 146).

3.3.1. Variant 1: the friendly bid

In order to characterize argumentatively the communicative activity type emerging from a friendly bid, examples taken from the ten cases collected will be considered (cf. Annex 1).

We immediately discover that the crucial communicative events, including both

bidder and target directors' statements, can be reduced to two documents⁸⁹: (1) the *announcement of a firm intention* to make an offer, as foreseen by Rule 2.5 of the Takeover Code, and (2) the *offer document*, formally enacting the bid (cf. Table 3.3).

	BAE-Detica	Capita-IBS	Mears-Supporta
Firm intention announcement	28.07.2008	5.06.2008	18.12.2009
Offer document	31.07.2008	5.06.2008	22.12.2009

Table 3. 3. Relevant documents in three cases of friendly bid

In analyzing the *announcement of a firm intention to make an offer* (firm intention announcement) from an argumentative perspective, we should first of all consider the text in its communicative dimension, as a verbal interaction between a writer and a reader, in which the former aims at doing something to the latter (cf. class 1 activities). At its deepest level, a text has to be seen as a hierarchy of interconnected sequences, that is predicate-argument structures, semantically organized in order to realize its pragmatic aim that coincides with “what the writer aims at doing to the reader” (cf. Rigotti & Rocci 2001, 2006; Rigotti & Cicada 2004), in other words with the *habit change* that the addresser expects to bring to the addressee.

By transmitting this specific announcement to an RIS, the company initiates an activity of class 2. In fact, the filing of such document commits the bidder to make an offer to T-shareholders and such commitment is legally enforceable. In other words, by announcing the firm intention to make an offer, the writer actually performs a legally enforceable promise. This crucial aspect allows to distinguish the *announcement of a firm intention to make an offer* (Rule 2.5) from the simple *announcement of a possible offer* (Rule 2.4), which does not represent any commitment for the bidder to make an offer.

The peculiarity of the firm intention announcement is fundamental to identify the proper addressee of the text. Indeed, inasmuch as “intention to make an offer”, the main addressee has to be identified with T-shareholders, although, being a press release, i.e. a public announcement mediated by journalists, the text activates more than one

⁸⁹ For simplicity, we have excluded the announcement of a possible offer foreseen by Rule 2.4. In the case of BAE-Detica, this announcement was made on the 18th of July 2008, without mentioning the identity of the bidder.

communicative interaction – belonging to a class 1 activity – in which a composite audience of readers is involved, which coincides with the numerous corporate stakeholders (cf. Mazzali-Lurati 2008).

Par.	BAE-Detica	Capita-IBS	Costa-Coffeheaven
	Summary	Summary	Summary
1	Introduction	Introduction	Introduction
2	The Offer	The Offer	The Offer
3	Irrevocable Undertakings	B&R for the Offer	Irrevocable Undertakings
4	Information relating to BAE Systems	Unanimous recommendation	Info. relating to the Whitbread Group
5	Information relating to Detica	Background to and reasons for the Offer	Information relating to Costa
6	B&R for the Offer	Undertakings to accept the Offer	Info relating to coffeetheaven Group
7	B&R recommendation	Info on IBS and its current trad. and prosp.	B&R for the Offer
8	Recommendation	Info Capita and its current trad. and prosp.	B&R for recommendation
9	Financing of the Offer	Financing of the Offer	Recommendation
10	Management and employees	IBS management, employees and locations	Financing of the Offer
11	Detica Share Schemes	Inducement Fee	Manag., employees and locations
12	Discl. of interests in Detica	IBS Share Schemes and Warrant Instrument	coffeetheaven Share Schemes
13	Break Fee and Implem. Agreement	Disclosure of interests in IBS	Discl. of interests in coffeeth. relevant sec.
14	Delisting, comp. acq.n and re-registration	Delist. and canc. of trad. on AIM and comp. acq.	Delisting, comp. acq. and re-registration
15	General	Further details of the Offer	General
16	Enquiries	Overseas IBS Shareholders	
17		Other matters	

Table 3.4. The macro-structure of firm intention announcements: friendly bids

The main audience is in any case represented by T-shareholders because they are the eventual decision-makers, to whom both the promise (firm intention) to make an offer and the offer itself are made. As the Takeover Code indicates, the main goal of these disclosures is that of ensuring T-shareholders the possibility to take a “properly informed decision”. In assuming this perspective, we will however consider the presence of other stakeholders, whose involvement in the deal can be more or less explicit, but certainly relevant for an adequate understanding and interpretation of the text. The

simple fact that the Takeover Code explicitly assigns information rights also to T-employees and requires both companies' directors to take into account the consequences of the offer for employees, demonstrates the importance not to ignore other stakeholders.

At the macro-level, the firm intention announcement follows a typical structure. Table 3.4 reports the list of chapters composing the announcement in three cases.

Notice that, in Table 3.3, no document published by the target company appears. Yet, we have seen that Rule 25 of the Code explicitly requests T-directors to publish their view and state the reasons for their recommendation to shareholders. As Table 3.4 shows, the T-boards' view is actually included in the bidder's documents, under the paragraph "Recommendation". The T-Board is endorsing the offer to the point that its view is actually included in the bidder's documents, where also the reasons are given within a paragraph provided for the purpose ("Background and reasons for the recommendation").

While the press release announcing the offer's firm intention is sent by the bidder to RIS, the source of the announced message has to be identified with the Boards of Directors of both companies, as it can be deduced from the introductory paragraph of the announcements:

- 1.: The boards of directors of BAE Systems and Detica announce that they have reached agreement on the terms of a recommended cash offer for the entire issued and to be issued share capital of Detica [...] (*BAE-Detica; firm intention announcement, 28 July 2008*)
- 2.: The boards of directors of Costa and coffeeheaven announce that they have reached agreement on the terms of a recommended cash offer [...] (*Costa-coffeeheaven; firm intention announcement, 15 December 2009*)
- 3.: The boards of Mears and Supporta are today pleased to announce the terms of a recommended offer to be made by Mears, to acquire the entire issued and to be issued ordinary share capital of Supporta. (*Mears-Supporta; firm intention announcement, 18 December 2009*)

This indicates that the offer is friendly ("recommended offer"). By emphasizing, among the several relevant aspects of the deal, the agreement sealed by the two boards, the writer clearly frames the event in the perspective of T-shareholders, paving the way to an important argumentation: "you should accept this offer because your own Board

recommends to do so”. We can say that the T-shareholders’ perspective is focalized also because the offer is referred to, rather than the related business acquisition and its various implications.

In the above examples, the *outcome* of a previous discussion can be recognized. Phase 1(a) of the acquisition process has been successfully completed: the two companies have privately negotiated a possible deal and eventually found an agreement. Supposing that this negotiation has been supported by an argumentative discussion that was centered on the issue: “is a deal desirable for our companies?”, we would say that both parties have reached the conclusion that, under the terms settled, the deal is desirable, removing any doubts against this standpoint.

In the *offer document*, the friendly nature of the proposal is reflected in the macro-structure of the text, which substantially consists of two parts, coinciding respectively with the *letter of recommendation from the Chairman* of the target company and the *letter from the bidder*, which is in general signed by the Chairman or the CEO. It is interesting to remark the order chosen by the writer. While the sender of the document is formally the bidder, the letter that comes first is the one containing the recommendation by the T-board. These two formal letters, both addressed to target shareholders, are followed by appendices containing more specific technical information.

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Figure 3. 2. Table of contents of a friendly offer document (BAE-Detica)

The Table of Contents of the BAE-Detica offer document, reported in Figure 3.2, clearly shows this structure.

By comparing synoptically the firm intention announcement and the offer document (appendices excluded) we discover that their respective contents largely coincide⁹⁰, as Figure 3.3 shows. Moreover, the paragraphs of the announcements are replicated in the offer document and, within the latter, many paragraphs of the target's recommendation letter are actually a "copy and paste" from the bidder's letter⁹¹.

Two paragraphs immediately captures the attention of the argument analyst, as their title signals the assumption of a commitment to "give the reasons why": in the T-board's recommendation letter we find the "background and reasons for the recommendation", while the bidder's letter includes the "background and reasons for the offer". It seems that both paragraphs have been created in order to fulfill the argumentative obligations set by the Code: the bidder presents its offer and justifies it while the T-board expresses its recommendation to accept the bid and justifies such recommendation.

To accomplish our analysis, we can focus on those paragraphs in which the offer and the recommendation are advanced and justified, excluding all other paragraphs⁹². Therefore, we can consider both letters' introductions, because they allow to establish the intended purpose of the letter; the paragraph "the offer" as indeed it is the kernel event at issue; the reasons why the board recommends the offer, the formal declaration of such recommendation and, eventually, the reasons brought by the bidder.

⁹⁰ This reflects somehow the purpose of the Takeover Code, which sets as one of the fundamental principle that all shareholders should receive equal treatment. Because the firm intention announcement is followed with high probability by the actual offer, if such announcement does not give all the information that can be disclosed, the better informed and positioned investors would be advantaged on those who need to wait for the offer document in order to adequately assess the offer.

⁹¹ This can be deduced both from the explicit reference made by the target or inferred from the context, which suggests whose province is a certain paragraph. For example, the intentions regarding the future of the target company are supposed to be first of all stated by the bidder, because by obtaining control over the target, it will have the power to decide how to manage it. Not by chance, the Code imposes to the bidder such disclosure.

⁹² The exclusion of a paragraph was driven by one of the following reason: (i) the segment appears to lack argumentative relevance, rather considering strictly procedural aspects (e.g. procedure of acceptance, settlement, share schemes) or specifying some technical conditions (e.g. taxation, overseas shareholders); (ii) the segment may hold an argumentative potential but, if so, we assume its content is referred to in one of the selected argumentative paragraphs.

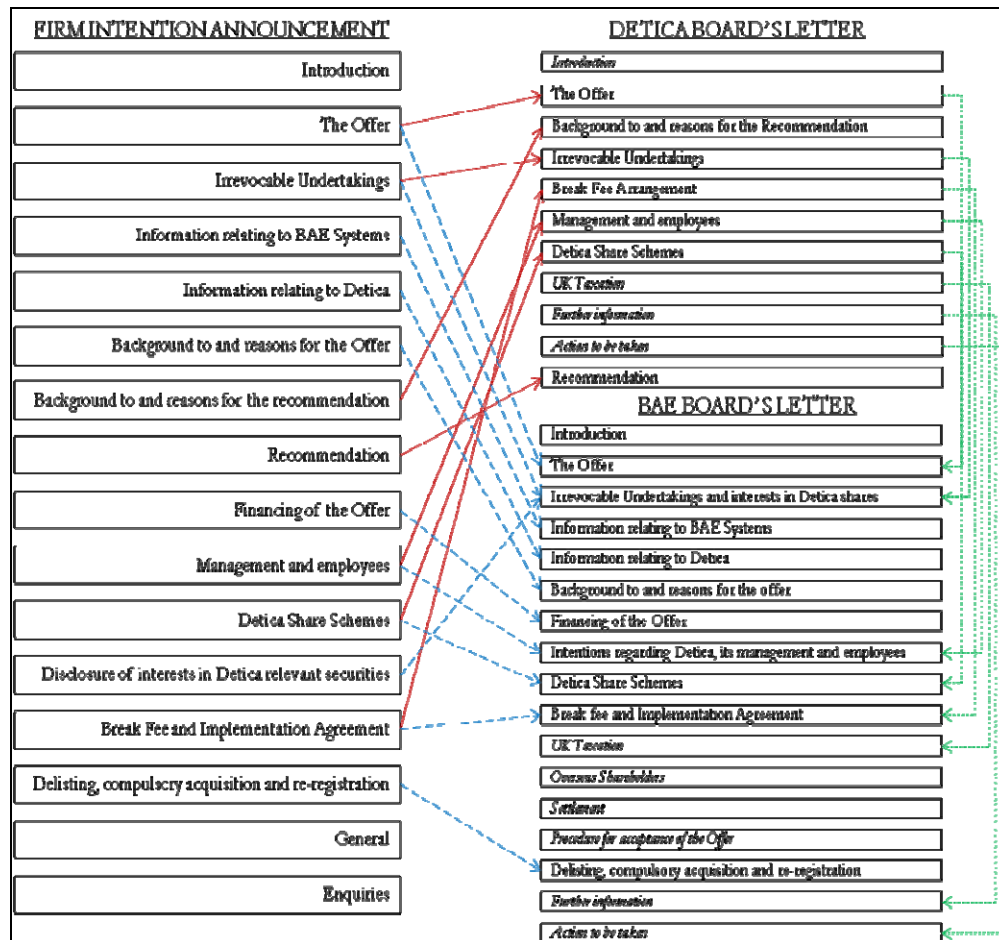


Figure 3.3. Mapping the announcement onto the offer document (BAE-Detica)

3.3.1.1. The distribution of tasks between the boards of directors

The first part of the offer document coincides with the recommendation letter from the Detica directors. The letter is explicitly addressed to Detica shareholders, identifying them as target the offer and main audience of the information therein contained. The Board invites shareholders to consider BAE's letter to obtain further information on the offer, while the main goal of their letter is subsequently declared to be that of "explaining why" they have decided to support the offer:

- 4.: Dear Detica Shareholder,
Recommended Cash Offer for Detica Group plc by BAE Systems (Holdings) Limited

1. Introduction

On 28 July 2008, the Boards of BAE Systems and Detica announced that they had reached agreement on the terms of a recommended cash offer [...]

Further information relating to BAE Systems Holdings and BAE Systems can be found in paragraph 4 of the letter from BAE Systems Holdings set out in Part II of this document.

I am writing to you on behalf of the Directors of Detica to explain the background to and terms of the Offer and to explain why the Directors of Detica are unanimously recommending that Detica Shareholders accept the Offer, as the Directors of Detica have irrevocably undertaken to do in respect of their own beneficial shareholdings of 7,162,397 Detica Shares (representing approximately 6.15 per cent. of the issued share capital of Detica). This letter also explains the action that you should now take if you wish to accept the Offer. (*BAE-DETICA, offer document, p.6, 31.07.2008*)

The introduction of the bidder's letter first recalls the firm intention announcement and the terms of the offer, bringing then the reader's attention to the T-board's positive recommendation:

**5.: Dear Detica Shareholder,
Recommended Cash Offer for Detica Group plc by BAE Systems (Holdings) Limited**

1. Introduction

On 28 July 2008, the Boards of BAE Systems and Detica announced that they had reached agreement on the terms of a recommended cash offer "

[...]

This document and, if you hold certificated Detica Shares, the accompanying Form of Acceptance contain the formal Offer (including its terms and conditions)

[...]

Detica Shareholders who accept the Offer will be entitled to receive 440 pence in cash per Detica Share

[...]

Your attention is drawn to the letter of recommendation from the Chairman of Detica in Part I of this document, which sets out the reasons why the Detica Directors, who have been so advised by RBS Hoare Govett and Ernst & Young, consider the terms of the Offer to be fair and reasonable and unanimously recommend that all Detica Shareholders accept the Offer, as they have irrevocably undertaken to do in relation to their own entire holdings.[...] (*BAE-DETICA, offer document, p.10, 31.07.2008*)

These cross-references, which are present in all the friendly cases collected, signals the *division of argumentative labor* between the two companies' boards. In fact, the T-Board assumes its argumentative commitment in the introduction of its

recommendation letter and makes reference to the bidder's letter for several further aspects of the offer.

Through this specific move, the bidder appears to state that the exposition of the fundamental reasons why shareholders should accept the proposal is province of T-directors. In other words, BAE refrains from directly advising Detica shareholders, preferring to embrace the position of Detica directors.

An argumentative interaction takes place through the offer document which takes the form of a conventionalized critical discussion, including the offer made by the bidder to T-shareholders and the advice given by T-directors.

The confrontational trigger, or *initial situation*, of this discussion is substantially affected by Phase 1(a) of the acquisition process, in which the two companies' board have found an agreement over the deal. The result is a common standpoint which they jointly defend in front of the deciding shareholders: *+p: shareholders should accept the offer*. We could say that the envisaged merger has already took place at the argumentative level between the directors. The two sides' positions, points of views, evaluations, have flowed into a single, merged, combined, shared, opinion.

The distribution of tasks coincides with a fundamental *procedural starting point*, allocating the respective burdens of proof: exactly as requested by the Code, the T-board assumes the task of giving the reasons why the offer has to be accepted, while the bidder covers the more specific issue related to the reasonableness of the underlying acquisition.

At the level of *material starting points*, we should remark that the asymmetry of information between directors and shareholders is expected to strongly influence the conventionalized opening stage. This will emerge more clearly in chapter 4.

The same holds for the argumentative means, which will be the focus of the next chapter. The Code imposes specific constraints to analogy-based arguments, as any bases for comparison must be clearly indicated and, more specifically, if past stock prices are recalled, this must include at least the price of the day before the commencement of the offer period⁹³.

The outcome of the argumentative activity coincides with the eventual decision

⁹³ Rule 24.2 (g): "if any document published by the offeror contains a comparison of the value of the offer with previous prices of the offeree company's shares, a comparison between the current value of the offer and the price of the offeree company's shares on the last business day prior to the commencement of the offer period must be prominently included, no matter what other comparisons are made".

of shareholders, which is officially announced by the bidder through press releases. However, in these announcements no reason for the decision is made explicit. Therefore, it is not possible to establish whether the final decision coincides with an actual resolution of the difference of opinion. More in general, the target shareholders play the role of silent antagonist as their doubts or criticisms never become explicit. The difference of opinion and the deriving argumentative discussion are projected by the directors, who develop their argumentation presumably by anticipating possible objections.

In Figure 3.4. the BAE's bid for Detica is reconstructed as an argumentative activity type.

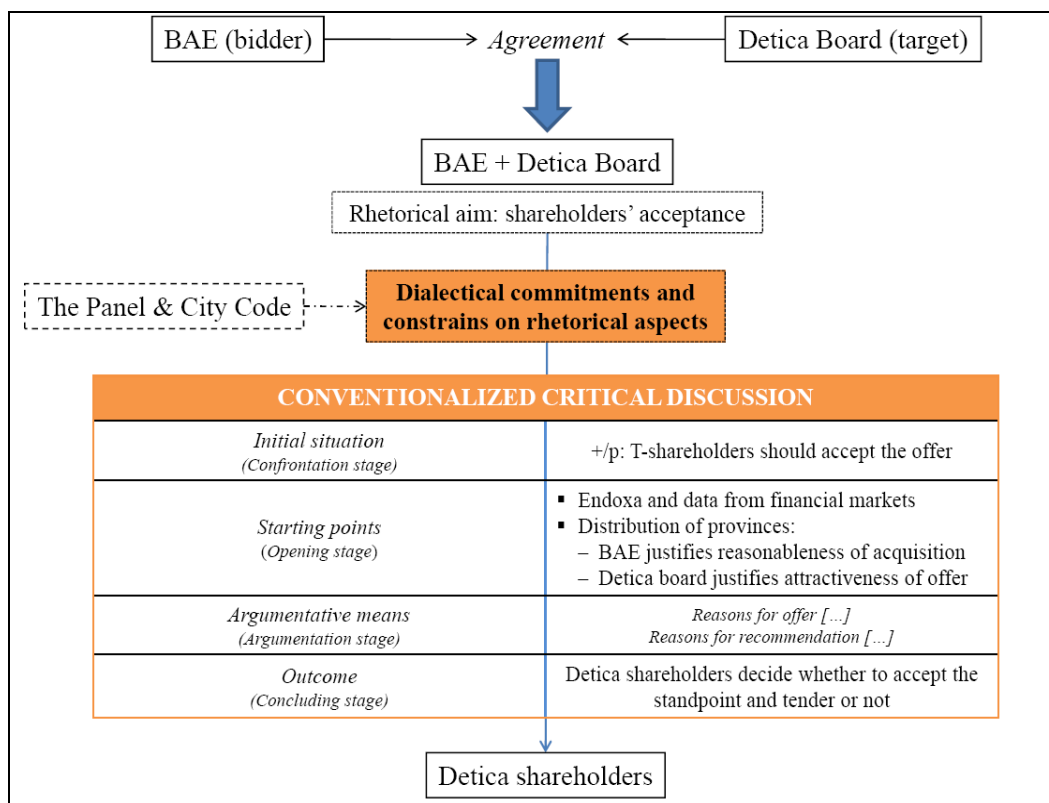


Figure 3. 4. Friendly bids as conventionalized argumentative discussions.

3.3.2. Variant 2: the hostile bid

In hostile bids, the proposal made to T-shareholders is not recommended by the

T-Board. Therefore, a clear conflict emerges between the opinion expressed by the T-board and the virtual standpoint that the bidder holds, namely that T-shareholders should accept the offer. In friendly deals, T-directors *adopt* the proposal, contributing to its final formulation, which they too eventually “propose” to shareholders. This support is made visible already in the firm intention announcement, jointly made by the two boards and including the T-board’s recommendation and related reasons.

If, instead, we consider the relevant texts collected for the hostile cases, a much more complex situation emerges. Table 3.5⁹⁴ shows in chronological order the documents characterizing three hostile bids included in the corpus. We can see that the offer period starts with an announcement by the bidder, followed by an announcement by the target. As the name suggests (Re:), this announcement represents a response to the bidder’s one, suggesting that the two boards are no longer coordinating their communication towards shareholders (see later). Subsequently, the offer document is published by the bidder, followed by the target defence document, in which the board fulfills its obligation to issue its reasoned opinion. Further announcements and defence documents follow.

	NASDAQ-LSE		CENTRICA VENTURE		KRAFT-CADBURY	
	NASDAQ	LSE	CENTRICA	VENTURE	KRAFT	CADBURY
1	2.5 ann.		2.5 ann.		2.5 ann.	
2		Re 2.5		Re to 2.5		Re to 2.5
3	Re Re 2.5		Offer doc		Offer doc	
4	Offer doc			Defense		Defense 1
5		Defense 1		Announcement	Re defense	
6	Re defense 1		Re defense			Defense 2
7		Defense 2				
8	Re defense 2					
9		Defense 3				
10	Re defense 3					

Table 3.5. Relevant texts in hostile bids

As Haan-Kamminga (2006) suggests, hostile bids envisage a battle between the two boards, which can be fought at three levels: (1) a *financial battle*, in which T-managers and directors try to make use of various takeover defenses, which however regulations aim at preventing as much as possible (see next section); (2) a *legal battle*, in

⁹⁴ 2.5 ann= Firm intention announcement; Re 2.5 = response to firm intention announcement; Offer doc = offer document; Defense = defense circular; Re defense = response to circular.

which the companies litigate in a court; but also and, more relevantly for us, (3) a *communication battle*, where one side attempts to defend its position against the other side's opposite view. In all these cases, the third form of battle has been clearly chosen. We shall see that what Haan-Kamminga calls a communication battle proves to be, more precisely, an argumentative battle.

3.3.2.1. *The conflicting positions and the absence of coordination*

Friendly bids are made manifest by the bidder and target joint announcement. In hostile offers, instead, only the bidder announces the proposal (cf. Table 3.5):

- 6.:** The Board of The Nasdaq Stock Market, Inc. ("NASDAQ") today announces the terms of Final Offers to be made by Nightingale Acquisition Limited ("NAL"), a wholly owned subsidiary of NASDAQ, for the entire issued and to be issued share capital of London Stock Exchange Group plc ("LSE"). [...]

An attractive offer which fully reflects both LSE's standalone prospects and an appropriate premium.

NASDAQ appreciates LSE's strong standalone growth prospects. [...] NASDAQ believes this potential, as well as the significant synergy benefits of a combination, are fully reflected in its offer price [...] (*NASDAQ-LSE, firm intention announcement, 20.11.2006*).

- 7.:** Centrica Resources announces the terms of a final cash offer to acquire the entire issued (and to be issued) share capital of Venture not already held by Centrica Resources.

[...] Centrica believes that the Offer represents a compelling opportunity for Venture Shareholders to realise the value of their Venture Shares in cash at a significant premium to Venture's pre-bid speculation share price and at a time of continuing economic uncertainty and market volatility. (*Centrica-Venture, firm intention announcement, 10.07.2009*).

6. and 7. show that the bidder also assumes the argumentative task that in friendly bids is assumed by the T-board only. The standpoint stating the attractiveness of the offer is advanced ("An attractive offer"; "Centrica believes that the Offer represents a compelling opportunity for Venture Shareholders to realize the value") and reasons are given in its support ("which fully reflects both LSE's standalone prospects and an appropriate premium"; "in cash at a significant premium to Venture's pre-bid speculation share price and at a time of continuing economic uncertainty and market

volatility”).

The offer announcement and document do not contain the T-directors’ opinion, which instead is fundamentally ignored. Thus, though not wholly surprising, the two sides do not coordinate their communicative actions at all. The firm intention announcement is followed by a separate announcement published by the target company, while the offer document does not contain the letter or any statement from the T-directors (cf. Figure 3.5)⁹⁵.

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Figure 3. 5. NASDAQ’s offer document: table of contents

In the offer document, the bidder assumes the burden of proof also in relation to the acceptability of the offer:

- 8.:** I am writing to you today on behalf of the Board of Infinis Energy to set out the terms of the Offer, to explain the background to and reasons for the Offer and to seek your acceptance of the Offer (*Infinis-Novera, offer document, 12.10.2009*)

⁹⁵ As can be seen in Figure 3.5, the letter to LSE shareholders is officially sent by Nightingale Acquisition Limited, which was the vehicle used by NASDAQ for the exclusive purpose of acquiring LSE.

- 9.:** This document sets out the detailed terms and conditions of the Final Offers and explains why NASDAQ believes its Final Offers are attractive to all LSE Shareholders (*NASDAQ-LSE, offer document, 12.12.2006*).
- 10.:** I am writing to you today, on behalf of the Board of KiFin, to set out the terms of the Offer, to explain the background to and reasons for the Offer and to seek your acceptance of the Offer (*KiFin-Minerva, offer document, 23.11.2009*)

Being the paragraph “Reasons for recommending the offer” absent, the bidder includes its argumentation in favor of the acceptance, either in the introductory paragraph or in the paragraph “The offer”.

In some cases, the offer document is partially modified in its structure, transforming itself into a more rhetorical and promotional text. For example, when Ryanair attempted for the second time to acquire AerLingus, the first pages of its offer document (cf. T.5.3.2) were characterized by a style resembling a lot that of defense circular. Another interesting example is Kraft’s offer document containing the proposal to acquire Cadbury. The assumption of the burden of proof is confirmed by the macro structure of the text: beside the paragraphs typically composing the offer document, further paragraphs are added (3-9), each one devoted to a specific argument in favor of the proposal (cf. Table 3.6).

BAE-Detica	Par.	Kraft-Cadbury
Introduction	1	Introduction
The Offer	2	The Offer
Irrevocable Undertakings	3	The Offer represents a substantial premium
Information relating to BAE Systems	4	The Offer represents an attractive multiple
Information relating to Detica	5	Kraft Foods’ current trading and prospects are strong
B&R for the Offer	6	Kraft Foods’ share price
Financing of the Offer	7	Kraft Foods’ estimated synergies have been carefully evaluated and are in line with precedent transactions
Management and employees	8	Kraft Foods is a unique fit for Cadbury and is the only offeror
Detica Share Schemes	9	Kraft Foods will remain financially disciplined
Break Fee and Implem. Agreement	10	Information on Kraft Foods
UK Taxation	11	Background to and reasons for the Offer
Overseas shareholders	12	Management, employees and locations
Procedure of acceptance of the Offer	13	Conditions
Settlement	14	Other key terms of the Offer
Delisting, comp. acq.n and re-registration	15	Next steps

Table 3. 6. The macro-structure of the bidder letter in the offer document: BAE vs. Kraft

T-directors' position is instead separately expounded in response statements and in the so-called defense circular. In fact, immediately after the bidder's announcement (usually the same day), the T-board publishes its own announcement in which the opposite standpoint is spelled out and related reasons are stated:

- 11.:** The Board of London Stock Exchange Group plc (the "Company") rejects Nasdaq's final* offer to acquire the Company for 1243p per share in cash. The Board firmly believes that the proposal, which represents only a 2 per cent premium to the market price at the close of business on 17 November 2006, substantially undervalues the Company and fails to reflect its unique strategic position and the powerful earnings and operational momentum of the business.

[...]

Commenting on the offer, Clara Furse, Chief Executive of the London Stock Exchange, said "We believe Nasdaq's final offer fails to recognise the outstanding growth record and prospects of our group on a standalone basis let alone the Exchange's unique global position." (*NASDAQ-LSE, response to firm intention announcement, 20.11.2006*)

- 12.:** The Board of Venture Production plc ('Venture' or the 'Company') notes the announcement by Centrica plc ('Centrica') of an unsolicited final offer for Venture of 845p per ordinary share. Following a Board meeting, and having consulted its financial advisers, the Board has unanimously concluded the offer is not in the best interests of shareholders and should be rejected by shareholders.

The Board has concluded that Centrica's offer substantially undervalues Venture given its near and long term prospects and the strategic position and high quality of its UK gas reserves and resources. (*Centrica-Venture, response to firm intention announcement, 07.12.2009*).

As clearly emerges by comparing 6. and 7. To 11. and 12. respectively, the bidder and the T-board hold two opposite standpoints in relation to the acceptability of the offer. The bidder states that the offer is attractive and should be accepted by T-shareholders, while the T-directors externalize their belief that the proposal undervalues the company and should, therefore, be rejected.

Between the two companies' managers and directors there is no direct discussion. Phase 1(a) has probably not occurred and, in any case, has been unsuccessful. Now both sides directly address T-shareholders with their own standpoint.

- 13.:** LSE posted a circular on 19 December 2006 setting out why the LSE Board believes you should reject NASDAQ's offers. In this response document we explain why we believe 1,243 pence per LSE Ordinary Share is a full and fair price and you should accept our offers. (*NASDAQ-LSE, circular to shareholders, p.8, 8.1.2007*)

Two reciprocally contradicting opinions must be reconstructed⁹⁶, reflecting the two mutually exclusive alternatives which shareholders are confronted with:

- **ISSUE**

p: should LSE shareholders accept NASDAQ's offer?

- **PARTIES and STANDPOINTS**

NASDAQ: +/-p

LSE Board: -/p

LSE shareholders: ?/p

Two critical discussions are implied by this reconstruction. One envisages NASDAQ as protagonist of a positive standpoint ("shareholders should accept the offer"); the other envisages the LSE Board as protagonist of a negative standpoint ("shareholders should not accept (= should reject) the offer").

However, the two implied discussions are mutually connected: the two opposing sides are arguing about the same issue, they are addressing the same audience with their own alternative standpoint and, moreover, they both claim to refute the reasons advanced by the other side. Not by chance, many statements are labeled as "responses". In fact, when writing to shareholders, the arguers not only pretend to rationally support their position but also manifest their intention to counter the other's argumentation, as the following examples show:

- 14.:** In addition to setting out this new information, this circular addresses many of the misleading assertions made by Nasdaq in its document issued on 8 January 2007. (*NASDAQ-LSE, defense circular, p. 2, 18.1.2007*).

⁹⁶ We must distinguish between contrary or contradictory oppositions. Two statements are contrary if they cannot be both true but can be both false ("the combination will produce an abnormal return" vs. "the combination will produce a negative return"); contradiction arises when the truth (falsehood) of one proposition excludes the truth (falsehood) of the other, as no mediated value. Now, because T-shareholders have no third alternatives – they can either accept or reject the offer – the two standpoints contradict each other.

- 15.: LSE claims to have adopted proactive balance sheet management to return capital to Shareholders. In reality, 76 per cent. of capital returned in the last four years was either a direct response to an unsolicited bid (entirely outside LSE's control) or an exceptional distribution from the sale of real estate (*NASDAQ-LSE, circular to shareholders, p. 11, 8.1.2007*).
- 16.: In these announcements KiFin made a number of claims that your Board rejects. I am writing to you now to respond to those claims(*KiFin-Minerva, second defense circular, 23.12.2009*)
- 17.: Aer Lingus have once again shown they cannot be trusted. Aer Lingus today claim that "we expect to achieve profit overall in 2008". Unfortunately for Aer Lingus shareholders, the reality is that Aer Lingus has incurred substantial - as yet undisclosed - exceptional costs, and companies have to pay tax, so the result will be another year of substantial net losses (*Ryanair-AerLingus, response statement, 22.12.2008*)

Hence, though not directly communicating each other, the B-and T-directors maintain a sort of dialectical interaction, as the commitments implied by the speech acts performed by one side are criticized by the other side.

The resulting conventionalized critical discussion envisaging a *confrontational trigger* which is made of two opposite standpoints. Such a competitive scenario however constitutes a particular joint activity, presupposing a shared goal. We could say that, by accepting to fight an *argumentative battle*, both companies' directors implicitly agree to engage in a sort of critical debate in front of the same audience, in which their respective standpoints are critically assessed and eventually accepted/rejected.

Thus, the crucial *procedural starting point* coincides with the mutual adherence to fight the battle argumentatively in the public arena of financial markets: each side is ready to defend its standpoint and attack the other's arguments. The *material starting points* include one's own and the other commitment store⁹⁷ (Hamblin 1970). However, in 14. we remark that LSE directors state their intention to address "many" misleading assertions by NASDAQ, not all of them. This suggests that each side will try to frame the discussion in its own advantage, in particular by creating the most expedient *opening*

⁹⁷ The notion of commitment store was introduced by Hamblin (1970):

"A speaker who is obliged to maintain consistency needs to keep a store of statements representing his previous commitments, and require of each new statement he makes that it may be added without inconsistency to this store. The store represents a kind of persona of beliefs; it need not correspond with his real beliefs, but it will operate, in general, approximately as if it did. We shall find that we need to make frequent reference to the existence, or possibility, of stores of this kind. We shall call them commitment stores: they keep a running tally of a person's commitments" (p. 275)

stage on which the argumentative means can be constructed.

This battle develops well beyond the documents requested by the Code (cf. table 3.5), numerous reciprocal responses are published. Plausibly, this is bound to the fact that, in hostile offers, there is a more decisive pursuit of the rhetorical aim. Intuitively, the simultaneous presence of an opposite view to the offer makes the T-shareholders' acceptance far from being granted. Identically, the emergence of a bidder, wishing to persuade T-shareholders to tender against the will of the T-Board, forces the latter to actively react in order to prevent this undesired outcome.

In Figure 3.6. this complex conventionalized critical discussion is reconstructed by referring to the NASDAQ's bid for LSE.

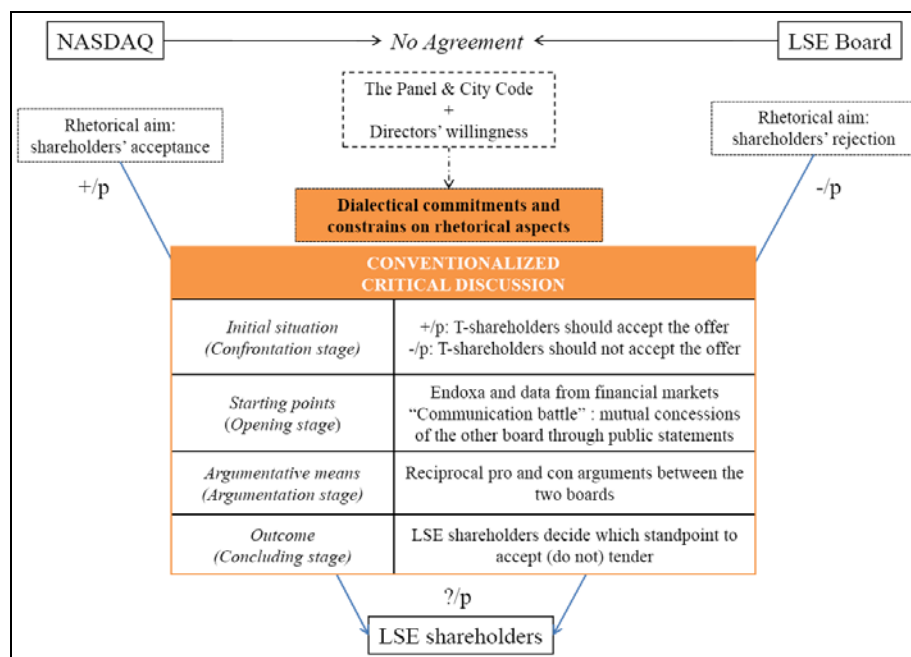


Figure 3. 6. Hostile bids as conventionalized argumentative discussions.

4. Argumentative strategies in friendly bids

Chapter 3 has demonstrated that takeover bids must be considered an argumentative activity type, as they envisage communicative interactions which involves argumentation in a relevant way.

This and the next chapters the argumentative strategies that are used by directors in the context of these activity type are analyzed. In this chapter, we focus on friendly bids, while in chapter 5 we shall consider hostile bids.

4.1. Procedure of analysis

On the basis of the texts collected, the argumentative analysis of friendly bids has been accomplished throughout the following steps:

- A. The BAE-DETICA has been selected as prototypical, functioning as heuristics to identify the relevant argumentative passages.
- B. Once the argumentative passage is identified, it has been reconstructed through the pragma-dialectical approach, in order to obtain an *analytic overview*, including in particular: the issue under discussion, the parties and their position (standpoint), the arguments advanced and their structure.

Following the method proposed by Pragma-Dialectics (cf. van Eemeren et al. 1993; van Eemeren et al. 2002), the analytic overview reconstructs the argumentative interaction on the basis of the ideal model of critical discussion. Thus, the *confrontation stage* is reconstructed by identifying the issue at stake, the protagonist and its standpoint and the antagonist. A non-mixed difference of opinion is distinguished from a mixed difference of opinion as the former envisages a protagonist advancing a standpoint and an antagonist casting doubts; in the latter, both holds their own standpoint and cast doubts on the other's standpoint. Also, single and multiple differences of opinion are distinguished, depending on whether one or more issues are at stake.

The *opening stage* is reconstructed by eliciting the relevant procedural and material starting points (endoxa and data). The overview of *argumentation stage* consists in showing how the material starting points support the standpoint, distinguishing different structures of argumentation: single, multiple, compound and subordinate (cf. Snoeck Henkemans 1997).

- C. On the basis of the analytic overview, the crucial argumentative moves are analyzed in their inferential configuration, through the AMT and its Y-structure (cf. Rigotti & Greco Morasso 2010; Rigotti & Palmieri 2010).

As explained in Chapter 2, the AMT reconstructs the inferential configuration of arguments by distinguishing two components: the topical component is based on a locus which generates a maxim, corresponding to the major premise of an hypothetical syllogism in which the conclusion coincides with the standpoint; a material component, which, by conjoining an Endoxon and a Datum (the latter usually coinciding with the part of the argument that is made explicit in the text), grounds the minor premise of such syllogism. In order to visualize this configuration, Rigotti and Greco Morasso propose the Y-structure, so called because its forms recalls the letter Y (see Figure 4.1).

For example, imagine an analyst who says: “Certainly, Company ABC will not pay dividends this year, because it chose to reinvest all its profits into a new project”. The analytic overview reveals that the arguer is defending the standpoint “ABC will not pay dividends” with the argument “ABC chose to reinvest all its profits into a new project”. The latter represents a datum which is linked to the standpoint by a relation of *alternativeness* as the use of profits for reinvesting excludes that such profits can be distributed. Thus, the *locus from alternatives* is concerned (see Annex 2 for the taxonomy of loci proposed in Rigotti (2009)). The maxim is: “If an action alternative to x is decided for, x will not be undertaken”; by combining this maxim with the minor premise “ABC chose to undertake an action alternative to paying dividends”, we obtain a conclusion which coincides with the standpoint (“ABC will not pay dividends”). However, the minor premise is not at all ensured and must be grounded on material starting points. More precisely, the minor premise is derived from the conjunction of the datum (“ABC has decided to reinvest all its profits into a new project”) and the implicit Endoxon (“For a company, distribute profits (dividends) and reinvest profits are two mutually exclusive alternatives”). The final result is shown by the Y-structure in Figure 4.1.

- D. Identify significant instances of strategic maneuvering and characterize them in the aspects of topical choice, audience adaptation and presentational device.

- E. The analysis is made for other cases of the corpus in order to verify its regularity and, possibly, bring to light interesting variants of the moves identified.

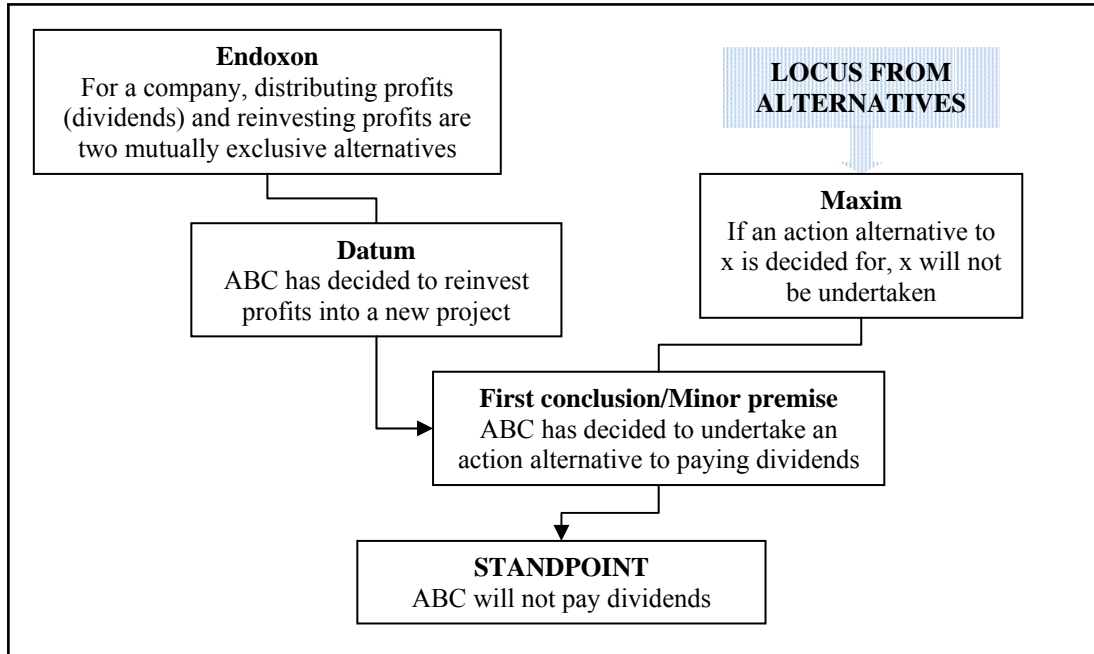


Figure 4. 1. The AMT's Y-structure. Example of application

4.2. The distribution of argumentative tasks as a strategic move

In chapter 3, we discover that the argumentative discourse characterizing friendly bids features a coordination between the bidding and target directors, in which the former refrains from making explicit their positive standpoint in relation to the acceptability of the offer. Simply, the bidder makes reference to the T-board's positive recommendation.

This choice, besides showing respect for the target company and its institutional structure, could also have a fine argumentative effect, in which a special kind of appeal to T-directors' authority is made. In general, the appeal to authority is a type of argument in which the acceptability of the standpoint is based on the character (ethos) of someone who endorses the standpoint. Rigotti (2006, 2009) classifies the "from authority" within the *complex loci*, as it features some traits of the *locus from efficient cause* (the speaker is the efficient cause of the discourse), but concerns the discourse itself and not the world

which the discourse refers to. The typical maxim generated by this locus is “if p is said by an authority in the field where p belongs, then p is true” (cf. Walton 1997).

It is crucial to point out that, in these types of argument, the authority itself is the argument, which means that the acceptability of the standpoint only is at stake. Now, depending on the type of proposition which the standpoint consists in, different requirements need to be fulfilled by a person to be deemed of authority. Table 4.5⁹⁸ (inspired by Walton 1997) indicates these requirements in relation to the type of proposition involved in the standpoint.

Types of utterance	Sources of authority
Information	Position to know, honesty
Knowledge	Scientific/technical competence, honesty
Judgment	Wisdom, honesty
Advice	All above sources, benevolence

Table 4.1. Sources of authority according to the type of standpoint

In the case of target directors, the type of speech act advanced when formulating their recommendation is an advice, for which five sources of authority are foreseen: *position to know*, *sincerity*, *technical competence*, *wisdom* and *benevolence*. Therefore, when an advice is at stake, a more specific maxim is activated: “if x is advised to pursue action A by a well-positioned, sincere, competent, wise and benevolent agent, x should pursue A”. In my opinion, the bidder’s respect of T-directors’ province has to do with these requirements. In fact, in relation to the any utterance bound to the situation of the target company, T-directors, in virtue of their position, are more authoritative: belonging to the company, they are in a *better position to know* its value and long-term prospects; the fact that they have been elected by shareholders presupposes that they have been recognized as *competent* and somehow *wise*; their mandate imposes them *sincerity* and *benevolence* towards shareholders. Similarly, B-directors are “authorities” in relation to their company and its business and, being the initiators of the acquisition, they are the most competent sources of information about it.

⁹⁸ A first version of this table appeared in Rigotti, Greco Morasso, Palmieri (2008). Financial Argumentation. Argumentum elearning module. www.argumentum.ch.

In order to work, the bidder's strategy must be supported by an important presupposition, coinciding with the Endoxon "Corporate directors are sincere and benevolent", which means: they are agents acting in the best interests of shareholders. In the previous chapters we have seen that the actual plausibility of this Endoxon, is highly discussed and is far from being a proposition that can be taken for granted (see the distinction between the shareholders-welfare and the managers-welfare hypotheses). Because of agency problems, T-directors could recommend an offer which is not expedient for shareholders. Thus, the actual reasons put forward by the T-Board must be assessed.

4.3. The reasons advanced by the T-directors

Let us start from the paragraph, included in the offer document, named "The Offer", which indicates, as requested by the Code⁹⁹, the terms of the financial proposal (see Annexes, T.3.1.1). The price offered for Detica shares is not only indicated but also compared with other values of the same security, in order to bring to light the premium included in the offer's price. (lines 9-17)

If companies decide to make these comparisons, the City Code imposes to include at least the difference between the offer price and the share price on the day before the commencement of the offer period, that is the day before the announcement of a possible offer or, if this announcement is not made, the day before the firm's intention announcement (cf. section 3.3.1.1). The first bullet point fulfills precisely this requirement: the offer price is 57% higher than the closing price of the day before Detica announced a possible offer.¹⁰⁰ The second and third bullet points indicate higher premiums implied by different comparisons. By considering the average price of (a) the 1-month and (b) the 6-months prior to 17 July, further possible rumors, speculations, anticipations are neutralized.

⁹⁹ Cf. Rule 24 (d): "the offer document [...] must include:[...] (iv) details of each class of security for which the offer is made, including whether those securities will be transferred "cum" or "ex" any dividend and the maximum and minimum percentages of those securities which the offeror undertakes to acquire; (v) the terms of the offer, including the consideration offered for each class of security, the total consideration offered [...]."

¹⁰⁰ "In response to recent press speculation, the Board of Detica confirms that it has received a preliminary approach which may or may not lead to an offer being made for the Company" (*Detica, statement re: Possible Offer, 18 July 2008*, source: *Investigate*)

It is clear that the closer the compared day is to the day of the offer period's commencement, the more the price might be disturbed by speculations on a potential bid; similarly, the more the compared day distances from the commencement offer day, the higher is the risk to purport the appreciation of the stock as the effect of a possible bid, when actually the real cause is the regular growth of the company's standalone business. Since there is no univocal rule for defining the basis of premium, potential room is left in the opening stage, to a strategic maneuver defining the reference price in the most expedient manner.

The fourth bullet point (line 18) reports the P/E multiple implied by the offer price, which represents a typical metric for valuating business units (cf. Damodaran 2007). No further data is given to the reader – such as the P/E multiple of other similar transactions or of firms comparable to Detica – for assessing such ratio. Then, it is stated that the already proposed dividend for Detica shareholders will not be cancelled by the acquisition (lines 23-26), entailing the irrelevance of this aspect for the eventual decision, because the dividend is in any case ensured.

The formal recommendation (see. T.3.1.3) is declared in the last paragraph of the target's letter, in which a formula is used, always occurring in friendly cases, that fulfils the Code's requirement to confirm that the competent advisers have been consulted (“the directors of [target name], who have been so advised by [name of advisers]...”)¹⁰¹.

The offer's acceptance is recommended because “terms of the offer are fair and reasonable” (line 3). The directors have personally agreed with the bidder on the proposal and now manifest their belief that accepting it would be the best action that shareholders could undertake.

This standpoint is argumentatively justified in the paragraph “Background and reasons for the recommendation” (see T.3.1.2), in which the board fulfils the commitment imposed by the Code to state the reasons for forming its opinion. This reasoning activity is formally presented as an explanation, in which the reasons (arguments) which have brought the board to decide to recommend the offer are

¹⁰¹ Following Rule 3 of the City Code, the directors of both companies must seek the opinion of advisers. However, the opinion expressed by the directors does not represent a report of the advisers' view. Simply, the directors should decide what to do only after having consulted with advisers and should disclose advisers' opinion. As a matter of fact, the two views always coincide, indicating either that the board is always ready to follow such an advice or that advisers are incentivized to support directors' position. By the way, advisers are appointed and paid by the company.

disclosed (“explain the reasons why the Directors of Detica...”, see *Introduction*). Since the eventual decision-makers are the shareholders, the disclosure of such reasons turns out to coincide with arguments by which shareholders ought to be persuaded to accept the offer. By explaining why directors have decided to recommend the offer, the Chairman wants to show that this decision was the product of a reasonable argumentation, which, as such, shareholders too should adopt. In other words, the reasons that have persuaded directors to believe that the offer is expedient should become shareholders’ own reasons.

Therefore, although apparently presented as an explanation, the discourse developed in this paragraph is essentially argumentative: besides fulfilling its legal obligations, the Board is addressing shareholders (“Dear shareholder”, see *Introduction*) and, by giving reasons, aims at convincing them to accept BAE’s offer. Let us describe how.

Initially, the board recalls the positive results achieved by the company and presents them as the effect of the strategy designed and executed by the management team (lines 1-10). Then, a series of data and facts are provided in support of the positive outlook and good prospects that the Board expects from Detica’s standalone business (see “*Current Trading and Outlook*”, lines 12-29).

At this point, the directors tackle the offer that they are recommending to shareholders. The claimed reasonableness of the offer is bound to the opportunity it would represent for Detica shareholders to realize their investment (lines 35-36), that is to achieve a relevant goal. We have to do here with an instance of *pragmatic argumentation* which is built on an ontological account of action. Since, in general, an action is defined as an event intentionally caused by an agent pursuing a goal that fulfills a desire or a commitment, all inferential connections which relate means and ends, desires or commitments and actions, knowledge and decisions to activate a causal chain, etc. belong to this ontological relation. In other words, they correspond to maxims generated by the locus *from final cause* (cf. Rigotti 2008).

The typical maxim generated by this locus is bound to the fundamental form of practical reasoning, which Walton reconstructs through the following scheme (cf. Walton 1990; Walton et al. 2008:323):

(A) I have goal G

- (B) Carrying out action A is a means to realize G
- (C) *Therefore*, I ought to carry out this action A.

What actually justifies the passage from (A) and (B) to (C) is precisely the typical maxim from final cause “if an action A is a means to realize the agent’s goal G, the agent ought to carry out action A”.

However, the fact that an action is potentially capable of realizing a goal – in the sense of producing an outcome coinciding with the envisaged possible world – is not sufficient to conclude that this action is reasonable and desirable (cf. Rigotti 2008). In the way in which we have formulated it, this maxim presupposes numerous conditions that should be brought to light and assessed in order to establish whether the underlying inference can be justified. Walton proposes to evaluate this scheme by means of critical questions that are based on the distinction between sufficient and necessary conditions for practical reasoning (cf. Walton 2007a). An acquisition could be sufficient for creating value but not necessary because, maybe, better solutions exist; likewise, selling a company could be necessary but not sufficient to make profit because other conditions, for instance a really adequate price, are needed in order to achieve one’s own goal.

Adopting a similar approach, Rigotti (2008) proposes an integrated ontology of action (see Figure 4.4) which intends to specify the conditions under which an action is reasonable, i.e. it is really capable of fulfilling the agent’s desire¹⁰².

¹⁰² Noteworthy, this approach is for numerous aspects identical to the basic principles of rational decision making developed within economic sciences. Indeed, as we already discussed in chapter 2, economics is a social science dealing with human behaviors and decisions concerning the allocation of scarce resources and the creation of new resources. Thus, at the heart of the economic phenomenon there is the human agent who, more or less rationally, attempt to achieve a certain goal. Within the Economic Thought, such action-based view has been particularly advocated and developed by the Austrian School (founded by Carl Menger’s *Principles of Economy*), which, in order to characterize its approach, introduced the concept of praxeology i.e. theory of action (von Mises 1949). Indeed, von Mises motivated his pragmatic approach on the basis that economics is a branch of the theory of human action (1962:73). Not surprisingly, numerous scholars belonging to this tradition have explicitly described their method as being based on verbal logic (cf. Kirzner 1973).

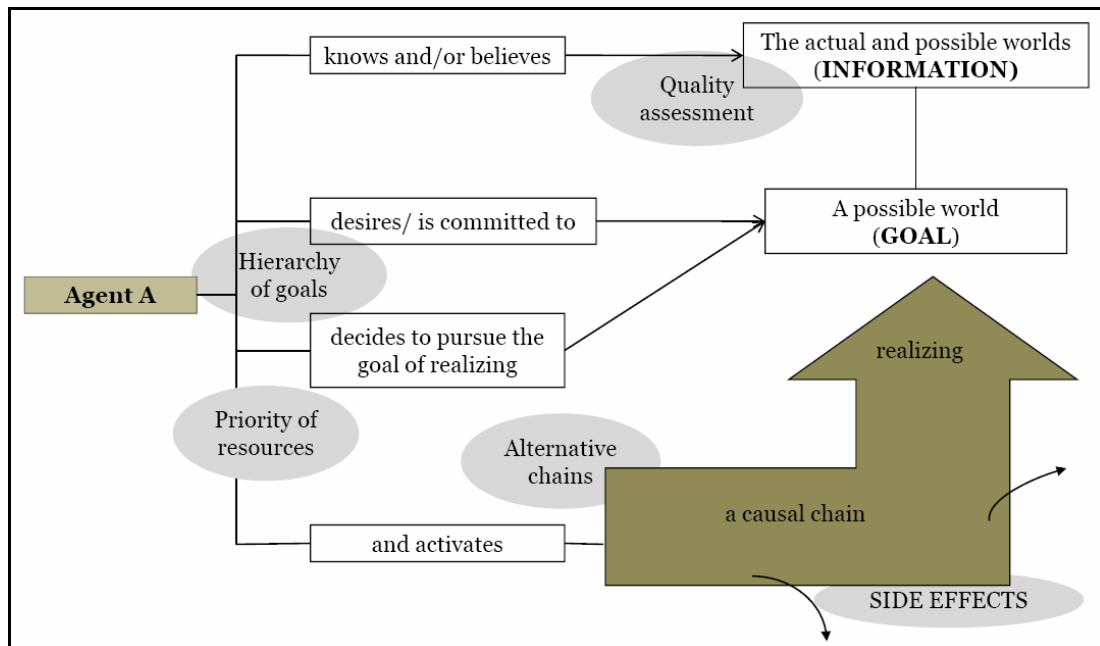


Figure 4. 2. The ontology of reasonable action (adapted from Rigotti 2008)

On the basis of this ontology, an action is reasonable if it is based on reliable information about the actual and possible worlds; it respects the agent's hierarchy of goals and priority of resources, ensuring that the application of such resources to the envisaged action does not prevent the agent from accomplishing a more important action which requires the same (scarce) means; it is comparatively better than any available alternatives, including the *default alternative* of not activating the causal chain; it activates a reliable causal chain (=a sequential process that will bring about the outcome coinciding with the agent's goal); the activation of the causal chain does not cause side effects which offset the benefits implied by the realization of the goal¹⁰³.

Indeed, Detica directors do not limit themselves to indicating the connection between BAE's offer and the goal pursued by shareholders, but advance more specific reasons in support of their standpoint. These reasons exploit, more or less explicitly, the just elicited requirements for reasonable action. In particular, the expediency of accepting BAE's offer is compared with the most immediate alternative available to

¹⁰³ Often, it is difficult to clearly distinguish between one or the other condition. For example, choosing one alternative implies the exclusion of another alternative and this might be undesirable (side effect); while the negativity of a side effect is assessed precisely against the hierarchy of goals thanks to which it could be tolerated because less negative than renouncing to realize our goal. In this case the typical reasoning from lesser evil is adopted (cf. Rigotti 2008; Spielthener 2010).

Detica shareholders, namely to reject the offer and continue to invest in Detica as a standalone company.

This alternative is immediately tackled by the Board. Notice that the sub-paragraph “*The Offer*” begins with the connective “notwithstanding”, which indicates that the benefits implied by the offer would, if the latter is accepted, offset those implied by the, nevertheless attractive, standalone option. If, on the one hand, the positive performances and good prospects of the target company would induce not to recommend the sale of such company¹⁰⁴, on the other hand, the presence of an even better opportunity for shareholders must bring directors to recommend the acceptance of this offer.

By stating that the company has positively performed and still has good prospects, the directors indirectly defends managers’ and their own conduct, pointing out that the offer represents an even better opportunity and not a remedy to the effects of a badly managed firm. And why accepting the offer would be better than continuing to invest in Detica’s standalone prospects? According to the Board, because the offer “provides Detica Shareholders with certainty of value at an attractive level, which reflects both the quality of the Detica business and its standing in its markets”. In other words, tendering shareholders would still realize a significant gain but at a lower risk (“certainty”), which evidently stems from the nature of the consideration: it is a cash offer, which, by definition, is absolutely the safest security.

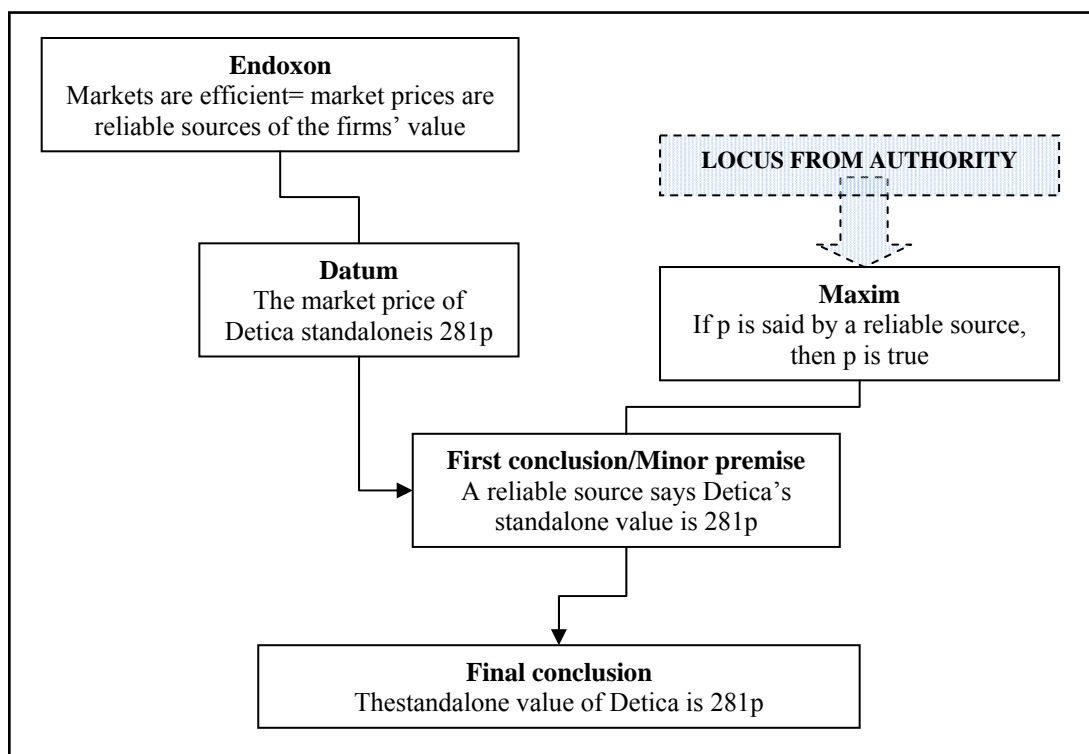
The attractive level of the offer would be proven by the premium over the market’s undisturbed share price of Detica. The computations previously made (and appearing also in the bidder’s letter) are recalled in this sub-paragraph as evidence that the level of the offer price is higher than the undisturbed price. In other words, the content of the paragraph “2. The offer” provides the data from which the superiority of BAE’s offer over the value assigned by the market can be inferred. In pragma-dialectical terms, the paragraph aforementioned represents a fundamental move of *opening stage*, in which the arguer assumes as part of the common ground that the undisturbed price of Detica is represented by the values so reported or computed. As a consequence, in the *argumentation stage*, the arguer can move from these data in order to support his claim.

¹⁰⁴ We will see that, typically, these positive facts are used in the defense from hostile bids to justify the Board’s rejection.

Notably, this argument presupposes *market efficiency*. Since in an efficient market, stock prices fundamentally reflect the intrinsic value of a company, stock prices can be used as sources revealing the value of a company. Instead, if the stock market is not efficient and, thus, Detica shares are undervalued – as the valuation hypothesis would suspect (cf. Shleifer & Vishny 2003) – an offer price above the undisturbed market price could actually be unattractive because the latter would not be really undisturbed but biased by information asymmetry and other forms of market's imperfections. Instead, if the efficient market's premise holds, then an offer to buy securities at a price higher than the market price would certainly represent an attractive proposal.

Therefore, the strength of this argument largely depends on an Endoxon affirming market efficiency, i.e. on whether market prices provide reliable information. The appeal to efficient market hypothesis can be considered as a peculiar form of *argument from authority*, in which the concerned “authority” is “the market” (see Argument Analysis 1).

As the integrated ontology of action indicates (cf. the oval “quality assessment”), information is crucial for practical decision-making, because it allows to adequately represent the actual world and figure out possible worlds. Different levels of knowledge can bring to strongly different decisions. Thus, a reasonable action requires to assess the quality of the available data and, in particular, of their source. In the specific context of finance, the level of market efficiency is clearly crucial in this respect. If markets are efficient, prices can be useful indicators and precious data for supporting reasoning processes leading to sound decisions; but, if prices significantly deviate from fundamentals, then a pragmatic argument grounded on an unreliable source of data could be totally irrelevant, leading to a sort of *ad verecundiam fallacy* (abuse of authority). Concretely, if Detica shareholders are actually *sitting on a goldmine* (Bradley et al. 1983) – which entails the intrinsic value of the shares is more than what the purported undisturbed prices reveals – the premium argument would clearly lose its strength.



Argument analysis 1. The attractiveness of the price under the assumption of market efficiency

Furthermore, two important aspects, implied by the acceptance of a BAE's offer should be considered: (1) Detica shareholders will lose their ownership; (2) the company will be acquired by and integrated into the bidder, with significant changes for its stakeholders, in particular employees.

Regarding the first aspect, it seems assumed that the relevance of ownership in companies with a highly dispersed stock is mainly bound to the financial rights associated with it and, so, with the opportunity to gain from the company's future profitability. Since the price includes a premium, Detica shareholders should recognize that a fair value is given to them in exchange of renouncing to these prospects. It is difficult to determine whether the premium actually represents a fair price. However, the directors state that the offer price "reflects both the quality of the Detica business and its standing in its markets", thus implicitly inviting shareholders to rely on their authority: in particular, directors are in the *position to know* whether Detica could produce cash flows which could justify the renunciation to BAE's price.

The second aspect is also tackled by the directors, who maintain that the

combination implied by the offer would bring important benefits to Detica and its employees (see lines 26-39), “since it will have increased resources to compete more fully and will benefit from the significant international footprint that BAE Systems will bring”.

The adverb “in addition”, which introduces this argument (line 36), seems to suggest that this reason represents, rather than a necessary condition combined with the financial one, a further, reinforcing, reason for accepting the offer and possibly for legitimating the deal in front of other stakeholders. By considering the pseudo-quotation of Detica Chairman, reported at the end of the summary of the firm intention announcement, we discover in fact that also another audience is involved:

18.: [...] Consequently, the Board is able to recommend this Offer not only to shareholders but also to Detica's wider stakeholder community (*BAE-Detica, firm intention announcement, 31 July 2008*).

According to the Board, the benefits which the offer provides to the company's business justify the recommendation¹⁰⁵ “not only to shareholders **but also** to stakeholders”.

¹⁰⁵ The term “recommendation” should not induce to believe that stakeholders are deciders like shareholders. The acceptance invoked by this “recommendation” is probably a more general consent, which could be certainly required for avoiding any reputation issue and, above all, possible post-deal integration issues.

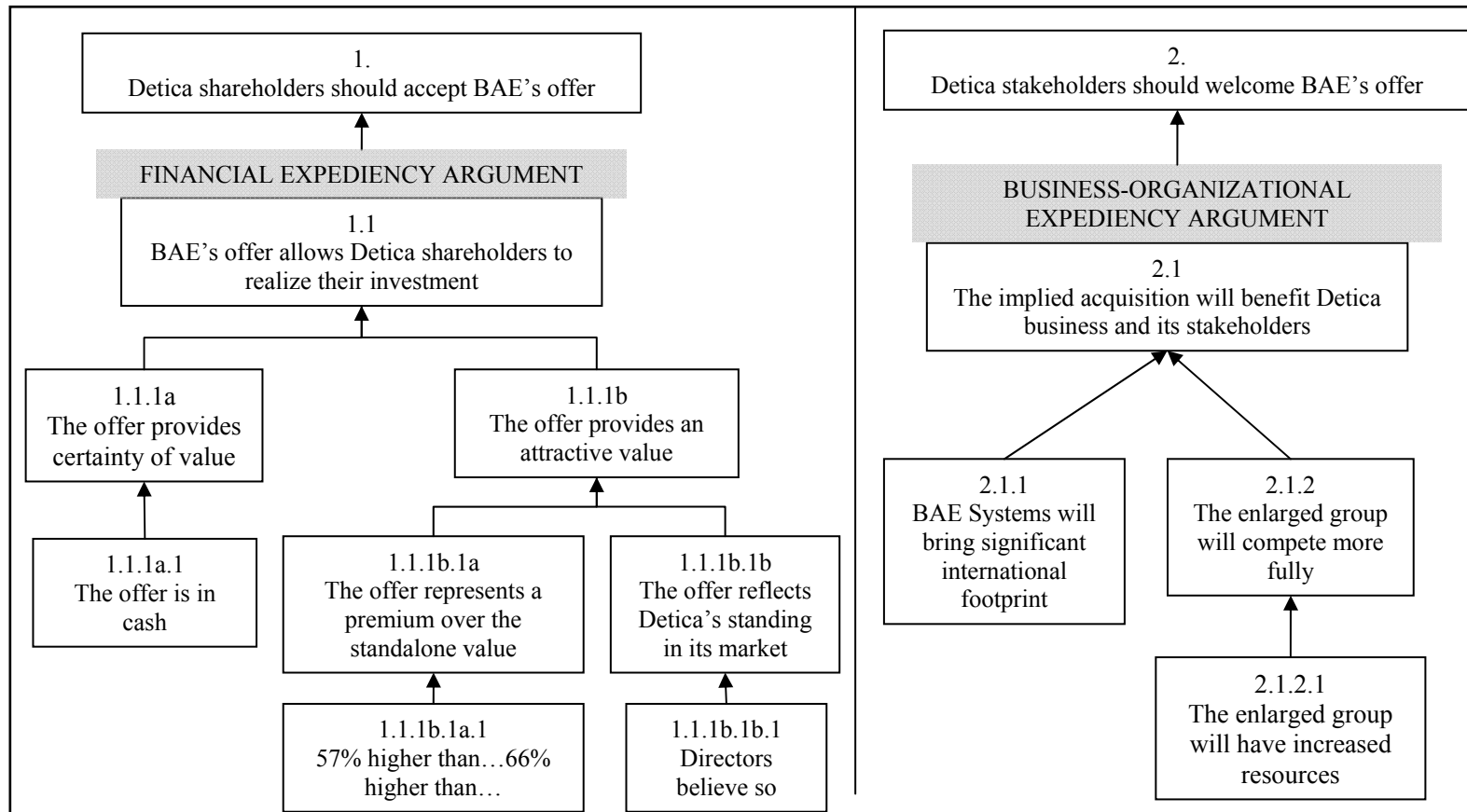


Figure 4. 3. Argument structure of Detica's recommendation: interpretation 1

At this point, two interpretations are possible, both entailing that we reconstruct a multiple critical discussion: one CD involves Detica Board and Detica shareholders and envisages the following *confrontation stage*:

CD₁

ISSUE – p₁: should Detica shareholders accept BAE's offer?

PARTIES and STANDPOINTS – Detica Board: +/p₁; Detica shareholders: ?/p₁

The other CD involves again the directors having the role of protagonist but the antagonist are not shareholders but other stakeholders (employees in particular):

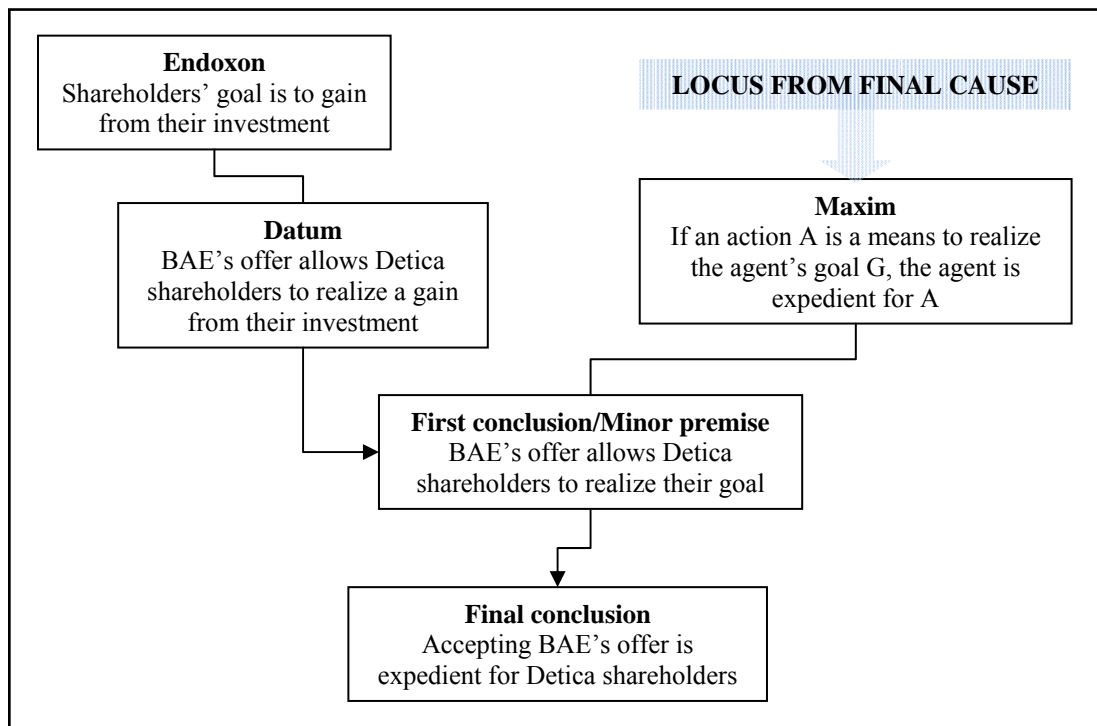
CD₂

ISSUE – p₂: should Detica stakeholders welcome BAE's offer?

PARTIES and STANDPOINTS – Detica Board: +/p₂; Detica stakeholders: ?/p₂

(I) According to the first interpretation, the “financial argument” intervenes in the first critical discussion (CD₁) in support of directors' standpoint, while the “business-organizational argument”, concerning the implications that accepting the offers will have on Detica, would support directors' standpoint in CD₂.

Following this interpretation, shareholders would be framed as pure investors whose solely goal is that of “realizing their investment”. In this view, although shareholders own the company, their very identity coincides with that of investors who bought shares in the hope of obtaining a return in the form of dividend or capital gain and not with the purpose of controlling the company, taking care also of its social and interpersonal dimensions. Now, since BAE's offer is judged as capable of realizing such financial expediency, we could conclude that it should be accepted. Argument Analysis 2 reconstructs this argument adopting the AMT. What appears as Datum is actually an *Argumentatively Established Fact* (AEF, see Rigotti & Palmieri 2010), which is further argued as the above structure indicates.



Argument Analysis 2. Opportunity to realize investment for Detica shareholders

In this interpretation stakeholders would be involved because the bid implies, once accepted, a combination between BAE and Detica, which will not affect Detica shareholders, but will significantly changes Detica's business and its organizational dimension. This represents a high concern for stakeholders, in particular employees who, being entitled to receive the offer document, should be considered as ratified participants who will certainly read the text.

(II) The second interpretation follows the approach adopted by the City Code and the European Directive, which requires target boards to take into account also the implications for the employees when advising their shareholders. In an argumentative perspective, we could say that the argumentation supporting the final drafting of the law has been based on an Endoxon envisaging a socially responsible shareholder.

Following this more comprehensive interpretation, the CD₂ remains the same, but the CD₁ changes. Here, the T-directors defend their standpoint with a compound argumentation, in which the financial and business-organizational expediencies are kept together as building a single decisional basis (cf. Figure 4.6). Here shareholders are not seen as pure investors but as people holding also a social preoccupation, either because

personally involved (e.g. they could be employees) or because they intend to be socially responsible. If this is truly the case, the information concerning the after-deal company would acquire their relevance and could either reinforce/weaken the acceptability of the offer or, in the most extreme case, could even bring to reject an offer that, from the strictly financial viewpoint, is attractive.

Figure 4.6 updates the argumentation structure in CD₁ only, as CD₂ remains the same. Interestingly, the hierarchy of audiences is overthrown when we move from one CD to the other. In CD₁ shareholders constitute the *primary audience* (van Rees & Rigotti, in press) while stakeholders are a *secondary audience*; in CD₂, stakeholders evidently represent the primary audience.

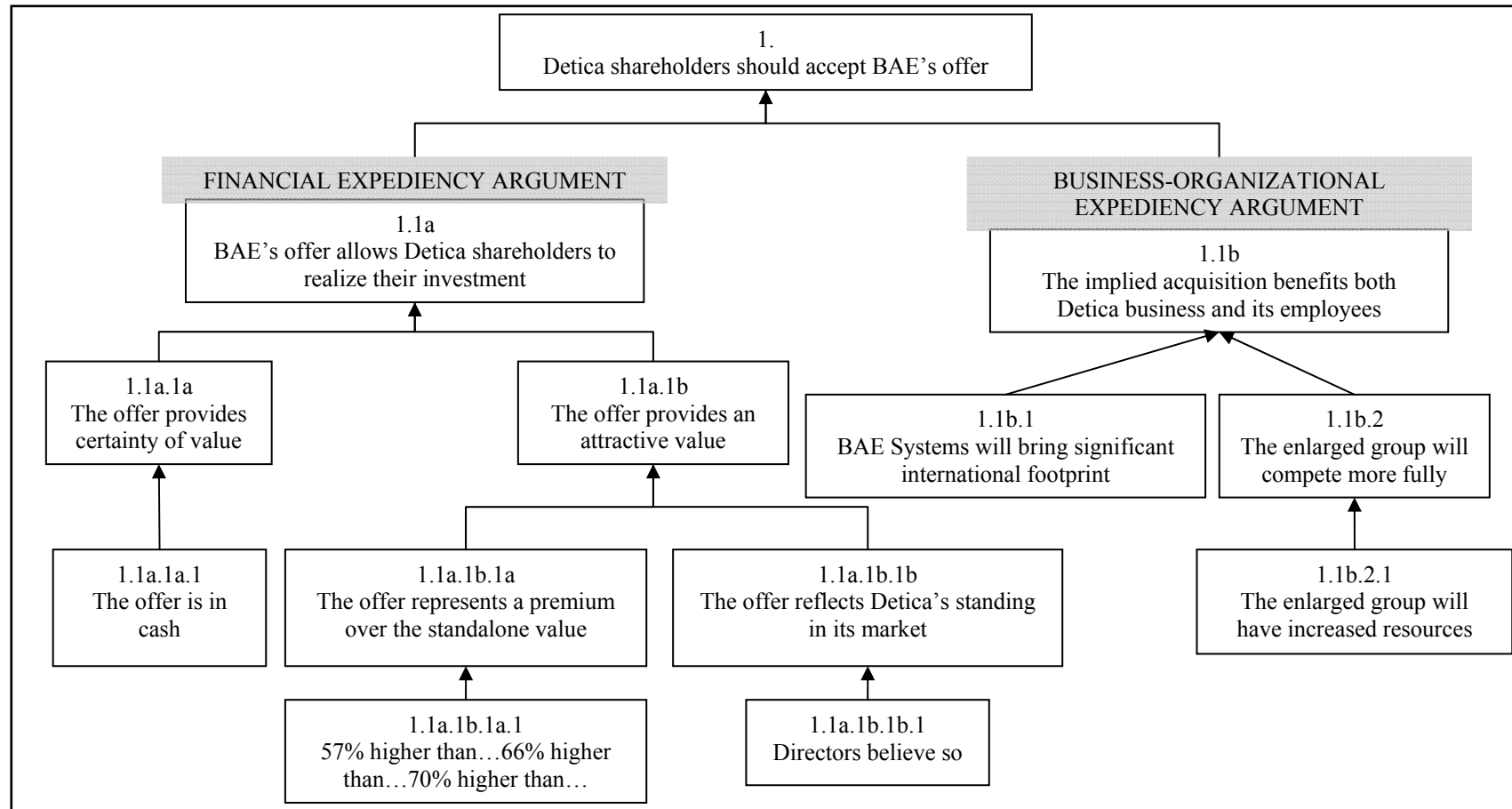
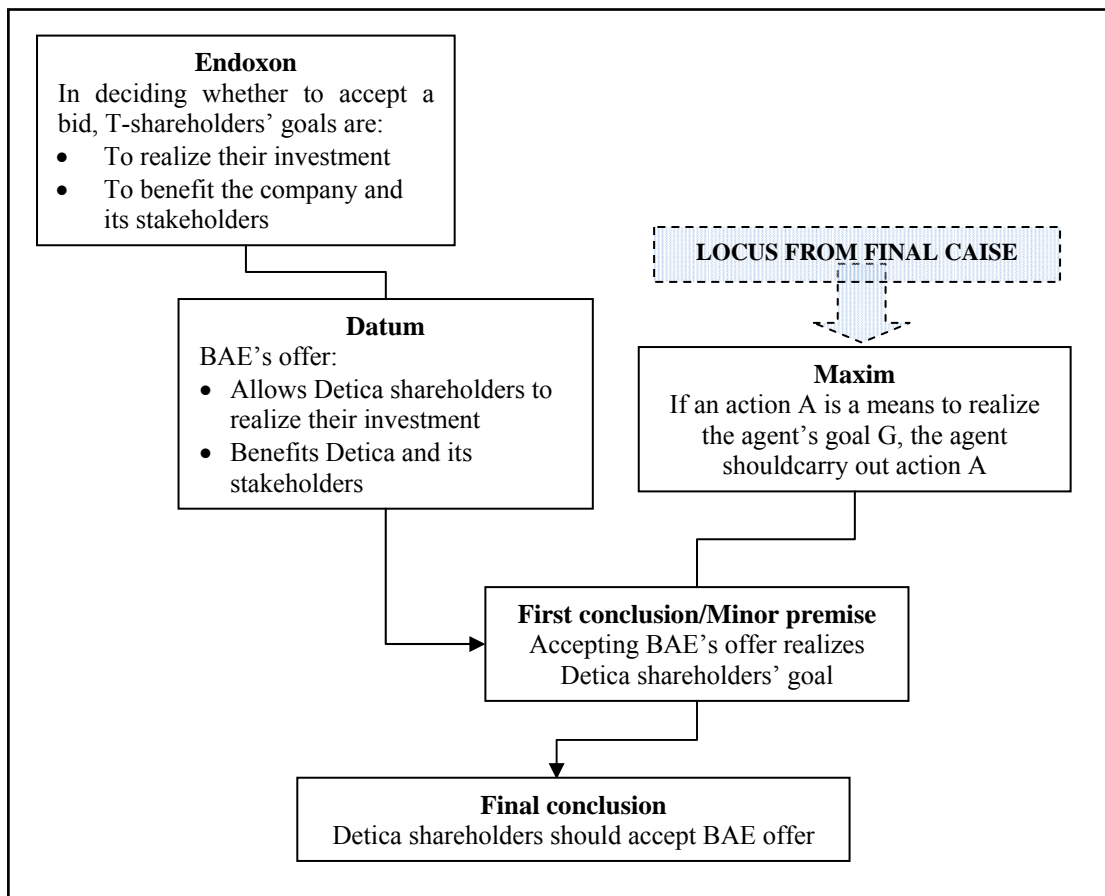


Figure 4. 4. Argument structure of Detica's recommendation assuming shareholders are concerned with the after-deal target

Following the AMT, a compound argumentation structure coincides with two or more data applying the same maxim¹⁰⁶ (cf. Rigotti & Palmieri 2010), as Argument Analysis 3 shows.



Argument Analysis 3. Combining financial and organizational reasons

¹⁰⁶ An example of compound argumentation often given by Pragma-Dialectics (cf. van Eemeren et al. 2002) sounds as “We should go at the restaurant because all stores are closed and we have no food at home”. Following AMT, this argument applies the *locus from alternatives*, whose deriving maxim would be “if all alternatives to an action x are excluded, action x should be chosen”. The fact that all stores are closed and the fact that we have no food at home correspond to two data, which, once conjoined with the Endoxon stating that “buying food and cooking food at home are the two only alternatives to going at the restaurant”, bring to the first conclusion that “all alternatives to going at the restaurant are excluded”. By completing the reasoning initiated by the maxim, we eventually reach our standpoint “We should go at the restaurant”.

If we consider the reasons for the recommendation in other friendly cash offers, we discover that they largely adopt the same argumentation structure of Detica, reported in Figure 4.5. This can be seen by looking at the related paragraphs reported in the Annexes (see. T. 3.2.1, T.3.3.1, T.3.4.1, T.3.5.1, T3.6.1).

For example, in recommending *Capita*'s offer, the directors of *IBS* put forward an argumentation that is almost identical to that set out by Detica (see T. 3.2.1). First of all, they maintain that positive outlook of the standalone company is outmatched by the offer (lines 3-5). The function of Detica's "notwithstanding" is analogously carried out here by the connector "while". Again, the premium over the undisturbed price – whose computation is reported in the subsequent sub-paragraph (lines 7-11) – and the certainty provided by cash are considered. Through the self-quotation concluding the summary of the firm intention announcement, we discover that the risks referred to by the directors are related, more in particular, to the current global crisis (my bold):

19.: "The IBS Board believes that the offer from Capita of 187.85 pence in cash per IBS Share provides both an attractive premium and certainty of value for IBS Shareholders **especially against the current backdrop of uncertainty in general economic conditions**" (*Capita-IBS, firm intention announcement, 5 June 2008*)

Investing is inevitably risky, but given the current economic crisis, to continue investing in IBS would be particularly risky. Therefore, renouncing to realize a certain value in order to enjoy very risky growth opportunities is not expedient. The implicit maxim at work here is "if renouncing to an action A brings benefits that do not overcome the benefits provided by undertaking A, action A is expedient".

Finally, the benefits for the company, and more specifically its customers and employees, are indicated. Detica directors claim that, with BAE, "Detica will have increased resources to compete more fully" (T.3.1.1, lines 37-38); similarly, the board of IBS maintains that Capita will "enhance IBS's competitive position" with its financial resources and expertise (lines 13-16).

Assuming interpretation (II), Figure 4.7 shows the structure of Capita's argumentation, which, as it can be seen, is very similar to that of Detica.

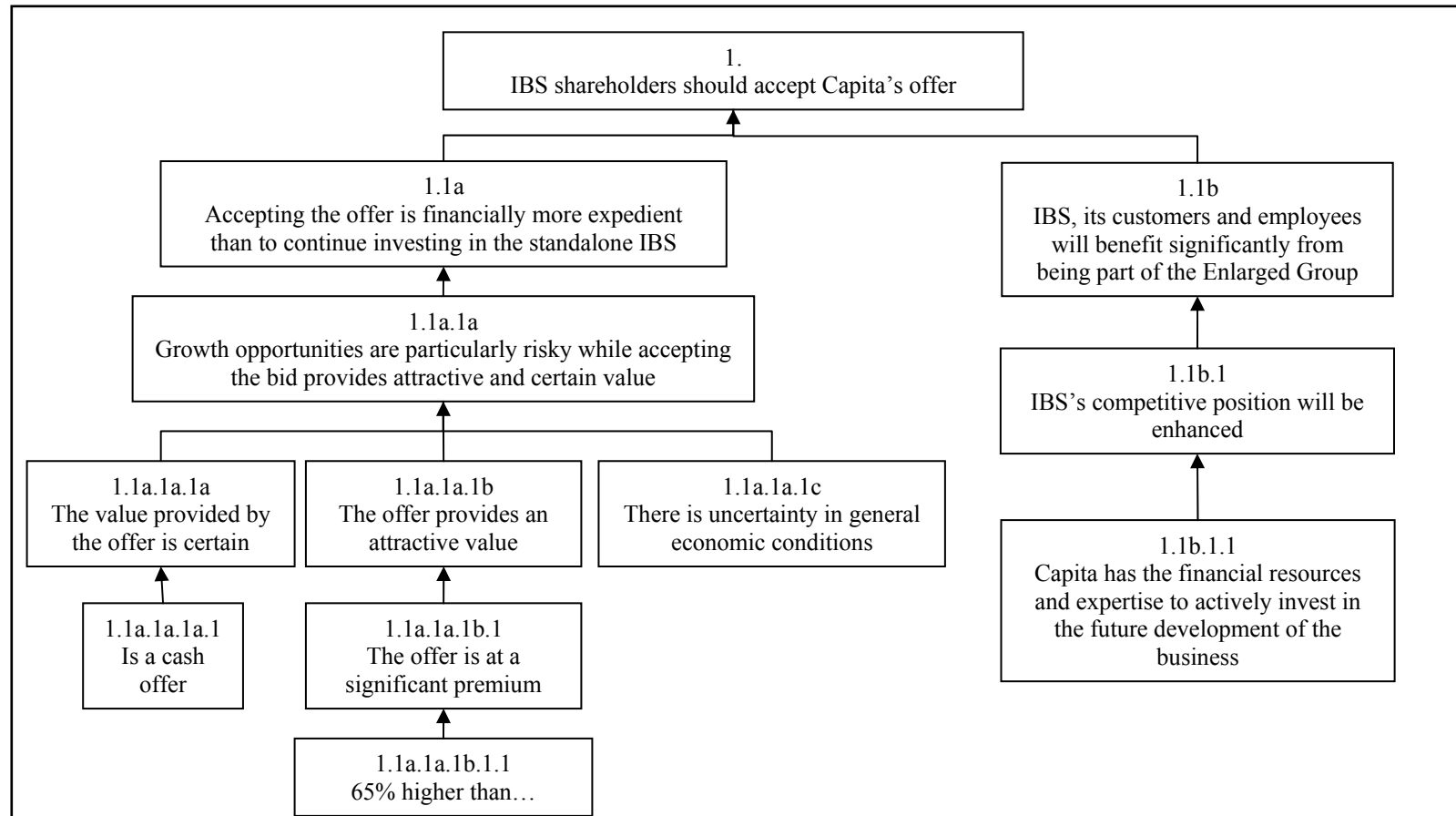


Figure 4. 5. Argumentation structure of IBS directors' recommendation

The importance of the implications on the target business and employees is particularly considered by *coffeheaven*, a company that has been recently acquired by *Costa*, a subsidiary of *Whitbread*. In fact, after highlighting the attractiveness of the offer using exactly the same words which were stated by Detica (see T. 3..3.1, lines 4-6), three subsequent items of the bullet list concerns, respectively, the opportunities that would arise for employees, the keeping of an important Polish subsidiary and the provision, by Costa, of additional resources enabling Detica to develop more than as a standalone (the connective, this time, is “whilst”) (lines 7-16). Again, the link with shareholders’ goal of realizing the investment grounds the pragmatic argument by which the offer should be accepted for its cash component and the premium over the undisturbed market price of the shares (lines 20-26).

The analysis of examples discussed above, reflected in Figures 4.5 and 4.6, show two fundamental aspects that are entailed by a takeover and that must be somehow taken into account in the decision: the *financial aspects*, strictly bound to the offer made to shareholders, and *business-organizational aspects*, related to the consequences that the acquisition/merger following the bid will bring at the corporate level.

In the following sub-sections we shall discuss them in detail, also bringing to light further argumentative moves.

4.3.1. The means of payment as argument

Now, for what concerns the financial aspect (represented by Argument 1.1 in Figure 4.5 and Argument 1.1a in Figures 4.6 and 4.7), it is clear that the means of payment is an important element as it entails different financial transactions. In cash offers, the T-shareholder ceases to invest and should be “compensated” for this (the idea of “realizing the investment”); in stock offers, the T-shareholders becomes shareholders in the transformed bidding company.

As a consequence, the advantages and disadvantages of the two forms of payment partially differ, affecting the topical potential of the arguer. For instance, in a stock offer it is not possible to use the ‘certainty argument’ as it is used in a cash offer. Indeed, relying on the already discussed cases and on the other cases of the corpus, we

find evidence that, in cash bids, the certainty and the premium are always stressed:

- 20.: “the Offer is such that the Directors believe it provides Detica Shareholders with certainty of value at an attractive level” (T.3.1.2, lines 33-34)
- 21.: “the Offer provides both an attractive premium and certainty of value for IBS Shareholders” (T.3.2.1, lines 4-5)
- 22.: “the level of the Offer, providing coffeeheaven Shareholders with certainty of value at an attractive level”(T.3.3.1, lines 4-5)
- 23.: “The value, timing and certainty offered by the terms of the Offer are, in the opinion of the Minster Board, more attractive to the Minster Shareholders than any other potential strategic option currently open to the Minster Board” (T.3.5.1, lines 22-24)
- 24.: “The value, timing and certainty offered by the terms of the Offer are more attractive to The Medical House Shareholders than any other potential strategic option” (T.3.6.1, lines 8-9)

In share-for-share proposals, being stock risky, we expect not to find the “certainty” argument but good reasons why T-shareholders should become shareholders in an enlarged company. As we said in chapter 3, from the financial point of view, T-shareholders gain if the stake they receive in the enlarged firm has a higher value than their current stock in the standalone target. The value of such new stake, in turn, depends on the future performances of the enlarged firm.

Let us consider all three cases of friendly stock offers included in the corpus, starting from *BTG*’s offer for *Protherics*. The directors justify their recommendation (T. 3.7.1) believing this to best serve the interests of shareholders (lines 23-24). This standpoint is supported by the preceding sub-paragraphs, as indicated by “therefore” (line 22). First of all, *Protherics* is described as a strong company having created significant opportunities for selling products and developing further (lines 6-9). Then, the directors argue in favor of the merger as a means for *accelerating* this developing process as the *BTG* would provide the critical mass for realizing the envisaged profitable business (lines 11-14). This argument centers around the concept of *casual chain* within the ontology of action (cf. Figure 4.4). It seems that the process through which *Protherics* intends to realize its business goal would be significantly improved through the combination in two fundamental aspects: it would be faster (“accelerate”) and would obtain the required “critical mass” on which it could be applied, thus adequately exploiting the significant potential created. The first aspect concerns time: especially in

competitive settings, “time is money”, not only in the sense that money has a time value – so that one dollar today is worth more than one dollar tomorrow –, but also in the sense that the sooner a gain opportunity is reached, the less the risk to lose such opportunity. The idea behind the “critical mass” is that a powerful instrument should not be spoiled and deserves an adequate context in which its usefulness can be fully enjoyed.

With such envisaged improvements and a reduction in costs (lines 14-16), value for shareholders would be created. Although the price of the offer includes a premium, which is indicated in the usual paragraph “The offer”¹⁰⁷, we remark that this datum is not exploited for justifying the recommendation. Rather, the focus is put on the profitability potential of combining the companies. Indeed, the concept of premium differs in cash and stock offers. In the first case, the additional value is real and can be immediately enjoyed; in the second case, it is rather virtual and depends on the value that the new BTG will have in the future, which is strongly influenced by the success of the proposed merger. This explains why the Board’s argumentation concerns the value of the combination and not the value of the financial bid.

As a consequence, some of the reasons belonging to the argument based on the economic-organizational aspect (argument 1.2 in cash offers), which in cash offers appeared to be more relevant for stakeholders rather than shareholders, here becomes crucial. These reasons, combined with the absence of higher offers (lines 18-21), eventually brings to conclude that approving this merger would be expedient for Protherics shareholders.

¹⁰⁷ “On this agreed basis, the Recommended Offer represents a premium of 45.5 per cent. to the Closing Price of a Protherics Share of 41.25 pence on 17 September 2008 (being the Business Day prior to this announcement) and a premium of 92.0 per cent. to the Closing Price of a Protherics Share of 31.25 pence on 12 August 2008 (being the Business Day prior to the announcement by Protherics regarding potential offers for Protherics)” (*BTG-Protherics, firm intention announcement, 18.09.2008*).

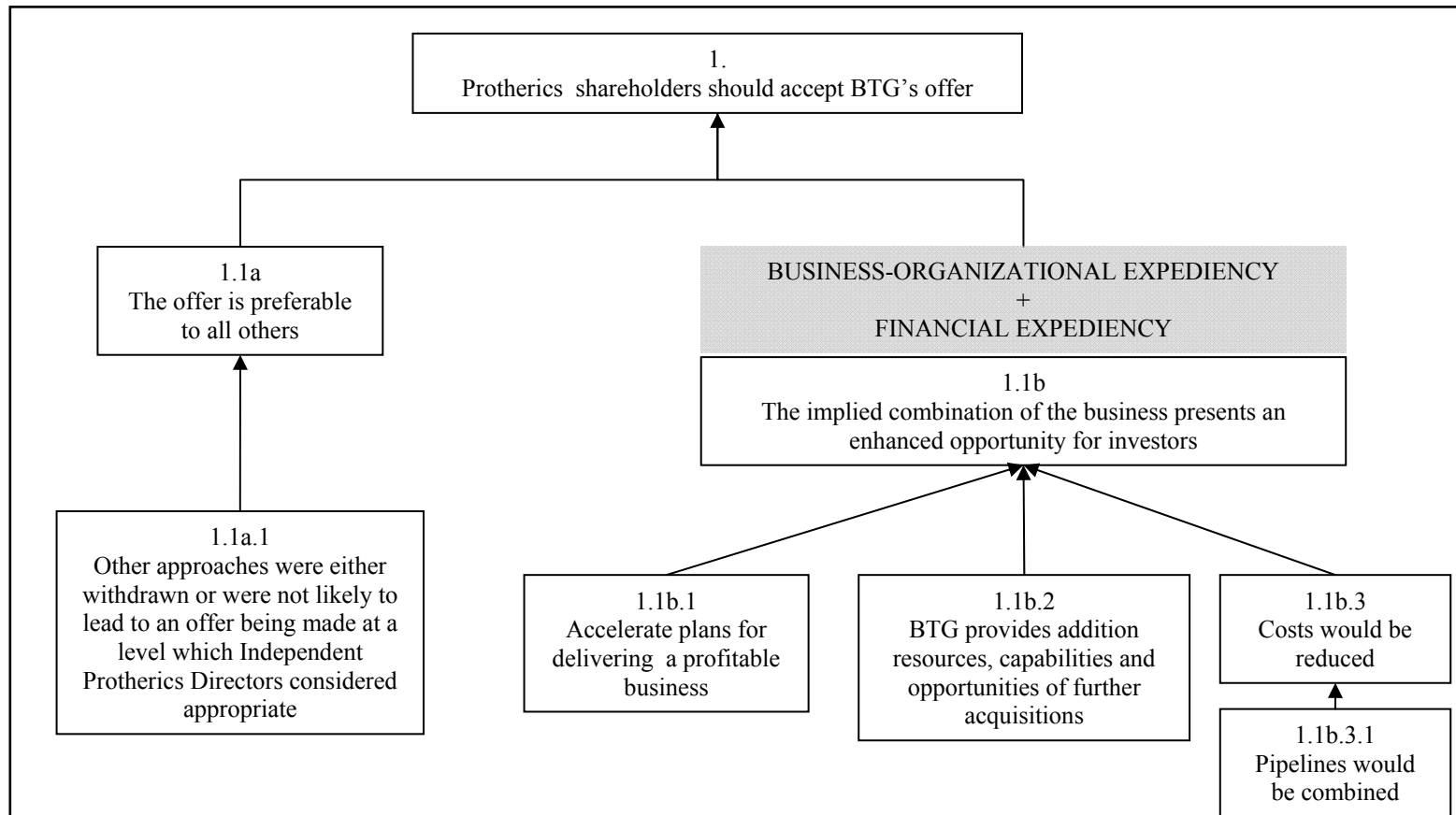


Figure 4. 6. Argumentation structure of Protherics directors' recommendation of BTG's offer

In Figure 4.8 the two arguments are reconstructed as compound. We can see that neither certainty nor the premium are mentioned but only the absence of alternative better offers. Argument 1.1b here differs from Argument 1.1b in cash offers, as the former explicitly connects the benefits provided by the combination with the creation of shareholders' value, while the latter stresses the benefits for the company and its stakeholders.

This strategy adopted by Protherics directors is largely confirmed in *Fountains'* recommendation of *Connaught's* bid (T.3.8.1), where the opportunity offered by the means of payment is made even more explicit (my bold):

25.: “the **all share structure of the Offer** will enable Fountains Shareholders to benefit from the future success of the Enlarged Group (lines 22-23).

By applying again an *argument from alternatives* to the fact that the only offer available is Connaught's Fountains, adopts the argument coinciding with 1.1a in Figure 4.78.

Starting point of the *Supporta's* recommendation of *Mears'* bid (T.3.9.1) is the strategic review initiated by the company in order to create value for shareholders (lines 1-11). Then, a number of measures are recalled that the company has already taken in line with the stated objectives (lines 12-25). The Board in this way shows that the proposed acquisition is not a shortcut but comes after several other concrete actions have been undertaken. The responsible and meditated behavior of the management team is further stressed some lines below: the “intention to not become embroiled in a further sale process” (line 28-29) brought directors to discuss and welcome Mears' proposal only because of the quality of the approach.

In order prove that Supporta shareholders would gain in becoming shareholders in Mears, the strategy envisaged by the Mears and Mears managers' proven capacity to create value for shareholders are highlighted (lines 39-42).

Interestingly, Supporta directors do not discuss the merits of the strategy for the enlarged group, leaving the Mears explaining it in the “argumentative” paragraphs

(T.3.9.2) of the bidder's letter (my bold):

26.: In recommending Supporta Shareholders to accept the Offer the Supporta Directors believe the following factors to be of relevance:

[...]

- the Mears Directors' strategy for the Enlarged Group as set out in **paragraph 5 (e)**.

This provides further evidence for the distribution of province occurring in friendly bids and suggests that, in stock offers, the reasons given by the bidder (see later) could function as material starting point for the standpoint “becoming investors in the enlarged company (i.e. in the company transformed by the acquisition) is expedient”.

Supporta directors' confidence in Mears is boosted by the past success (“track record of delivering value to its shareholders”) achieved by the bidder. This is an *argument from past analogy*, which is very widespread in finance and is not privy of shortcomings. The occurrence of an event proves its possibility, not its necessity (“a posse ad esse non valet illatio”). In particular, when financial or business managers realize a positive performance we must be sure that this occurred because of their skills and not because of pure luck¹⁰⁸. Of course, these kinds of inference become more solid if the concerned event has proven to occur *repeatedly*.

The reason for this is that the repetition of an event suggests that some intrinsic features pertain to the agent that makes him/her capable of repeating the performances. Indeed, Supporta directors speak of a “*track record* of delivering value to shareholders” which makes them *comfortable* in entrusting Mears management with their own shareholders. In other words, the recommended stock swap offers the opportunity to Supporta shareholders to invest in a company which is run by a group of managers who

¹⁰⁸ However this logic might appear trivial, it unfortunately was at work in important financial debacles. The failure of Long-Term Capital Management (LTCM), a hedge fund managed by Nobel Prize academics, seemed to be affected by this particular fallacy. Roger Lowenstein's novel about this failure, which scared many big financial investors and institutions, describes the episode in which LTCM's founder, John Meriwether, obtained unconditional trust in Salomon Brothers thanks to a rather lucky trade:

“Meriwether, as it had happened, had recently set up a bond-arbitrage group within Salomon. He instantly saw that Eckstein's trade made sense, because sooner or later, the prices should converge. The prices did converge, and Salomon made a bundle. Hardly anyone traded financial futures then, but Meriwether understood them. He was promoted to partner the very next year. More important, his little section, the inauspiciously titled Domestic Fixed Income Arbitrage Group, now had carte blanche to do spread trades with Salomon's capital” (Lowenstein 2000: 4).

very probably hold those good skills required for creating shareholders value¹⁰⁹.

4.3.2. The improved liquidity argument

Let us keep our focus on the Mears-Supporta case (T.3, 9.1). Beside the possibility to participate in higher profits, the offer is motivated by the opportunity to give T-shareholders a more liquid share that, if they wish, could be subsequently sold to the market (lines 44-47).

The idea that by accepting the offer, T-shareholders would obtain a more liquid asset is repeatedly found in the corpus, both in cash and in stock offers:

- 27.:** The Minster Board recognises that shareholders in quoted companies with relatively small market capitalisations and low levels of liquidity find it difficult to exit their investment in the market and it considers that the Offer will enable Minster Shareholders to realise value from their investment in Minster on the best terms currently available (T.3.5.1, lines 26-29).
- 28.:** The Medical House Board believes that in the current economic climate, quoted companies with relatively small market capitalisations find it difficult to attract independent research coverage or genuine stock liquidity.(T.3.6.1, lines 18-20)
- 29.:** Given the historic lack of liquidity in Fountains Shares and the comparatively liquid market in Connaught Shares, due to its status as a FTSE 250 company, the Fountains Directors believe that the Offer also represents a good opportunity for Fountains Shareholders who wish to realise their investment, compared with a continued holding of Fountains Shares. (T.3.8.1, lines 26-29)
- 30.:** Shareholders in the Enlarged Group are likely to experience a greater level of share trading liquidity than there has historically been in Supporta due to the increased market capitalisation of the Enlarged Group over that of Supporta and the fact that Mears is listed on the Official List of the London Stock Exchange (T.3.9.1, lines 44-46)

¹⁰⁹ We notice that, in three cases of stock deals, T-directors do not mention employees when justifying their recommendation. Instead, the main argument is bound to maximizing shareholders' value (see lines 7-8 of Supporta's text). The implication for the business of the target company are theoretically the same in cash and stock offers, except that, often, in stock deals target managers are more likely to remain in charge. This was the case for both Supporta and Protherics (cf. offer documents). An hypothesis, in this case, is that, since in cash offers target managers usually depart, employees need to be ensured that the new management team will not dispose of them. However, we have seen that, in the BAE-Detica case, the good prospects for employees were highlighted notwithstanding Detica CEO was planned to take part of the enlarged group. Further research is needed for verifying this issue on a larger corpus.

While in cash offers, the higher liquidity is unquestionable (cash is in any case the most liquid security), in stock offers such improvements (see 29. and 30.) stems from the fact that T-shareholders would become shareholders in a larger company, admitted on the Official List of the Stock Market.

4.3.3. Outmatching other proposals

Figure 4.8 shows that the financial expediency of BTG's proposal to Protherics shareholders is also based on the comparison with other possible offers emerged. Similar remarks can be made if we consider MAMA's recommendation of HMV offer (T. 3.4.1). We note that HMV's bid (5.4p) was preceded by another one, hostile, by SMS Finance, offering 4.75p (lines 8-10). It is clear that, being both offers in cash and being all other things equal, the former should be preferred to the second.

Often, in showing the comparative expediency of the recommended bid, directors highlight their effort or readiness to find alternative deals:

- 31.:** Protherics announced on 13 August 2008 that it had received approaches from a number of parties interested in acquiring Protherics. Other than that received from BTG, those approaches were either withdrawn or were not likely to lead to an offer being made at a level which Independent Protherics Directors considered appropriate (T.3.7.1, lines 18-20)
- 32.:** On 5 November 2008, the Company announced that it had received more than one approach which may or may not lead to an offer being made for the Company. The Company has since been in discussions with multiple parties in order to investigate whether a recommendable offer might be forthcoming. All discussions with interested parties, with the exception of Connaught, have ceased. The Board has progressed discussions with Connaught which, following a process of due diligence and the negotiation of terms, have led to the Offer (T.3.8.1, lines 2-6)
- 33.:** Since the announcement on 29 October 2009 placing Supporta into the current offer period, there has been interest from other potential offerors. No party, other than Mears, has completed due diligence or announced a formal offer for Supporta (T.3.9.1, lines 48-50).

4.3.4. The lack of resources for continuing the standalone business

In more than one case, the T-Board argues that accepting the offer and realizing the business combination is preferable, if not necessary, because, in order to grow, the company would need further capital which, however, is not available:

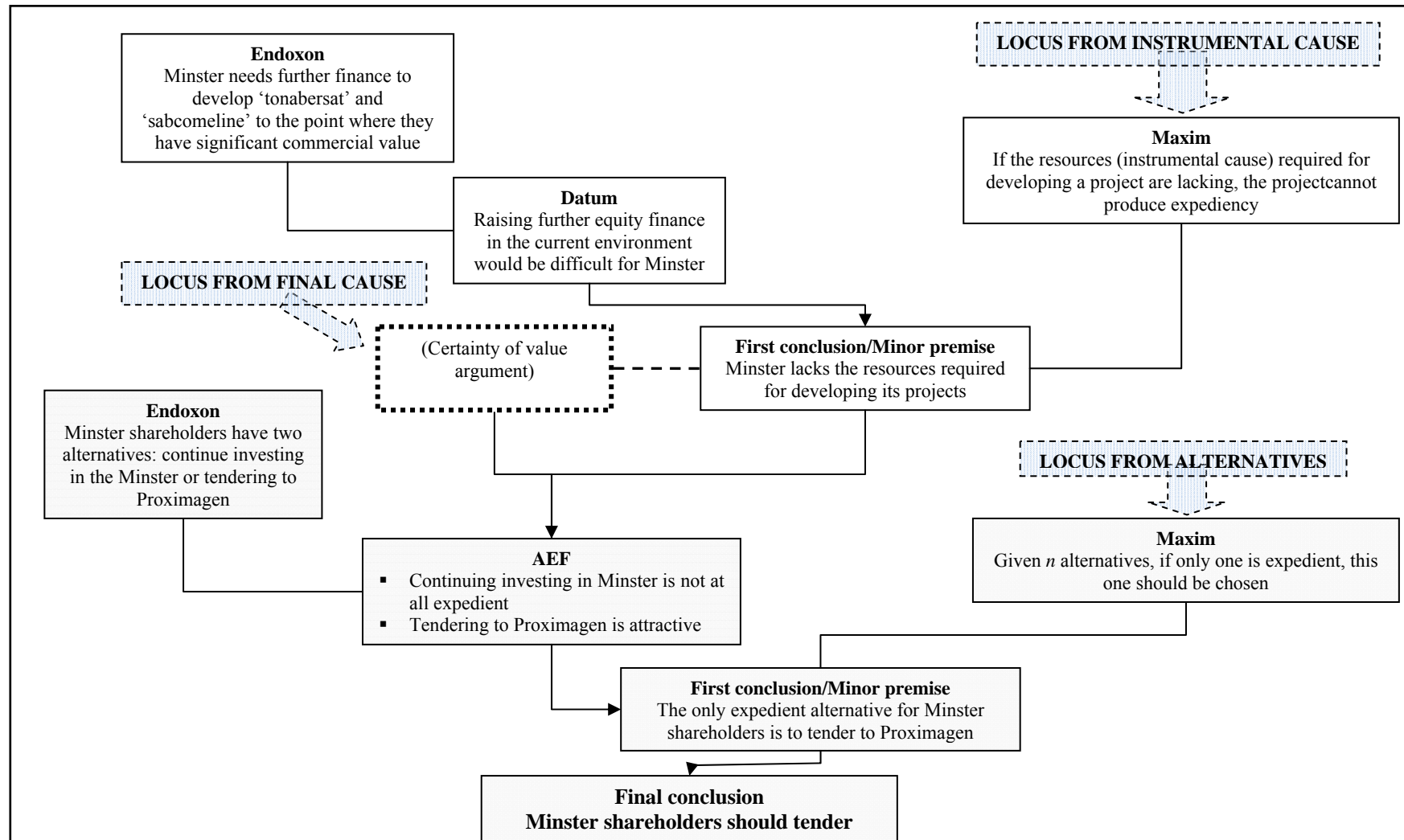
- 34.: In assessing, and recommending, the proposal from HVM, the Directors have taken into account a number of factors, including the following:[...] in order to capitalise on growth opportunities in our markets MAMA would require further access to finance. (T.3.4.1, lines 16-17; 25-26).
- 35.: Raising further equity finance in the current environment to develop one or both of Minster's two compounds would be both difficult and highly dilutive to existing Minster Shareholders (T.3.5.1, lines 15-16).

If we consider Minister's argumentation (T.3.5.1), we can see that being short of the capital required for developing its projects (the compounds 'tonabersat' and 'sabcomeline'), Minster lacks the so called *instrumental cause* necessary to undertake an action realizing a goal. A general reasoning typically bound to this locus (*from instrumental cause*) is often summarized through a sort of proverbial implication, of the form "no p, no q", applied in different contexts: "No cannons, no war"; "No Martini, no party"¹¹⁰; "No money, no business"; etc.

In this case, Minster cannot access to financial resources unless compromising shareholders' value. Thus, an opportunity to create value is not available. By combining this Argumentatively Established Fact with the certainty of value (cf. Argument 1.1a in Figures 4.6 and 4.7) provided by the Proximagen offer, through a reasoning from alternatives the conclusion is reached that Minster shareholder should accept the offer.

Argument Analysis 4 reconstructs this complex procedure. The higher Y-structure establishes that the default alternative (i.e. to continue investing) is not expedient. The dashed line box indicates the conclusion of the pragmatic argument showing the expediency (attractiveness and certainty of value) of accepting the offer. At this point, the datum required by the bottom Y-structure is established and can be activated in order to justify the standpoint.

¹¹⁰ This well-known advertising has been interpreted here as an argument from instrumental cause, by which the Italian vermouth is seen as a tool necessary to realize an enjoining party. Its necessity however could bring to interpret the slogan as an *argument from definition*, which exploits the essential conditions (in this case Martini) ensuring the existence of an entity (party).



Argument Analysis 4. Minster's lack of capital for developing its products justifies the sale to Proximagen

4.3.5. Committing to tender for signaling sincerity

In recommending shareholders accept the offer, the Directors make clear that they did commit themselves to do the same with their own shares. The Code requests to indicate already in the firm intention announcement any undertaking or letter of intent taken by any shareholders, directors and managers included, and to specify the nature of these commitments¹¹¹. In fact, a separate preceding paragraph is devoted to these matters¹¹².

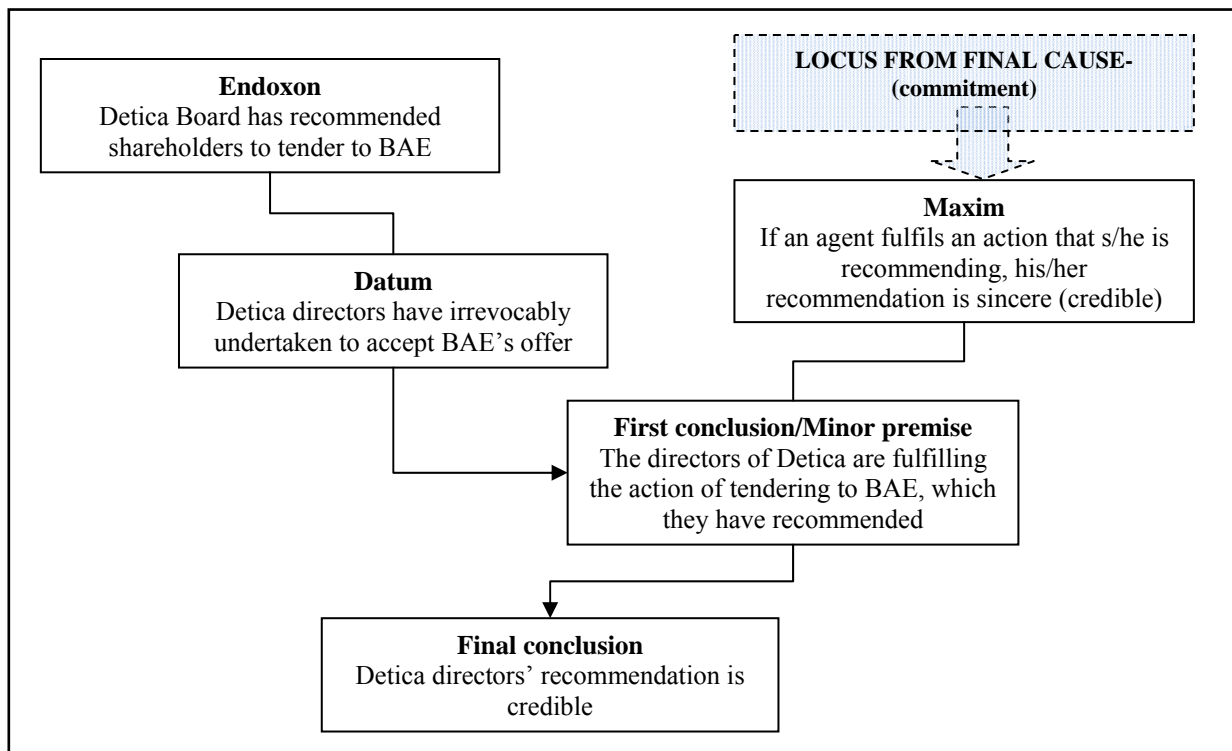
The fact that such information is *recalled* when declaring the recommendation suggests that a certain argumentative function can be ascribed to it. Indeed, the personal acceptance of the offer by Directors represents a pragmatic entailment of their recommendation. In the opposite case, in fact, we would be in front of an apparent inconsistency between words (“we believe the offer should be accepted by Detica’s shareholders”) and actions (as shareholders, Detica’s directors do not accept the offer).

Instead, by ensuring such consistency, the board is also able to strengthen credibility on its claim, excluding a possible personal attack (maybe even an *ad hominem* move), such as: “you claim that shareholders should sell but you yourself are not selling”. Instead, a signal is created (“actions speak louder than words”), by which directors attempt to show the agent-principal alignment. Let us analyze this implicit argument to identify its strengths and weaknesses:

¹¹¹ Rule 2.5 (b) (iv): “When a firm intention to make an offer is announced, the announcement must state details of any relevant securities of the offeree company in respect of which the offeror or any of its associates has procured an irrevocable commitment or a letter of intent”.

¹¹² Paragraph 3 of BAE’s offer document (“Irrevocable undertakings”) states:

“BAE Systems Holdings has received irrevocable undertakings to accept the Offer from the Directors of Detica in respect of their entire holdings amounting to, in aggregate 7,162,397 Detica Shares, representing approximately 6.15 per cent. of Detica’s existing issued share capital. The irrevocable undertakings are also in respect of Detica Shares that may be issued to, or acquired by, the Detica Directors pursuant to the terms of the Detica Share Schemes (other than any shares allotted or otherwise acquired by the Detica Directors under an HMRC approved scheme). The undertakings from the directors of Detica will remain binding in the event that a higher competing offer for Detica is made and will cease to be binding only if the Offer lapses or is withdrawn.[...]” (p. 11).



Argument Analysis 5. T-directors signal their sincerity by tendering their own shares

At least two exceptions do not justify this inference. One, if the agent is obliged to make an action, not necessarily he/she believes it is expedient. A typical case that we have encountered in chapter 2 is compulsory disclosure. By respecting the law, corporate managers take the commitment to communicate certain facts but not necessarily consider this as expedient. Secondly, actions (both communicative and not) can be *insincere* (Rigotti 2005), which means that the agent undertake them for side purposes. By tendering their own shares¹¹³, managers facilitate the offer to become conditional and, if this provides them other advantages – under the form of exit bonuses, job positions in the new company, etc. – they could be tempted to sell also at a low price, because such partial loss would be compensated elsewhere.

In other words, because the action referred to in the Datum box (Argument

¹¹³ Very often (but not in the BAE-Detica case), also outside shareholders decide to irrevocably commit to tender. Unlike directors, shareholders have no commitment to give reasons for their own decisions. We could imagine, however, that the main motive for making these undertakings is to persuade fellow shareholders to tender, overcoming so coordination problems. Investors who find the offer attractive needs to hope the offer will become conditional in order to receive the agreed cash. From the perspective of the bidder, the presence of these agreements may certainly foster the likelihood that the remaining T-shareholders will be persuaded that the offer is really acceptable.

Analysis 5) is almost a “due act”, it could easily fail to adequately apply the concerned maxim. It is a datum which does not put at stake credibility convincingly, representing a purely rhetorical move.

4.4. The bidder’s justification of the underlying acquisition

The other crucial paragraph of the offer document, in which an argumentative commitment can be ascribed, is represented by the “Background to and reasons for the offer”. As its title hints (“reasons for the offer”), this paragraph seems to correspond to the Code’s requirement to state the commercial rationale underlying the bid. The protagonist of this phase is thus the bidding company.

Also here, the explanatory level should not be confused with the argumentative one. The offer is already in place. Its launching must not be deliberated and, thus, it does not constitute an issue. However, being the offer a human act and not an event, the “reasons for the offer” actually coincides with the arguments that have persuaded bidder managers and directors to accomplish such act, i.e. the reasons behind their decision to make the proposal.

Now, because takeover offers are typically made in view of realizing a corporate acquisition, and, possibly, a merger of the two firms, the reasons behind the offer correspond to the reasons why the bidder believes the proposed acquisition is an expedient business activity.

Therefore, by exposing the arguments which have persuaded them to pursue the acquisition, bidder directors justify such acquisition. In this way, this section of the offer document evidently tackles the issue that intrigues most economists (see chapter 2): what motives drive takeovers?

While the T-board makes explicit its standpoint in the paragraph “Recommendation” and then assumes the burden of proving it in the paragraph usually titled “Background and reasons for the recommending the offer”, the paragraph “The offer” does not indicate any standpoint. However, by considering the felicity conditions of the speech act “to propose”, we can reconstruct two important *virtual standpoints*¹¹⁴ (van Eemeren et al. 1993), namely that what is proposed should be

¹¹⁴ A proposal entails that the proposer claims expediency for the proposee. In other words, by performing a proposal the speaker commits himself to the standpoint that what he is proposing is good

expedient for the decider – something that T-directors have argued for – but also for the proposal-maker. Assuming bidder managers are rational agents, they will pursue the acquisition because they believe that such investment is expedient. We also know that this expediency should concern the bidding company and their shareholders but that, because of agency problems, the actual motives could coincide exclusively with managers' personal benefits. We also know that bidder managers might be insincere, claiming that the proposed action is expedient for T-shareholders while actually believing it is expedient only for their own shareholders or for themselves.

From these remarks it emerges that a multiple discussion and a multiple audience are expected to be involved by the argumentation developed in this paragraph.

One discussion concerns the expediency for the bidding company and its shareholders, as this passage suggests:

36.: The Proximagen Directors believe that the acquisition of Minster will benefit Proximagen's shareholders. (T.3.5.2, lines 11-12)

Beside existing B-shareholders, T-shareholders too could be interested in this issue, not only when they are paid in stock (thus becoming B-shareholders), but also if they receive cash. In fact, to know that the bidder has a reasonable motive for making the offer is what allows justifying the premium. A bidder apparently lacking a business idea for creating value and synergies could arouse suspicions that the real motive behind the offer is that the target shares are undervalued (cf. *sitting on a goldmine* hypothesis).

The other discussion concerns the expediency of the acquisition for the target company. This issue, as we have seen, has been already tackled by T-directors (see the business-organizational argument in Figure 4.6).

for the proposee. At the same time, a proposal to make an action entails that what is proposed is a joint action, in which the proposer himself is involved. Thus, a speaker making a proposal is committed also to the standpoint that what is proposed is expedient for himself (unless he is crazy or masochist). Of course, the actual goodness for both the proposer and the proposee does not automatically follow from the performance of a proposal. In fact, an action could be insincerely proposed (in this case it is not good for the proposee) or could be also made irrationally (as the hubris hypothesis posits), bringing the proposer to manipulate himself.

4.4.1. “The proposed acquisition is in line with our strategy”

Let us start again by the prototypical case, namely BAE-Detica. In the final part of their text (T.3.1.4), BAE directors claim that the acquisition will create value for their company, by producing a return exceeding the cost of capital (lines 22-23). This value comes from growth and synergies which the combination is expected to generate (lines 20-22).

While the sources of these synergies are described rather opaquely (“more efficient internal investment”), the expected growth is linked to the fact that the acquisition of Detica would allow to realize the strategic objective of entering the growing NS&R market. Here, the concept of *strategy* plays a central role (lines 3 and 7). Roughly speaking, a strategy can be understood as the configuration of a goal-means framework, defining an instance of the general ontology of action: the agent behaves strategically when he/she establishes an important goal and identifies the proper measures that must be activated in order to realize such goal. It goes without saying that having a good strategy is a fundamental requirement for a successful business organization (Grant 2010)¹¹⁵.

In fact, BAE states that its strategic objective (goal) is to “establish security businesses in its home markets” (lines 3-4) and that the acquisition allows to realize this objective (lines 6-7). Thus, the connection with the corporate strategy allows the arguer to introduce a practical reasoning (cf. section 4.2.3):

Analytic overview

ISSUE

p: is the acquisition of Detica an expedient corporate investment for BAE?

PARTIES and STANDPOINTS

BAE Board: +/p

Detica shareholders: ?/p (BAE shareholders: ?/p)

MATERIAL STARTING POINTS

¹¹⁵In the field of strategic management, a strategy is typically defined around the notions of goal and action: “A strategy is a pattern or plan that integrates an organization major goals, policies and actions sequences into a cohesive whole” (Mintzberg et al. 2000: 10). For a synthetic overview of the authors defining the concept of business strategy, see Grant (2010).

Corporate strategy = definition of goals and of means to achieve them

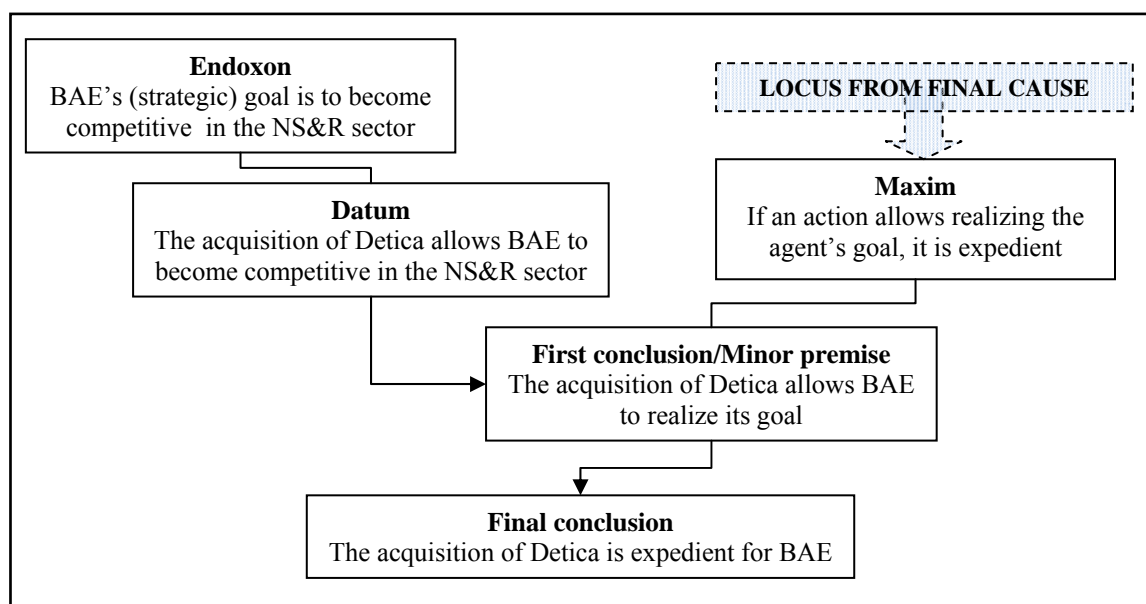
BAE's strategic goal = to become competitive in the NS&R sector

Acquiring Detica allows becoming competitive in the NS&R sector

ARGUMENT

(The acquisition realizes our strategy) = The acquisition is a means realizing our goal

Through the technique of *substitution* (van Eemeren et al 1993), we reformulate the phrase “realize the strategy” in the terms of the argument from final cause. Hence, we obtain the following Y-structure:



Argument Analysis 6. The link to strategy as an argument from final cause

The reference to the corporate strategy proves to be a typical argumentative move put forward by the bidder:

- 37.: The proposed acquisition of the coffeeheaven Group provides an attractive route to accelerate the implementation of its strategy to bring scale to the Central and Eastern European market (T.3.3.2, lines 17-18)
- 38.: The Proximagen Directors believe that the acquisition of Minster is in line with the strategy (T.3.5.2, line 2)

- 39.:** In Consort Medical's preliminary results announcement for the year ended 30 April 2009, Consort Medical outlined its strategy to build and strengthen its core business through new product innovation, increased market reach and higher value business models (T. 3.6.2, lines 1-2)

Now, if we look more in depth to BAE's argumentation, we discover that both the reasonableness of the strategic goal identified and the adequacy and ability of the acquisition to pursue this goal are further elaborated. In argumentative terms, neither the Endoxon nor the Datum in *Argument Analysis 6* is taken for granted. Therefore, they must be understood more properly as an Argumentatively Justified Opinion (AJO) and an Argumentatively Established Fact (AEF) respectively (Rigotti & Palmieri 2010).

We can see, in fact, that the BAE directors provide reasons why entering the NS&R sector is an intelligent strategic objective: this sector is growing and will grow again because it will "benefit from increasing priority government attention" (lines 2-3). The strategic idea of entering this business is further legitimated in lines 9-10, when BAE predicts an important change in their business context: the evolvement in customers' demand towards more integrated services will bring the "historically fragmented NS&R sector to consolidate". Moreover, in line 15.16, the NS&R sector is predicted to double.

The justification of the strategy seems to be the anticipation of a possible criticism by the antagonist who could critically question the Endoxon. If we consider again the cases to which examples 37-39 refer, we discover that the arguer always attempts to justify the reasonableness of the stated strategy:

- 40.:** The branded coffee shop sector has experienced rapid growth during the last five years, even during the toughest trading conditions for years.[...] Costa is now the second-largest premium international coffee shop brand; with stores in the UK and in 25 countries outside the United Kingdom. Costa believes that it still has significant opportunity to expand both in the UK and internationally (T.3.3.2, lines 2-3, 13-15)
- 41.:** Proximagen has been looking at consolidation opportunities amongst other small cap UK listed and private companies, given the attractive valuations due to the limited funding opportunities available to biotechnology companies to develop and commercialise these prospects (T.3.5.2, lines 3-5)
- 42.:** The Consort Medical Board believes that the market for parenteral drug delivery devices is an important and fast growing adjacent market segment and has the potential for sustained growth as pharmaceutical and biotechnology companies seek differentiated devices with proprietary features as a means to create competitive

advantages for their drugs, whether those drugs are proprietary or generic (T. 3.6.2, lines 9-12)

Costa moves from the rapid growth of the branded coffee shop sector and the proven success achieve as far for finding reason to insist in this strategy by seeking further opportunities.

Proximagen levers on its financial capacity to exploit the potential of promising business companies which lacks resources (cf. the discussion of this case in section 4.2.3.4).

Consort gives reasons for its prediction that the market for parental drug delivery devices will grow (“pharmaceutical and biotechnology companies see differentiated devices...”).

There are also cases in which the strategy is not referred to. Capita (T.3.2.2) focuses on the enhancement of the causal chain by immediately stressing the high compatibility of its business, resources and capabilities with those owned by IBS (lines 6-7). This, Capita argues, will “add greater scale” (line 8) and will enhance the target’s ability to serve its customers (lines 11-12).

Regarding the AEF, in which the acquisition is claimed to be capable of realizing the bidder’s strategic objective, numerous factors are mentioned as support. The BAE Board maintains that the combination of BAE and Detica respective businesses and resources would enable to enjoy the envisaged opportunities, in particular the combination of the reciprocal capabilities (lines 10-13) and the geographical fit that allows to expand Detica’s business (lines 15-18).

BAE specifies that is has already developed some *measures* for realizing the strategy (lines 4-6) but that the acquisition of Detica provides “an economically attractive and accelerated implementation” of the strategy (lines 6-7), which means it is better than the existing measures. In fact, also here we find a contrastive conjunction (“while”) justifying the necessity of undertaking the advocated action. In other words, the acquisition allows the bidder to improve the existing causal chain realizing its (strategic) goal.

We remark, the use of the verb “to accelerate”, which we have encountered several times already:

- 43.: [...] the proposed acquisition of Detica provides an economically attractive and accelerated implementation of its strategy to address these opportunities.
- 44.: The proposed acquisition of the coffeeheaven Group provides an attractive route to accelerate the implementation of its strategy to bring scale to the Central and Eastern European market
- 45.: HMV believes that there are further opportunities to accelerate the growth of its ticketing activities across the MFG venues

The underlying Endoxon in this argument could be interpreted through the proverbial phrase “time is money”, which basically means that obtaining a benefit before is better, either because it gives competitive advantages or because it reduces risk. Thus, an accelerate casual chain is more efficient than one running at a ”normal speed” (cf. Argument Analysis 7).

Analytic overview

ISSUE

p: is the acquisition of Detica an expedient corporate investment for BAE?

PARTIES and STANDPOINTS

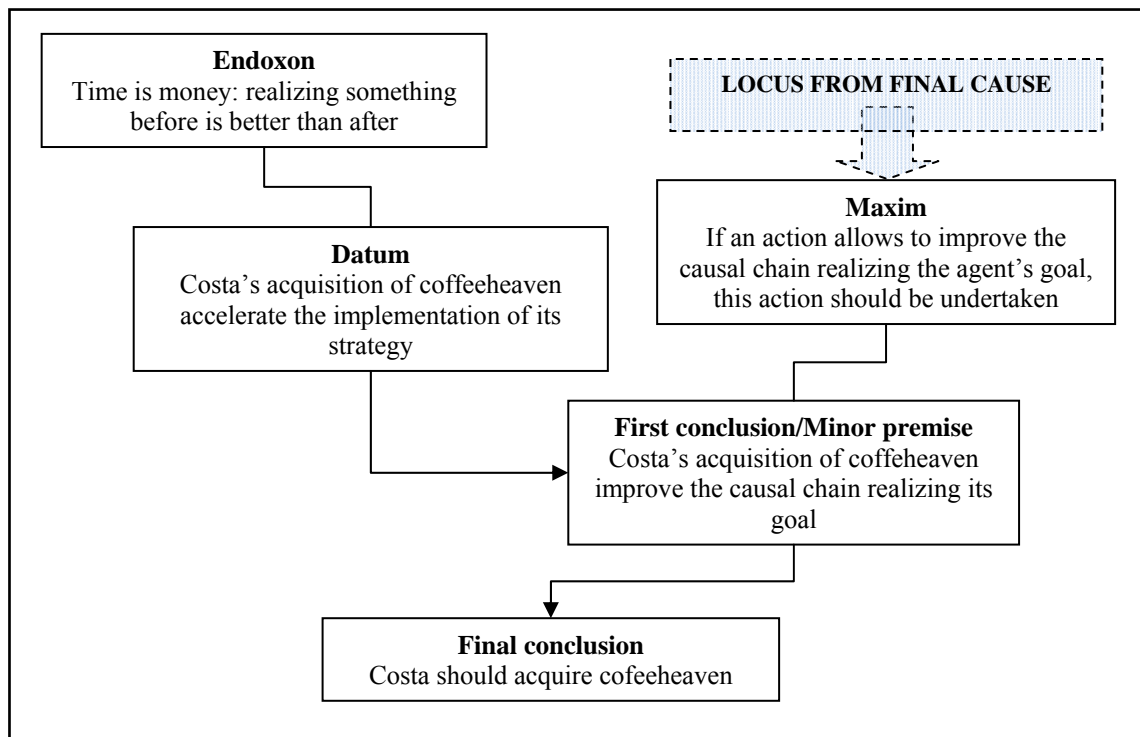
BAE Board: +/-p

Detica shareholders: ?/p

(BAE shareholders: ?/p)

ARGUMENT

The acquisition of Detica provides an accelerated and attractive implementation of the strategy = improves the causal chain through which the opportunities offered by the NS&R sector can be enjoyed.



Argument Analysis 7. Acceleration argument

Furthermore, the economic attractiveness of acquiring the target is often underlined (cf. examples 31-32). The phrase suggests that the price paid for the acquisition is overcome by the value such acquisition will produce. However, although synergies are usually mentioned, no great details are given regarding this point. This might be due to a disclosure dilemma affecting cash offers in particular. If the bidder discloses with more precision the added value (synergy) that could be created by the combination, it would also reveal its *resistance point*, thus weakening its position in the negotiation with T-shareholders, who would probably ask a higher price.

This problem is partially mitigated in stock offers, because synergies would be shared with T-shareholders. Not by chance, in the cases of stock deals considered in this dissertation, more specific information, including synergies estimates, are given (cf. T.3.7.2, T3.92).

4.4.2....and it is a happy joint action.

Beside the expected benefits for the would-be acquirer, the bidder maintains that the target company would benefit too from the combination. In fact, BAE argues that

Detica would be improved as BAE would provide to it with a platform for applying its capabilities into the US market (T.3.1.4, lines 17-18).

Therefore, BAE is not simply referring to a would be expedient action but also to what could be a happy joint action by which the joint agents integrate their causal chains so that one allows to realize the other's objective and vice versa.

This form of *argumentative* strategy¹¹⁶ can be found at work also in other cases. For instance, *Consort Medical* makes it even more explicit by means of subtitles (lines 10, 47, 64): firstly, the benefits for the Enlarged group are stated, then the benefits for Medical House follow, finally the benefits for Consort are specified. In particular, Consort would provide Medical with reputation, size and strength required to gain market share (lines 49-51) and, thanks to the specific capabilities of the division into which it will merge (Bespak), Medical could enhance its offering (lines 52-54).

The goodness of the proposal for both companies, which would enhance each other, is stressed by Capita too: IBS would add greater scale to Capita's operation, while Capita would enable IBS to service a wider range of customers and projects. Similarly, HMV would maximize MAMA's potential, while MAMA would enable HMV to accelerate its growth.

In sum, a recurrent justification of the offer provided by the bidder is so structured:

- The company's strategy is recalled and its expediency justified,
- The pursuit of the acquisition is connected with the stated strategy,
- The reasons are given why the acquisition would realize the strategy,
- The benefits for the target company are indicated too.

ISSUE

p: is the acquisition of Detica a reasonable joint action?

PARTIES and STANDPOINTS

BAE's Board: +/p

¹¹⁶ In fact, the concept of strategic maneuvering in argumentation theory (van Eemeren 2010) refers to the means adopted by the arguer in the various stages of the argumentative discussion in order to achieve, beyond the dialectical aim of resolving the dispute, the rhetorical goal of persuading the audience to accept the standpoint.

Detica shareholders: ?/p; (BAE shareholders): ?/p

ARGUMENT STRUCTURE(See Figure 4.9)

Since the claim is that of a happy joint action, the two arguments (1.1a and 1.1b) are reconstructed as compound. This interpretation envisages:

- T-shareholders either concerned with both companies (because the offer is in stock) or concerned, on the one side, with the future of the target company and, on the other side, with the motives behind the bid; and
- B-shareholders concerned at least with their own company.

If, instead, we follow an interpretation in which shareholders are concerned only with their own company, the two arguments would be independent and would be each part of a specific critical discussion in which each one constitutes a standpoint in its own:

Analytic overview

- **CD₁**
ISSUE
p: is the acquisition of Detica expedient for BAE?
PARTIES and STANDPOINTS
BAE Board: +/p
BAE shareholders: ?/p
- **CD₂**
ISSUE
p: is the acquisition by BAE expedient for Detica?
PARTIES and STANDPOINTS
BAE Board: +/p
Detica shareholders: ?/p

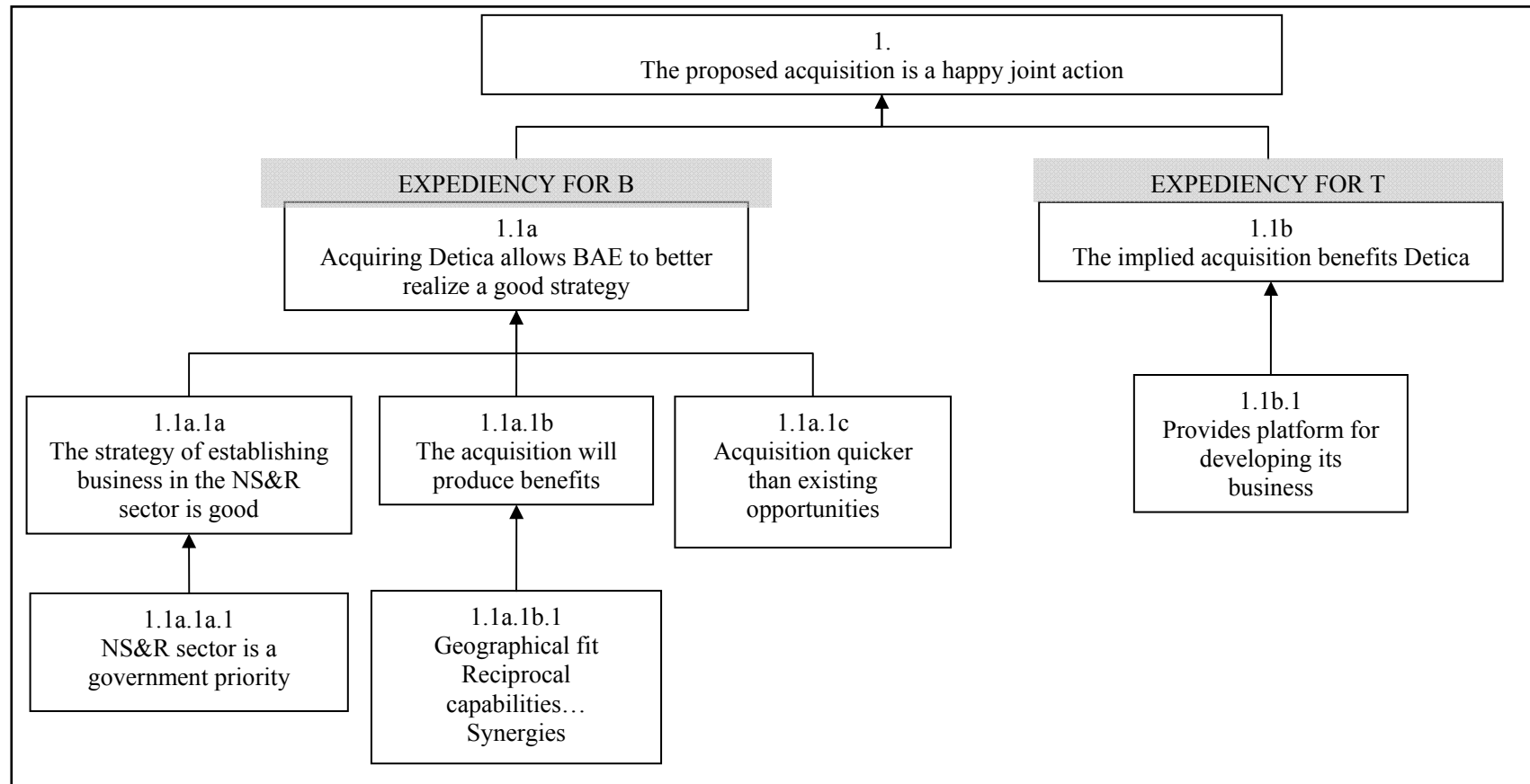


Figure 4. 7. The happy joint action argument

4.5. Some remarks on the rhetorical dimension in friendly bids

Fundamentally, the argumentative discourse encountered in friendly offer documents can be reduced to the two paragraphs "Background and reasons for the recommendation" and "Background and reasons for the offer", appearing respectively in the T-Board's recommendation letter and the Bidder's letter. Through these two paragraphs, the bidder and the T-directors not simply make an offer and express an opinion about it, respectively, but more specifically engage in supporting their own position with arguments. Both paragraphs represent so the fulfillment of the argumentative commitments that are explicitly requested by The City Code.

Now, if, on the one hand, corporate directors are somehow obliged to critically found their position, on the other hand, they carry an interest towards the outcome of the bid. The bidder is evidently interested in T-shareholders' acceptance of the offer but we must presume that also T-directors desire the same outcome, either because moved by personal interests or because intending to fulfill their mandate towards shareholders. Indeed, by recommending the offer, the board becomes a sort of co-bearer of the offer. Especially when the deal is highly negotiated, a friendly proposal, which follows a successful Phase 1(a) of the acquisition process, incorporates the T-board's point of view, its evaluation and also its interests, either aligned or not with shareholders' and other corporate stakeholders. After all, if the bid is expedient for T-shareholders, it would be so also because it has been shaped and affected by the efforts made by T-directors during Phase 1(a) of the acquisition process.

Therefore, a rhetorical dimension inevitably affects the argumentative discourse developed by the two boards, giving rise to a strategic maneuvering between, on the one hand, the requirements of criticality and the constraints imposed by the institutional context and, on the other hand, the desire to achieve a particular interactional goal.

Noteworthy, if we consider the offer document in such a rhetorical dimension we discover an interesting phenomenon: those who should be interested more than anybody else in obtaining T-shareholders' consent, namely bidders, do not tackle directly the concerned issue, embracing instead the T-directors' argumentation supporting the recommendation. This move can be interpreted as a strategic maneuver in the *opening stage*. As van Eemeren suggests, in the opening stage "each party will try to establish the

procedural starting points it considers most workable, including the most opportune division of the burden of proof” (2010:44). Of course, in this case, shareholders, being antagonist, cannot have a burden of proof. The two protagonists, namely B- and T-directors, allocate the emerging sub-issue to the one being more capable of tackling it. By limiting itself to execute the tasks imposed by the Code, the bidder commits to prove the reasonableness of the acquisition underlying the offer. Analogously, the T-board justifies the recommendation to accept it.

This coordination, which I have named *distribution of provinces*, is made possible by the agreement previously reached by the managers and directors who, now, give account for the deal they have privately negotiated. Although, from a strictly juridical perspective, the only proposal maker is the bidding company, the T-board makes itself “co-bearer” of the offer. Not by chance, both letters to T-shareholders are parts of the same offer document, in which they constantly refer to each other. Moreover, within the firm intention announcement, their respective content is combined (cf. Figure 4.3, Table 4.2).

The essential strategy applied, at the level *argumentation stage*, is thus this special kind of appeal to the other side’s authority (province). The bidder fulfills its own institutional commitment as foreseen by the Code and, in order to achieve its rhetorical aim of persuading T-shareholders relies mainly on the T-board’s argumentation. T-directors show to be persuaded by the bidder’s rationale behind the offer and its implications for target company as a whole. Instead, they give reasons why to tender would be more expedient than the alternative of continuing to invest in the standalone company. The agreement between the two boards brings to a coordinated management of the commitments imposed by the regulator. The two critical discussions instituted by the Code (cf. chapter 3) are actually combined in a sort of polyphonic discourse developed within the relevant paragraphs of the offer document.

Regarding the material starting points, a fundamental endoxon is the hypothesis of efficient market and its capacity of giving reliable information through prices is assumed (EMH) which allows relying on the latter in the argumentation stage. The data do not in general coincide with new information but with the elaboration of existing information (e.g. past prices) and of past commitments (e.g. stated strategy).

Topical choices. Strictly financial and business-organizational aspects constitute

the main sources for the arguments used to justify the offer's recommendation. The T-board defends the financial attractiveness of the offer with arguments based on the relative advantages brought by the particular means of payment. Hence, the acceptability of a cash offer is proven by the implied certainty of value, while a stock offer is presented as the opportunity to invest in a better company. Also the benefits that the target company and its stakeholders would enjoy as being part of the bidder are stressed in order to persuade T-shareholders either that they should not be worried to sell their company (because the new owner will enhance it) or that their company will become an even better investment. Bidder directors focus on the expediency of the acquisition and present the offer as the result of a reasoned decision whose origin was the intention to realize the corporate strategy. By connecting the deal with the strategy, the B-directors find a coherent justification of the offer which appears as a unique opportunity that should not be lost.

Audience adaptation. The primary audience of the offer document is represented by T-shareholders, for whom the Code has instituted the two critical discussions. Following this line of interpretation, the reasons for the recommendation are evidently arguments why T-shareholders should accept the bid. The rationale for the offer provided by the bidder could serve the same purpose in two respects: (1) ensuring T-shareholders that the after-deal target company will be enhanced. This aspect is directly relevant in stock offers but only indirectly in cash offers; (2) removing suspicions that the target is "sat on a goldmine" and that the offer is actually driven by the undervaluation of target shares. The absence of a business logic behind the deal could bring to believe either that B-directors are affected by hubris or empire building or that they are attempting to acquire a value already existing, which the stock markets has failed to recognize and to reflect in the price of the security.

The presence of a composite audience (van Eemeren 2010), however, should not be neglected. The Code itself indicates employees as people who are entitled to receive the documents sent to shareholders and request from directors to tackle also the implications of the offer for them. As principal of B-directors and managers, B-shareholders expect decisions that create value for them. If the rationale for the acquisition is not convincing, they could try to hinder the deal or, more simply, sell the shares, dropping down the price.

Presentational techniques. In general, the strategic maneuvering adopted in friendly bids is not characterized by a particular use of presentational devices. The introduction of the two letters of the offer document addresses the primary audience (T-shareholders) directly (“Dear shareholders”, “your attention is drawn” etc.), but, afterwards, no particular style is adopted for directing the arguments towards the audience demand. Instead, an indirect style is adopted, by which the exposition of the arguments having supported directors’ decision should persuade shareholders to adopt the same reasoning processes. As a final remark, we note the almost total absence of mathematical reasoning that is typically adopted for valuating acquisitions. Rather, ordinary language is used to devise arguments that are constructed around words and phrases which evidently recall an economic-financial expediency: “certainty of value”, “attractive”, “accelerate implementation of strategy”, “strategic fit”, “opportunity to realize investment”, etc....

Noteworthy is the style of the firm intention announcements, resembling that typically adopted in wedding announcements¹¹⁷. Not by chance, often mergers are metaphorically named ‘weddings’ (e.g. Kitching 1967; Borek et al. 2004) and the discourse processes through which the after-deal corporate managers internally announce and legitimate the merger has been interpreted as wedding narratives (Demers et al. 2003).

¹¹⁷ Consider for example this announcement found on a website containing samples of wedding announcements: “[T.A.J] and [J.L.O] are pleased to announce we will be married on Saturday, the sixteenth of July during a private ceremony...” (source: www.colorsbydesign.com).

5. Argumentative strategies in hostile bids

5.1. A preliminary remark concerning the method of analysis

The procedure of analysis for hostile bids is not so different from the one adopted for friendly ones. The choice of a prototypical hostile case has been however much more difficult, because each case of those collected actually presents its own peculiarity. The NASDAQ-LSE case has been chosen for two main reasons: it has been hostile from the beginning until the end of the offer period and it has represented a very important case which, not by chance, aroused the attention of the markets and the press.

As this chapter will illustrate, hostile bids envisage an evidently higher “argumentative rate”. Thus, a selection of significant sub-issues has been made.

5.2. The initial arguments of the bidder

The analysis presented in section 3.3.2.1 reveals that a hostile bidder does not, as it cannot, entrust the target board with the task of argumentatively discuss the merit of the offer. On the opposite, since the first announcement, the bidder advance its standpoint in favor of the offer’s acceptance, defending it with reasons.

In friendly bids, the bidder could simply exploits T-directors’ recommendation whose arguments have been analyzed in the previous sections. In hostile bids, they must “do by themselves” if they want to obtain the consent argumentatively. At this point, the crucial question is: which arguments does the bidder advance to persuade shareholders to accept the offer?

In the firm intention announcement, the bidder gives arguments before the T-board reacts and thus cannot include counter-arguments. By considering various cases, a strong similarity can be observed with the arguments supporting the recommendation of a friendly bid. Let us consider the arguments given by NASDAQ and Centrica.

NASDAQ immediately claims its proposal is “An attractive offer which fully

reflects both LSE's standalone prospects and an appropriate premium” (cf. T.4.1.1, line 9) Then, the benefits for numerous classes of LSE stakeholders are listed in support of the “transaction rationale” (line 27): benefits for users (lines 39-51), continuity of LSE's market structure (lines 52-59), the competitiveness of the London centre will be ensured (lines 60-73). Again, we find arguments affecting shareholders as investors and arguments that concern also the future of the acquired company. Since the target company (LSE) is in this case the financial market, we can make the hypothesis that the various benefits for the target company are directly relevant for shareholders. The latter are presumably investors in many other companies listed on the LSE, thus highly interested in preserving the market in which they operate, the quality of its services, the level of transaction costs, etc. Therefore, to reconstruct the “financial expediency” argument and “business-organizational expediency “ argument as compound is here even more convincingly.

Centrica (T.4.2.1) makes make a choice from the topical potential which is very similar to the one made by IBS directors when recommending Capita’s offer (cf. T.3.2.1). In fact, the certainty (provided by cash) and the value (implied by the premium over past market prices) of the offer are compared with the highly improbable, thus risky, profits that Venture could achieve alone, in the present market conditions (cf. Figure 4.12). Centrica’s argument that Venture lacks finance for further investments (1.1a.1b.1c) was also recurrent in friendly bids (see *Mama* and *Minster*’s recommendations). Argument 1.1b deserves further comment, because it proves to play a double role. Firstly, it ensures that the target company will benefit from being acquired. As already said, this argument could address both socially concerned shareholders and stakeholders. Secondly, this argument seems to fulfill a fundamental argumentative task towards Venture shareholders. In fact, by stressing the risks bound to Venture business, which should persuade shareholders to tender, Centrica must, at the same time, justify why buying a risky business is expedient. Assuming the bidder is minimally rational, the decision-makers have to see a rationale behind the offer, otherwise, as already mentioned, they might raise suspicions of undervaluation.

Indeed, Arguments 1.1b.1a and 1.1b.1b provides such rationality: Centrica holds a strategy for hedging risk, which would be even reinforced with Venture, and Centrica holds the financial resources that Venture needs.

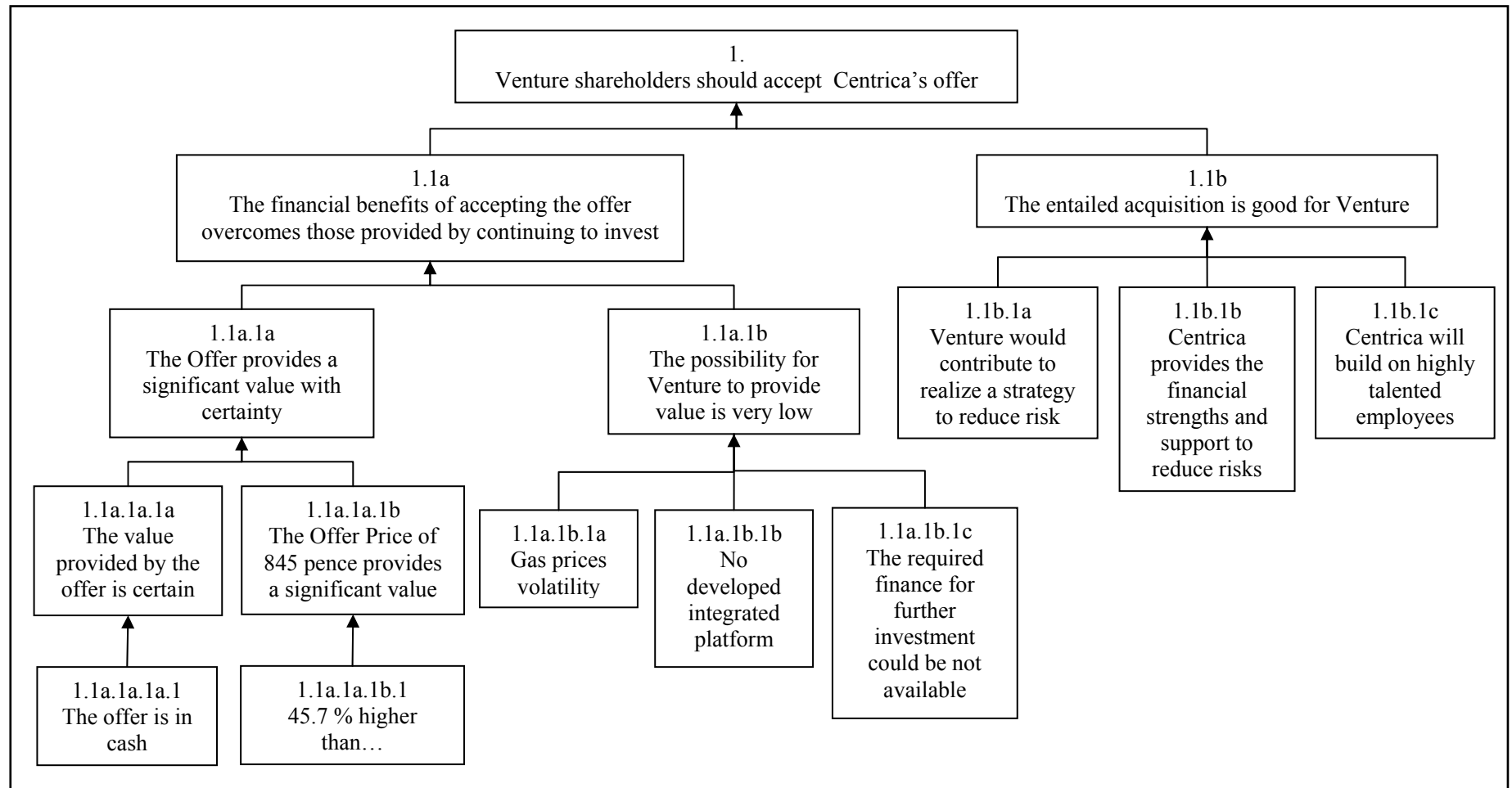


Figure 5.1. Argument structure of Centrica's justification of the offer

As it was the case for friendly bids, the form of payment represents a source for topical choices. In cash offers, the certainty of value is stressed:

- 46.: KNOC believes that the Share Offer incorporates a full and fair value for Dana's entire portfolio of production, development and exploration assets and provides Dana Shareholders with an opportunity to realise a compelling value in cash at a significant premium to Dana's pre-bid speculation share price (*KNOC-DANA, firm intention announcement, 20.08.2010*).
- 47.: Infinis Energy believes that the Offer is attractive for Novera Shareholders, providing certainty, in cash, at a compelling value, particularly in the context of Novera's share price performance over the last 12 months (*Infinis-Novera, firm intention announcement, 7.10.2009*).

Instead, the offers in stock (Evolve) or including stock (Kraft) highlight the advantages of participating to a profits created by the combined company:

- 48.: Evolve's new shareholders, that is, those Blue Oar Shareholders who accept the Offer, will also benefit from the Evolve Board's plans for the Blue Oar business, largely by allowing Evolve's experienced management to oversee the re-positioning of Blue Oar's businesses (*Evolve-BlueOar, firm intention announcement, 8.12.2008*).
- 49.: Cadbury Shareholders who accept the Offer will be able to share in all synergies resulting from the combination of Kraft Foods and Cadbury through the Kraft Foods share component of the Offer (*Kraft-Cadbury, firm intention announcement, 9.11.2009*).

We have characterized the general argumentative strategy in friendly offers as a distribution of provinces between the two boards. If we keep this metaphorical framing, a hostile offer envisages a sort of invasion of territory. By inviting T-shareholders to take a decision which is against their board's recommendation, the bidder implicitly questions the fiduciary relationship existing between directors and shareholders, mainly underestimating the "position to know" from which directors form their opinion.

This aggressive mood is particularly evident in NASDAQ's approach to LSE, in which the actual irrelevance of the T-board for the financial decision is stressed:

50.: LSE SHAREHOLDERS ARE URGED TO ACCEPT THE FINAL OFFERS AS YOU, RATHER THAN THE LSE BOARD, WILL DETERMINE WHETHER THE FINAL OFFERS WILL BE IMPLEMENTED (NASDAQ-LSE, *offer document*, p.4 12.12.2006)

The (not so much) implicit message is “Don’t listen to your board”. Indeed, takeover bids are addressed to shareholders, not to the management. The former are the deciders, not the latter. However, in general, T-directors are in the position to know the value of the target company, so that their opinion is important for the quality of the decision.

Now, if directors recommend shareholders reject a *good* offer, this can be due either to a lack of judgment skills (competence) or to a bias, a conflict of interest. In responding to the first LSE defense circular, NASDAQ seems to hint to the latter hypothesis:

51.: We believe that the LSE Board places independence before shareholder value (T.5.2.4, p.10)

5.3. The target defense circular

As said, the reasoned opinion of the T-board does not appear in the bidder’s document. It is, instead, separately delivered, through a specific text type: the defense circular. The latter is a document of about 20-25 pages (notes and appendices excluded), combining written text with other semiotic devices such as figures, graphs, visual emphasis etc., that are typical of promotional discourse genres, such as brochures and advertisements (cf. Beasley & Danesi 2002). It is introduced by a letter from the Chairman of the T-Board of Directors, to which the argumentative elaboration of the Board’s position follows.

The circular is characterized by an explicitly argumentative intention, as it can be deduced immediately from the cover page of the LSE’s first circular (T.5.2.1), in which the standpoint is clearly spelled out (“Reject NASDAQ’s offer”) together with one argument (“maximize your value in a world of opportunity”), and Cadbury’s second circular (T.5.8.2), in which the burden of proof is assumed (“Further reasons to reject Kraft’s offer) and even reinforced (“further”). Indeed, at the beginning of the Chairman’s introductory letters, the Board manifests its argumentative intentions, as these examples

show (my bold):

52.: Dear Novera Shareholder,

[...] I am writing to **set out the reasons why** your Board believes that the Infinis Offer substantially undervalues Novera and its prospects and strongly recommends that you reject it and take no action in relation to it (*T.5.6.1, p.1*)

53.: Dear Shareholder,

[...] Ryanair has posted its Offer Document to you. You should reject the Offer. **Let me explain why** [...] (*T.5.1.1, p. 3*)

Because the defense circular follows the documents (namely the firm intention announcement and offer document) in which numerous not directly argumentative information have been already indicated, its content is largely argumentative. Indeed, the defense circular has to be properly characterized as an *argumentative text*, since its declared intention and its actual content coincide with the formulation of the T-board opinion and the reasons justifying it. More in particular, the rhetorical aim of the T-board to persuade shareholders to reject the offer is marked by a higher degree of directness:

54.: “Reject Nasdaq’s offer”(*T.5.2.1, p.1*)

55.: “Don’t let Kraft steal your company”(*T.5.8.1, p.1*)

56.: “There are six principal reasons why you should reject Centrica’s Offer” [...] “Centrica should pay a higher price for control of your Company”(*T.5.5.1, p.2*)

Let us look now in detail to the first defense circular written by the London Stock Exchange (LSE) against NASDAQ’s bid. I shall use this circular as prototypical in order to characterize the general structure of this text type and elicit the fundamental sub-issues that are discussed.

The defense circular was issued on the 19th of December, eight days after NASDAQ published its offer document. The cover page reports the standpoint in the directive form: “Reject Nasdaq’s offer” and another directive speech act “maximise your value in a world of opportunity”. On the same cover page, we see a map of the globe with the list of countries having companies listed on the LSE and the phrase “The world’s capital market” under the company’s logo.

On page 1 of the document, the LSE Board shortly recalls the main arguments in support of its claim, namely that the NASDAQ offers a low price (does not share synergies, does not include a premium, not even the LSE’s standalone value) and does

not recognize the unique strategic position of the company.

On page 3, several past events are recalled (“We have a track record of delivering”) in which the company proved to be capable of creating value for shareholders. Together with the announcement of profit forecasts, this information brings the arguer to conclude “Our exceptional growth story continues”.

In this way, the Board seems to mean that the delivery of value is a characteristic of LSE and its management and, therefore, is something that is happening again and should be expected to happen again. This story is not concluded but goes on. We remark here an interesting presentational device. In fact, a not yet concluded story is something that challenges the curiosity and desire of the reader/hearer who has to decide whether to go on in reading/hearing to it or to stop. In the latter case, however, he/she would run the risk to miss a happy end. Through this metaphor, the LSE Board indirectly recalls shareholders that, by selling their shares to NASDAQ, they will no longer participate to this “growth story”.

On page 4, the introductory letter from the Board of Directors, signed by the Chairman, summarizes the key content of the whole document. Relying on the headlines of the letter it is possible to identify the main arguments constituting the defense.

Firstly, the offer is judged as undervaluing the target company (“Nasdaq’s offer significantly undervalues your company”). Secondly the attractiveness of continuing to invest in LSE is stressed (“an increasingly valuable franchise; “Strong growth prospects”). Thirdly, the implications of the would be acquisition on the company and its stakeholders are dealt with (“Impact on stakeholders”). However, this last point is not elaborated further in the document and is presented as the simple fulfillment of a rule of the Code. In fact, the LSE Board limits itself to make a number of remarks (“the board notes...”). Indeed, the text is devoted to the first and second aspects. From page 8 to page 12, the price issue is tackled as suggested by the repeated title “A wholly inadequate offer”; from page 13 to page 21, the second aspect, regarding the attractiveness of LSE as a standalone, is elaborated. Here, arguments bound to the past achievements (introduced by the titles “Outstanding financial performance”; “The world’s capital market”; “A secular change in trading”; “Strategic technological asset”) can be distinguished from arguments bound to the future prospects (“The virtuous circle”; “A world of opportunity”). The last two pages (21-22) concern the bidder

(NASDAQ) and depict it as a troubled company, suggesting that the true motive behind the offer is the NASDAQ's need to transform itself into a more competitive firm. The conclusion "Don't let Nasdaq transform itself at your expense" clearly highlights the suspicions that the LSE raises about the true reasons for the offer. In this way, also the target invades the other side's province, while, in friendly offers, the task to motivate the bid was carried out solely by the bidder. In other words, the T-Board defends itself also by attacking the bidder and questioning the "reasons for the offer".

In sum, the topical choice made by the LSE Board concerns three aspects which become as many sub-standpoints (cf. Figure 5.2), further supported by sub-arguments. The first aspect concerns the offer price, which the directors consider wholly inadequate; the second aspect focuses on the expediency of continuing to invest in the standalone company (the growth story that continues) and, bound to this, the investment opportunity that would be wasted by selling the shares; the third aspect, which, however, is less elaborated, touches the actual interests pursued by NASDAQ and their incompatibility with the best interests of LSE shareholders.

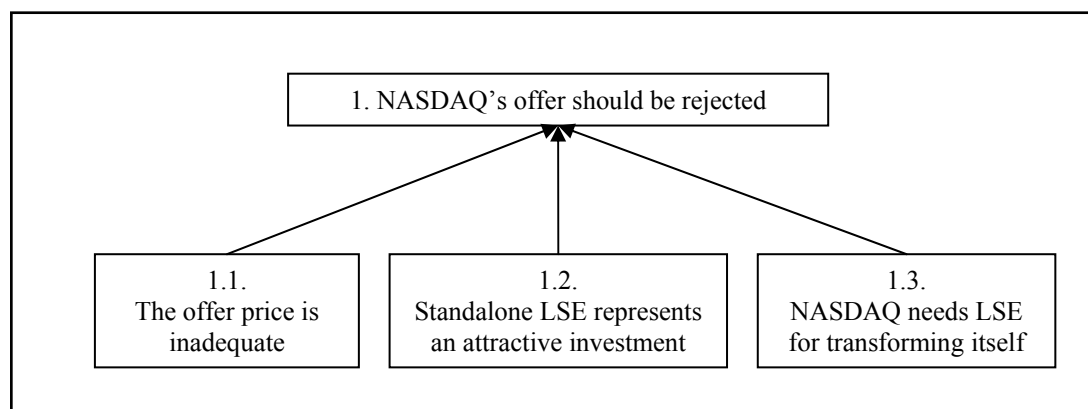


Figure 5.2. The main arguments of LSE's defense

Now, if we look at the other cases, we discover that this kind of topical choice is recurrent and manifests itself already in the emphasized headlines of the pages preceding the introductory letter. Below we report some examples that can be seen more in detail in the circulars included in the Annexes.

57. refers to Aerlingus' defense against the first Ryanair's bid (cf. T.5.1.1); 58. is taken from Venture's defense against Centrica (cf. T.5.5.1); 59. reports Minerva's

reasons for rejecting KiFin's bid (cf. T.5.9.1).

- 57.:** Aer Lingus has excellent prospects as an independent company
Ryanair's Offer is wholly unattractive
[Ryanair] Significantly undervalues our business
Ryanair's Offer does not reflect Aer Lingus' true value
Ill-conceived, contradictory and anti-competitive
- 58.:** Venture is worth substantially more than 845p per share
1. Strong energy outlook
2. Leading independent gas producer
3. Material upside potential
4. Track record of delivering value
5. Expertise in place to exploit upside
6. Financial strength to deliver
Centrica is trying to buy Venture on the cheap (cf. T.5.5.1)
- 59.:** Minerva:
Significantly undervalues the business today
Takes no account of the unique position of Minerva's portfolio
Seeks to profit from improving market conditions at your expense
Does not reflect the benefits of Minerva's excellent funding platform

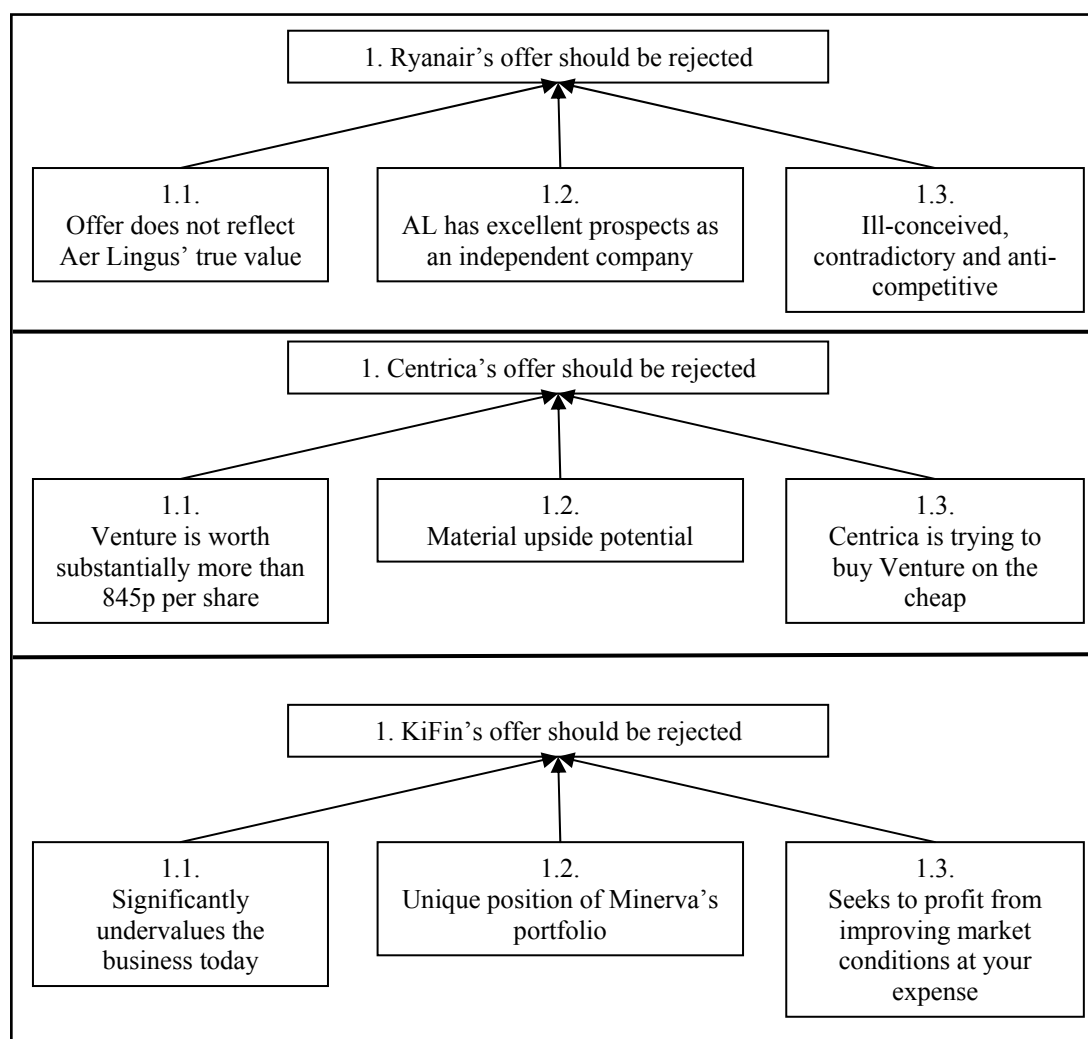


Figure 5. 3. The main arguments chosen in the defense from hostile bids

An extremely relevant characteristics of all defense circulars considered in this dissertation is the almost total absence of arguments related to other stakeholders such as employees. In figure 5.3. we can see that only the financial aspects of the deal are contemplated. This represents a clear instance of audience adaptation. The decision that shareholders are asked to make is framed as a typical investment decision in which they have to decide whether to continue to invest in the possible growth prospects of the target company or realize their investment by selling the shares.

Numerous presentational devices contribute in making the arguments selected more effective. In order to mark the low level of the price, the offer is often described as

“derisory” (e.g. AerLingus, Kraft) or “opportunistic” (e.g. Venture, Minerva, BlueOar). Very interesting are also some expressions through which the rejection recommended to shareholders is represented as the prevention of a non-benevolent action from the bidder:

60.: Don’t let NASDAQ transform itself at your expenses (*T.5.2.1, p.23*)

61.: Don’t let Kraft steal your company (*T.5.8.1, p.1*)

In 60. LSE frames the injustice implied by NASDAQ’s proposal: only the latter would gain and such gain would be an expropriation of LSE shareholders’ value. NASDAQ’S inflows would coincide with outflows for LSE shareholders. In other words, the message is: “you cover the costs, they get the revenues”.

Cadbury is even more direct and defines the proposal maker as a kind of thief who is trying to steal the company. By definition, a thief is one who takes what he/she does not own without paying.

In relation to argument 1.2., we also find a big number of presentational devices that highlight the attractiveness of continuing investing in the standalone target. As an example, we have already discussed the “growth story” metaphor used by LSE.

In the next sections, I shall focus exactly on arguments 1.1 and 1.2, which actually become sub-standpoints defended by the T-board and criticized by the bidder, who advances and defends the opposite sub-standpoints.

5.4. *The sub-issue concerning the adequacy of the offer price*

It goes without saying that the level of the price is a fundamental aspect, perhaps the most crucial, for deciding whether or not to accept a bid. Not by chance, in all hostile bids that I have considered, the inadequacy of the price was used by the T-board as an argument to reject the offer. As we have already seen in the analysis of friendly offers, the means of payment is relevant and also entails different argumentative strategies.

For simplicity, I shall focus now on cash offers only, where the level of the offer price is clearly established. Once the bidder discloses the terms of the offer, the price becomes a piece of evidence, a starting point that cannot be doubted. What is questionable is whether this price is good in relation to the value of the target, which is the crucial aspect that must be established. The target value, in fact, is far from being evident and determining it is a difficult task.

Therefore, the dispute that arises between the bidder and the T-board in relation to the adequacy of the price necessarily turns into a dispute concerning the value of the target company as a standalone.

Several methods exist for valuating targets' standalone value (see Arzac 2005; Weston et al. 1998): stock prices, discounted cash flows, multiples, real options, and others. These methods represent standard proxies for the value of a business, but each of them contains relative advantages and shortcomings (Bruner 2004; Damodaran 2001).

In friendly bids, pre-offer stock prices are the fundamental basis. Assuming that the market was pricing the stock enough correctly, i.e. adequately reflecting the standalone value of the company in the price, the reasoning was compelling.

In hostile bids, the premium claimed by the bidder is analogously based on stock prices before the commencement of the offer period (cf. T.4.1.1; T.4.2.1). In some cases, however, strategic maneuvering is at work for establishing the price that should be used for comparison. For example, in November 2006, NASDAQ made its second attempt to buy LSE¹¹⁸, arguing that the offer price “represents a 54% premium over the Closing Price on 10 March 2006, the Business Day immediately prior to LSE’s announcement that it had received a pre-conditional approach from NASDAQ” (T.4.1.1, lines 19.25). The underlying reasoning is that the market, once informed of this approach, reacted by buying LSE shares at a higher price, thus anticipating a possible offer by NASDAQ. To reinforce the effectiveness of its argument, NASDAQ uses a presentational device by introducing the concept of “*undisturbed price*”. On page 9 of its response document (T.5.2.4), NASDAQ tries to show that the LSE stock has been influenced by market speculations, driven by NASDAQ’s first approach in March.

Remarkably, the value of an offer can change significantly depending on which basis is used for such price comparison. To illustrate this point further, let us consider how Centrica computes the premium of its offer for Venture:

62.: The Offer Price represents a premium of approximately:

45.7 per cent. to the closing price of 580.0 pence for each Share on 17 March 2009, the last trading day prior to commencement of the Offer Period; and

¹¹⁸ In March 2006, LSE disclosed a pre-conditional offer of 950p a share made by NASDAQ, which was then withdrawn. Subsequently, NASDAQ started to buy LSE shares in the market obtaining a stake of 28.75%.

87.6 per cent. to the closing price of 450.5 pence for each Share on 13 January 2009, the last trading day prior to market and press speculation about a potential offer for Venture by Centrica (*T.4.2.1, lines 1-5*).

We can see that in the second case – in which the premium is based on the day prior to rumors –the premium is almost twice that implied by comparing the offer price to the price prior to the day before the period started. In this way, Centrica signals that the 41,9% difference between the two prices is due to investors' anticipation of an offer, which, using NASDAQ's words, have disturbed the true price.

This argument would be defeated if another interpretation to this movement is made. For instance, the prices could have risen because investors have thought that the company was undervalued or that the threat of a hostile offer could incentivize target managers to improve the performance of the company (cf. the *sitting on goldmine* and the *kick in the pants* hypotheses defined by Brealy et al. 1983).

The latter case would be hardly admitted by T-directors, though, when they react by announcing increased dividends or share repurchases, it is tempting to believe that these measures have been “forced” by the bid. Nevertheless, the typical reason given by T-directors in support of their standpoint that the offer is inadequate always seems to presuppose that the market was undervaluing the company.

In my corpus, I found in general, two different argumentations through which the T-board tries to show that the intrinsic value of its company is higher than the offer price: (1) one is based on a revaluation of the company's assets provided by an expert valuer. It is therefore a strategy that exploits the appeal to an expert opinion (argument from authority); (2) the other is based on *relative valuation*, through which the value of the target is estimated by making a comparison with other companies in relation to relevant aspects. Here, a crucial role is played by the argument from analogy.

5.4.1. The appeal to external valuers

In my corpus, I found an appeal to expert valuation in defense made by the following target companies: Rugby Estates Investment Trust (Reit), Minerva, Venture, and Dana. REIT and Minerva are real estate companies and both requested an assets valuation from *CB Richard Ellis* (CBRE), one of the world's largest firms in real estate services. Venture (which is now part of Centrica) and Dana are two oil and gas

explorations companies. Venture asked a valuation report from *Resource Investment Strategy Consultants*(RISC); Dana was valued by *Senergy*.

In all these cases the logic is compelling: through an argument from expert opinion, the actual value of the company is established. Since this value is higher than the offer price, the latter is unacceptable. Both Minerva and REIT make explicit this reasoning, as the following excerpts taken from their defense circulars show:

THE TRUE VALUE OF REIT	
Using valuations certified by CBRE as at 31 October 2009:	
NAV ¹ per REIT Share	72p
Terra's Offer price per REIT Share	41p

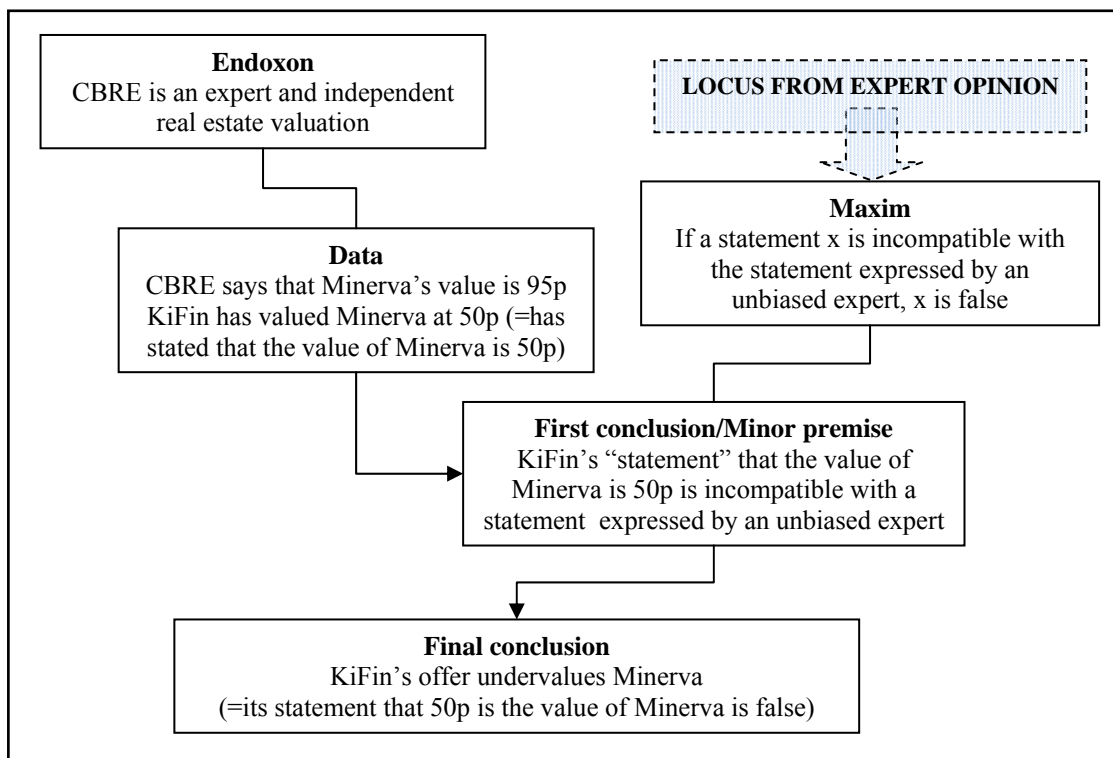
(T.5.7.1, p.1)

Using valuations certified by CBRE as at 30 November 2009:	
Minerva has a Pro Forma NAV ⁽¹⁾ of:	95p per Minerva Share
KiFin is only offering you:	50p per Minerva Share
Reject the Offer	

(T.5.9.1, title page)

In section 4.2.1, the crucial aspects that must be taken into account when assessing appeals to authority have been elicited. In our case, the source of the valuation must be competent and, above all, unbiased (my bold):

- 63.:** The Board has commissioned an **external valuation** of the Company's property portfolio by CBRE(*T.5.7.1, p.3*)
- 64.:** Minerva's **independent valuer**, CBRE, has valued Minerva's portfolio of properties as at 30 November 2009(*T.5.9.1, p.1*)



Argument Analysis 8. The argument from expert opinion applied to independent valuers

Argument Analysis 8 reconstructs the inferential configuration of this argument. This argumentation could be critically questioned in two aspects. One is the content of the expert valuation, but this would require a huge expertise; the other aspect is the actual independence of the expert when making its valuation. The words chosen by REIT and Minerva, namely “external” and “independent” stress on the fact that the valuation was not carried out by the target company itself. The bias in this case would be

evident. However, the external valuer is paid by the target company, a fact that might certainly create conflicts of interest.

In its reaction (T.4.4.1), KiFin does not question the quality of CBRE but makes two critical remarks which would weaken Minerva's claim.

Firstly, KiFin refers to the market price reaction, lower than CBRE's estimate of 90p (lines 5-8). This move is, in my opinion, rather risky, because it implicitly introduces a premise stating that the reaction of the market is a reliable indicator, which, combined with the fact that the current Minerva share price is higher than KiFin's offer, would force KiFin to admit that its proposal is undervaluing Minerva.

Secondly, KiFin emphasizes the highly subjective nature of the valuation (lines 12-14), caused by the fact that numerous properties in Minerva's portfolio of assets are under construction. According to KiFin, the valuation largely depends on key assumptions, which, in argumentation theory, coincide with *endoxa*. Indeed, KiFin shows that by changing some of these assumptions, the final result would lead to a different conclusion in relation to the acceptability of the offer (cf. lines 15-21).

Also Centrica makes two kinds of remark after Venture published the valuation report made by RISC (cf. T.4.2.4). First of all, the bidder notes that the T-board has replaced its independent valuer (lines 2-4). Perhaps, through this move, Centrica wants to mean that the former valuer (D&M) was not considered anymore by Venture because its valuation would be negative. In other words, Venture has not asked an independent review, but a valuer who could provide a good revaluation.

The second remark is a criticism to the report itself, which according to Centrica "lacks credibility in a number of important respects" (lines 5-6), in particular in the assumptions on future gas prices, which are judged as overly-optimistic, and in the valuation of Venture's reserves, which would ignore the risk associated to their development.

KNOC's response to DANA's defense is noteworthy, because the bidder does not criticize directly the valuation made by Senergy, but simply uses the same argumentation, relying however on another expert (RPS Energy):

- 65.: During its evaluation of Dana, KNOC appointed RPS Energy Ltd, a global reserve auditor with a highly respected international reputation and significant experience in the North Sea and North Africa. On the basis of publicly available information, RPS Energy Ltd reviewed all of the production, development and exploration assets in the portfolio of Dana and its analysis of 2P and 3P reserves, together with contingent and prospective resources, is fully incorporated into KNOC's Share Offer. (*KNOC-DANA, response to circular, 9.9.2010*)

This counter-argument obliges Dana directors to specify their previous argument. It is no longer sufficient to quote an expert, because through the same inferential connection, the opposite standpoint has been proven too. Therefore, the Dana Board specifies, in a response statement published the same day, the conditions of authority by highlighting a crucial difference between RPS and Senergy. Since the assets to be valued are Dana's, the latter's valuer is in a better position to know (my bold):

- 66.: [Dana's] defence circular includes a comprehensive Independent Expert valuation of Dana's assets based on full and current technical and cost data. **KNOC and its advisers do not have this full and current underlying data**, therefore **they could not have performed as detailed** an analysis as the Independent Expert valuation which is reported in the circular (KNOC-DANA, response to response statement, 9.9.2010)

5.4.2. The use of relative valuation and the comparability issue

In all other cash offers, relative valuation was used. While the appeal to external valuer activates an argument from authority, relative valuation exploits the argument from analogy, which is based on the assumption that two entities are comparable (van Eemeren & Grootendorst 1992; Garssen 2009).

As Damodaran (2001) explains, "in relative valuation, the objective is to value assets, based on how similar assets are currently priced in the market" (p. 251). Damodaran remarks that relative valuation is widespread and is particularly used by analysts when valuating acquisitions (p.252). The advantages of this technique are that it is easy to compute and to present to clients and customers, i.e. investors, while its main pitfalls a particular vulnerability to manipulation (pp. 252-253). In argumentative terms, relative valuations hold a high rhetorical potential but might easily derail and violate the critical testing of comparability (cf. Garssen 2009).

Relative valuation requires first of all that the stock price (or the value of the

asset) is standardized through a *multiple* (like the *price-to-earnings* ratio (P/E) or the *Enterprise Value-to-assets value* ratio). In this way it possible to make a comparison with other firms.

The second step is to choose an adequate group of comparable firms, which is far from being straightforward. Usually, companies in the same industry of the firm that must be valued are chosen (Arzac 2005: 63).

Damodaran (2001) explains that a comparable firm is one with similar cash flows, similar growth potential and similar risk. These features correspond, in argumentation theory, to the properties that define the *functional genus* to which two entities must belong in order to be comparable (Walton & Macagno 2009; Rigotti & Greco Morasso 2010). A functional genus is a set of items all owning the properties that are relevant for the standpoint under discussion. When the criterion used for comparability is “firms that belong to the same industrial sector”, it is implicitly assumed, through a shortcut, that firms belonging to the same sector have similar cash flows, growth potential and risk (cf. Damodaran 2001: 266). Therefore, an industry to which different firms belong constitutes a functional genus.

Now, the procedure for applying a relative valuation works as follows:

- *Step 1.* Choose the multiple.
- *Step 2.* Define the set of comparable firm, i.e. the functional genus and its members.
- *Step 3.* Compute the multiple for each firm selected and make the average.
- *Step 4.* Apply the average figure to your firm and for the desired purpose.

The fact that an average number is used is certainly one of the reasons why this procedure is defeasible. The average is used in order to eliminate biases, but, if my company is actually performing in bottom half of the group, the average would overvalue it; while, if my company is outperforming the others, the average would undervalue it.

In its first defense document against NASDAQ, the LSE Board proposes a relative valuation of the LSE share, based on the P/E ratio (T.5.2.1, pp. 8-9). The P/E ratio is computed by dividing the stock price of a company by its earnings per share (EPS), calculated as the total net earnings divided by the total number of outstanding

shares. EPS may refer to the last twelve months (LTM earnings) or to a forecast of the next twelve months; the former are called trailing multiples; the latter are called forward multiples (Arzac 2005: 64).

At page 9 of its first defense circular (T. 5.2.1), LSE uses trailing P/E ratios in order to defend its claim that NASDAQ's price does not reflect LSE standalone value. The circular computes the average P/E ratio of fifteen exchanges (including NASDAQ and LSE at the current price), which LSE define as "major listed exchanges". In the endnote, LSE explains this choice as follows:

"Other major listed exchanges include all global exchanges with a market capitalization greater than £1 billion as at 15 December 2006 (being the last day prior to the latest practical date prior to posting the document)."

Let us describe step by step, the procedure adopted by LSE

- *Step 1. P/E*
- *Step 2. "all global exchanges with..." = NYMEX, NYSE, CBOT, Nasdaq...*
- *Step 3. 37.3x.*
- *Step 4. The P/E of LSE (37.3x) is higher than the P/E of NASDAQ's offer = 24.7x*

In this way, LSE shows two things: (1) the average P/E (37.4x) is higher than the P/E implied by NASDAQ's offer price (24.7x); (2) the P/E implied by the offer is one of the lowest in the ranking of the P/E of the comparable firms.

The second aspect is particularly relevant once connected with the content of page 8 of the circular. Here, LSE advanced numerous reasons that would prove that the company is better positioned than any other major listed exchange in the world:

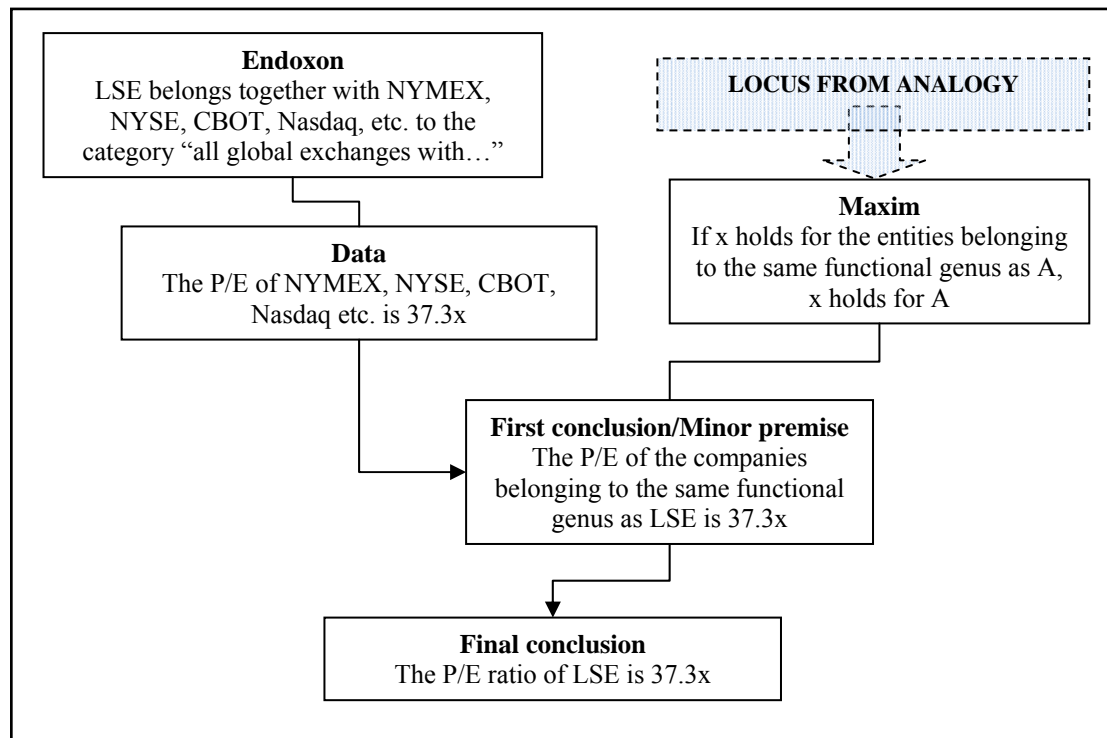
67.: Your company is listing more international companies than any other major listed exchange in the world

Your company is helping more issuers raise more money through IPOs than any other major listed exchange in the world

Your company is delivering faster growth in trading than any other major listed exchange in Europe or the United States

The Board argues that, because LSE is expected to grow and to realize cash flows more than its comparable companies, its true P/E ratio is certainly above the average.

Let us analyze this complex but crucial argumentation assuming, for simplicity, that the average of the peer group can be applied to all members of the group. Argument Analysis 9 shows the inferential configuration of this analogical reasoning.



Argument Analysis 9. The P/E ratio argument used by LSE

As this Y-structure shows very well, there is a crucial difference between endoxa and data. The datum is a piece of information that LSE states but that, theoretically, anyone could compute by himself.

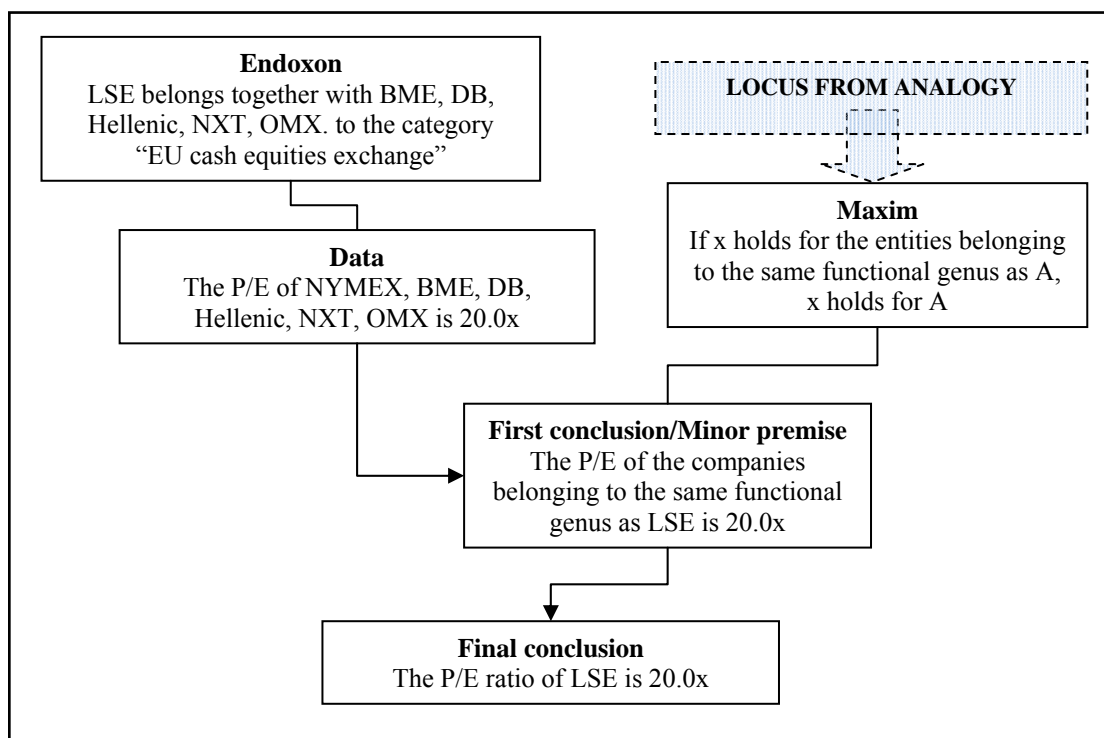
Instead, what fills the endoxon box could be hardly defined as information. It is rather a way of conceiving the industrial context. It is something that we agree upon on the basis of a convention or, to put it with Damodaran, an implicit assumption. Interestingly, NASDAQ’s response (T.5.2.4) does not question the datum (also because “mathematics is not an opinion). The target of NASDAQ’s criticism is the appropriateness of the peer group selected by LSE:

68.: we question why a cash equities exchange chooses to compare itself with businesses as diverse as a commodity futures exchange, a derivatives and physical energy marketplace and an electronic derivatives and options exchange

- These businesses have completely different growth drivers to LSE – for example, independent consultants estimate forward revenue growth for equity derivatives businesses to be c.2.5 - 3.0x higher than for cash equities exchanges. (*T.5.2.4, p.7*)

We can see that NASDAQ tries to define the relevant functional genus in a different way. Because of different growth drivers, the implicit assumption (endoxon) that all major exchanges in the world have the same growth profile is unacceptable for NASDAQ. Therefore, a different peer group must be selected, which, by applying the same procedure used by LSE, leads to a totally different result:

- *Step 1. P/E*
- *Step 2. “EU cash equities exchange” = BME, DB, Hellenic, NXT, OMX*
- *Step 3. 20.7x.*
- *Step 4. The P/E of LSE (20.0x) is lower than the P/E of NASDAQ’s offer = 24.7x*



Argument Analysis 10. The P/E ratio argument used by LSE

Through this example, the crucial relevance of the *opening stage* emerges. All these moves are in fact attempts to define the most expedient common ground. We see in fact that, once certain starting points are established, the reasoning in the *argumentation stage* is almost automatic.

The interesting dispute between NASDAQ and LSE continues in the following documents published by both sides.

LSE directors insist in defending their valuation and reject NASDAQ's criticisms. In its second circular (cf. T.5.2.3), on p. 14, LSE directors put forward two counter-arguments against NASDAQ's claim that only European stock exchanges can be used as comparables: (1) financial experts did not do so when providing fairness opinion in precedent takeovers involving other exchanges; (2) NASDAQ itself, when measuring its performance in March 2006, included in its own peer group both LSE and the *Chicago Mercantile Exchange (CME)*, which is neither a European nor a stock exchange.

Noteworthy, in its further reply (23 January 2007), NASDAQ simply restated its view without countering the new arguments provided by LSE:

- 69.:** LSE's latest value arguments are clearly misleading – LSE again refers back to historic multiples for an inappropriate peer group and attempts to justify standalone value through reference to transaction multiples for pure and hybrid derivatives exchanges. The fact that 1,243pence represents a full and fair valuation is set out in our First Response Document (T.5.2.5, p.2).

In the dispute between Centrica and the Venture directors, relative valuation was also involved. Above, in Figure 4.12, I have reconstructed the structure of Centrica's argumentation in its firm intention announcement. In responding to such announcement, the Venture board states that:

- 70.:** The value per barrel implied in Centrica's offer is materially below the average achieved in the sale of comparable large North Sea asset portfolios in recent years (T. 4.2.2, lines 9-10).

This argument is further developed in the defense circular, on p. 19 (cf. T.5.5.1). The main difference with LSE-NASDAQ is the choice of the multiple. Venture does not use the P/E multiple but the *Enterprise Value-to-reserves value* ratio of transactions made by other companies having similar reserves. The value of the reserves is computed through the *barrel of oil equivalent basis* (boe). The procedure followed by Venture is:

- **Step 1. EV/value of reserves**
- **Step 2. “sale of comparable large North Sea asset portfolios in recent years” = TAQA/Talisman (Jan 07), Dana/GDF (Nov 06), Venture/CH4 (Aug 06), etc.**
- **Step 3. 17 \$/boe**
- **Step 4. Centrica implied value (17\$/boe) is higher than the value implied by Centrica's offer (10.3\$/boe)**

In order to execute step 4, we need to compute the ratio implied by Centrica's offer. This is done by Venture in two steps: first compute the EV implied by Centrica's offer price, then divide the EV by the value Venture's proved and probable reserves as estimated on 31 March 2009¹¹⁹.

This argument advanced by the target board forces the bidder to improve its whole argumentation. In fact, in the offer document, besides the reasons already given in

¹¹⁹ These figures are indicated in the notes of Venture's defense circular (T.5.5.1, p. 42).

the firm intention announcement, another argument is put forward by Centrica:

71.: The Offer Price takes into account an increase in UK gas prices, notwithstanding uncertainty surrounding these future trends, and that 70 per cent. of Venture's reported 2P reserves are natural gas, rather than oil. Furthermore, a large proportion of these reserves have yet to be developed. Therefore, simple value comparisons on a barrel of oil equivalent basis are, in Centrica's view, inappropriate (*T.4.2.3, lines 8-11*).

In Figure 4.15, I reproduce part the structure of the previous argumentation of Centrica (Figure 4.14) by adding the counter-argument just discussed.

Also here, the bidder's reaction concerns the Endoxon. Centrica does not neglect the computations made by Venture, nor that, in general, *boe* can be used to estimate the value of a company. Rather, Centrica questions the applicability of this *criterion* in the specific context of Venture. The maxim at work states that the compared realities must belong to the same functional genus. According to Centrica, because Venture's reserves are mainly gas and have yet to be developed, they cannot be compared to transactions that (a) were mainly oil and (2) have already occurred.

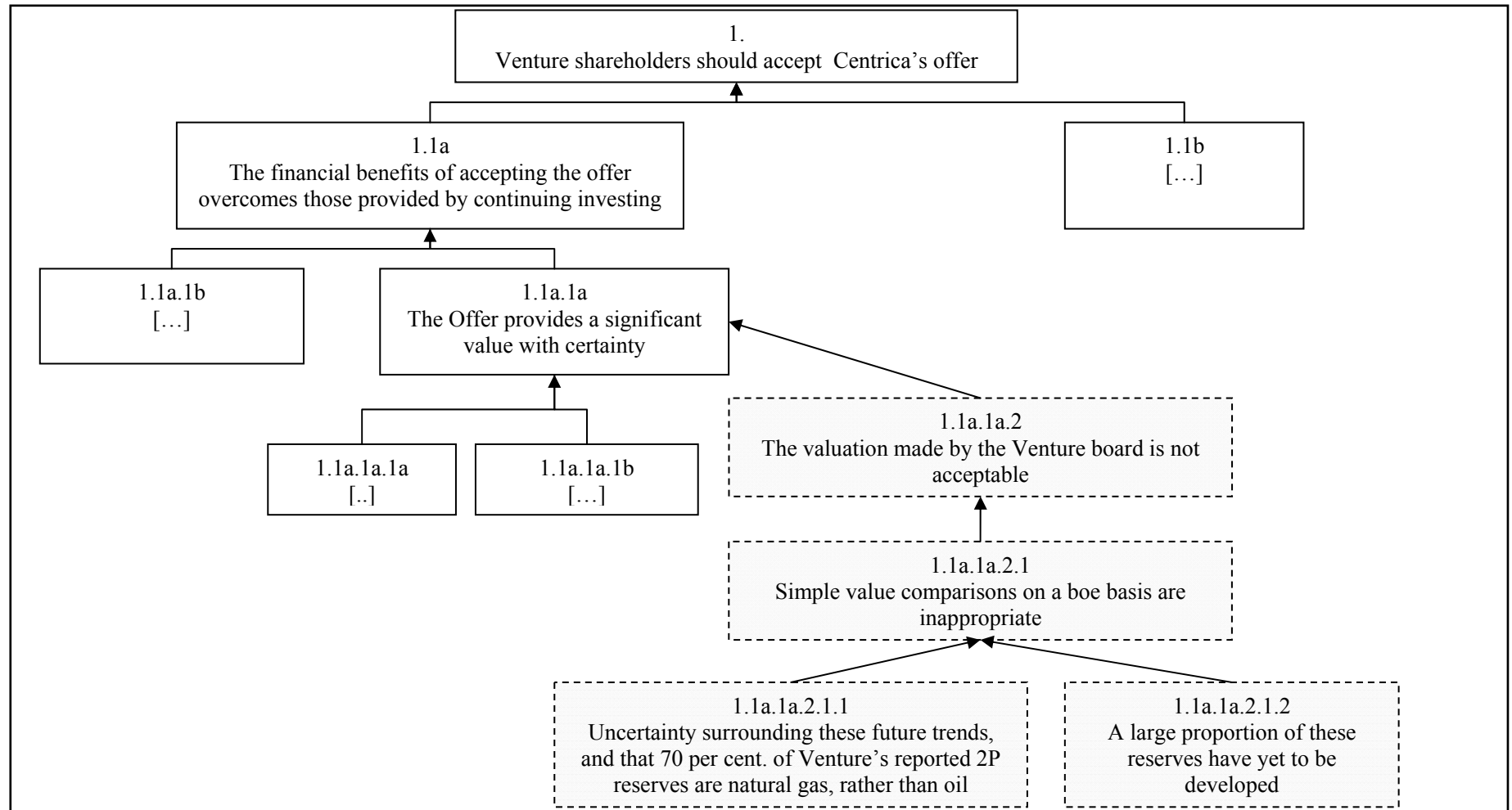


Figure 5. 4. Structure of Centrica's argumentation in the offer document

Finally, there are cases in which relative valuation is even rejected as a metric. In its second defense circular, Novera clearly claims this against Infinis' attempt to use EV multiples:

72.: Infinis stated that its Offer “implies an Enterprise Value multiple of 16.9x Novera's reported EBITDA for the twelve month period ended 30 June 2009 of £10.6m”

The Board believes that EBITDA multiples are the wrong metric to value a growth company. Equity analysts typically use discounted cash flow analysis as their primary valuation methodology for Novera and companies like it (T.5.6.2, p.4)

Rather than providing new information, Novera seems to retrieve an endoxon from the common ground. The fact that Novera recalls that DCF analysis is *typically used by analysts* should draw our attention to the definition given by Aristotle of endoxa: “opinions that are accepted by everyone or by the majority, or by the wise men (all of them or the majority, or by the most notable and illustrious of them) (Topics 100b.21)”.

The move made by Novera, thus, does not consist in new information disclosed, but rather as a warning for Infinis, which seems to overlook an assumption well established in the financial context.

5.5. The arguments concerning the target's standalone prospects

The obvious implication of an offer's rejection is to continue investing in the standalone target company. It is, therefore, crucial for T-shareholders to know what the future prospects of the company are. Especially in cash offers, which provide certain value, investors might prefer to tender also at a not enough high price, if they think the possibility for their company to provide a return is low.

Now, regarding the future of the target company as a standalone, the bidder and the target directors evidently do not share the same view. On the one side, NASDAQ maintains that increasing competition will prevent LSE from being profitable (cf. T.5.2.4); Ryanair describes AerLingus's standalone future as “bleak” (T.5.3.2, p.21); Kraft emphasizes the improbable growth targets set by Cadbury (T.4.3.1, lines 25-34). On the other side, LSE levers on its competition culture (T.5.2.1); AerLingus relies on its financial strength and recent measures taken (T.5.3.1); Cadbury stresses its unique position and leadership (T.5.8.1).

These are only some of the innumerable arguments exchanged when discussing the quality of the standalone target.

I shall focus on a specific aspect that seems peculiar of hostile bids and helps understanding the nature of a such kind of offers, namely the attack to/defense of the target managers and directors. As already pointed out, a bidder making a hostile offer is inevitably questioning target managers and directors' *ethos*. Target managers and directors find themselves in a difficult position, also because suspicions may arise that they are resisting to the offer only to maintain their position (cf. section 2.2.2, the managers-welfare hypothesis).

In this way, a hostile bid, and the debate it entails, becomes an opportunity to assess target managers and directors' past actions. In this regard, I found, in numerous cases, a phrase through which T-directors claim to prove their abilities to create value for shareholders (my bold):

- 73.: A **proven track record** with the management team to **deliver value** [...] With the commitment of our management team and the partnership we have developed with our staff, we plan to continue to deliver on our strong **track record** of financial performance, maintaining disciplined cost control and profitably growing our capacity (*T.5.1.1, p.6*)
- 74.: A **track record of delivery**. In our circular of 17 February 2006, your Board committed to delivering superior shareholder returns. In the 10 months since then, an investment of £100 in the Exchange has become worth £175. (*T.5.2.1, p.13*)
- 75.: Venture has a sustained **track record of delivering growth and value**. This growth has been delivered through the successful execution of a simple focused strategy of identifying, integrating and exploiting carefully selected acquisition targets to unlock 'stranded' reserves (*T.5.5.1, p.2*)
- 76.: Novera's senior management team of six has over 130 years' combined experience in the energy sector and a **proven track record of originating new renewable projects** and successfully bringing them through the planning and consent stages into operation (*T.5.6.1, p.2*).
- 77.: Our performance is ahead of the objectives set out at the beginning of 2009, providing **further evidence of our management team's strong track record of delivery**, and is particularly notable against a difficult economic backdrop (*T.5.8.2, p.2*).

The choice made here from the topical potential is clearly conceived for the audience of shareholders-investors. Indeed, the kernel dynamics of finance, described at the beginning of chapter 3, becomes here precious to understand this species of

arguments. As we said, investors provide capital to the firm, represented by its managers and directors, who by selling securities commit themselves (actually the company) to repay investors. For shareholders, no fixed amount of money is established but the right to receive net profits. If a company makes profits, such value (if all other claimants have been paid) belongs to shareholders, the owners of the firm. In public companies, this endeavor is entrusted to corporate managers, monitored by directors, who are the ultimate responsible for the firm's performances (cf. Monks & Minow 2005).

Now, when shareholders are target of a takeover bid, the eventual decision to reject an offer and continue investing in the company coincides with a renewed trust to the incumbent managers and directors. It goes without saying that this confidence cannot be taken for granted or ensured once for all. Indeed, disclosure rules and the related financial reporting activities are mainly motivated by the need to verify managers' behavior.

Therefore, the "proven track record in delivering value" is an argument that should not be interpreted simply as supporting the standpoint that the company performed well. The goal of the T-board's argumentation in takeover bids is to persuade shareholders not to sell. Thus, this argument must be interpreted as a reason why shareholders should keep their trust in the managers and directors. A relation has to be singled out between, on the one hand, the fact that managers repeatedly proved to deliver value, and, on the other hand, the fact that shareholders should continue investing in the company.

In general, the occurrence of an event in the past proves at least its possibility, but not its necessity. In this sense, shareholders can conclude that it is not impossible for their managers to deliver again value. However, by speaking of "track record", directors can argue that the repetition of the event is not simply possible but even probable, as such a repetition hides a cause. A single win might be due to luck, but a repeated event is more reasonably explained if we find a factor that causes it. This factor coincides, according to the T-board, to a skill, a capacity, an intrinsic property held by managers which make them capable of creating value. Consider example 77. referring to Cadbury: here, the outperformance of the management is interpreted as a further proof for their track record. Evidently, the Board argues, they have not been lucky, they are skilled.

My hypothesis of reconstruction is the following: a manager who realizes value

can be described as an agent who was moved by this final cause and achieves it; the repetition of this phenomenon brings to conclude that the agent is almost an efficient cause of that effect; that means, he/she has probably the capacity to produce that effect coinciding with the goal. The maxim is thus the following one:

“if an agent A produces an effect E every time he/she is moved by the final cause E, A is (probably) an efficient cause of E”.

Furthermore, the repetition of value creation may also function as symptomatic argument (van Eemeren & Grootendorst 1992) of managers' commitment towards shareholders. If we look at example 74., LSE directors point out their credibility, by recalling the commitments taken in February and their actual realization now. As we said in section 2.7 (“my word is my bond”) the selling of security could be interpreted as a commissive speech act, through which enterprises engage themselves to accomplish an action in the future. Now, one of the felicity conditions of the speech act ‘to promise’ is exactly that the speaker can fulfill what he is committing to do (cf. Searle 1965). The track record functions as a reason to believe in this condition and thus to consider the promise reliable.

How do bidders react to such apparently wonderful scenario? NASDAQ invites shareholders not to be persuaded by the capital that LSE has returned, because these returns were not, NASDAQ argues, the effect of managers' ability and respect of commitments, but the effect of (i) a defensive strategy against hostile bids; (ii) or exceptional events (*T.5.2.4, p.11*).

Therefore, NASDAQ does not neglect that LSE shareholders have received value but simply remarks that these returns are not symptom of “proven skills to deliver”, but rather measures that managers implemented to defend their own personal position.

It is interesting to compare the presentation techniques through which the two sides communicate their point of view. While LSE directors speak of “proactive balance sheet management”, NASDAQ calls these distributions “largely reactive”. In the first case, the agent is characterized as an entrepreneur, with skills, smart ideas, good intentions, full of initiative and also benevolent (“pro-”); in the second case, the person is passive, suffers the context and the pressure by the others, lacks any plan and, thus,

when the circumstances constrain him, is forced to respond.

In Ryanair's second bid for AerLingus, the non-fulfillment of promises plays a crucial role:

Shareholders cannot believe Aer Lingus defence	
Aer Lingus 2006 defence document promised ...	But Aer Lingus actually delivered ...
"Committed to reduce unit costs"	Operating costs per pax rose 18% in last 2½ years
"Excellent prospects as an independent carrier"	EU independent carriers are rapidly consolidating while AL is bypassed
"Superior returns justify a premium rating"	Negative returns have led to a rating collapse
"Deliver further value through profitable growth"	Growth has delivered operating losses in 2008 and again in 2009
"Expect to add significant value to our company"	€960m of value loss in last two years (Nov'06-Nov'08)
"Ryanair's offer of €2.80 does not reflect Aer Lingus' intrinsic value"	The market agrees, having valued Aer Lingus at ave.of just €1.09 per share in the 30 days to 28 Nov'08

(T.5.3.2, p.8)

In this case, the bidder pretends to show that the T-directors and managers not only proved not to be able to deliver value. Rather, the standpoint of Ryanair is that they are not credible, because they promised something that was not achieved. A critical question to Ryanair's argument could be whether the promise was not kept because insincere or because contextual circumstances, which could not be reasonably predicted, prevented AerLingus to fulfill its commitments.

In fact, Aerlingus' defense defines the 2008 year as "a very difficult year for all

airlines worldwide, as a result of the major increase in fuel prices [...] and broader economic uncertainty” (*T.5.3.1, p.3*).

On pages 16-17 of the same document, AerLingus directors also refute Ryanair accusation by listing twelve promises made in 2006 (“actual commitments made in 2006”) and, for each of them, ticking a box as a sign of delivery.

On pages 18-19 further “delivered promises” are recalled, namely an increasing number of routes and unit cost reductions. We note, however, that, apart from cost reduction, none of the data brought to light by Ryanair are tackled by AerLingus. There is an evident lack of correspondence between Ryanair’s table and Aerlingus’ reply.

This latter remark leads us to the last point that I wish to tackle very shortly before moving to the conclusions of this dissertation. It seems that, in trying to construct the most expedient opening stage, each side either attempts to rule out the other’s starting points or, more simply, ignores what the other said.

Now, this choice could be interpreted as a lack of criticality. If arguers claim to argumentatively demonstrate that they are right, they must be able to overcome all criticisms advanced by the antagonist. The problem in this respect is how to reconstruct the interaction between the bidder and the target directors. Since they are not addressing to each other but to shareholders, their dialectical obligation are directed to shareholders. On the other hand, by accepting to fight the argumentative battle, they have implicitly agreed to relevantly consider the other’s standpoint and arguments.

I prefer to refrain from handling with this issue in detail (see conclusions), but I want in any case to bring to light that, when one side does not reply to an argument put forwards by the other side, the latter remarks it in a further response (see excerpts reported below). In NASDAQ’s response to LSE’s second defense, NASDAQ clearly interprets the lack of reaction by LSE directors as an implicit acceptance, inviting shareholders to draw their conclusions from this lack of argumentativeness (cf. *T.5.2.5, p. 21*). But also LSE uses a similar move, probably in relation to an issue that is even more relevant than those raised by NASDAQ in just mentioned passage. NASDAQ refers to synergies that would arise from the combination of the two exchanges. However, despite the insistence of LSE in previous documents (cf. *T.5.1.1, p.11*), no detail on such synergies has been indicated, something that LSE highlights (cf. *T.5.2.1,*

Does LSE accept our arguments?

Why did LSE choose not to respond to some of NASDAQ's key arguments in the First Response Document?

NASDAQ argument	LSE response
Cost reductions <p>"LSE references having achieved £75 million of annual customer savings since 2001 ... On its own account, LSE has given less than £30 million back to users – a derisory amount"</p> <p>NASDAQ First Response Document, 8 January 2007</p>	<p>[None]</p> <p>Does this mean that LSE accepts historical cost reductions were derisory?</p> <p>→ Draw your own conclusions</p>
Shareholder base <p>"If standalone value is so clearly above 1,243 pence as LSE claims, why have no traditional UK long-term holders bought substantial positions since NASDAQ's approach"</p> <p>NASDAQ First Response Document, 8 January 2007</p>	<p>[None]</p> <p>Does this mean that LSE has been unsuccessful in convincing long-term holders that standalone value is above 1,243 pence?</p> <p>→ Draw your own conclusions</p>
Technology <p>→ NASDAQ provides highly efficient trading tools</p> <p>→ NASDAQ's technology is highly scalable and ready to meet customer needs</p> <p>NASDAQ First Response Document, 8 January 2007</p>	<p>[None]</p> <p>Does this mean that LSE acknowledges that NASDAQ's technology is better positioned to meet customer needs than its own?</p> <p>→ Draw your own conclusions</p>

(cf. T.5.2.5, p. 21)

Nasdaq is silent on synergies

"This premium reflects a fair share of the synergies which NASDAQ expects to realise in the combination..."

Nasdaq document, 8 January 2007

- Remarkably this is all Nasdaq said on the value of synergies in this document

(cf. T.5.2.2, p. 19)

6. Conclusive remarks and further research paths

6.1. Answering the research questions

This dissertation moved from a double concern. On the one hand, I was interested in exploring the financial context from an argumentative perspective. Finance is a domain largely ignored by argumentation scholars, although reasoning and rationality appears to be crucial in it. Thus, I wanted to better understand whether and how this context allows argumentation to occur and what forms of reasoning are exchanged in financial communication. On the other hand, my goal was to contribute to the broad research stream of argumentation in context, which aims at investigating how argumentation concretely intervenes in social interactions, promoting sound decision-making processes. I chose to focus on takeover bids because they represent very important financial activities, which entails complex and relevant decisions. Indeed, the communicative interactions characterizing takeover bids prove to be highly argumentative.

In order to conduct this investigation I have firstly built up an interdisciplinary ground, set out in chapter 2. Theoretical and analytical instruments developed by argumentation theory have been combined with elements of financial economics, as regards to financial markets and takeovers, and with studies in financial communication, in which the relevance of information for decision-making is stressed without referring to its argumentative dimension.

The specific research questions elaborated in chapter 1 have been addressed in chapter 3, 4 and 5.

6.1.1. The relevance of argumentation for a properly informed decision

A central concern in my dissertation was to shed light on the role played by

argumentation in a context (finance) in which an essential component of any argumentative discourse, namely information, is vital. In general, reliable information is necessary for both firms and investors in order to improve the quality of their own decisions. Information is particularly crucial also when firms need to persuade investors to take a certain decision or to accept a certain opinion.

How information and argumentation are related in the communicative activities supporting takeover bids? How does argumentation elaborate information in order to rationally support the decision to accept or reject a bid?

By considering takeover proposals, I discovered that the shareholders' need for information is met by communicative activities in which information is *argumentatively* exploited. After having elicited the crucial communicative interactions in which argumentation intervenes, I have analyzed the strategic maneuvering that the bidder and target directors make starting from a certain piece of information.

The results bring to light that in both friendly and hostile offers, and in particular in the latter, the relevance of a certain piece of information significantly depends on its involvement within an argumentative process.

Because takeover bids involve an important and complex decision by target shareholders, the argumentative discourse developed by corporate directors is pragmatic in nature, thus mainly concerning what is desirable and expedient to do. However, the relevance of knowledge-oriented argumentation (whose aim is to establish whether a statement is true or false) should not be underestimated. In fact, the pragmatic inferences communicated by corporate directors are based on numerous material starting points, which are not immediately evident and need in turn to be justified, realizing so subordinate argumentations. In other words, they must be argumentatively supported in order to become reliable information on which a certain decision can be justified. For example, the standalone value of the target company, which, together with the offer price, is indispensable to determine the financial expediency of an offer, is established by means of different inferential procedures and by relying on different sources and assumptions. In this respect, the *opening stage* of a critical discussion becomes crucial. The quantity of data that could be used as information is huge. As a consequence, strategic choices can be made for selecting and constructing the most expedient material starting points, which will be used, in the *argumentation stage* to infer the desired

decision.

The argumentative approach to financial communication proposed in this work shows the importance of endoxa for establishing the relevance of a certain information for the decision at stake. The selected data, which constitute information, cannot alone justify a decision, as they must be combined with other kinds of starting point. Here, a fundamental role is played by various kinds of endoxa, which determine the actual relevance of a piece of information for the standpoint at issue. Indeed, argumentation represents a particular way through which financial communication manages information: within an argumentative discourse, data and facts (information) become premises which, by means of an inferential procedure, may lead to reasonable decisions, judgments, evaluations, positions, etc. In fact, financial communication typically transform information into decision by means of argumentation. Different possibilities however exist:

- 1) Companies disclose new information which is then used by investors to reason out their decision. In this case, argumentation meant as a communicated inference does not take place, but only intrapersonal argumentation by the investor;
- 2) Companies disclose new or recall existing information and communicate also an inference starting from this information. When new information is disclosed, social reality is affected so that some reasoning procedures are no longer relevant while other become relevant.
- 3) Companies do not disclose new information but “create” new information by elaborating existing information through argumentation

The analysis carried out in chapters 4 and 5 showed that the second and the third phenomena typically occurs in takeover bids. Directors do not simply disclose information, but they exploit it argumentatively. They insert information into a discourse developed in order to convince shareholders of the acceptability of their standpoint.

When existing information is elaborated, a certain interpretation is conveyed, that is a certain line of reasoning moving from already shared data. If this data is directly accessible, reference is made to the common ground; if the data are the product of a reasoning elaboration, a move at the level of opening stage is accomplished, through

which the arguer tries to establish the most expedient material starting point. The endoxon that is recalled become here crucial to justify the selection of a certain piece of information and the exclusion of another one.

6.1.2. Strategic maneuvering in friendly and hostile bids

Which argumentative strategies do bidding and target directors adopt to allow shareholders to take a sound decision and at the same time to persuade them to accept/reject the offer?

In order to answer this question, the results obtained from friendly and hostile cases must be distinguished. In fact, directors' argumentative attitude is substantially affected by the nature of the proposal. Although the Code does not foresee a different procedure for the two types of offer, the empirical analysis in chapter 4 has actually brought to light two distinct realizations of the same activity.

By comparing strategic maneuvering in these two distinct cases, it becomes possible also to answer the question: *how do the argumentative situations implied by friendly and hostile bids respectively affect bidding and target directors' strategic maneuvering?*

Friendly bids. In friendly bids, the crucial decisional moment seems to have already occurred. The offer is presented as a decision already taken and adequately argued which shareholders should simply go along with. The bid practically becomes a joint proposal and, interestingly, the bidder refrains from directly arguing in favor of the offer acceptance, limiting itself to appealing to the authority of the T-board. The bidder actually does not make explicit any standpoint. In introducing its letter in the offer document, the stated goal is to make the offer and set out its terms and conditions; then, the reader's attention is drawn to the T-board's recommendation and related reasons.

Initial situation. Therefore, the *confrontation stage* envisages the target board as main protagonist, while bidding directors appear to collaborate by justifying the underlying acquisition as requested by the Code. In this way, the bidder apparently fulfills an informative role only, letting the T-Board pursue the rhetorical aim of persuading T-shareholders towards the acceptance of the offer.

Starting points. The fundamental characteristic of the argumentative discourse

supporting *friendly bids* becomes so the mutual coordination between the B-and T-directors, which reflects the friendly nature of the proposal. This coordination represents a crucial *procedural starting point* in the opening stage characterizing the conventionalized discussion in friendly bids. It reflects the argumentative obligations requested by the City Code, which are fulfilled by both sides within the same document by means of two distinct paragraphs, one concerning the reasons for the offer and the other concerning the reasons for the recommendation. The bidder's main argumentative effort appears as having being concluded in phase 1(a) with the achievement of T-board's consent. Now, the bidder is confident that the T-board's support will be the most persuading argument. Thus, a procedural starting points is established in the opening stage, by which the T-board will argumentatively defend the offer's expediency. Regarding the *material starting points*, the hypothesis of market efficiency, at least in relation to the target stock, seems to be presupposed. In fact, pre-offer prices are considered as sources of reliable information about the standalone value of the target. The reliability of directors is also strongly presupposed as numerous pieces of information find their ultimate support in the directors' belief.

Argumentative means. As a consequence of the established procedural starting points, in the *argumentation stage*, the bidder advances only the reasons justifying the acquisition, while the T-board justifies its recommendation. In chapter 4 the main argument schemes adopted to both aspects have been brought to light and analyzed.

The T-Board develops pragmatic arguments to show that tendering the shares represents an action more expedient than to continue investing in the standalone target. Here, the comparison of the offer price with pre-offer stock price, the certainty provided by cash or the improvement provided by the bidder's stock, and the lack of adequate grow opportunities for the target are the main arguments adopted to justify the recommendation.

The arguments put forward by the T-Board are presented as the reasons that have been at work in deciding whether to recommend the offer or not. In other words, the reasons that have persuaded directors to believe that the offer is expedient are expected to become shareholders' own reasons. Although the offer document is explicitly addressed to shareholders ("Dear shareholder of [T-name]"), in advancing the arguments that should persuade them to accept the offer, such directness lacks: shareholders are

never addressed in the second person ('you', 'your'), no directive speech act characterizes the recommendation and its justification. This indirectness might also be explained as an attempt to mitigate the difference of opinion and so the questionable nature of the decision at stake. An excessive rhetorical directness (which we found recurrent in hostile bids) could be counterproductive in a situation in which, apparently, no public criticism has been raised against the offer.

Hence, the decision is presented as almost compelling. In fact, the arguments that T-directors choose from the topical potential emphasize the financial attractiveness provided by the offer which the standalone company hardly could achieve. Such impossibility is not bound to managers and directors' lack of skills or commitment, but to the very high offer price and to contextual conditions out of managers' control (market and economic uncertainty, difficulty to raise finance, etc.). Moreover, the benefits for the company once acquired are highlighted. The reconstruction of this second line of reasoning is problematic as it is not always clear whether the economic-organizational expediency is an argument addressed to shareholders or to important ratified participants such as employees. In any case, the arguer reinforces the expediency of the offer by indicating a further benefit that would occur.

The bidder's argumentative effort coincides with the exposition of the motives behind the decision to pursue the acquisition. In the perspective of financial economics, these arguments largely coincide with some of the explanations for takeovers singled out by scholars. The analysis of the cases considered in this dissertation suggests that, although synergies, cost reductions and revenues enhancing are mentioned, they never constitute the core of the bidder's justification. A mix of reasons is put forward and, in particular, the focus is put on the presumed ability of the resulting corporate acquisition to realize the corporate strategy, previously defined by the bidder, and on the opportunity to create a stronger group which would benefit both companies (the "happy joint action" argument) and their stakeholders. By stressing the development opportunities that the combination would bring to both firms, the bidder could be attempting to dispel suspicions that the offer is motivated by irrational motives (see hubris theory) or by an attempt to acquire an undervalued target (see valuation and raider theories).

In general, the use of presentational techniques is limited. One interesting device concerns the style of the announcements ("we are *pleased* to announce"), which recalls

that adopted in wedding announcements. Not by chance, a rhetorical device is used in describing the boards' agreement as this appears to be the most crucial "argument" for accepting the proposal.

Outcome. The bid concludes with the eventual tendering decision of target shareholders. Because they do not externalize their own reasons behind the decision to tender or not, it is not possible to assess the extent to which a concluding stage has been successfully achieved. Although all friendly bids considered in my corpus were eventually accepted by the majority of shareholders, it not possible to determine whether this successful outcome is relevantly related to the quality of the arguments put forward by corporate directors.

Hostile bids On the opposite, when a *hostile bid* is announced, the whole transaction has just begun and takes place directly in the financial market. The bidder argues directly with T-shareholders attempting to persuade them to accept their proposal. T-directors try to prevent this outcome. Each side sets out its own argumentative strategy and tries to destroy the other side's arguments.

Initial situation. In the firm intention announcement the bidder not only sets out the terms of the offer as requested by the Code but also makes explicit the standpoint that the offer is desirable for T-shareholders. Similarly, the bidder's decision to bypass the T-directors, arguing against their reasoned opinion, forces T-directors to defend themselves. In a takeover context like the UK, in which takeover barriers are largely prevented, the argumentative defense may represent the only available alternative for the T-board. Therefore, in the reconstructed confrontation stage, target shareholders find themselves in front of two opposite standpoints advanced by the bidder and the t-board respectively.

Starting points. The communicative coordination emerged in friendly bids is absent in hostile offers. Not only each side develops its own argumentation but also distinct documents are used. So, for example, the offer document no longer contains the T-boards' view. The T-board fulfills its obligation to express its reasoned opinion in a specific document, the defense circular, which constitutes a largely argumentative text. I have suggested to consider as the crucial procedural starting point, the implicit mutual acceptance to fight the argumentative battle. However, this sort of agreement is only

partially realized as not always arguers take into account the counter-arguments put forward against them.

The information representing the material starting points is constructed by each side but is also criticized by the other side, in particular by questioning the implicit endoxa which make a datum relevant to prove the conclusion.

Argumentative means. The bidder's standpoint is supported by reasons which resemble those that in friendly bids were used by T-directors. The content of the offer document is not a repetition of the announcement as further reasons are given which take into account the criticisms manifested by the T-board when responding to the firm intention announcement. The resistance made by the T-board, thus, forces the proposal-maker to specify its position, to go more in depth in the reasons why the bid should be accepted.

In defending their position, T-directors do not tackle only aspects bound to the level of the offer but they also have to justify managers' and their own past decisions. By making a hostile offer, in fact, the bidder implicitly questions the credibility of T-managers and directors. The T-board defense is based on arguments wholly concerning the economic-financial dimension of the deal. The main arguments are in fact the inadequacy of the price and the excellent investment that the standalone company still represents for shareholders.

After the circular has been published, several statements containing further arguments are issued by both sides, in the attempt to persuade shareholders against the other side's argumentation.

Outcome. Also in hostile bid, the conclusion coincides with the decision by the shareholders. Unlike friendly cases, hostile offers present different outcomes: some are accepted, other rejected, and still others are accepted only after the price is increased and the T-board recommends the approval.

The pursuit of the rhetorical aim of both firms' directors significantly touches all stages of a critical discussion (except for the concluding one). In the *confrontation stage*, we remark the attempt to characterize the offer in a manner that foster already a certain interpretation. In particular, the T-board, in the defense circular, makes use of various denotative phrases ("opportunistic offer", "don't let steal your company"), in which the formulation of the standpoint also contains a hidden argumentation. In the *opening stage*,

both the procedural and material starting points are strongly influenced by the presence of the other company's directors who defend the opposite standpoint. So, beside supporting one's own position, each side commits itself to destroy all or many of the other side's argumentations. As regard the *material starting points*, the argumentative dispute comes to affect the endoxical background assumptions relating to which information become relevant for decision. Numerous examples have shown that a certain piece of information may acquire or lose relevance according to the endoxon with which it is combined (e.g. the comparability of two companies). Even more, the same datum sometimes bring to two opposite conclusions because interpreted under different background assumptions (e.g. the capital returned in the past by the T-managers).

In the argumentation stage, some *loci* emerge as predominant and relevant. Beside pragmatic reasoning (locus from final cause), a crucial role is played by arguments based on analogy and authority. Both become fundamental in the estimation of the target standalone value and work on the basis of endoxa that are argumentatively questioned by the other side.

The numerous differences emerged between friendly and hostile bids allow to better understand the potential of argumentation for financial communication.

By analyzing hostile offers we discover that, in friendly bids, a lot of information remains stagnant. For instance, earning multiples, which in hostile bids prove to be crucial for determining the value of the offer price, are often indicated but not argumentatively activated, or even ignored (not indicated).

The rhetorical dimension increases in hostile bids. The discourse is delivered more directly, the use of various presentational devices is recurrent and the choice of arguments focuses on the aspects that T-shareholders seem to care at most. More in general, the argumentative rate is higher in hostile bids. The fact that a situation envisaging an explicit conflict of opinion (hostile bid) is reflected by a higher argumentative rate signals that directors consider argumentation a relevant instrument to achieve their objectives.

6.1.3. The influence of the institutional context on argumentation

In chapter 3, I have characterized takeover bids as context of argumentation. The

interaction field in which they occur (stock markets and more precisely listed companies), and the legal requirements to which they are subject, constitute the main institutional constraints that takeovers bids impose on arguers' strategic maneuvering.

The reconstruction of friendly and hostile bids as conventionalized critical discussions, in which the four stages are mapped, allows shedding light on the *extent to which the argumentative interactions in friendly and hostile bids mirror a standard of critical discussion*.

A first remark concerns the roles played by the involved actors. By advancing a standpoint and assuming the burden of proof, both bidding and target directors are interpreted as protagonist of a projected critical discussion with target shareholders, who represent a silent antagonist. Because of the constraints imposed by the interaction field, they have very limited possibility to express their position which, consequently, is not found in the texts analyzed. Their role is however fundamental as they are the deciders: the arguments developed by the directors must and do assume the perspective of shareholders.

While in friendly bids the material starting points are established by directors, assuming they will be accepted by the reading shareholders, in hostile offers the "voice" of shareholders is partially represented by the criticisms the bidding and target directors reciprocally exchange. A meaningful example is when one side criticizes the other because a certain argument has not been tackled. In this way, a critical attitude is pursued as the full assumption of the burden of proof is solicited.

The extent to which the argumentative interactions are conducted in a critical manner largely depends on the context in which the decision in relation to a takeover offer is taken. The latter is significantly influenced by the regulatory framework. In the UK, once a bid is announced, the City Code enters the game and introduces a change in the interaction field by imposing specific commitments to both firms' directors. These commitments prove to foster the critical resolution of the difference of opinion.

Indeed, the City Code aims at ensuring a "properly informed decision" not only by requesting to disclose the information that is presumed to represent part of the material starting points of shareholders' decision-making. Since the bidder is asked to motivate its offer and the T-board to give a *reasoned* opinion, the legal context of the bid forces the directors to critically formulate their proposal. The decision that shareholders

are invited to take are previously designed and argued for by someone else.

In this way, the offer document and, in case the offer is hostile, the defence circular, both formally representing the basis for the shareholders' decision, reveal to be not merely "informative" but more specifically argumentative. The Code intends to ensure that shareholders take their decision moving from two different starting points: (1) the data provided by those being better informed (both directors) and (2) the reasons already given by T-directors in their own decision, in their own evaluation of the proposal. The second aspect is particularly important if we consider the specific context in which takeover bids are proposed. As I recalled in chapter 3, the agency problems in listed companies may bring T-directors to recommend a decision which does not actually realize the interests of shareholders. Therefore, by requesting directors to motivate their position in relation to the concerned decision, the Code may contribute to reduce these problems as the agent must justify his/her behaviour in front of the principal.

Furthermore, by requesting directors to motivate their decisions characterizing phase 1(a) of the acquisition process, the Code has a preventing function: in negotiating a possible deal, both bidding and target directors have an incentive to act in shareholders' best interest, as their decision will not simply be announced, but will also need to be properly justified.

Noteworthy, the Code favors a critical attitude also by granting shareholders the required time to decide, thus reducing significantly the risk of hasty and fallacious reasoning procedures.

What argumentatively-relevant commitments are manifested by arguers?

In fulfilling the norms imposed by the juridical context, directors show to adopt a critical approach aimed at fostering the possibility to decide on the merits of the offer, but, as the analysis has shown, also other interests are at stake in the directors' argumentative discourse. It goes without saying that the bidder's primary goal is to obtain shareholders' acceptance, while the goal of T-directors depends on the specific position they take.

An explicit argumentative attitude is assumed by directors. The burden of proving the reasonableness of the directors' decisions in the pre-offer phase is assumed, both in relation to the underlying acquisition and to the offer acceptance. The

advancement of standpoint(s) in relation to these two issues and the engagement in argumentatively supporting them differ according to the mood of the offer.

The bidder is not requested to give reasons in favor of the offer's acceptance. However, in hostile bids, where T-directors do not accomplish this task, B-directors decide to argue for the offer's acceptance. This demonstrates that corporate directors consider argumentation as an important instrument to reach their goal, namely to obtain shareholders' consent and realize the envisaged deal.

6.2. Open questions and further research venues

This dissertation has brought to light that takeover transactions feature a significant argumentative rate, which could evidently not be fully tackled by one single dissertation. Further research should in particular focus on more specific aspects that have emerged in my analysis.

In relation to friendly offers, the crucial relevance of pre-offer negotiations should be investigated in its argumentative dimension. In particular, it would be very interesting to understand how the arguments appearing in the offer document have been shaped. This endeavor evidently presents methodological problems bound to the private nature of these discussions. Narrative interviews to managers and directors could be adopted in order to reconstruct the argumentative interaction in its fundamental stages.

Hostile offers manifest an argumentative richness which should be investigated more in depth. In my analysis I have elicited in particular the typical standpoints advanced. Subsequently, I have focused on the price sub-issue and the sub-issue concerning the merits and demerits of the target board. However, other sub-standpoints are advanced which relate to other aspects that deserve further attention, in particular the strategic use of profit forecasts.

Evaluating arguments. Beside the analysis of the numerous arguments adopted both in friendly and hostile offers, their evaluation is certainly crucial and should be pursued in future research. The analytic overview, the argumentation structure and the AMT analysis of the argument offer an important starting point for evaluating the quality of the arguments.

The development of evaluative criteria would be very useful to answer questions like: is a successful/unsuccessful bid mirrored by sound/unsound arguments? Does the

quality of arguments in hostile bids improve when the controversy increases?

This however has not been proven by our analysis which did not undertake a systematic evaluation of the arguments, though in some part suggesting criteria that must be taken into account for such an evaluation. In particular, the risk of committing straw man fallacy must be verified. Another thing that deserved to be further investigated is also whether the increasing rhetorical concern in hostile bids brings, beside a higher risk of derailments, also a higher reasonable potential. In other words, does the attempt to persuade also produce a more critical exchange? In this relation, the underlying hypothesis is that dialectic and rhetoric are not only compatible but they might even be mutually enhancing, in the sense that a sound argument is also more persuasive and that the personal interest in persuading the audience motivates a more critical attitude.

Quantitative investigations on the persuasiveness of argumentation. Another important aspect is the actual persuasiveness of the arguments. In friendly bids this problem could seem less serious because they are rarely rejected. It would be also interesting to discover how B-managers/directors, in the pre-offer negotiation were able to persuade T-managers/directors and vice versa. However, also in friendly bid, the effectiveness should not be overestimated. As the data indicated in the annexes show, the friendly bids that we have been considered often need to be extended in order to reach the desired acceptance threshold. Numerous shareholders, though not the majority, do not immediately accept the offer. This partial rejection might be explained in different ways, e.g. shareholders have not been persuaded by directors' arguments and hope the bid will not succeed; shareholders have been persuaded by directors' arguments but hope that the bid will succeed in order to remain shareholders in an improved target company. Therefore, an empirical analysis of the decision-making process would be required, in which real shareholders should be interviewed to discover how their decision concretely takes place: How do they read the offer document? What parts of it do they consider relevant? Is their opinion relevantly affected by the arguments given by directors? How? Does their reasoning coincide with the inference communicated to them in the proposal?

In hostile bids, the outcome is instead more uncertain. The cases considered in my analysis include offers that were rejected, offers that, being increased, became friendly and were eventually accepted, and offers that were accepted. Therefore, it becomes even more crucial to understand the effect that the topical choice, their

audience adaptation and the presentational technique bring to the decider.

In evaluating the persuasiveness of arguments, the concerned audience must be carefully considered. The discussions emerging in hostile bids about the present and future value of the target company involve also technical aspects (the choice of the multiple, etc.) which suggests that other actors of the financial market, in particular financial analysts, are involved. Thus, a hypothesis that should be explored is whether the defense circular and the responses to it represent pre-formulated messages to influence shareholders' decision indirectly: do directors try to influence analysts' evaluation and the recommendations that they publish?

The distinction between friendly and hostile offers. In this dissertation I have considered friendly and hostile cases distinguishing them according to a precise criterion, namely the presence or not of the T-board's recommendation. However, an interesting question could be whether, on the basis of the analysis of strategic maneuvering, it is possible to further specify this difference. In other words, could we characterize two non-recommended bids as more or less hostile, according to the argumentative approach adopted? The results of my analysis already offer interesting insights. For instance, let us consider NASDAQ's bid and Kraft's bid. Both were hostile; both involved two large companies; in both cases, a US company attempts to take over a British company having a certain national relevance (LSE and Cadbury). However, we also remark some important differences in their argumentative attitude: Kraft never attacked directly the Cadbury directors nor their skills, implicitly leaving open the door for a negotiation, but without excessively encouraging it; NASDAQ directly attacked the LSE board and, above all, even threatened its fellow shareholders to sell the stake and drop down the price. NASDAQ also threatens to compete directly in the London market. Thus, they do not behave as fellow shareholders but as raiders. What this comparison shows is that a constant focus on value and on the merits of the deal is preferable to an excessively aggressive approach which stresses competitiveness. Of course, this is a hypothesis that should be verified by considering numerous other cases. However, these remarks represent interesting indications which suggest that argumentation may indeed make the difference.

7. References

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