

Minority Report on the Mandatory Bid Rule

Senator Andrew Murray

The Corporate Law Economic Reform Bill 1999 included provisions for a mandatory bid rule (MBR). At the time of passage of that Bill, the Australian Democrats supported an amendment moved by Senator Conroy which had the effect of deleting the provisions of the Bill which would have introduced the MBR.

At that time I commented as follows:

Let me make it clear that we believe the government has made a good case [for the introduction of the mandatory bid rule]. We have also had presentations from such informed professionals as the Australian Securities Institute and we are aware of overseas precedent in this area. However, the arguments against it are such that, at this time, we have decided to take a cautionary stance on this and to be careful about introducing something which may not be necessary additional to the other changes which, in terms of this bill and in terms of the proposed tax rollover relief for scrip for scrip takeover, will significantly increase takeover activity.

The essence of the thoughts of the Democrats at that time was that we could see arguments of substantial merit both for and against the introduction of a MBR. The majority report very succinctly outlines those arguments and for that reason it is unnecessary to canvass those points again.

With that as the starting point, we decided that our position would be to give the CLERP takeover reforms and the scrip for scrip rollover relief some time to take effect and later reassess whether the introduction of a MBR could have the potential for providing benefits in addition to those other reforms.

I refer to paragraph 2.30 of the majority report where it is noted that the Australian Securities Investment Commission in fact confirmed the approach adopted by the Democrats; namely observe the new takeover regime in operation for a period of 12 months before making a decision regarding the introduction of the MBR.

None of the evidence presented to the Committee has persuaded me to change my stance. The Australian Democrats are still concerned about the transparency of control transactions, and the absence of a public auction process. We are not convinced that the efficiencies, managerial pressure and increased price tension that it is suggested would arise from a MBR would outweigh the potential negative consequences. Furthermore, in an environment where other significant reforms have recently been introduced which are likely to lead to increased takeover activity, we believe it is appropriate to delay the introduction until those reforms have had time to take effect and an assessment can be made as to whether the MBR could provide additional benefits.

The Australian Democrats recommend that the MBR not be enacted at this time.



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