

How do Acquirers Choose between Mergers and Tender Offers?*

David Offenberg
Loyola Marymount University
1 LMU Dr., MS8385
Los Angeles, CA 90045
310.338.2903.o / 310.338.3000.f
David.Offenberg@lmu.edu

Christo Pirinsky
Department of Finance
George Washington University
2201 G St. NW, FH 507
Washington, DC 20052
202.994.2377.o / 202.994.5014.f
pirinsky@gwu.edu

March 28, 2013

Abstract

We present a theoretical framework and supporting empirical evidence for the choice of acquisition method in takeovers. Under existing regulations, tender offers provide the advantage of substantially faster completion times than mergers. In our model, bidders have a preference for speedy execution to minimize competition for the target. However, a tender offer signals to the target higher demand for its shares and raises its reservation price. In equilibrium, bidders trade-off speed and cost. We show that deals in more competitive environments and deals with fewer external impediments on execution are more likely to be structured as tender offers. Furthermore, the rivals of the bidding firm exhibit significantly lower announcement returns in tender offers than in mergers.

JEL classification: G34, J50

Keywords: SEC regulations, tender offers, real options, takeover premiums, mergers and acquisitions

* We would like to thank Anne Anderson, Vladimir Atanasov, Matt Cain, Bill Christie, David Denis, Don DePamphilis, Derek Horstmeyer, Jim Hsieh, Antonio Macias, John McConnell, Mattias Nilsson, Micah Officer, Wenjing Ouyang, Joshua Spizman, Yongxiang Wang, David Yermack, and seminar participants at George Mason University, George Washington University, Loyola Marymount University, the 2013 Financial Management Association, the 2013 Midwest Finance Association, and the 2012 California Corporate Finance Conference for helpful comments. We also appreciate the feedback of attorneys Thomas Baxter and David Lynn on the legal environment of tender offers.

“Still, little is known about why we sometimes observe takeover by ... tender offer and sometimes by merger.” – *Harris and Raviv (1988)*

1. Introduction

In the United States, corporate combinations are accomplished by a merger or a tender offer. In a merger, the acquirer and the target’s board of directors agree on a price, and the target’s shareholders then vote whether or not to approve the proposal. In a tender offer, the acquirer proposes a per-share price to the target’s shareholders, who then have the choice of whether or not to sell at the offer price. As Harris and Raviv noted in 1998, the deal structure of acquisitions has been difficult to understand. Twenty five years later, there is still no well-established theory about the choice of takeover method.

Historically, the tender offer was a hostile takeover device, used to bypass an unreceptive board of directors. Tender offers are widely regarded as an effective corporate governance mechanism. In this regard, it is not surprising most existing government regulations tend to facilitate their execution. However, the adoption of state antitakeover laws in the late 1980s and early 1990s almost completely eradicated hostile tender offers by imposing multi-year waiting periods before acquirers could take control of unwilling targets (Bertrand and Mullainathan, 2003). Yet, despite the end of hostility, tender offers are still a common acquisition method.

In this paper, we propose a new theory for the choice of acquisition method. Current regulations allow for faster completion of tender offers than mergers. The faster speed of execution of tender offers makes them more attractive to bidders, especially when the acquisition is strategically important and the probability for a competitive bid is high. However, when a bidder chooses to structure its offer as a tender, the demand for immediacy sends a positive signal to the target about its value and the target raises its reservation price. Thus, structuring the

deal as a tender offer raises the takeover premium. In equilibrium, the bidder would weigh the strategic benefits of completing a faster tender offer versus its additional costs of a higher premium.

The first half of the paper develops a model that elaborates on the tradeoff outlined above. Our model predicts that an acquirer will prefer a tender offer as the acquisition method when expected competition for the target is high, and may use a tender when there is no competition if the costs of waiting are sufficiently high. The model also predicts that takeover premia will be higher in tender offers than in mergers.

In the second half of the paper, we present empirical evidence consistent with our theoretical predictions. The empirical analysis is undertaken with a unique, hand-collected dataset of acquisitions announced between January 1, 2007 and December 31, 2010.¹ Our model relies on the assumption that tenders are faster to complete than mergers on average. Consistent with this conjecture, we show that the unconditional completion time of tender offers in our sample is 75 days shorter than the completion time of mergers. As predicted, we find that the probability of a tender offer increases with measures of the competitiveness of the takeover process. In particular, we show that a bidder is more likely to pursue the target via tender offer if there is an outstanding bid for the target from another firm. Bidders are also more likely to choose a tender when they have some prior relationship with the target because, in this case, the bidder will have private information about the value of the target that it will wish to act upon before it becomes public knowledge. Next, we find that target-initiated deals are less likely to be structured as tender offers. Supporting our model's final prediction, we show that the

¹ We focus on the post-2006 period since the revision of the Best Price Rule (SEC Rule 14d-10) in 2006 significantly relaxed some of the regulatory constraints on tender offers (see Section 5).

announcement returns of the bidders' rivals are negative and significantly lower for tender offers than for mergers.

Our model also predicts that regulatory impediments will bias the acquirer away from conducting a tender offer. We empirically confirm that legal and financial barriers dissuade bidders from pursuing tender offers in our sample. Acquisition attempts that experience additional scrutiny from governmental agencies such as the Federal Trade Commission (FTC) and the Department of Justice (DOJ) take 114 days longer to complete. Such deals are rarely structured as tender offers because the costs of waiting in these cases are low. We also find that tender offers are less likely for bidders with higher leverage ratios and less cash; consistent with the idea that tender offers impose less financial flexibility to the bidder than mergers. Finally, we show that controlling for the endogeneity of the deal structure, tenders are more expensive than mergers.

Our paper offers several other contributions. In particular, the insight that bidder competition for the target is a key factor in the choice of acquisition method leads us to the conclusion that the choice of method reveals information about the two firms. For the target, the choice of method uncovers information about its synergies with the acquirer and the market for its shares. For the bidder, the choice of method also reveals information about its competitive interactions with other firms, financial health, and likelihood for regulatory scrutiny.

We also provide a better understanding of the nature of tender offers. Top M&A textbooks, including Bruner (2004) and DePamphilis (2011), do not explicitly address how firms choose the acquisition method. The existing literature has identified two key differences between mergers and tenders. First, Betton et al. (2008) and Golubov et al. (2012) indicate that tenders for publicly-traded firms are faster than mergers. Second, many articles have shown that

the takeover premiums in tender offers are higher than in mergers (Schwert, 1996; Officer, 2003; Moeller et al., 2004).² The major contribution of our paper is that it shows why these relationships exist and how they are tied together via the trade-off for the acquirer between speed and cost.

Many empirical studies use a tender offer dummy to proxy for the unknown differences between tenders and mergers, and our theory is able to describe the source of those differences. For instance, Dong et al. (2006) find that undervalued firms are more likely to be acquired via tender than merger. In our study, acquirers opt for a tender over a merger when there is likely to be competition for the target, and we would expect such competition if the target is undervalued. Similarly, Bates and Lemmon (2003) find that bidder termination fees are less common in tender offers than in mergers. Our model theorizes that if the acquirer will incur a cost by losing the target to a competitor, the acquirer may have sufficient financial incentive to complete the deal via a tender offer. Therefore, the additional insurance of a bidder termination fee is redundant in a tender offer.

Historically, the finance literature has assumed that tender offers are hostile.³ As Andrade et al. (2001) document, hostile tender offers almost completely disappeared after the 1980s, yet (non-hostile) tender offers did not disappear. Furthermore, Schwert (2000) argues that most takeovers described as hostile in the press are not distinguishable from those described as friendly in economic terms. In our sample time period, friendly tenders represent 99% of all tender offers. In all friendly cases, the tender offer price is negotiated with the target's board, in

² However, other papers find no difference in the premiums between tenders and mergers (Huang and Walkling, 1987; Betton et al., 2008).

³ There are some exceptions. For example, Comment and Jarrell (1987) note that tender offers can also involve prior pre-announcement negotiations.

concert with its financial and legal advisors. Friendly tender offers are now the norm and hostile tenders are the exception.

In the next section, we offer a legal, regulatory, and empirical background on the choice between tender and merger. In Section 3, we construct a model that incorporates the trade-off between speed and cost; in Section 4, derive testable applications; in Section, 5 we discuss the sample; while in Section 6, we present the empirical analysis. We conclude in Section 7.

2. Background

In this section we review the legal and regulatory environment of the acquisition market. We place special emphasis on the speed of execution from both a regulatory and strategic perspective.

2.1. Acquisition method and the speed of execution

This study focuses on the time from the announcement of the deal to the completion. Prior to the announcement, the bidder and target negotiate privately for weeks or months. These negotiations are unknown to market participants, including the bidder's rivals. At the announcement of the agreement, information is released to the market regarding the value of the target. Since a bidding competitor has the opportunity to outbid its rival in the window of time from announcement to completion, our analysis explicitly focuses on this time period.

There are three regulatory reasons that cash tender offers in the United States should be faster from announcement to completion than mergers. First, the SEC has different filing requirements for tenders and mergers. The only filing required to initiate a tender is the tender

offer statement (SC-TO). The SC-TO is filed on the same day that the tender offer begins. Under SEC Rule 14d-1, the tender offer may end as soon as 20 calendar days after the initial filing. The target shareholders vote in a merger but do not in a tender offer, and a shareholder vote takes time. In order to have a shareholder vote to approve a merger, SEC Rule 14d-6 requires the bidder to first file a preliminary proxy (PREM14a) with the SEC at least 10 days before distributing the definitive proxy to the shareholders (DEFM14a). Then, the target firm must distribute the definitive proxy statement to its shareholders announcing the meeting at least 20 business days before the vote will occur. As a result, there is typically a two-month lead-up to a shareholder vote in a merger.

The second regulatory difference between tenders and mergers is the antitrust review. The FTC and DOJ have 30 days to review a merger or exchange offer for antitrust concerns under the Hart-Scott-Rodino Act, but only have 15 days for a cash tender offer. If either agency requests additional information from the parties (known as a “second request”), the time to complete the deal increases. Indeed, Kirchner (2009) finds that it takes 157 days to resolve the average second request.

Third, mergers and tenders differ in their financing requirements. SEC Rule 14e-1(c) requires the bidder to pay for tendered shares or return them to the shareholder within three days of the close of the tender offer.⁴ SEC Rule 14e-8(c) deems a tender offer to be fraudulent if the bidder does not have a reasonable belief that it can purchase the securities sought.⁵ Neither rule explicitly requires tenders to be fully financed prior to commencement, but an acquirer would be

⁴ This rule, otherwise known as the “Prompt Payment Requirement,” only requires payment to be made “promptly,” but does not define promptly. However, the SEC staff has interpreted promptly to mean three days. See Lynn (2009).

⁵ In Release No. 33-7760, the SEC notes that, “Although not required, a commitment letter or other evidence of financing ability (e.g., funds on hand or an existing credit facility) would in most cases be adequate to satisfy the rule’s requirement that the bidder have a reasonable belief that it can purchase the securities sought.” The SEC also comments that, “In most cases when the bidder expects to obtain funds from another source, financing is arranged in advance or immediately after announcing an offer.”

exposing itself to significant liability by commencing an offer without the means to pay for the shares. Practically speaking, tender offers must be fully financed in order to meet the three-day requirement. In contrast, depending on market conditions, financing a merger can take months. Furthermore, if the acquirer is using a sizable amount of its own stock as consideration, it may also be required to hold a time-consuming shareholder vote to approve the merger. Given these three regulatory differences, we expect tender offers to be completed faster than mergers on average.

2.2. Speed of execution as a consideration in acquisitions

The regulatory setting suggests that tender offers have a substantially shorter expected completion time than mergers, but that factor is only relevant to the extent that speed is valuable in the acquisition market. Decision making theory argues that early resolution of uncertainty generally allows for a better allocation of resources. Acquisitions represent a dramatic shock to every organization, and the uncertainty surrounding the merger outcome could adversely affect all stakeholders associated with the firm, such as customers, suppliers, and employees, resulting in the erosion of value. For example, in response to the *Oracle* tender offer in June of 2003, *PeopleSoft* warns, “As a consequence of the uncertainty surrounding their roles and the companies’ future, our key employees...may seek other employment opportunities.”⁶ Consistent with this idea, Hertz et al. (2008) also find that firm uncertainty regarding financial distress exhibits adverse effects on its suppliers.

A major incentive for the timely completion of takeovers arises from bidder competition. Extensive research suggests that mergers could be an important factor in the creation and sustainability of competitive advantage (Trautwein, 1990). Some of the sources of competitive

⁶ PeopleSoft S-4, filed June 19, 2003.

advantage in mergers are synergies, economies of scope, and economies of scale (Betton et al., 2008). Horizontal mergers could also strengthen market power, while vertical mergers could reduce ‘hold-up’ production costs (Grossman and Hart, 1986; Hart and Moore, 1988). Many authors have also emphasized the importance of complementarities at the level of organizational culture as a source of competitive advantage in acquisitions (Porter, 1987; Datta, 1991).

The takeover market is highly competitive. In our sample, 39.7 percent of all deals have multiple bidders. First movers could gain a competitive advantage in acquisition markets. As a result, the speedy execution of a takeover could minimize the chance that a competitive bidder “steals” the target or raises its price. Many authors have also suggested that pressured by competition, firms often over-bid for a target, a phenomenon known as the “winner’s curse” (Giliberto et al., 1989).

There is also anecdotal evidence that the different speed of execution across tender offers and mergers is well recognized and considered by the market. Several companies acknowledge in their SEC filings that the use of a tender offer will help accelerate closure of the deal. For instance, in the 2007 tender offer for *Biosite Inc.* by *Inverness Medical Innovations Inc.*, the background of the Offer to Purchase stated “Biosite’s advisors indicated on multiple occasions Biosite’s board of directors’ strong preference for a two-step tender offer structure, which would take a shorter period of time to deliver the consideration to Biosite’s shareholders that elected to tender in the tender offer than would a one-step merger structure.”⁷ Many well-publicized deals were also very likely structured as mergers rather than tender offers due to a perceived lack of competitiveness – for example, the *AT&T/T-Mobile* deal (*Verizon* was too big and *Sprint* was having financial difficulties) or the *Delta/Northwest* merger (*United* and *Continental* were busy with their own merger and *American* was too big).

⁷ See page 29 of Exhibit 99.(A)(1)(A) to the Schedule TO-T filed by Inverness with the SEC on 5/29/2007.

In our subsequent analysis, we will test whether tenders are in fact faster than mergers and attempt to determine why some firms choose not to take advantage of that speed.

2.3. Related literature

To the best of our knowledge, there are only three theoretical studies that attempt to explain the choice of the takeover mechanism. Harris and Raviv (1988) compare the choice between a proxy contest and a tender offer. Their model focuses on the devices used to fend off a hostile takeover, so it does not align with the modern, friendly nature of tender offers. Berkovitch and Khanna (1991) model mergers as a bargaining game between the acquirer and target firms and tender offers as an auction in which bidders arrive sequentially and compete for the target. A basic assumption of their model is that once mergers are announced, there is no possibility for competitive bids, which is not supported empirically. Schnitzer (1996) analyzes the choice between a hostile and a friendly takeover and finds that the uncertainty about potential efficiency gains, the manager's preference for control, and transaction costs affect the raider's choice. Our study is different because it focuses on the choice between mergers and tender offers (unconditional on hostility) and explores a different trade-off in the market place.

The empirical work has identified mathematical correlations between the acquisition method and deal characteristics, but does not convincingly explain why these correlations exist. The seminal work of Bradley et al. (1983) indicates that tenders create value by generating new information about the target in the takeover process. However, their methods and results are equally applicable to mergers, so their findings do not point acquirers to one particular takeover method. Betton et al. (2008) acknowledge that, "systematic empirical evidence on the choice of merger versus tender offer is only beginning to emerge."

That said, the empirical literature does find some important differences between tender offers and mergers. First, Betton et al. (2008) find that the average tender offer for a publicly-traded target by a publicly-traded acquirer is completed about 36 days faster than a similar merger. The legal structure that we previously discussed suggests that tenders should be faster, and the evidence in Betton et al. supports this conjecture. Second, Betton et al. (2009) and Golubov et al. (2012) find that tenders are more likely to be completed than mergers. If the primary cost of a merger over a tender offer is the cost of losing the target, then their finding suggests that this cost is indeed lower in tenders.

Empirical research also suggests that tender offers are more expensive than mergers although the results are not robust. For example, Jensen and Ruback (1983) find that target shareholders earn higher premiums in tenders than in mergers. However, Huang and Walkling (1987) argue that after controlling for the payment method and the degree of resistance, the difference in abnormal returns between tender offers and mergers is insignificant. We note that the literature does not address the endogeneity of the acquisition form, which could significantly affect the inferences. However, predicting the choice of acquisition form requires a theoretical framework which is discussed in the following section.

3. Model

Real option theory has long recognized that waiting (or the speed of execution of an action) could have costs and benefits for the actor. Within the context of corporate acquisitions, if the costs of waiting outweigh the benefits, the deal will be structured as a tender offer. If the costs of waiting are relatively small compared to the benefits, the deal will be structured as a merger.

The cost of waiting for the bidder that we consider arises when the target is successfully acquired by another entity. In this case, the bidder bears a cost because it does not capture the synergy gains. Furthermore, the fact that the target is acquired by a competitor could result in a loss of a competitive advantage.

Similarly, there are costs to the target by not waiting. The most obvious cost is the forgone option to solicit a higher price. In order to forgo this real option, the target must be compensated. In our model, we evaluate the trade-off between the benefit of a fast tender offer and its cost of a higher premium for the bidder and generate a number of empirical predictions.

Suppose a potential bidder (acquirer) values the target shares at v_B , while the target shareholders value their shares at v_s . As Grossman and Hart (1980) argue, the transaction will take place only when $v_B > v_s$. The value v_s could be interpreted as a reservation price for the target shareholders.

While the bidder is at an informational advantage in evaluating the synergies associated with the acquisition, the target is not. There are two possibilities for the target regarding a particular acquisition. On the one hand, the synergy created by the deal could be unique to the particular bidder. For example, it could reflect some unique complementarity of the asset structure of the bidder and the assets of the target. In this case, the assets of the target have no superior alternative use outside of the ownership of the bidder. On the other hand, the synergies that the target firm brings might not be unique to the bidder and other firms could potentially be able to generate an even higher surplus with the acquisition of the target. The latter possibility raises the reservation price of the target firm. We can assume that the private valuation of the target firm for the value of its shares under alternative ownership could take two possible values v_s^L and v_s^H ($v_s^L < v_s^H$). The first valuation corresponds to the reservation price for the target

shareholders in the case in which there is no other bidder in the market; the second valuation corresponds to the existence of an alternative bidder with a higher private valuation of the target shares.

We consider the following timeline. At $t = 0$, the bidder (with a private valuation v_B) identifies the target and observes whether there is an alternative potential bidder with higher private valuation ($v^H > v_B$). At $t = 1$, the acquirer announces a takeover bid which could be structured either as a tender offer or a merger. The tender offer has a shorter expected completion time and assures that the competing firm would not be able to join the bidding contest and outbid the acquirer.⁸ The merger has longer time to completion; resulting in an additional erosion of value for the bidder in the amount c (we articulate these costs in Section 4). However, in the case of merger, a competing bidder that places a higher value on the target will emerge as the successful bidder. The latter outcome results in a permanent loss of value for the bidder due to loss in competitive advantage or relative market share C . At $t = 2$, the target firm arrives at a private valuation of its reservation price and the deal is completed.

Assume that the acquirer receives p percent of the surplus created by the acquisition (such that $p > 0$), and the target receives the remaining $1 - p$ percent of the surplus. Then the gain to the bidder under the different scenarios can be expressed as follows:

	No competition	Competition
Tender offer	$p \cdot (v_B - v_S)$	$p \cdot (v_B - v_S)$
Merger	$p \cdot (v_B - v_S) - p \cdot c$	$-C$

⁸ In reality, a tender offer would only reduce the probability that the bidder could lose the target to a competitor and not necessarily completely eliminate this possibility. This simplifying assumption, however, does not significantly affect the major inferences in the paper.

In the presence of a competitive bidder, the acquirer would never choose to structure the deal as a merger given that it will suffer a permanent loss in value. As a result, the choice to structure the deal as a merger would automatically signal to the target a lower valuation for its assets and the target would revise its reservation price to v_S^L . In this case, the gain for the bidder would be $p \cdot (v_B - v_S^L - c)$ and the gain for the target would be $(1 - p) \cdot (v_B - v_S^L - c)$.

Now consider the case where there are no competitive bidders in the market. Although the acquirer might be able to discern this information, it is potentially very difficult to communicate this information reliably to the target. If the acquirer chooses to structure the deal as a tender offer, the target would update its reservation price to v_S^H . If the acquirer chooses to structure the deal as a merger, the target would update its reservation price to v_S^L . In the case of no competitive bidding, the deal would be structured as a tender offer only if

$$p \cdot (v_B - v_S^H) > p \cdot (v_B - v_S^L) - p \cdot c. \quad (1)$$

From here it follows that under no competition, the deal will be structured as a tender offer only when:

$$c > v_S^H - v_S^L. \quad (2)$$

This result implies that in the absence of competition, a deal would be structured as a tender offer only when the cost of waiting via using a merger is relatively high compared to the value loss due to increase in the takeover premium.

Our analysis also generates the following prediction for the relation between the price of the target in a tender offer and in a merger:

$$P_{TO} = v_S^H + (1 - p) \cdot (v_B - v_S^H) > v_S^L + (1 - p) \cdot (v_B - v_S^L) - (1 - p) \cdot c = P_M \quad (3)$$

Regardless of whether there is competition, our model predicts that the takeover premium will be always higher in a tender than in a merger.

Our model relies on the assumption that the acquirer loses a value C when the target is merged with a competitor. This corresponds to the loss that Bradley et al. (1983) observe when a tender offer bid is lost to a rival firm. As a result of the rival gaining control of the target, the bidder not only loses the target, but they also lose the competitive advantage that the rival wins by gaining control of the rival's assets.

In summary, our model predicts that an acquirer will always use a tender offer as the acquisition method when there is competition for the target, and may use a tender when there is no competition if the costs of waiting are sufficiently high. Also, our model predicts that premiums will be higher in tender offers than in mergers. Finally, the model implies that returns to rival acquirers should be lower in tenders than in mergers. All of these predictions assume that the deal can legally or practically be structured as a tender offer.

4. Empirical Design

We argue that when choosing their acquisition method, firms trade-off the strategic benefits of speed with the cost of a higher premium. The starting point of our analysis is the assumption that tender offers have shorter completion times than mergers. In Section 2, we presented legal and regulatory arguments for this assumption. However, empirical evidence is necessary to confirm this conjecture. Thus, our first hypothesis is:

Hypothesis 1. Tender offers have shorter completion times than mergers.

Our major empirical prediction regarding the choice of acquisition method is outlined in the following:

Hypothesis 2. Acquirers with significant competitive threats and other costs of waiting choose tender offers.

We consider three novel proxies for the cost of waiting: (1) *competitive bidder*, (2) *solicited deal*, and (3) *prior relationship*. Evaluating the competitive environment of a bidder ex-ante is highly speculative. As a result, we construct an ex-post measure of competitiveness indicating whether there was a competitive bid for the target prior to the announcement.⁹ Such a bid would generally decrease the amount of time the acquirer has to close the deal. In this case, the choice of a slower acquisition method would significantly reduce the likelihood of acquiring the target.

Next, we identify whether the bid was solicited by the target. Target-initiated deals are less likely to exhibit synergies that are strategically important to a large group of bidders. Otherwise, these synergies would have been previously identified. Similarly, Cain et al. (2012) advance the hypothesis that targets that instigate their sale signal higher adverse selection risk. Therefore, we expect tender offers to be less frequent in solicited deals. Our indicator variable for solicited deals takes the value of one if the acquirer's bid was the result of a formal solicitation process, and zero otherwise (we obtain this information from SEC filings).

Our third measure of the competitive environment of the bidder is a variable indicating whether the bidder and the target disclose some prior relationship in their filings. That prior relationship may be a licensing agreement, joint venture, or a simple customer/supplier connection.¹⁰ In these cases, the bidder will have private information about the value of the target. This asymmetric information gives the bidder an advantage in bidding for the target, but

⁹ We learn this information by reading the background of the deal in the DEFM14a for mergers and the SC TO-t or S-4 in tenders. Bids are classified as competitive if the acquirer had to raise its bid or make a counter-offer to beat another bidder. The identity of the other bidder is almost never disclosed in the filings.

¹⁰ Disclosure in the proxy or offer statement of past transactions is required by Item 1005 of Regulation M-A. We also learn this information by reading the background of the deal in the SEC filings.

it must act upon its private knowledge in a timely manner before the information becomes public. As a result, we predict that deals involving firms with prior relationship are more likely to be tender offers.

We also consider a set of variables proxying for other (non-competitive) costs of waiting, including a government delay dummy, acquirer high debt dummy, cash offer dummy, and deal relative value. Our sample includes deals in which the FTC, DOJ, Federal Aviation Administration (FAA), Federal Communications Commission (FCC), Surface Transportation Board (STB), or a state agency created a delay in the closing via a second request or similar extended review. The firms in an acquisition often hire specialized attorneys to help them navigate the governmental hurdles, and these lawyers presumably know whether a deal is likely to be delayed by a government agency.¹¹ Therefore, we hypothesize that firms will choose a merger over a tender if there is a high probability of a government delay. The acquirer high debt dummy, cash offer dummy, and relative value proxy for the ability of the bidder to make a fully-financed tender offer. We expect that the greater the financing impediments to a takeover, the more likely it is that it will be organized as a merger.

A major prediction of our model is that the premium under tender offers would always exceed the premium under mergers (for the same companies). Unfortunately, we cannot observe a deal which is simultaneously structured as both. Companies always choose one (the optimal) option guided by a wide range of factors; some of which could be correlated with the expected premium. The endogeneity of the deal structure makes it difficult to draw empirical predictions about the association between the deal structure and the premium in the cross section. One way

¹¹ For example, in the Background of the Merger between XM and Sirius, the parties note that, “SIRIUS and XM agreed to discuss with their respective counsel the likelihood of obtaining the required regulatory approvals for a combination.” It goes on to identify two specific law firms that were competent in this area, one for the DOJ/FTC approval and another for the FCC approval. See page 20 of the DEFM14A filed by XM Satellite Holdings with the SEC on 10/9/2007.

to address this problem is to identify instrumental variables that predict the acquisition method but not the expected premium and use these variables to isolate the exogenous variation in acquisition method choice. Hypothesis 2 suggests a set of potential instruments. As a result, we predict the following:

Hypothesis 3. In the cross-section of deals, the instrumented tender offer-indicator is positively correlated with the acquisition premium.

Finally, if strategic considerations are an important motivation for bidders to demand execution speed we would expect tender offers to be associated with more strategically important acquisitions. As a result, we predict the following

Hypothesis 4. Tender offers are accompanied with lower announcement returns for the rivals of the bidding firm than mergers.

5. Data and Summary Statistics

This study focuses on the post-2006 period because the revision of the SEC's Best Price Rule in 2006 reduced the tremendous legal uncertainty in the tender offer market. The original Best Price Rule specified that all investors holding the same class of securities had to be paid the same *consideration* per share in a tender offer. However, the wording of the rule was vague about whether executive compensation triggered by the tender offer was included in the definition of "consideration," so it was left to the courts to decide. A series of conflicting rulings by the 2nd, 7th, and 9th U.S. Circuit Courts of Appeals (during the 1995–2002 period) regarding the applicability of executive compensation to the definition of consideration created some additional uncertainty surrounding the acquisition costs of tender offers. As a result, the Best Price Rule was amended effective December 8, 2006 to require that compensation payments be

excluded from the definition of consideration. A more detailed history of the Best Price Rule is presented in Appendix 2. Figure 1 shows the significant drop-off in tender offers from 2002 to 2006, and the rebound after the revision of the Best Price Rule in 2006.

We form a sample of U.S.-based targets acquired by U.S.-based companies in deals announced between January 1, 2007 and December 31, 2010 from the Thomson Financial SDC Platinum Mergers and Acquisitions database. We require all of the targets to be based in the United States so that U.S. takeover law applies to the deal. We require all acquirers to meet the same criteria to avoid complications arising from differing foreign tax and legal regimes. We require all deals to be completed so that we can accurately measure time-to-completion. The time-to-completion is measured from the day the deal is announced to the day the deal is effective.¹² We require all targets and acquirers to have financial information in Compustat and require all targets to have stock price data in CRSP.

Given that a large part of the data is hand-collected, we limit our sample to deals where the acquirer holds more than 90% of the target's equity. A tender offer is most beneficial to the acquirer when at least 90% of the target's existing common stock is tendered.¹³ We also require all firms in our sample, targets and acquirers, to be listed on the NYSE, NASDAQ, or American Stock Exchange. Consistent with the literature, we remove all deals in the heavily regulated

¹² Completion time is the time from the first official announcement of the bid to the final approval of the deal. It does not include the time of any private negotiations between the two parties since such negotiations are not public information. Our results are qualitatively similar if we measure the completion time in mergers from the announcement date to the day the shareholders vote to approve the deal. The target typically cannot back out of the merger once its shareholders have voted in favor of the agreement. For instance, in AT&T's merger with Centennial Communications Corp, the merger agreement explicitly specifies only six cases in which the merger agreement may be terminated. None of these six cases give target the option to walk away from the deal once the shareholder vote has been taken, even if a higher-priced tender offer arises after the vote. (Agreement and Plan of Merger Among AT&T Inc., Independence Merger Sub Inc., and Centennial Communications Corp. Dated November 7, 2008; Article VII.)

¹³ In 48 of the 50 states, if an acquirer ends up with at least 90% of the shares, they can complete the second step of the tender offer with a short-form merger, which does not require a shareholder vote. However, a tender offer will always be completed as long as the bidder receives a voting majority, as defined in the target's articles of incorporation. Usually the voting majority is defined as either a simple majority or two-thirds majority.

financial and utilities industries. A takeover is classified as a tender offer if the acquirer gains control of the target by buying shares directly from the shareholders rather than through a shareholder vote. Given that SDC has errors in properly classifying deals, we harvest this information from filings on the SEC's website. No deal in our sample switches from a merger to a tender offer, or vice versa. We do not include toeholds in our analysis because only one acquirer in our sample has one. We similarly ignore go-shop provisions, as they are present in only two of our tender offers. Our final sample consists of 208 mergers and 92 tender offers. In comparison, the sample in Hartzell et al. (2004) is 235 firms and Boone and Mulherin (2007) use 400 observations.

For each deal, we calculate the takeover premium as the offer price less the stock price four weeks prior to the announcement date, divided by the price four weeks prior. For robustness, we also calculate the premiums with two-month returns, rather than four-week returns.¹⁴ In Table 1, we present summary statistics for the sample of mergers and tender offers over the period from 2007-2010. We observe that tender offers are characterized with significantly higher premiums and shorter completion times. We also show that about 38% of tenders have competitive bidders, while this figure is only 15% for mergers. Parties with prior relationships are far more likely to structure the deal as a tender than a merger. Deals that will be delayed by the government are also more likely to be structured as mergers. Collectively, these results suggest that a tender offer is more likely to be used when time is of the essence.

The SEC rule that the financing must be secured before the tender offer commences also seems to affect the choice of method in three ways. First, as also noted by Travlos (1987), tenders are far more likely to be financed with cash than with equity. Second, relative to the acquirer, targets of tenders are smaller than targets of mergers. Smaller targets may require less

¹⁴ When we winsorize the premiums at the top and bottom 1% level, our results are qualitatively similar.

complex financing arrangements or none at all. Third, the acquirer is more likely to choose a merger over a tender offer when its debt-to-assets ratio exceeds 0.5. In sum, the results in Table 1 suggest that the choice of acquisition method is driven in part by the regulatory environment and in part by the expected competition for the target.

6. Results

6.1. Time-to-completion

Table 2 reports the coefficient estimates and robust P-values from OLS regressions of the number of days from the announcement of the deal to the effective date of the deal on a tender offer dummy and control variables. In column 1, we test the robustness of the correlation between tender offers and completion time. The coefficient on the tender dummy is -75.4 days and significant at the 1% level. In other words, in this parsimonious test, tenders reach completion about 75 days faster than mergers.

In column 2, we expand the model to include the groups of variables that explain the legal and financial constraints on the deal, as well as the competitive environment surrounding the bid. The results of the regression can be summarized as follows. First, tenders are still completed about 35 days faster than mergers. Second, our results suggest that all-cash bids are completed faster than all-equity deals and a government delay adds 102 days to the completion time. Finally, the competitive environment for the bidder has no bearing on the time-to-completion, controlling for the choice of method. This result highlights the fact that acquirers choose an acquisition method that is appropriate to the level of competition.

In column 3, we add industry and year fixed-effects. We observe that the economic and statistical significance of the tender offer variable is robust to the inclusion of these additional controls.

6.2. Choice of acquisition method

The main idea of the paper is that the choice of acquisition method is determined by the tradeoff of execution speed versus execution cost. In Table 3, we estimate the probability for a takeover to be structured as a tender offer. In the first two models, we report the marginal effects from a probit model, while in the last two models, we report the coefficient estimates from a linear probability model. The explanatory variables include our proxies for competition for the target and costs of waiting discussed in Section 4. We also include a number of financial variables for the bidder and target as additional controls. In particular, we include the percentage of the deal proceeds paid in cash to control for the taxable difference between cash and stock deals. The description of the construction of each variable is in Appendix 1. All of these variables are calculated as of the end of the fiscal year immediately preceding the takeover announcement.

Each of the coefficients on the variables describing the level of competition for the target have the expected sign and are significant at the 5% level or higher. In particular, we find that the presence of a competitive bidder increases the probability for a tender offer by around 18 percent. Bids for targets with a prior relationship with the bidder are also more likely to be structured as tender offers. Finally, we show that solicited bids are less likely to take the form of tender offers. As noted, given that solicited bids are initiated by the target, they are less likely to exhibit strategically important complementarities for the bidder.

Next, we find that the probability for a tender offer decreases with the expected time to completion of the tender offer – deals that incur a government delay for further review from regulators are less likely to be structured as tender offers. As described in Section 4, the additional delay caused by such requests effectively eliminates all the benefits of a faster execution speed for tender offers. Acquirers with high debt levels are also less likely to pursue a tender offer, very likely due to decreased financing flexibility. We also find that tender offers are more likely to be made in cash than mergers.

As an additional robustness test, we also estimate a linear probability-model with and without industry and year fixed effects and obtain very similar results. All of our models explain more than 31 percent of the variation in the choice of acquisition method.

6.3. Acquisition premium

In order to establish a causal relationship from the acquisition method towards the acquisition premium, a source of exogenous variation in the choice of method is necessary. Throughout the paper, we argue that the competitiveness of the bidder industry and other costs of prolonging the deal are important determinants of the acquisition method choice. We also present empirical evidence consistent with this conjecture in Table 3.

In this section, we estimate a two-stage IV-regression model for the acquisition premium. If T_i denotes an indicator variable for a tender offer, $INST_i$ – the instruments, PRM_i – the acquisition premium, X_i – a set of control variables, and FE – industry- and year-fixed effects, the first-stage regression is:

$$T_i = \alpha + \beta \cdot INST_i + \gamma \cdot X_i + FE, \quad (4)$$

while the second-stage regression is:

$$PRM_i = \alpha^* + \beta^* \cdot \hat{T}_i + \gamma^* X_i + FE, \quad (5)$$

where \hat{T}_i is the instrumented tender-offer variable at the first stage.

The two stages are estimated jointly in a two-stage least squares regression model. We use as exogenous instruments for the choice of acquisition method the following variables: indicators for solicited deals, prior bidder-target relationship, acquirer's high debt dummy, acquirer's return on assets and market-to-book ratios, the government delay dummy, and the relative value ratio. All of these variables are significantly correlated with the tender offer choice. It is also very unlikely that they would predict the takeover premium directly (we intentionally exclude the competitive bidder and cash variables from the list of instrumental variables since they could be linked to the premium through other channels). The dependent variable at the second stage is the takeover premium.

Panel A of Table 4 presents coefficient estimates from the first stage of the two-stage least squares estimation, while Panel B contains the results of the second stage. We find that tender offers are associated with higher acquisition premia than mergers. This result supports *Hypothesis 3* and lends additional support to our theoretical model. We also find that the premium increases with the size of the bidder and decreases with the size of the target. The minimum eigenvalue *F*-statistics indicate that the instruments are sufficiently powerful according to the Staiger-Stock test (Staiger and Stock 1997). We obtain similarly significant results if we use a probit in the first stage rather than an OLS model (unreported).

6.4. Rival reactions

To test our fourth hypothesis, we evaluate the reaction to bidder's competitors as a function of the acquisition method. The basic idea is that strategically important acquisitions

would be perceived as negative news by the bidder's competitors. Since competitive pressure creates an incentive for bidders to move quickly and structure their deals as tenders, we would expect to observe a negative stock price reaction for the firm's competitors at the announcement of a tender offer. We also predict that we will not observe such reactions in the case of mergers.

In Table 5, we compare announcement-period returns for the acquirer's rivals in mergers and tender offers. We use the market-model to calculate cumulative abnormal returns (CAR) with a value-weighted index over the windows $[-2,2]$ and $[-1,1]$ centered around the announcement date. We define rivals as firms in the same four-digit SIC industry with a ratio of acquirer assets-to-rival assets in the range from 0.25 to 4.0. Consistent with Hypothesis 4, we observe that both the mean and median stock price reactions of bidder competitors are consistently negative in the case of tender offers and consistently positive in the case of mergers. The return difference is also statistically and economically significant. For example, the first column in Panel A indicates that the average rival returns are 1.23 percent lower in tender offers than in mergers.

7. Conclusion

In this paper, we provide a rationale for the acquisition method choice. Given that historically hostile tender offers have been viewed as an efficient corporate governance mechanism, government regulations were designed to help resolve tender offers quickly and efficiently. Friendly merger proposals, on the other hand, are given lower priority. As a result, bidders who prefer fast execution (due to bidder competition or other factors) would tend to structure the acquisition as a tender offer. However, tender offers also come with a cost because they signal to the target a higher value and encourage the target to raise its reservation price. Our

theoretical prediction is that, in equilibrium, bidders trade-off the execution speed benefits of tender offers with the lower premium benefits of mergers.

We present empirical evidence consistent with the theoretical predictions. In particular, we show that tender offers are faster but more expensive than mergers. Tender offers are also more likely for strategically important acquisitions and acquisitions in more competitive environment than mergers. Finally, we show that rivals suffer lower returns in tender offers than mergers.

Current regulations in the U.S. allow for faster completion of tender offers than mergers. These regulations made sense in a time when tender offers were a hostile takeover device – faster resolution of a takeover battle allowed for smaller deadweight losses via lost customers, suppliers, employees, and financing. Given that hostility has disappeared from the market place, it is not clear why tender offers still receive beneficial treatment. After all, these are friendly deals that could benefit from the time allowed for parties in a merger to carefully deliberate their options. Nevertheless, our analysis suggests that the regulatory environment is an important factor in the takeover market.

Appendix 1: Variable Definitions

Variable	Definition	Source
Deal outcomes		
Four-Week Premium	Acquisition premium calculated as the difference between the offer price and the stock price four weeks before the announcement date.	CRSP, Eventus
Two-Month Premium	Acquisition premium calculated as the difference between the offer price and the stock price two months before the announcement date.	CRSP, Eventus
Days to Complete	Number of calendar days from the date announced to the effective date.	SDC, Edgar
Deal Characteristics		
Relative Value	Value of the deal divided by the sum of the value of the deal and the market value of the acquirer's assets.	SDC, Compustat
Solicited Bid	A dummy variable that takes the value of one if the target creates a formal process to find a buyer for itself.	Edgar
Government Delay	A dummy variable that takes the value of one if a review of the deal by a government agency takes more than 30 days.	Edgar, Lexis Nexis
Competitive Bidder	A dummy variable that takes the value of one if the acquirer had to make a counter-offer or raise its bid to beat another bidder.	Edgar
Prior Relationship	A dummy variable that takes the value of one if the firms disclose prior business dealings in the SEC filings.	Edgar
Percent Cash	The percentage of the consideration offered for the target's shares that is paid in cash.	SDC
Deal Value (US\$, millions)	"Total value of consideration paid by the acquiror, excluding fees and expenses," including the value of assumed liabilities.	SDC
Firm Characteristics		
Sales (US\$, millions)	Sales (SALE) as of the end of the fiscal year immediately preceding the acquisition.	Compustat
Book Assets (US\$, millions)	Assets (AT) as of the end of the fiscal year immediately preceding the acquisition.	Compustat
Market Value of Assets	Debt (DLTT+DLC) plus common stock (PRCCF*CSHO) plus preferred stock (PSTKL) minus deferred taxes (TXDC) and investment tax credits (ITCI).	Compustat
Debt/Assets	The ratio of long-term debt (DLTT) to the market value of assets (see above) as of the end of the fiscal year immediately preceding the acquisition.	Compustat
High Debt Dummy	A dummy variable that takes the value of one if the firm's Debt/Assets (see above) exceeds 0.5.	Compustat
EBITDA/Assets	Income (OIBDP) divided by the market value of assets (see above) as of the end of the fiscal year immediately preceding the acquisition.	Compustat
Market/Book	The market value of assets (see above) divided by the book value of assets (AT).	Compustat

Appendix 2: Brief History of the Best Price Rule (SEC Rule 14d-10)

The regulatory environment for tender offers has been in flux in the United States for many years. In 1986, the SEC adopted Rule 14d-10, otherwise known as the “Best Price Rule.” This regulation specified that, “the consideration paid to any security holder pursuant to the tender offer is the highest consideration paid to any other security holder during such tender offer.” In other words, all investors holding the same class of securities had to be paid the same amount per share in a tender offer. The wording of the rule was not clear about whether executive compensation triggered by the tender offer was included in the definition of “consideration,” so it was left to the courts to decide. Beginning in 1995, the courts ruled that executive compensation contingent on the change-in-control could be part of the consideration paid to the executives for their shares.¹⁵ From 1995 to 2002, the 2nd, 7th, and 9th U.S. Circuit Courts of Appeals made conflicting rulings about the applicability of executive compensation to the definition of consideration. Although tender offers did not disappear during this time, there was uncertainty as to whether a buyer might have to go back after completing the deal and pay the non-executive target shareholders additional compensation to make them whole.

The uncertainty about Rule 14d-10 peaked following the resolution of the case of *Gerber v. Computer Associates International (CA)* from the Second Circuit of the U.S. Court of Appeals.¹⁶ In that case, a jury awarded shareholders an additional \$5.7 million after finding that a \$5 million non-compete payment to the CEO was consideration in the tender offer under Rule 14d-10. Given that CA paid \$120 million for the target, the judgment added 4.75% to their costs, not including the costs of litigating the case for nearly 11 years.

¹⁵ See, for example, *Epstein v. MCA, Inc.*, 50 F.3d 644 (9th Cir. 1995)

¹⁶ *Gerber vs. Computer Assocs. Int'l, Inc.*, 303 F.3d 126 (2d Cir. 2002).

The September, 2002 decision in *Gerber v. CA* in particular made it extremely risky for a target firm to make payments to executives that were contingent upon a change in control. Based on this ruling, acquiring firms in tender offers were exposed to substantial liability if the target firm made payments to any executive via golden parachute, retention agreement, accelerated vesting, or consulting agreement, as all could be included as consideration in the tender offer. Motivated by this decision, the SEC chose to clarify that its intention with the best price rule was to exclude executive compensation. As a result, Rule 14d-10 was amended effective December 8, 2006 to require that, “the consideration paid to any security holder for securities tendered in the tender offer is the highest consideration paid to any other security holder for securities tendered in the tender offer.” In other words, compensation payments are excluded from the new version of the best price rule.

There is anecdotal evidence that the court rulings from 1995 to 2002, and specifically in the *Gerber v. CA* case, skewed the takeover markets away from tender offers until the revision of Rule 14d-10 in 2006. In a joint letter submitted to the SEC in 2005 upon its request for comments on the proposed changes to the rule, several top law firms noted that:

Given the current disarray among courts with respect to the proper interpretation of Rule 14d-10 under the Securities Exchange Act of 1934 (the “Exchange Act”) — and the significant litigation risks entailed in the tender offer process because of these court interpretations — most law firms are advising their clients not to commence tender offers if other acquisition structures are available that do not have the possible adverse consequences of the best-price rule — even if such other structures may be less economically efficient for companies and their shareholders.¹⁷

¹⁷ Letter to the SEC regarding File No: S7-11-05; Release Nos. 34-52968; IC-27193 Amendments to the Tender Offer Best-Price Rule (the “Release”), sent February 21, 2006 by Cravath, Swaine & Moore LLP; Davis Polk &

Similar sentiment can be observed in newsletters that law firms sent to their clients after Rule 14d-10 was revised. For instance, in November, 2006, the law firm Morrison Foerster alerted its clients, “We anticipate that with the amendments (to Rule 14d-10) companies will use tender offers more frequently...”¹⁸ Later, in guidance to clients of the law firm Skadden Arps Slate Meagher & Flom, Ward et al. (2011) note that, “This resurgence (in tender offers) is largely due to the U.S. Securities and Exchange Commission’s 2006 clarification to the all holders/best price rule regarding the treatment of employee compensation in tender offers.” Given that Offenber and Officer (2013) find that most firms now have substantial change-in-control compensation contracts, there is reason to believe that acquiring firms were actively avoiding tenders from 2003 through 2006 so as to avoid the corresponding liability. As a result, there should have been an increase in tender offers after 2006.

Figure 1 shows the proportion of deals completed by tender offer in the United States from 1995 through 2010. Empirically, the impact of the Gerber decision appears obvious in Figure 1. Tender offers represent 14.2% of deals in 2002, but only 3.2% in 2006. The market for tender offers rebounds quickly after 2006, with 20% of deals executed as tenders in 2008 & 2009. Any empirical study on the choice of method must account for the legal ambiguity in the tender offer rules, particularly from 2002 through 2006. Given that the tender offer market was so skewed by the ambiguous interpretations of Rule 14d-10 and other legal changes, we focus our empirical analysis on deals initiated after 2006.

Wardwell; Latham & Watkins, LLP; Simpson Thacher & Bartlett LLP; Skadden, Arps, Slate, Meagher & Flom LLP; and Sullivan & Cromwell LLP.

¹⁸ Morrison Foerster Client Alert, “SEC Amends Tender Offer ‘Best Price’ Rule,” 11/6/2006, retrieved from: <http://www.mofo.com/pubs/xpqPublicationDetail.aspx%3fpxST%3dPubDetail%26pub%3d7260>

References

- Andrade, Gregor, Mark Mitchell, and Erik Stafford, 2001, New Evidence and Perspectives on Mergers, *Journal of Economic Perspectives* 15, 103-120.
- Bates, Thomas, and Michael Lemmon, 2003, Breaking up is hard to do? An analysis of termination fee provisions and merger outcomes, *Journal of Financial Economics* 69, 469-504.
- Berkovitch, Elazar and Naveen Khanna, 1991, A theory of acquisition markets: Mergers versus tender offers and golden parachutes, *Review of Financial Studies* 4, 149-174.
- Bertrand, Marianne and Sendhil Mullainathan, 2003, Enjoying the quiet life: Managerial behavior following anti-takeover legislation, *Journal of Political Economy* 111, 1043-1075.
- Betton, Sandra, B. Espen Eckbo, Karin S. Thorburn, 2008, Corporate takeovers, in *Handbook of Corporate Finance: Empirical Corporate Finance, Volume 2*, North Holland: Amsterdam, pg. 316.
- Boone, Audra L., and J. Harold Mulherin, 2007, How are firms sold? *Journal of Finance* 62, 847-875.
- Bradley M., A. Desai, and E. Kim, 1983, The rationale behind interfirm tender offers: information or synergy? *Journal of Financial Economics* 11, 183-206.
- Bruner, Robert F., 2004, *Applied Mergers and Acquisitions*, Wiley, New Jersey.
- Cain, C.L., A.J. Macias, and J.M. Sanchez, 2012, Do Targets Benefit from Auctions? The Role of Private Information, Purdue University working paper.
- Comment, Robert and Gregg A. Jarrell, 1987, Two-tier and negotiated tender offers: The imprisonment of the free-riding shareholder, *Journal of Financial Economics* 19, 283-310.
- Datta, D. K., 1991, Organizational fit and acquisition performance: Effects of post-acquisition integration, *Strategic Management Journal* 12, 281-297.
- DePamphilis, Donald, 2011, *Mergers, Acquisitions and Other Restructuring Activities*, 6th edition, Academic Press, California.
- Dong, M., D. Hirshleifer, S. Richardson, and S.H. Teoh, 2006, Does Investor Misvaluation Drive the Takeover Market? *Journal of Finance* 61, 725-762.
- Giliberto, S. Michael and Nikhil P. Varaiya, 1989, The Winner's Curse and Bidder Competition in Acquisitions: Evidence from Failed Bank Auctions, *Journal of Finance* 44, 59-65.
- Golubov, A., D. Petmezas, and N. Travlos, 2012, "When It Pays to Pay Your Investment Banker: New Evidence on the Role of Financial Advisors in M&As, *Journal of Finance* 67, 271-311.
- Grossman, S. J. and Oliver D. Hart, 1980, Takeover Bids, the Free-Rider Problem, and the Theory of the Corporation, *Bell Journal of Economics* 11, 42-64.

- Grossman, S. J. and Oliver D. Hart, 1986, The Costs and Benefits of Ownership: A Theory of Vertical and Lateral Integration, *Journal of Political Economy* 94, 691-719.
- Harris, Milton and Arthur Raviv, 1988, Corporate Control Contests and Capital Structure, *Journal of Financial Economics* 20, 55-86.
- Hart, O.D. and J. Moore, 1988, Incomplete Contracts and Renegotiation, *Econometrica* 56, 755-785.
- Hartzell, J.C., E. Ofek, and D. Yermack, 2004, What's in it for me? CEOs whose firms are acquired. *Review of Financial Studies* 17, 37-61.
- Hertzel, M. G., M. S. Officer, Z. Li, and K. J. Rodgers, 2008, Inter-Firm Linkages and the Wealth Effects of Financial Distress Along the Supply Chain. *Journal of Financial Economics* 87, 374-387.
- Huang, Y. and R. A. Walkling, 1987, Target abnormal returns associated with acquisition announcements: Payment, acquisition form and managerial resistance, *Journal of Financial Economics* 19, 329-349.
- Jensen. Michael C. and Richard Ruback, 1983, The market for corporate control: The scientific evidence, *Journal of Financial Economics* 11, 5-50.
- Kirchner, Thomas, 2009, *Merger Arbitrage: How to Profit from Event-Driven Arbitrage*, Wiley, New Jersey.
- Lynn, David M., 2009, Tender offer considerations for cash repurchases and exchange offers, Newsletter from the law firm of Morrison & Foerster LLP.
- Moeller, S. B., F. P. Schlingemann, and R. M. Stulz, 2004, Firm size and the gains from acquisitions, *Journal of Financial Economics* 73, 201-228.
- Offenberg, David, and Micah S. Officer, 2013, The totality of change-in-control payments, Loyola Marymount University working paper.
- Officer, Micah S., 2003, Termination fees in mergers and acquisitions, *Journal of Financial Economics* 69, 431-467.
- Porter, M. E., 1987, From competitive advantage to corporate strategy, *Harvard Business Review* 65, 43-59.
- Schnitzer M., 1996, Hostile versus friendly takeovers, *Economica* 63, 37-55
- Schwert, G. William, 1996, Markup pricing in mergers and acquisitions, *Journal of Financial Economics* 41, 153-192.
- Schwert, G. William, 2000, Hostility in takeovers: in the eyes of the beholder? *Journal of Finance* 55, 2599-2640.
- Staiger, Douglas, and James H. Stock, 1997, Instrumental Variables Regression with Weak Instruments, *Econometrica*, 65, 557-586.

Trautwein, F., 1990, Merger motives and merger prescriptions, *Strategic Management Journal* 11, 283-296.

Travlos, N. G., 1987, Corporate Takeover Bids, Methods of Payment, and Bidding Firms' Stock Returns, *Journal of Finance* 42, 943-963.

Table 1**Sample characteristics**

The table reports the average deal, acquirer, and target characteristics across mergers (first column) and tender offers (second column) for the period from 2007 through 2010. Detailed definitions of all variables are outlined in Appendix 1. The last column presents the differences of the corresponding characteristics across mergers and tender offers. Acquirers in these deals are public firms that held less than 10% of the target before the acquisition and more than 90% after. The minimum deal size is US\$1 million. (***) (**), and (*) indicate statistical significance at the 0.01, 0.05 and 0.10 level, respectively.

Variable	Merger	Tender Offer	Difference
Deal outcomes			
Four-Week Premium	44.38%	58.31%	13.93% **
Two-Month Premium	43.08%	60.86%	17.78% ***
Days to Complete	134	58	-76 ***
Deal Characteristics			
Relative Value	16.55%	8.76%	-7.79% ***
Percent Cash	59.17%	96.86%	37.69% ***
Government Delay	17.30%	2.20%	-15.10% ***
Solicited Bid	38.46%	31.52%	-6.94%
Competitive Bidder	15.38%	38.04%	22.66% ***
Prior Relationship	8.65%	17.39%	8.74% **
Deal Value (US\$, millions)	2,359	1,093	-1,266 **
Acquirer Characteristics			
Sales (US\$, millions)	15,351	20,140	4,789
Book Assets (US\$, millions)	21,339	25,125	3,786
High Debt Dummy	11.53%	2.17%	-9.36% ***
EBITDA/Assets	7.21%	10.29%	3.08% **
Market/Book	134%	157%	23% **
Target Characteristics			
Sales (US\$, millions)	1,292	411	-881 ***
Book Assets (US\$, millions)	2,083	479	-1,604 ***
Debt/Assets	19.15%	11.31%	-7.84% ***
EBITDA/Assets	3.29%	0.77%	-2.52%
Market/Book	158%	209%	51% ***
Observations	208	92	

Table 2
Completion time regressions

The table reports the coefficient estimates and robust P-values from OLS regressions of the number of days from the announcement of the deal to the effective date of the deal on a tender offer dummy; deal relative value; an indicator for the percent of the offer paid in cash; an indicator for high-debt acquirers (debt-to-asset ratio exceeding the 0.5); (log of) acquirer and target sales; and indicators for a government delay, solicited deals, contested offers, and prior relationship between the bidder and the target. The sample period is 2007-2010. The last two rows report the total number of observations and adjusted R-squared in each regression. Detailed definition of all variables is outlined in Appendix 1. (***) (**), and (*) indicate statistical significance at the 0.01, 0.05 and 0.10 level, respectively.

	(1)	(2)	(3)
Tender Offer dummy	-75.4 (0.000)***	-35.1 (0.000)***	-38.3 (0.000)***
Legal/Financial Impediments to Tenders			
Relative Value		78.7 (0.049)**	50.2 (0.199)
Percent Cash		-0.4 (0.001)***	-0.2 (0.038)**
Acquirer's High Debt dummy		-3.2 (0.768)	-18.7 (0.313)
Government Delay dummy		116.8 (0.000)***	102.2 (0.000)***
Competition for Target			
Solicited		-5.6 (0.443)	-11.7 (0.226)
Competitive Bidder dummy		4.9 (0.455)	6.4 (0.079)*
Prior Relationship dummy		5.1 (0.499)	9.9 (0.222)
Financials			
Acquirer Ln(Sales)		2.2 (0.338)	-0.5 (0.819)
Target Ln(Sales)		3.1 (0.188)	4.0 (0.163)
Intercept	133.9 (0.000)***	12.1 (0.801)	20.1 (0.602)
Industry Fixed-Effects	No	No	Yes
Year Fixed-Effects	No	No	Yes
Firms	300	293	293
Adjusted R-squared	0.173	0.577	0.622

* significant at 10%; ** significant at 5%; *** significant at 1%

Table 3**Choice of method regressions**

The table reports the marginal effects from Probit- and the coefficient estimates from OLS-regressions of the probability for a takeover deal to be structured as a tender offer on indicators for solicited deals, contested deals, and prior relationship between the acquirer and the target; an indicator for high-debt acquirers (debt-to-asset ratio exceeding 0.5); and indicators for a government delay; deal relative value; percent cash; and additional target and acquirer controls. Robust P-values are reported in parentheses. The sample period is 2007-2010. The last two rows report the total number of observations and adjusted R-squared in each regression. (***), (**), and (*) indicate statistical significance at the 0.01, 0.05 and 0.10 level, respectively.

	Probit	Probit	OLS	OLS
Competition for Target				
Solicited	-0.175 (0.001)***	-0.143 (0.000)***	-0.147 (0.005)***	-0.13 (0.016)**
Competitive Bidder dummy	0.153 (0.008)***	0.128 (0.002)***	0.188 (0.004)***	0.188 (0.005)***
Prior Relationship dummy	0.084 (0.177)	0.073 (0.215)	0.12 (0.122)	0.114 (0.132)
Legal/Financial Impediments to Tenders				
Acquirer's High Debt dummy	-0.253 (0.017)**	-0.25 (0.010)***	-0.094 (0.179)	-0.059 (0.437)
Government Delay dummy	-0.301 (0.006)***	-0.276 (0.000)***	-0.174 (0.004)***	-0.171 (0.007)***
Relative Value	0.078 (0.682)	0.113 (0.393)	-0.049 (0.754)	-0.056 (0.709)
Percent Cash	0.006 (0.000)***	0.006 (0.000)***	0.004 (0.000)***	0.004 (0.000)***
Financials				
Acquirer EBITDA/Assets	0.673 (0.159)	0.469 (0.007)***	0.34 (0.011)**	0.493 (0.000)***
Acquirer Market/Book	0.053 (0.081)*	0.048 (0.180)	0.035 (0.306)	0.032 (0.361)
Target Ln(Sales)	-0.026 (0.124)	-0.006 (0.639)	-0.022 (0.157)	-0.002 (0.899)
Target Debt/Assets	0.197 (0.194)	0.181 -0.122	0.145 (0.222)	0.105 (0.362)
Target Market/Book	0.026 -0.139	0.016 (0.100)*	0.021 (0.138)	0.011 (0.440)
Constant	-0.323 (0.301)	-0.963 (0.000)***	0.337 (0.246)	-0.294 (0.353)
Industry Fixed-Effects	No	Yes	No	Yes
Year Fixed-Effects	No	Yes	No	Yes
Observations	295	295	295	295
Adjusted/Pseudo R-squared	0.329	0.411	0.287	0.347

(Robust p values in parentheses)

* significant at 10%; ** significant at 5%; *** significant at 1%

Table 4**Takeover premium and acquisition method**

The table estimates a two-stage least squares regression of the effect of the acquisition method on the acquisition premium (four-week premium and two-month premium). The endogenous variable is an indicator variable for a tender offer and is instrumented with dummies for Solicited Bid, Prior Relationship, Acquirer's High Debt, Acquirer's return on assets, Acquirer's Market-to-Book ratio, government delay and the Relative Value ratio of the deal, as well as target and bidder characteristics. The independent variables at the second stage include the tender offer indicator (instrumented) and the target and bidder characteristics. The third and the fourth models also include industry- and year-fixed effects. Panel A presents coefficient estimates and standard errors from the first stage of the two-stage least squares estimation, while Panel B presents the second stage. The sample period is 2007-2010. The last two rows of Panel B report the minimum eigenvalue F-statistic of the instruments at the first stage and the number of observations used in estimation. (***) (**), and (*) indicate statistical significance at the 0.01, 0.05 and 0.10 level, respectively.

Table 4 (continued)

Panel A: first stage

	Tender (used to predict four-week premium)	Tender (used to predict two-month premium)	Tender (used to predict four-week premium)	Tender (used to predict two-month premium)
Competition for Target				
Solicited	-0.14 (0.028)**	-0.139 (0.020)**	-0.126 (0.100)	-0.125 (0.091)*
Competitive Bidder dummy	0.199 (0.016)**	0.193 (0.019)**	0.195 (0.028)**	0.189 (0.032)**
Prior Relationship dummy	0.132 (0.011)**	0.133 (0.007)***	0.149 (0.037)**	0.153 (0.023)**
Legal/Financial Impediments to Tenders				
Acquirer's High Debt dummy	-0.114 (0.267)	-0.107 (0.300)	-0.091 (0.436)	-0.081 (0.484)
Government Delay dummy	-0.169 (0.008)***	-0.171 (0.009)***	-0.183 (0.011)**	-0.189 (0.012)**
Relative Value	-0.204 (0.334)	-0.163 (0.441)	-0.39 (0.019)**	-0.362 (0.036)**
Percent Cash	0.004 (0.001)***	0.004 (0.002)***	0.004 (0.000)***	0.004 (0.000)***
Financials				
Acquirer Ln(Sales)	-0.024 (0.332)	-0.018 (0.459)	-0.042 (0.044)**	-0.038 (0.070)*
Acquirer EBITDA/Assets	0.82 (0.001)***	0.639 (0.013)**	0.801 (0.004)***	0.732 (0.012)**
Acquirer Market/Book	0.04 (0.174)	0.042 (0.202)	0.031 (0.547)	0.038 (0.501)
Target Ln(Sales)	-0.004 (0.868)	-0.008 (0.751)	0.025 (0.090)*	0.024 (0.144)
Target Debt/Assets	0.132 (0.454)	0.138 (0.445)	0.095 (0.403)	0.099 (0.399)
Target EBITDA/Assets	-0.104 (0.675)	-0.025 (0.901)	0.014 (0.954)	0.082 (0.691)
Target Market/Book	0.023 (0.021)**	0.023 (0.017)**	0.019 (0.040)**	0.018 (0.030)**
Constant	0.501 (0.220)	0.448 (0.279)	0.041 (0.919)	-0.01 (0.980)
Industry Fixed-Effects	No	No	Yes	Yes
Year Fixed-Effects	No	No	Yes	Yes
Observations	292	290	292	290
Adjusted R-squared	0.257	0.249	0.294	0.287

Table 4 (continued)**Panel B: second stage**

	(1)	(2)	(3)	(4)
	Four-week premium	Two-month premium	Four-week premium	Two-month premium
Tender (Instrumented)	0.492 (0.012)**	0.612 (0.011)**	0.362 (0.058)*	0.437 (0.062)*
Competitive Bidder dummy	0.002 (0.984)	0.08 (0.275)	0.032 (0.658)	0.109 (0.067)*
Percent Cash	-0.003 (0.007)***	-0.002 (0.000)***	-0.002 (0.017)**	-0.002 (0.029)**
Acquirer Ln(Sales)	0.062 (0.000)***	0.045 (0.000)***	0.067 (0.000)***	0.047 (0.000)***
Target Ln(Sales)	-0.071 (0.001)***	-0.045 (0.001)***	-0.07 (0.000)***	-0.039 (0.000)***
Target Debt/Assets	0.371 (0.003)***	0.124 (0.301)	0.357 (0.001)***	0.069 (0.301)
Target Market/Book	-0.053 (0.002)***	-0.058 (0.000)***	-0.042 (0.002)***	-0.039 (0.001)***
Target EBITDA/Assets	-0.057 (0.702)	-0.098 (0.317)	0.039 (0.779)	0.017 (0.806)
Constant	0.555 (0.102)	0.41 (0.114)	0.275 (0.431)	0.062 (0.798)
Industry Fixed-Effects	No	No	Yes	Yes
Year Fixed-Effects	No	No	Yes	Yes
Observations	292	290	292	290
F-Stat of instrument @ 1st stage	43.65***	39.43***	26.74***	19.15***

* significant at 10%; ** significant at 5%; *** significant at 1%

Table 5**Returns to rival firms at acquisition announcements**

The table compares announcement-period returns for the acquirer's rivals in mergers and tender offers in the SDC data for the period from 2007 through 2010. The market-model is used to calculate cumulative abnormal returns (CAR) with a value-weighted index over the windows from [-2,2] and [-1,1] centered around the announcement date. Rivals are defined as firms in the same four-digit SIC industry with a ratio of acquirer assets-to-rival assets in the range from 0.25 to 4.0.

Panel A: Comparison of Means

Deal Type	CAR [-2,2]	CAR [-1,1]	<i>n</i>
Merger	0.63%	0.59%	167
Tender Offer	-0.60%	-0.12%	70
<i>Difference</i>	-1.23%	-0.71%	
<i>p-value for difference</i>	0.0155	0.0721	

Panel B: Comparison of Medians

Deal Type	CAR [-2,2]	CAR [-1,1]	<i>n</i>
Merger	0.28%	0.21%	167
Tender Offer	-0.47%	-0.17%	70
<i>Difference</i>	-0.75%	-0.38%	
<i>p-value for difference</i>	0.070	0.070	

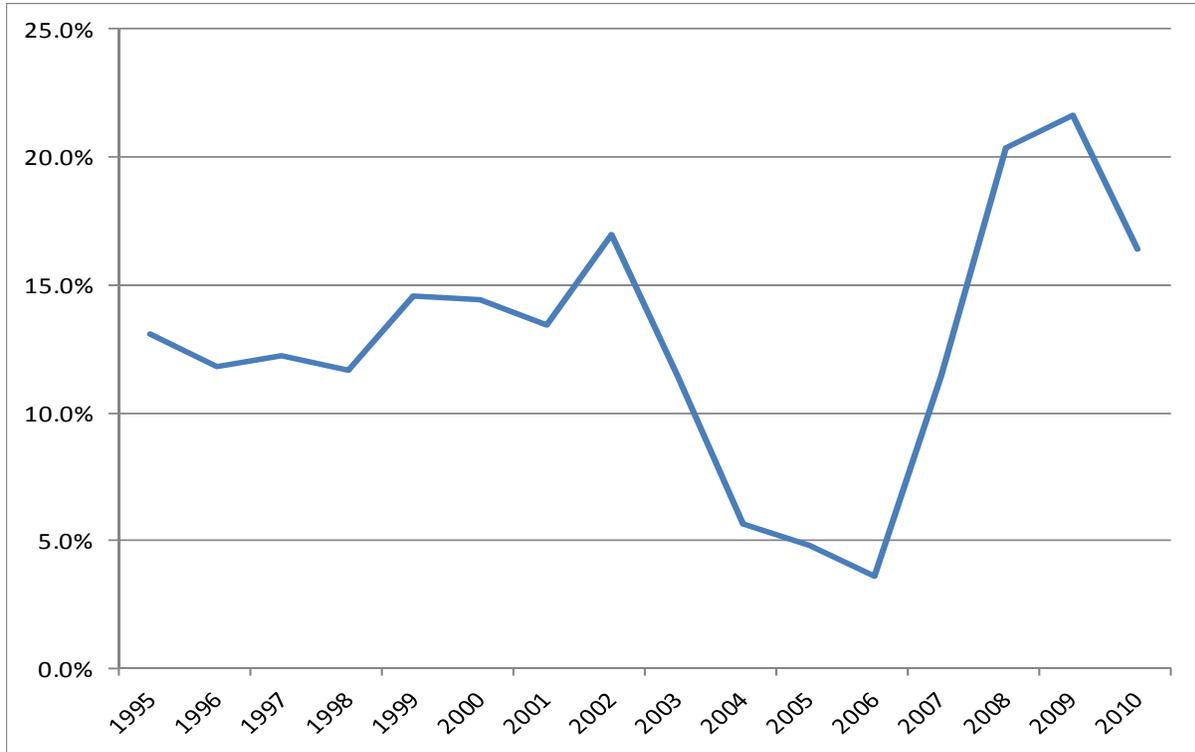


Figure 1 Proportion of tender offers by year

The table reports the total number deals, number of tender offers, and the proportion of tender offers relative to total number of deals for publicly-traded targets in the SDC data for each year over the 1995-2010 period. Acquirers in these deals are publicly-traded firms that held less than 10% of the target before the acquisition and more than 90% after. The minimum deal size is US\$1 million.