

In a year of takeover defences, what impacts do these tactics have on shareholders?

Written by Simon Segal, PhD research candidate, Business, Flinders University

It's becoming the year of defence in Australian mergers and acquisition, with varying and fascinating defence tactics on display over the past six months.

Perhaps the most brazen defence this year in Australia was Healthscope's [rejection of two rival bidders](#) while simultaneously announcing an earnings downgrade. Not only does this defy [the maxim that the best defence is a high share price](#) but classic defence tactics also hold that rival bidders should be leveraged off each other to extract a higher offer.

In May, Brookfield lodged an A\$6 billion (including debt) competing takeover proposal at A\$2.50. This followed an A\$2.36 proposal in April from a consortium that included BGH and AustralianSuper. Instead of pursuing the proposed takeovers, Healthscope launched a strategic review to explore selling its property portfolio. That prompted suggestions the move was more about creating a stalking horse defence.

Healthscope's share price has partially held, trading at A\$2.19 compared to a high of A\$2.58 after the proposals were made public. It remains well above its A\$2 level shortly before the first takeover proposal.

Santos is another storied defence saga involving protracted negotiations with Harbour Energy, including two improved offers over a dramatic May weekend. In all, the defence persuaded Harbour to improve its proposals five times since the A\$4.55 it first offered in August 2017.

Harbour ended up offering A\$7 if Santos agreed to hedge part of its oil-linked production. Santos still rejected the offer in a marginal decision. The [rise in the oil price aided Santos's defence](#), but its board is now exposed to shareholder pressure should the oil price fall sharply.

Harbour was left frustrated at what it considers the stop-go messaging of Santos, leading to the [belief that Santos did not want to sell at any reasonable price](#). Santos believes its existing strategy offers better shareholder value, the premium paid for

gaining control of the company is inadequate and the transaction structure is too complex, risky and uncertain. Santos now trades around A\$6.38.

Holding out for better offers

Aside from their bidders, which bought stakes in Healthscope and Santos to shore up their positions, both companies have wide shareholder registers without any anchor shareholder.

This is in contrast to APN Outdoor, Gateway and Mineral Deposits where a few large and decisive shareholders were clear that their boards should reject initial offers this year from [JCD ecaux](#), [Hometown](#) and [Eramet](#) respectively. All three bidders improved their offers.

This led to a new board recommendation from APN whose defence was complicated by its [offer to buy Adshel](#), JCDecaux's biggest rival in Australia's street furniture advertising segment, from HT&E. Once APN was [outbid for Adshel](#) it [negotiated improved terms from JCDecaux](#).

Mineral Deposits waited for acceptances to approach 50% before [changing its recommendation to accept](#).

This was an unusual switch for a defence board to make so late in the process. More typically a target board advises shareholders to take no action. It may suggest an offer is opportunistic or undervalued without recommending shareholders reject an offer.

Rather than being persuaded by a sufficiently attractive offer, Mineral Deposits was boxed in by two factors. The offer price was declared final at an early stage and shareholders were unwilling to remain invested in an Eramet-controlled company with [dilution](#) from likely capital-raising.

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In the case of Gateway, disgruntled shareholders pushed the board to find a suitor. The company ended up with [two competing offers](#) that it says it is considering. Other parties are [reportedly weighing up making a bid](#).

Another defence board that faced a difficult decision is Sirtex Medical. One day before a scheduled scheme meeting to approve a board-recommended A\$28 offer from Varian Medical Systems, Sirtex received a A\$33.60 proposal from Chinese asset manager CDH Investments.

Reflecting the fact that price is not the sole factor in defence, Sirtex had to weigh up complex regulatory approvals (particularly from the Committee on Foreign Investment in the United States), timing and other risks. The inclusion in CDH's proposal of a A\$200 million reverse break fee (if the bidder breaches or is unable to fulfil the acquisition agreement), Australia's largest reverse break fee, reflects the risks Sirtex felt.

None of these defence tactics involved poison pills – making the target's shares prohibitively expensive or the target unattractive to a bidder. The Australian [Takeovers Panel notes](#) the "poison pill" term is loosely used in Australia to refer to a defence triggered by a hostile bid that makes a target unattractive, such as pre-emptive rights or share top-up rights.

So what are the impacts on shareholders?

As Harvard Business School professor [Richard Ruback observed](#) :

I wish I could conclude that takeover defences are generally good or bad for stockholders, but the answer is not that simple.

Even where offers were improved, it depends which stakeholders are referenced (target or bidder shareholders, employees, suppliers, customers, management, competitors, among a few) and at which point one compares.

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Ruback concluded that:

- defences that give managers power to veto hostile takeovers seem to be harmful
- defences that destroy assets are probably bad
- defences that neither give managers veto power nor destroy assets are probably not harmful.

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