Mexican telecoms invader comes up against Dutch fortress

Sun, Sep 29 2013

* Many Dutch companies use foundations that can block takeovers

* KPN most recent example using foundation to stop unwelcome bid

* KPN suitor America Moviles now discussing price

By Philip Blenkinsop

BRUSSELS, Sept 29 (Reuters) - Dutch preference shares, once a device to share the benefits of a family business, have become an unbreachable barrier to hostile takeovers in the Netherlands, most recently forcing Mexico's America Movil to the negotiating table.

America Movil, Latin America's biggest telecoms group, quickly learned that it could not simply muscle in on its target, Dutch peer KPN, after a foundation charged with protecting the group exercised a call option on preference shares that gave it half the company's voting rights.

Such a "poison pill" takeover defence, long accepted by Dutch courts, is not just effective but also remarkably cheap, costing just 25 percent of the shares' nominal value.

KPN's protective foundation was able to obtain its half stake in a company worth a total 10 billion euros ($13.5 billion) for just 255 million euros.

America Movil, whose billionaire owner Carlos Slim wants to extend his empire to Europe, is now talking to the company. It said on Friday it might yet make a formal offer in October, a month later than it had planned.

Many Dutch companies are protected by similar foundations - including Ahold, ASML, DSM, ING , Philips and TNT Express.

"They have the potential to make life hard and to derail a transaction," said Nomura analyst Frederic Boulan.

"Such Dutch foundations have been used in the past to deter hostile takeovers. Their angle is to safeguard the company and its stakeholders, but also national interest."

The structure started out in the 1920s as a way of passing down a family business, for example giving control to one child and the right to a dividend to another. When expanded to include companies in general in the 1970s, Dutch industry was quick to see the benefits.

The Dutch government has said it plans to create a foundation to protect ABN AMRO, the lender it nationalised in 2008 and could return to the stock market in 2015.

While common in the United States, largely in the form of share issues to all existing shareholders, poison pill constructions are rare in Europe.

Some states such as France or Italy have typically intervened to prevent what they consider strategically important industries falling into foreign hands.

The Dutch pride themselves on the open nature of their economy, but broadly back the system of protective foundations as a safeguard.

And while the European Union has challenged states seeking to influence private businesses, for example through a golden share that carries special rights, as has been used in Britain, Germany and Spain, private owners or shareholders may decide what they deem useful for a company, subject to national laws.

In its advice to shareholders, the European Federation of Financial Services Users (EuroFinuse) advises voting against poison pill plans if they last for five years or more, can be renewed automatically and if they are triggered by third parties taking stakes of below 15 percent.

PROTECTION OR PRICE?

In the Netherlands, a series of legal cases has determined that protective foundations can only exercise call options if there is a threat to the company's continuity or independence and can hold preference shares for no more than two years.

In 1999, Dutch courts ruled Italian fashion house Gucci could issue shares to a trust to fend off a hostile bid from French peer LVMH and said an acquirer had a duty to consult with a target.

In 2006, a court did rule against a foundation taking up stock in a battle between Dutch industrial conglomerate Stork and hedge funds seeking to break it up. The court said the hedge funds had been shareholders since 2004 and could not be considered outside "raiders".

The most recent case, from 2008, involved chip equipment maker ASM International, which faced a threat from activist shareholders seeking to overthrow management. Judges upheld the right of an ASMI-related foundation to purchase preference shares.

It is not clear exactly how KPN's foundation will act. The five members of its board are Dutch former captains of industry, including ex-chiefs of airline KLM and Shell Netherlands and a number also sitting on the boards of other protective trusts.

The foundation, created when KPN was privatised in 1994, says its role is not to assess the bid price, but to consider the interests of shareholders, workers and Dutch society.

However, as a result of its intervention, the two parties are now discussing price, according to KPN two weeks ago.

"This time, the foundation's move is to the advantage of shareholders. There's no rival bidder, but there's the prospect of a higher price," said Corne Van Zeijl, fund manager at SNS.

Dutch shareholder association VEB, while suspicious of such constructions in general, broadly supports the KPN foundation's decision to exercise its option.

"In principle we are not in favour, but we do see the proposed bid as low. There's not much of a takeover premium, and it leaves minority shareholders in a difficult position," VEB director Jan Maarten Slagter said.

However, one option for America Movil could be to buy more stock and then sit on its hands until the KPN foundation has to cancel its shares in the next two years. America Movil's stake would instantly double, leaving it obliged to make an offer for KPN, but at the price it bought in the market, potentially lower than the 2.40 euros per share it has proposed.