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Merger and Acquisition Activities in Japan: the Present and the Future

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I. INTRODUCTION

The development of corporate merger and acquisition in Japan has been drawing wide international attention recently. Instances of both business activities are on the increase today in Japan. The parties involved may be two or more Japanese firms or a combination of Japanese firms with one or more foreign firms. Perhaps the concept of mergers and acquisitions is too restrictive because it fails to include the related concept of capital participation among firms in general. The increase in acquisition activity in this broader sense seems to be attributable to a number of factors in Japan.

First, the Japanese market is now more closely linked than ever with its United States counterpart. An increasing number of Japanese enter-

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prises are contemplating forays into overseas markets, and the large market in Japan is attracting many United States businesses. A typical firm first enters a foreign market as a merchandise exporter, but the need for quick response to the market, or perhaps the need to overcome protectionist barriers, often motivates the same firms to undertake foreign production. Second, Japan's assembly-fabrication industries possess a high and attractive level of technology. In the electronics industry and some other sectors, a few United States firms have already established centers of component production in Japan.

Third, some mature Japanese manufacturing industries are eager to launch into new, innovative fields. The smokestack industries are examples of such mature sectors. They do not want to stand by with folded arms and watch the rapid technological innovations emerging in electronics, telecommunications, and data processing. The older industries must somehow link up with these newly emerging technologies for the sake of survival and future growth. Japanese enterprises used to groom in-house initiatives patiently for product development, but such growth strategies based strictly on in-house resources are fast becoming obsolete. The accelerating tempo of technological advancement makes it mandatory to absorb external resources either for direct exploitation or for combination with in-house resources. These older firms can thus make a bold foray into a new, innovative field.

In Japan, the concept of merger and acquisition was formerly associated with reorganization of a business in trouble. The new concept of merger and acquisition, however, is oriented to growth strategy and internationalization. Both the Japanese economy and Japanese businesses have changed. With this background, this article will first discuss the attempted takeover of Minebea Co. and then proceed to explore the following three topics:

(1) Merger and acquisition among Japanese corporations;

(2) Merger and acquisition in Japan by United States corporations; and

(3) Merger and acquisition in the United States by Japanese corporations.

Corporate acquisition is a matter that remains relatively unexplored in Japan. If this state may be thought of as backward, we should attempt to identify the reasons for this backwardness, and assess the possibility of future changes.

II. THE CASE OF MINEBEA CO., LTD.

In August 1985, Minebea Co., Ltd. (Minebea) a major ball bearing manufacturer in Japan, applied for merger with Sankyo Seiki Manufacturing Co. (Sankyo), a well-established manufacturer of precision machinery and electronics equipment, the former having acquired about nineteen percent of the latter's share capital.[1] Minebea's move caused a sensation, as there have been few such mergers in Japan. Later in the same month Trafalgar Holding Company (Trafalgar),[2] a United States conglomerate, increased the suspense when it announced that it had acquired a purchase option on the portfolio securities of Glen International,[3] a British concern. The portfolio reportedly included Minebea common shares, convertible bonds, and bonds with warrants, which when combined represented twenty-three percent of Minebea's share capital after conversion of the bonds and warrants.[4] Apparently, Trafalgar Holding Company had interpreted Minebea's merger bid with Sankyo as heralding a surge in Japan of such activity and wanted to capitalize on the purported trend.[5] With a heated tug-of-war going on

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1. Minebea was established in 1951 under the name "Japan Miniature Bearing" and became known worldwide as a manufacturer of precision miniature bearings. This corporation has aggressively pursued mergers and acquisitions as a corporate strategy. Estimated sales for the term ending September 1985 were 150 billion yen. Estimated net income for the same term was 5.8 billion yen. The corporation employs 3,000 workers.

Sankyo posted net income equivalent to 1.6 billion yen on sales of 98 billion yen, for the year ending March 1985.

2. This entity is not well known, but The Asian Wall Street Journal reported:

> With the formation of Trafalgar Holding Company, former chairman of Financial Corporation of America (FCA), Charles W. Knapp started in late 1984 to build a new multibillion dollar financial empire. After being pressured to leave FCA in August of 1984, Knapp took with him most of the executives and many of the customers who had helped him build FCA to its status as the parent of the largest savings and loan association in the U.S. to form the foundation of Trafalgar Holding Company. . . . Mr. Knapp is well known for his aggressive policies.

See Asian Wall St. J., Feb. 28, 1985, at 38; *id.*, Aug. 27, 1985, at 34.

3. This entity is likewise not well known. According to The Wall Street Journal, it is a London-based concern controlled by Mr. Terrence Ramsden. Wall St. J., Aug. 27, 1985, at 34.

4. In the past few years, Japanese companies have issued a substantial amount of bearer securities, often convertible into common stock. These securities have been popular in Europe, particularly in Switzerland, and have reportedly made it easier for foreigners to acquire positions in Japanese concerns. About 80 to 90% of Japanese convertible bond issues are usually subscribed to by foreigners. In the Eurobond market, however, these bonds are traded over the counter as bearer securities, and the issuing corporations have no means to ascertain where ownership of the bonds lies.

5. Chairman Knapp said that the acquisition of the option was only a start in a series of share acquisitions in Minebea. The ultimate goal, he said, was the control of either Minebea of Sankyo or both. He views Minebea and Sankyo Seiki as undervalued since Japanese corporations are not required to disclose current market values of real estate and other assets. Wall St. J., Aug. 27, 1985, at 34.

between Minebea and Sankyo, Trafalgar's intervention significantly complicated the matter.

Thus, the future development of this attempt is sure to draw wide international attention. It is not at all likely, however, that Trafalgar Holding Company will receive a friendly reply to its proposal from Minebea. Trafalgar seems to have no other choice but to launch a takeover bid to bring about the business combination. In this case, Trafalgar will need several hundred billion yen as deposit money, and it is unlikely that the company can afford to raise this enormous sum.[6]

Further, takeover bids from abroad, like that of Trafalgar, are subject to prior scrutiny by the Japanese financial authorities under the Foreign Exchange and Foreign Trade Control Law.[7] The law stipulates that if a foreign investor acquires stock shares of a Japanese firm listed on the Japanese stock exchange and comes to hold ten percent or more of the total issued shares of the firm, the foreign investor must notify the Minister of Finance of the acquisition.[8] The Finance Minister must then examine (1) whether the investment activities of the foreign investor will threaten the security of Japan or constitute a hindrance to the protection of the general public, and (2) whether such activities will have an adverse effect on the business operations of the industrial sector in which the subject Japanese corporation belongs.[9] On the basis of this examination, the Minister is authorized to advise the foreign investor to change or suspend its plan to acquire the Japanese target corporation.[10] The Finance Ministry and the Ministry of International Trade and Industry (MITI), the competent authorities in this case, would both play an important role in passing judgment in such a case. Therefore, in the Minebea case, many hard problems remain to be solved. Certainly peo-

6. Minebea, on the other hand, tried to take over Kanemori and increase its capital in an attempt to preserve its independence. Large shareholders of Minebea are likely to complain of this type of defensive corporate acquisition. Kanemori is not directly related to Minebea's conventional line of business and little complementary function can be expected, even though a successful takeover would lead to increased sales volume. In addition, Minebea's per share profit would decline, at least temporarily. The number of Minebea employees would be over 5,000 with the addition of 2,400 from Kanemori. Sales, however, would grow by no more than 10 percent. Kanemori, one of Minebea's affiliate companies, is engaged in non-store retail trade or dry goods. For the year ending March 1985, it posted a net income of 0.5 billion yen on sales of 12 billion yen.

7. Gaikoku Kawase oyobi Gaikoku Bōeki Kanri Hō (The Foreign Exchange and Foreign Trade Control Law), Law No. 228 of 1949, arts. 26-30.

8. *Id.*, art. 26, para. 3; *see also id.*, art. 26, para. 2.

9. *Id.*, art. 27, para. 2.

10. The Finance Ministry may make this same recommendation based on other findings. *See id.*, art. 27, paras. 1(3)-(4), 2.

ple in the industry, both in Japan and abroad, have an especially keen interest in how this case will be settled.[11]

III. THE PRESENT ACQUISITION CLIMATE IN JAPAN

The concept of corporate mergers and acquisitions is generally defined in Japan as "any combination of two or more business enterprises into a single enterprise or any placement of one business enterprise under the control of another enterprise, in both cases of which the aims are survival and future growth."[12]

"Any combination of two or more business enterprises into a single enterprise" refers to a corporate merger, whereas "any placement of one business enterprise under the control of another enterprise" refers to a corporate acquisition. In Japan, just as in the United States, there are two types of corporate mergers and three types of corporation acquisitions.[13] Mergers may take place through the amalgamation of corporations on an equal basis or by the formation of a new company. In the case of an acquisition, one can gain virtual control of a targeted firm by taking possession of a fixed percentage of its total issued shares, either through a capital increase allotment to a third party or a stock transfer. An acquisition may also be accomplished by means of a transfer of business or an assets sale. A transfer of business refers to the transfer from the acquired firm of its specific business assets including the factories, offices, and branches as well as the business relations with clients and the know-how relating to business transactions to the acquiring firm. Control of a firm may also be acquired by obtaining sufficient proxies to gain the right of management at the firm's shareholders meeting.

Merger and acquisition activities, especially corporate takeovers, are often regarded unfavorably in Japan. However, takeover activities can be

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11. Trafalgar Holding Company sold all its shares of Minebea on April 11, 1986. This behavior of the corporation was an expected result but may have occurred rather too quickly; however, the facts indicated clearly that the corporation did not have any sincere desire to purchase Minebea from the outset. Trafalgar Holding Company's real intention was strictly profit-making. Asahi Shimbun, April 11, 1986, at 2.

12. *See* E. KANZAKI & S. K. KAI, KIGYO BAISHU NO JITSUMU TO HOHRI (PRACTICES AND LEGAL ISSUES OF MERGERS AND ACQUISITIONS IN JAPAN) 20-23 (1985) (translation by author) [hereinafter E. KANZAKI].

13. The two types of mergers in Japan are (1) amalgamation of corporations and (2) merger of corporations to form a new corporation. The three types of acquisitions are (1) acquisition of shares (obtained by transfer of stock shares, or by capital increase allotted to third party), (2) business transfer and (3) capture of proxies. Both mergers and acquisitions of shares can be used in friendly or hostile takeovers; however, business transfers typically are friendly, while the capture of proxies is a hostile technique of acquisition.

divided usefully into friendly and hostile transactions. In a friendly acquisition, the management and large shareholder of the firm being acquired agree to and cooperate with the proposed merger or acquisition. Acquisitions in this category are accomplished by stock acquisitions, mergers, and business transfers. On the other hand, if the managers and large shareholders of a company targeted for acquisition oppose the proposed takeover, it is regarded as hostile. Those who attempt a hostile takeover become involved in a fight with the managers and large shareholders for proxies and equity shares in a bid to take possession of the right of management.

In Japan, as in the United States, the acquisition of shares may be made through a takeover bid.[14] This form of acquisition is referred to in Japan as the "open stock acquisition system,"[15] the first use of which occurred in 1971. The introduction of this system[16] to Japan came about because there was widespread feeling that without such a system Japanese investors might not be able to protect themselves from takeover bid offensives, which were at that time expected to be launched by foreign companies in the wake of capital liberalization. There have been only two cases of stock acquisition under this system.[17] Both were friendly transactions. Trafalgar's attempt to purchase Minebea would have been the third such case, and the first hostile one in Japan. This paper will now consider the present merger and acquisition situation among Japanese companies, focusing on mergers, business transfers and acquisitions of shares.

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14. The term "tender offer" is widely used in the United States while "takeover bid" is the common British variant. In the Japanese system, an acquiring corporation tries to purchase a certain minimum percentage of shares of a corporation targeted for acquisition at a price over the market value. The purchase of these shares should be made within a specified period after making such an intention known to the public. This method of stock acquisition is suitable for attempting to acquire a corporation in which a large percentage of equity is held by many shareholders. This "open stock acquisition system" is a particularly useful technique when attempting an unfriendly acquisition, even though the system is also used for friendly acquisitions.

15. *Supra* note 14.

16. Shōken Torihiki Hō (Securities Exchange Law), No. 25 of 1948, arts. 27-2 to 27-8.

17. These cases involved the purchase of shares of a Japanese firm, Automobile Machinery Co., by Bendix of the United States in 1972, and an acquisition of shares of Okinawa Haiden and Chuo Haiden by Okinawa Electric Power Co., in 1975. For details of these acquisitions, see E. KANZAKI, *supra* note 12, at 58-63.

A. *Mergers and Business Transfers*

Table 1 in the Appendix following the text of this article shows the number of corporate mergers and business transfers reported to and approved by the Fair Trade Commission in Japan. As the first table indicates, the number of mergers per year has generally increased since the end of World War II, reaching a peak in the period between 1965 and 1970 and generally declining thereafter. In those five years, two large-scale mergers were effected as part of the industrial effort to prepare for capital liberalization and to preserve Japan's international competitiveness.[18] The slow down in the mid-1960s, which occurred between the Tokyo Olympics-related boom (1962-1964) and what was widely referred to as the "Izanagi boom" (1966-1970), also served to stimulate merger transactions. The number of business transfers, on the other hand, has apparently continued to grow since 1950.

Table 2 shows the percentage composition of who initiated these mergers and business transfers in Japan. Nearly half of these transactions began with negotiations between the parties concerned, while most of the remainder were targeted either by the parent company or by large stockholders acting together. It appears then, that a fairly large percentage of corporate mergers and business transfers were effected by means of strenuous efforts on the part of Japanese enterprises to reorganize themselves within their respective business groups. Table 3 lists instances of mergers that have taken place since 1975 involving large enterprises. An asterisk denotes reorganization within a business group. It is evident from this table that a large number of merger transactions took place among firms belonging to the same group.

B. *Acquisition of Shares*

A complete combination of two or more enterprises in a corporate merger in Japan has usually been accompanied by several evils. These problems have included the retention of too many top executives and too many people holding other managerial positions (neglecting "the-right-man-in-the-right-place" principle) and the concurrent retention of different working rules and conditions. This sort of situation is liable to occur especially when there exists a gross imbalance in the business scales of the corporations involved in the merger. Unnecessary friction has some-

18. One was Nissan Motor Co.'s merger with Prince Motor Co., and another was the merger between Yahata Steel and Fuji Steel. For a more detailed discussion of these mergers, see INDUSTRIAL BANK OF JAPAN, THE 75 YEAR HISTORY OF THE INDUSTRIAL BANK OF JAPAN 458, 693-94 (1982).

times arisen in a new company when there has been a wide difference in the managerial and financial positions of the firms effecting a merger.

In these circumstances, corporate takeovers through the acquisition of shares have been drawing wide attention recently in Japan as a viable alternative to a corporate merger because an acquisition of shares enables the acquiring company to control the target without infringing upon its independence. A description of how takeovers have actually been accomplished in Japan through the acquisition of shares follows.

Between 1982 and 1984, seventy-eight corporate acquisitions were officially announced. Table 4 shows acquirers and acquirees depicted in matrix form by type of industry. As Table 5 shows, forty-one of these acquisitions, more than half of the seventy-eight cases, were effected within the same type of industry. According to a study by the Industrial Bank of Japan (IBJ), the expansion of operations within existing fields was the acquisition motivation for three-quarters of the seventy-eight firms, whereas diversification or penetration into other fields was the motivating factor for one-third of the total.

Table 6 shows the firms acquired, according to type of business. Retailers, including department stores and supermarket chains, account for eighteen percent, followed by fourteen percent for service-related businesses, including software houses, which find it difficult to become more competitive, although they are growing rapidly. Wholesalers, recently exposed to waves of reorganization, comprise twelve percent of the total, while transportation, in which leading trucking companies are stepping up efforts to bring about nationwide distribution networks, make up ten percent. Companies included in these four types of businesses account for more than half of all the acquired firms. This figure reaches seventy percent with the addition of the iron and steel industry, in which there has been much reorganization among electric-furnance steel makers, and the electrical machinery and electronics industries, which are expected to keep growing as they focus on electronics technologies and into which companies from other industrial sectors are making active entries.

Mergers and acquisitions are one of the methods which business enterprises employ in their efforts to adapt to an ever-changing economic climate and unstable conditions. The Japanese industrial structure has been changing remarkably, seriously affecting each industrial sector. It is quite likely, therefore, that more and more firms will become interested in acquisition transactions. The above-mentioned data are a good reflection of the situation in which Japanese firms now find themselves.

IV. Merger and Acquisition Activities in Japan by United States Corporations

The number of successful acquisitions of Japanese firms by United States corporations so far has been small. One of the most successful of these took place in August 1983, when Merck & Company, the second-largest drug maker in the world, acquired Banyu Pharmaceutical.[19]

It had been, for some years, rather difficult for United States corporations to acquire Japanese corporations. In December 1979, however, a law restricting foreign investment in Japan was abolished and new provisions were integrated into the Foreign Exchange and Foreign Trade Control Act (the Act).[20] The Act liberalized in principle direct investment by foreign corporations in Japan and converted the licensing system to a system of prior reporting for the acquisition of shares in Japanese firms. As a result, acquisition in Japan by foreign corporations has become much less difficult in terms of legal restrictions.

Notwithstanding these reforms, foreign investors are still urging Japanese authorities to simplify the prior reporting procedures for direct investment in Japan. In addition, foreign investors show concern over the stipulations that the Finance Ministry and MITI have the authority to examine a case in advance to judge whether it is in compliance with such general terms as "the security of Japan" and "protection of the general public," after which they may change or suspend the investment.[22] They worry that all foreign investments which could be construed as being unfavorable to the Japanese side would be eliminated in the screening process. Foreign investors are also requesting that foreign attorneys be allowed to enter the Japanese legal services market.[22] Some Japanese commentators went so far as to argue, ironically, that the request to admit foreign attorneys into Japan had been made because their services would be needed badly in connection with the purchase by foreigners of Japanese corporations.[23] Foreign corporations are likely to become in-

19. This corporation markets medium-scale pharmaceuticals, catering mostly to physicians. For the year ending March 1985, the corporation posted a net income of 2.8 billion yen on sales of 67 billion yen.

20. Gaikoku Kawase oyobi Gaikoku Bōeki Kanri Hō (Foreign Exchange and Foreign Trade Control Law), Law No. 228 of 1949.

21. *See supra* notes 8-9 and accompanying text.

22. In February 1984, the Japan-United States Investment Committee, representing both governments, discussed this matter to promote mutual investment in the years to come.

23. In addition, the European Community (EC) Commission once criticized the prior reporting system as being too demanding, indicating that the EC members were also interested in the acquisition of Japanese corporations. The criticism was made in

creasingly interested in the acquisition of equity shares in Japanese corporations, with a view of ownership, if and when they determine that the steps necessary to enable them to do so have been put in place.

For example, a United States multinational corporation has targeted a leading machinery maker and a middle-sized corporation in a high-technology field in Japan. A major United States drug maker is greatly interested in acquiring a pharmaceutical company of middle standing in Japan that is faring rather poorly following the Government's reduction of price levels of medicines. Given this level of interest, a detailed analysis of the successful Merck-Banyu case may be useful for foreign corporations interested in possible acquisition activity in Japan.[24]

Merck & Company and Banyu Pharmaceutical Company first entered into business relations in Japan in 1954, when they established a joint venture under the name of Nippon Merck Banyu Company. In August 1983, about 30 years after setting up the joint concern, the United States drug maker succeeded in gaining control of Banyu. The parties agreed at that time to bring about even closer business collaboration, including a stronger capital tie-up. The new sales of the Merck Group in Asia, including Japan, had been sluggish for several years before 1983. Merck's sales in Asia in 1982 accounted for only a little over eight percent of its worldwide sales, even though Japan is the second largest market in the world for prescription drug sales ($12 billion) behind the United States ($19 billion). Given this fact, management considered an effective strategy in the Japanese market to be the key to favorable future development of the whole Merck Group.

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autumn 1983 at the Japan-EC symposium cosponsored by the Ministry of International Trade and Industry of Japan and the European Community Commission.

24. There have been many other such approaches to Japanese banks such as the Industrial Bank of Japan (IBJ) asking that they work as an intermediary. Banks generally make every possible effort to inform United States corporations how difficult it is to make successful acquisitions in Japan and to persuade them to establish joint ventures for the mutual benefit of both sides.

An actual example is the recent establishment of a joint venture between Union Carbide Corp. and Iwatani & Co., a Japanese concern dealing in various gases for industrial and household use. IBJ assisted the two corporations in successfully setting up a new corporation. Union Carbide first expressed its desire to acquire a Japanese gas company or a gas sales company. IBJ managed to dissuade the United States corporation from pursuing its initial plan and instead introduced it to Iwatani & Co., one of IBJ's clients. In this way, IBJ succeeded in bringing about a mutually complementary arrangement in which Union Carbide allows Iwatani to sell over a hundred thousand items of sophisticated gas technology in Japan through the latter's distribution network. For the year ending November 1985, Iwatani posted a net income equivalent to 1.1 billion yen on sales of 450 billion yen.

Banyu, on the other hand, had been lagging behind its Japanese competitors in the development of new products and had been worried for some time about the slackening of its rate of sales growth. In addition, government-regulated drug prices were cut in January 1983, undercutting Banyu's market position even more severely.

Banyu had to find a way out of its difficulties. The Japanese drug manufacturer had to achieve economies of scale by building factories overseas in order to become an international company and to establish even closer ties with other drug makers. Thus, the needs of Banyu coincided completely with those of Merck. Furthermore, pharmaceutical companies must invest enormous sums of money on research and development over a long period of time in order to maintain market strength. Banyu is no exception. Banyu's stronger relationship with Merck appears to give it a large advantage in terms of research and development.

Merck did not resort to the drastic measure of acquiring shares of the Japanese corporation through an outright takeover bid, which is popular in the United States. Merck instead increased its percentage ownership of Banyu over time by obtaining equity shares through capital allotments to third parties. Merck finally acquired just over fifty percent of all of the issued shares of Banyu. This attempt by Merck turned out to be one of the few successful acquisitions of a Japanese concern by a foreign corporation.

It would, therefore, appear that a friendly transaction of the Banyu-Merck type, unopposed by the management of the targeted corporation, presents no problem at all. There is every likelihood, however, that foreign investors in the future will increasingly utilize hostile takeover bids, as in the Minebea case, to acquire Japanese corporations, and that such attempts will draw wide international and domestic attention.

V. Merger and Acquisition in the United States by Japanese Corporations

Japanese corporations are making inroads into foreign markets primarily through what is often referred to as "green field investment." In such cases, these companies begin from scratch; they buy land, build facilities and stock the facilities with machinery.[25] In addition to green

25. Direct investment overseas by Japanese corporations in recent years has been growing remarkably. Japan's direct investment in the United States amounted to $8,145 million in 1983, an increase of $4,435 million from 1971. For a more detailed discussion see Ministry of International Trade and Industry (Japan), Waga Kuni Kigyō no Kaigai Jigyō Katsudo (Overseas Activities of Japanese Corporations) 3 (1985).

field investment, more and more Japanese corporations are taking the acquisition route as a way of making direct investment abroad.[26] There is a social climate in Japan which gives rise to some prejudice against the acquisition of corporations, leading to an unwillingess to accept acquisitions. It is interesting to examine why the acquisitions of foreign corporations by Japanese corporations have been increasing despite this bias. Japanese businesses have come to regard the acquisition of foreign corporations as an important management strategy for the following reasons.

First, the trade imbalance in Japan's favor has caused the United States to restrict various types of imports from Japan. In response to these restrictions, it is rapidly becoming more and more necessary for Japanese businesses to engage in local production in the United States and other nations with which it has a trade imbalance. In this situation, an acquisition is a fast and relatively simple form of direct foreign investment enabling local production.

Second, with the deceleration of economic growth in the Japanese domestic market, Japanese enterprises which have found expansion in their conventional lines of business impossible have been seeking to enter high-growth fields both at home and abroad. However, for them to launch into new innovative fields with only in-house resources would be difficult. In addition, it is quite likely that the accelerating tempo of technological advances will soon render even products embodying the latest in-house developments obsolete. Consequently, more and more corporations are becoming interested in corporate acquisitions, which they regard as a fast and simple means of obtaining sophisticated technologies developed by other companies.

Third, some corporations in the United States are thinking of reorganizing their subsidiaries that are in trouble. Other United States corporations are contemplating what to do with their unprofitable divisions. An increasing number of United States corporations are attempting to

26. Instances of the acquisitions of U.S. corporations by Japanese corporations include Kobe Steel's acquisition of Midrex, Nippon Sanso's acquisition of Matison and Nipon Kokan's purchase of National Steel. Also, acquisitions of U.S. banks by Japanese banking institutions have recently been increasing. In January 1984, Fuji Bank acquired the two U.S. corporations Walter E. Heller & Co. and Walter E. Heller Overseas for about $400 million. Mitsubishi Bank succeeded in placing California Bank under its complete control in both name and reality in June 1984. IBJ also took the plunge in June 1984 when it embarked on the project of acquiring Henry Schroder Bank & Trust, with two different companies included, for $110 million. Later that same year, in December, Sanwa Bank acquired a leasing subsidiary of Continental Illinois Bank, the managerial crisis of which had surfaced at that time.

interest Japanese corporations possessing technical and managerial competence in the purchase of their poorly-faring subsidiaries or divisions.

Finally, Japanese corporations have begun to show interest in acquisitions in the United States because they have now become familiar with its business climate, one in which corporate acquisition is a matter of daily routine and in which little resistance to acquisition activity exists. The yen's rapid appreciation[27] also makes acquisition in the United States relatively inexpensive for Japanese corporations.

VI. FUTURE PROSPECTS

The Japanese economy was hard hit by the two major oil crises in the 1970s. Since then, individual businesses have managed to remedy most of their difficulties by means of various adjustment measures. The economy now finds itself at a point from which another fresh start will be required for further growth in the 21st century. The economy must find new directions for growth. The industrial structure is likely to undergo great changes as a result of the technological advances rapidly taking place in fields such as electronics, telecommunications, data processing, new materials, and biotechnology.

Japanese corporations will be forced to make good use of external resources in their efforts to cope with the rapid advance of technological development. They will have to determine the perspective from which they should look at corporate acquisition in their overall growth strategy. Financial institutions,[28] securities houses, consulting firms, and other organizations are likely to be more and more involved in rendering intermediary services relating to acquisition activity. Merger and acquisition activities in Japan are almost certain to increase in the years to come.

It is unlikely, however, that unfriendly acquisitions of corporations, so often seen in the United States, will become commonplace in Japan. As discussed above, there have been no successful cases of hostile corporate acquisitions in Japan to date.[29] There are a good many Japanese corpo-

27. As of February 20, 1987, $1.00 = 153.63 Yen. Wall St. J., Feb. 23, 1987, at 34, col. 5.

28. Japanese financial institutions have been actively involved in the establishment of departments specializing in furnishing their clients with necessary services related to mergers and acquisitions. For further details, see Toyo Keizai, Oct. 26, 1985, at 36.

29. At one time in the shipping industry, Sanko Steamship, Ltd., and an internationally famous tanker operation on the offensive, and Japan Line, Ltd., the world's second largest tanker buttoms operations and on the defensive, waged a fierce struggle. There also was a similar case between Daiei, Ltd., the largest chain store and retailer in Japan, and Takashimaya, Ltd., a well-established department store, in the retailing industry. The corporations which had their stock acquired would not enter into negotiations, and

rations which might be compared to feudal clans of the Edo period, as management and ownership are not separate in the minds of either employers or employees. Almost all of these corporations have a lifetime employment system, and their employees belong to the enterprise union of the corporation. These factors often combine to encourage both workers and employers to cooperate closely in their fight against attacks from would-be acquiring corporations just as people in feudal clans might have fought together in a crisis threatening their clans.[30] Further, the social climate in Japan is such that the acquiring corporation is liable to become the target of social abuse simply because it is trying to buy out another firm.

It is likely, therefore, that Japanese corporations will become increasingly involved in friendly acquisitions, although it is not likely that a company with a good business performance will be willing to accept being placed under the control of an acquiring corporation. It is more probable that corporations in trouble will be targeted for acquisition in the years to come. Recent instances of successful acquisitions reveal that most of the acquired firms had poor performance records.[31]

In every acquisition, however, rehabilitation requires time.[32] It follows that an acquiring corporation would look for a company with a solid record of performance and talented management if it expects success from the acquired corporation immediately after completion of an acquisition. From this point of view, a hostile takeover bid would still appear to be a very attractive strategy. In the years ahead, Japanese corporations will be exposed gradually to a wave of foreign takeover bid offensives. Certain types of corporations are more likely than others to be targeted for foreign takeover bids. The most vulnerable companies are

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those which acquired the shares finally found the task too hard for them and got bogged down. All this seems to indicate that hostile takeover attempts are least likely to bear fruit in the business climate in Japan.

30. For instance, the Sumitomo Bar was not successful in its merger talks with one of its affiliates, Kansai Mutual Loan and Savings Bank, because the labor union of the affiliate was strongly opposed to the attempted merger. Sumitomo Bank ranks third in both amount of deposits and current revenue and top in earnings among city banks. The Kansai Sohgo Bank (Kansai Mutual Loan and Savings Bank) is a small regional bank in the Osaka area.

31. Misawa Homes Co. is known as a company actively involved in corporate acquisitions. Corporations targeted for acquisition by this company all had notably poor performances. After completion of its acquisitions, Misawa Homes had to rehabilitate the acquired corporations by providing them with new work.

32. For example, Minebea, which acquired Shinko Tsushin Kogyo in 1947 and Tokyo Rashi Kogyo in 1975, needed several years to rehabilitate and integrate each of the two firms into the Minebea group.

those in which both the ratio of foreign ownership and the ratio of individual ownership, or floating stock ratio, are high.

The IBJ has conducted a detailed analysis using its computer data files to determine likely targets of takeover attempts. IBJ has entered onto magnetic tape all the financial data of the 985 companies listed in the first section and the 682 companies listed in the second section of the Japanese stock exchanges. IBJ obtained the following results based on financial data it had gathered over the past ten years. Among the 985 first-section companies, the shares held by foreign stockholders account for 5.6 percent of the total, while thirty-two percent of the shares are held by individual investors. In the 682 second-section companies, however, the former account for two percent and the latter hold forty-one percent of the total shares.[33]

In analyzing the likelihood of a foreign takeover bid, a company with foreign ownership of more than twenty percent is regarded as being at what IBJ refers to as "critical state 1." There were sixty-six companies which met this condition. If the ratio of individual ownership of a company is more than fifty percent, the company is said to be at "critical state 2." The number of companies meeting this condition amounted to 392. Thirty-two companies, however, met both conditions. According to IBJ's analysis, these thirty-two companies are the ones most likely to be targeted for foreign takeover bid offensives in the coming years.[34]

Stated more simply, those companies that have not achieved a high ratio of ownership by strong and reliable stockholders are more susceptible to takeover bids. According to the analysis based on the IBJ Data File,[35] of all the stock issued by the 985 companies listed in the first section, financial institutions own thirty-four percent and other major corporations own twenty-nine percent. By contrast, of total outstanding shares of the 682 companies listed in the second section, financial institutions hold nineteen percent and other major corporations held thirty-eight percent. Thus, the total combined ownership by financial institutions and other major corporations is sixty-three percent for the 985 first-section companies and fifty-seven percent for the 682 second-section companies. These figures suggest that "Japan Inc." will generally remain secure from takeover bid offensives because strong and stable stockholders, namely financial institutions and other leading corporations, own more than half of its shares. The situation could be quite different,

33. *See infra* Table 7.
34. *See infra* Table 8.
35. *See infra* Table 7.

however, for certain individual companies.[36]

Another type of company likely to be targeted for takeover is a company with an enormous amount of off-the-book property. There are quite a few companies which have been unable to make effective use of their business opportunities for increasing profits simply because of poor management. In addition, a company whose share price remained at an unreasonably low level should be wary of acquisition by foreign corporations, though it is not always easy to judge whether a given share price is high, low, or reasonable. The same situation exists for a company which is excessively undercapitalized. A final type of company which acquiring corporations might be interested in is one which has issued a substantial amount of convertible bonds and warrant bonds in overseas markets. The Minebea-Sankyo case discussed earlier is exemplary.

Many Japanese companies have been too complacent and have relied too heavily on the issuance of convertible and warrant bonds for low-cost funds. Such companies must become aware of the fact that these financing vehicles are really quasi-stocks. These companies will need to maintain tighter surveillance over the actual ownership of these securities in the future, if they are to guard against foreign takeovers.[37]

VII. CONCLUSION

A few comments on the merits of the trend toward merger and acquisition activities in Japan are an appropriate conclusion to this paper. Merger and acquisition are expected to generate increasing interest in industrial circles throughout Japan. Those who argue in favor of mergers and acquisitions emphasize that these activities will help rejuvenate the economy of Japan through the revitalization of corporate management and the efficient re-allocation of resources. Some commentators are strongly in favor of takeover bids and argue that aggressive takeover bids will lead to the revitalization of the individual corporations targeted for acquisition through the arousal of top officials of the targets.

Critics charge, on the other hand, that only raiders, lawyers and speculators find takeover bids profitable. Some complain that raiders purchase equity shares of a corporation simply to run up the share price

36. Even if stronger shareholders such as financial institutions or major corporations hold over 50 percent of the equity shares, it is important to keep well informed of the financial position and business behavior of those shareholders so that they do not sell their shares to would-be acquirers when offered high prices.

37. According to IBJ, the amounts outstanding to foreign currency-denominated convertible bonds and warrant bonds issued by Japanese corporations as of September 1985 were $21,916 million and $8,491 million respectively.

and make money. They menace the target corporation with a possible acquisition and then attempt to reap large profits by forcing the target to buy back the shares at a higher price. This scenario does nothing for the future of the corporation or the economy as a whole.

Because monetary relaxation has prevailed in Japan for the past five years, some corporations have been engrossed in what some call a "money game" and have managed their surplus funds in money markets in an effort to build up financial assets. There is a consensus in the financial circles of Japan that every effort must be made to prevent this "money game" from making further progress and that what might be called a "casino society"[38] should be prevented from taking root in Japan as it has in the United States. Industrial circles in Japan are ready to welcome merger and acquisition activities in general from a constructive point of view, though they rightly fear the effects of excess speculation.

38. With inflation and financial liberalization advancing in the United States, it is said that there is in that country what might be called a "casino society." In the United States, people seek to generate profits quickly in speculation with borrowed money instead of engaging in productive investment. A good illustration of the climate that prevails is the large amount of money spent on low-grade "junk bonds," speculative investment in real estate, acquisitions, and bank loans to promote such activities. *Playing with Fire*, BUS. WEEK, Sept. 16, 1985, at 78.

Table 1: Mergers and Business Transfers in Japan (1950-80)

	Mergers (approved)	Business Transfers (approved)
1950	420	209
1955	325	150
1960	440	140
1965	900	210
1970	1,150	410
1975	957	429
1980	961	680

Source: Fair Trade Commission in Japan

Table 2: Initiation of Mergers and Business Transfers

	Negotiations between the parties concerned	Targeted by parent company	Targeted by large stockholders acting in common	Others
Mergers	47.0%	30.6%	16.7%	5.7%
Business transfers	46.2%	40.2%	4.3%	9.3%

Source: Industrial Bank of Japan (IBJ), Tokyo

Table 3: Mergers Involving Larger Enterprises

Units of billion

(1)	(2)	(3)	(4)	(5)	(6)	(7)
1.17.'75	Toyo Sotatan Kogyo K.K.	120.0	Tettukosha K.K. Yoxtukaichi Toso K.K.	37.0 15.0	Toyo Sotatsu Kogyou K.K.	157.0
8.26.'77	C. Itoh & Co., Ltd.	349.1	Ataka Sangyo K.K.	116.9	C. Itoh & Co., Ltd.	372.5
* 7. 6.'78	Nippon Light Metal Co., Ltd.	178.8	Nikkei Atsuen K.K.	75.0	Nippon Light Metal Co., Ltd.	178.8
12.22.'78	Oji Paper Co., Ltd.	142.8	Nihon Pulp Kogyo K.K.	48.1	Oji Paper Co., Ltd.	160.6
* 4. 5.'79	Showa Denko K.K.	422.0	Showa Yuka K.K.	84.0	Showa Denko K.K.	437.3
7. 9.'79	Maruzen Oil Co., Ltd.	164.3	Kansai Oil K.K.	80.0	Maruzen Oil Co., Ltd.	204.7
* 8. 1.'79	Tohoku Electric Power Co., Ltd.	1,785.0	Niigata Kyodo Karyoku	80.0	Tohoku Electric Power Co., Ltd.	1,785.0
* 10.2 '80	Sumitomo Toyo Aluminum Refining Co., Ltd.	120.0	Sumitomo Aluminum Refing K.K.	160.0	Sumitomo Aluminum Refing Co., Ltd.	180.0
* 2. 9.'81	Furukawa Electric Co., Ltd.	210.2	Furukawa Metal Co., Ltd.	50.0	Furukawa Electric Co., Ltd.	212.2
* 9.14.'81	Toyobo Co., Ltd.	303.7	Toyobo Textile K.K.	30.0	Toyobo Co., Ltd.	303.7
* 4. 9.'82	Toyota Motor Corp.	1,209.0	Toyota Motor Sales K.K.	236.0	Toyota Motor Corp.	1,269.5
* 7.20.'82	Asahi Chemical Industry Co., Ltd.	463.9	Asahi Dau K.K.	100.0	Asahi Chemical Industry Co., Ltd.	520.3
* 12.26.'83	Kawasaki Steel Corp.	1,361.37	Kawasaki Chemical K.K.	75.0	Kawasaki Steel Corp.	1,416.87

Note 1: The above table lists mergers involving larger enterprises approved since 1975.
Note 2: * denotes reorganization within a business group.

(1) Date of approval
(2) Name of merging enterprise
(3) Capital amount
(4) Name of merged enterprise
(5) Capital amount
(6) Name of enterprise after merger
(7) Capital amount after merger

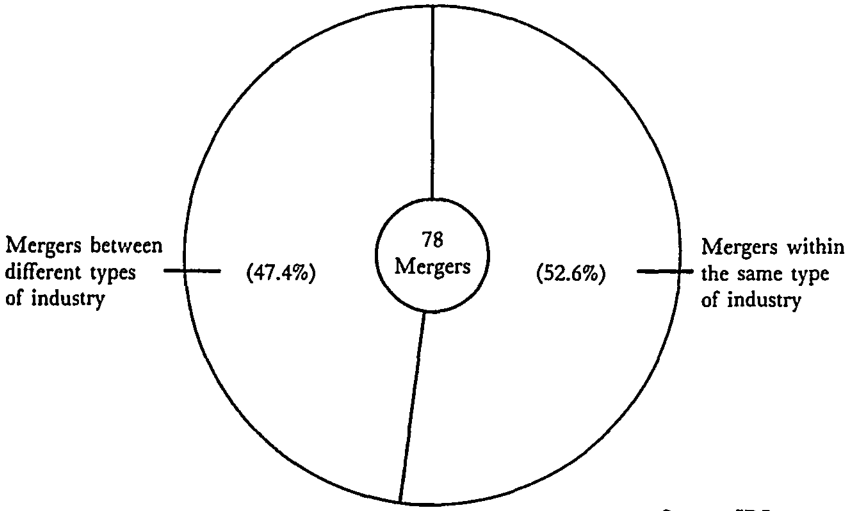
Source: IBJ

Table 4: Major Acquisitions of Corporations by Industry (1982-84)

Acquirer \ Acquiree	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)	(17)	(18)
(1)	2								2			2			1			7
(2)		3																3
(3)			6				2											8
(4)					1													1
(5)					3					1					1			5
(6)						1												1
(7)					1		1			1			1		1			5
(8)								2							1			3
(9)							1		1				1					3
(10)					1							1			1			3
(11)										1		5			1			7
(12)	1									1		1						3
(13)													12		3			15
(14)														8				8
(15)										1					1			2
(16)							1		1									2
(17)										1					1			2
(18)	3	3	6	0	6	1	5	2	4	6	0	9	14	8	11	0	0	78

Source: IBJ

Table 6, Industries of Acquiring Companies and Acquired Companies (1982-84)



Source: IBJ

Table 6: Firms acquired, according to type of business (1982-84)

(1)	(2)	(3)	(4)	(5)	(6)	(7)
18%	14%	12%	10%	8%	8%	30%

(1) Large retailers 18%

(2) Service 14%

(3) Wholesalers 12%

(4) Transportation 10%

(5) Iron-steel 8%

(6) Electrical machinery, electronics 8%

(7) Others 30%

Source: IBJ

Table 7: Ratio of Shareholding

(as of September 1984, %)

	Financial institutions	Corporations	Foreigners	Others (individuals)
985 companies listed in the first section of the Japanese stock exchanges	33.97	28.95	5.58	31.58
682 companies listed in the second section of the Japanese stock exchanges	19.16	38.25	2.02	40.57

Source: IBJ Data Files

Table 8: An Analysis of the Likelihood of Takeover Bids

(as of September 1984)

(1) The companies in which the ratio of foreign ownership is 20% and over (critical state 1)	66 firms
(2) The companies in which the ratio of individual ownership is 50% and over (critical state 2)	392 firms
(3) The companies meeting both conditions, (1) and (2) above	32 firms

Source: IBJ Data Files