Global Counsel

Why Theresa May might not worry about foreign takeovers

Blog post by Adviser Leo Ringer, 08 March 2017

Today SoftBank, new owners of UK tech jewel ARM Holdings, sold a 25% stake in the business just nine months after acquiring the chipmaker. Though the UK government is committed to ending short-termism in company governance and stewardship, and addressing the power of 'foreign' takeovers of British companies, the move apparently sounded no more alarm bells than did the initial swoop for ARM.

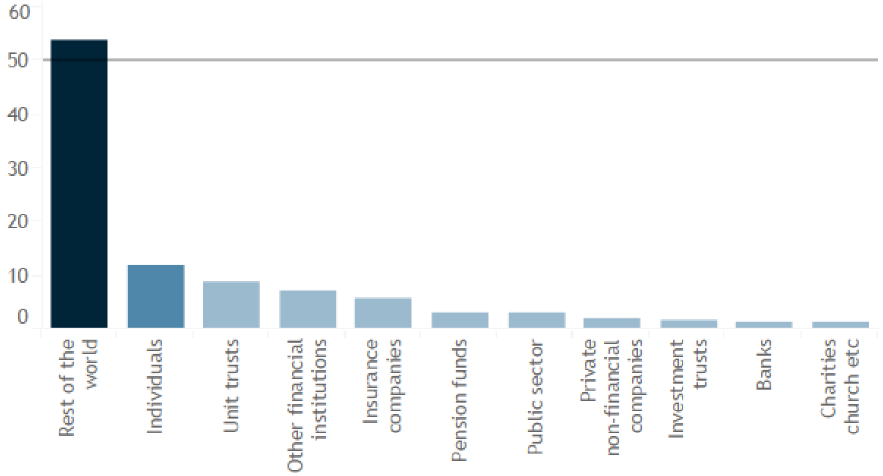
One explanation for this indifference is that, while policy reform is being developed inside the UK business department, ministers know that they are essentially powerless to intervene. Why sound a warning about takeovers and subsequent cattle-trading of British companies if nothing can be done? This was undoubtedly a major source of the palpable unease at Kraft's bid for Unilever: the knowledge that, like with Pfizer's bid for AstraZeneca in 2014, the policy tool kit is virtually empty.

A piece in this week's The Economist inadvertently gives us a second explanation. It laments the impact of foreign takeovers on the UK economy and the 'dwindling number of large British firms that are left'. The premise that runs through the entire argument – but is never defended – is that there is such thing as a large listed British company.

The second reason for not worrying about foreign takeovers states that there is no such thing as a British company after all – or at least not in the way that should concern policymakers. It holds that the distinction between 'foreign' and 'British' companies and shareholders is elusive and, from a policy perspective, mostly immaterial.

There are a few candidates for what a 'British' company might mean. It could mean the nationality of its owners – but since 54% of UK listed business stock is held outside the UK, then this can't be what we mean by 'British'. It could mean where a company is listed – but many 'foreign' firms have London listings, and many 'British' firms have one or more non-London listings. It could mean the nationality of the exec team – but a cursory glance at the boards of UK Plcs counts out that theory.

UK plc: in foreign hands
Percentage of UK stock market owned, by value



Source: ONS (2015)

So it must be the case that some combination of historical location and current HQ location make a company 'British', or not. But why does being 'British' – if we can determine it – matter? The argument seems to go that 'British' firms are more likely to invest in the UK, less likely to cut jobs, or relocate activity.

In other words, what policymakers really care about is the UK economic footprint of a business. But this is often conflated with corporate or shareholder 'nationality'. They are in fact distinct, and the thing that connects the two is the concept of home bias – the idea that shareholders and management teams of firms with 'British' nationality are more likely to maintain or expand that company's UK economic footprint.

The academic literature will have much to say about home bias. But anecdotally, we see 'foreign' investors like Tata and Nestlé behind decades of compound, committed investment in the UK. And we see 'British' firms like Dyson locating R&D in Singapore as well as in the UK. This suggests we need to detach our concern about corporate and shareholder nationality from concern about UK economic footprint: the former does not say much about the latter.

In fact, if we believe that management teams allocate capital where risk adjusted return is highest, then home bias shouldn't exist – capital should follow return. This is certainly how investment decision making at major multinationals appears to operate. The hollowing out of lower-end UK manufacturing is a simplistic but powerful example – as soon as China became a viable production location, 'British' firms moved jobs – despite the cost to British jobs and communities.

This is not to argue that home bias is completely non-existent in large UK-HQ'd public firms. But our interest in building a takeover regime which "protects" British firms should only be as strong as we believe this home bias to be. And we have grounds for suspecting it is by no means universal, nor particularly strong.

This is also not to argue about the merits of a takeover system which puts requirements around bidding companies. There are lots of excellent policy arguments for a more robust system. It is simply to argue that corporate or shareholder "nationality" – slippery and incoherent concepts – should not be a relevant factor in policy design, or in the measure of its success.