

## **Contested Takeovers of Family Firms and Socioemotional Wealth: a Case Study**

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### **Abstract**

**Purpose** – This paper provides an understanding of the importance of socioemotional wealth to family firms in Poland viewed through the lens of the events surrounding the first hostile takeover bid of the post-communist era on the Warsaw Stock Exchange when the clothing company Vistula & Wólczanka (V&W) made an unsolicited, leveraged bid for the family-controlled jewellery company W. Kruk.

**Design/methodology/approach** – The 2008 takeover and its aftermath are described in the context of the corporate governance and legal environment in Poland. The case study events demonstrate the connection between firm behavior and socioemotional wealth theory.

**Findings** – After the acquisition of W. Kruk by V&W, the Kruk family purchased stock in the newly named Vistula Group and gained influence over the supervisory board in concert with a business ally, eventually wresting back control of the company in the style of a Pac-Man ‘defence’. The case study illustrates the importance of socioemotional wealth in family firm takeovers.

**Research limitations/implications** – The case-study design has limitations for generalizability. Nevertheless the research highlights the relevance of socioemotional wealth preservation in understanding the market for control of listed family firms in Poland.

**Practical implications** – Understanding the reaction by family firms to takeover bids requires recognition that there is a tradeoff between financial and socioemotional wealth considerations, not just financial gains and losses.

**Originality/value** – The case study demonstrates the importance of socioemotional wealth to family firms and suggests that the balance of power in takeovers on the Polish stock market rests with incumbent management.

**Keywords** Takeovers, Family business, Socioemotional wealth, Corporate governance, Agency theory, Pac-Man defence.

**Paper type** Research paper

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# **Contested Takeovers of Family Firms and Socioemotional Wealth: a Case Study**

## **1. Introduction**

Mergers and acquisitions are an important means for businesses to create value for shareholders, albeit that the distribution of the benefits between target and bidder shareholders is a subject of controversy. While hostile takeovers are traditionally viewed as a way of replacing inefficient management and maximizing the value of an under-valued company (Manne, 1965) there is also the possibility that they may be used to extract value by coercing shareholders to sell their shares at unfairly low prices. Various takeover defences have thus arisen in response to concerns that hostile takeovers may deprive current shareholders of the true value of their stock. Incumbent management may also resist a takeover if they believe that in so doing they will increase the offer price. However, there is a risk that takeover defences may be motivated by the desire of incumbent management to keep themselves in power rather than to maximise shareholder value (Byrd and Stammerjohan, 1997).

There are a variety of takeover defences that may be employed, most commonly “poison pills”, stock repurchase plans and the use of “white knights”. In this paper we assess a version of a strategy that is relatively rare, the “Pac-Man” defence. This involves a target company that is subject to an unwelcome takeover bid retaliating by making an offer for the bidder (Johannesson, 2000). This paper describes a variation of the Pac-Man defence in which the management of the target company acquiesce in the takeover and then, in cooperation with a third party, buy a majority stake in the bidder and thus regain control by means of what, in effect, amounts to a reverse takeover.

Our case study is set in Poland, which provides an interesting setting as share ownership is less dispersed than in many Western countries and family shareholdings are common. Companies listed on the Polish stock market have a predominantly concentrated ownership structure: according to OECD calculations, 30-60 per cent of shares belong to controlling shareholders and 15-20 per cent are held by pension funds or investment funds (OECD, 2017). While the concentrated ownership structure in Poland contrasts with that in the US and UK, which are classified by the OECD as having dispersed ownership structures, it is the pattern found in most other countries. In such countries the expropriation of the rights of minority shareholders is a key corporate governance issue, but studies of the premia paid for

the transfer of controlling blocks of shares in Poland suggest that this issue is of less concern. A study by Trojanowski (2008) finds that positive premia are paid on average for 53 block transfers in Poland over the period 1996-2000, indicating that the controlling block holders are likely to enjoy some private benefits of control. However, these premia are relatively low compared to those paid in other countries. An international comparison of control premia by Dyck and Zingales (2004) noted, in particular, that the average block premium in Poland between 1990 and 2000 was 11 per cent of firm equity, compared to 58 per cent in its neighbouring former socialist country, the Czech Republic. Poland's experience with privatization in its transition to a market economy has resulted in an ownership structure in which control of listed companies rests mostly with institutional investors, founder/managers, including family groups, the State and foreign strategic investors. A study of the influence of ownership structure on the informativeness of the earnings of Polish-listed companies by Korczak and Korczak (2009) finds that concentration of unrelated block holdings has a positive impact, particularly when a few block holders jointly hold between 25 and 50 per cent of voting rights. Their results suggest that the optimal ownership structure in Poland involves concentrated ownership with a balance between block holders.

Our case study investigates the successful hostile bid launched in May 2008 by the Polish clothing company Vistula & Wólczanka (V&W) - itself the result of a friendly merger of two formerly state-owned companies - for the family-controlled Polish jewellery company W. Kruk, and its aftermath. Takeovers of listed companies in Poland are governed by public law, which requires large blocks of shares to be purchased via the announcement of a tender offer, thereby enabling a uniform price and equal treatment of shareholders. Polish law does not distinguish between hostile or friendly takeovers and the use of defensive tactics against a hostile bid is not explicitly regulated. In practice, however, defensive tactics employed after a bid is launched are restricted by a lack of time, and this was evident in the W. Kruk case. A key factor influencing control of public companies in Poland is the ability of shareholders to request changes via general shareholders' meetings. It was this route that enabled the Kruk family to regain control of its business after conceding defeat in the tender offer.

The research question we address is whether the concept of socioemotional wealth (SEW) from the literature on family firms, stemming from the work of Gómez-Mejía, Haynes, Núñez-Nickel, Jacobson, and Moyano-Fuentes (2007), can contribute to an understanding of the eventual outcome of this contested takeover. The SEW concept - the idea that owners of a

firm derive utility from the non-economic aspects of their business - has grown in importance in recent family business literature as it helps to explain why choices in family firms differ from those of non-family firms (Berrone, Cruz, and Gómez-Mejía, 2012; Zellweger and Dehlen, 2012). We detail the key events in the takeover of W. Kruk and the subsequent purchase of a controlling stake in the merged entity, renamed the Vistula Group, by the former majority shareholder of W. Kruk in collaboration with a business partner. We investigate the stated reasons for the initial takeover and the subsequent reverse takeover and assess the consequences of these transactions for shareholder value. While research has been conducted on the role of SEW in acquisitions by family firms (Gomez-Mejia, Patel, and Zellweger, 2015; Patel and King, 2016) the role of SEW has not yet been studied in a setting where family firms are subject to takeover bids. In our analysis of the W. Kruk case we assess the relevance of the five non-economic attributes underlying the SEW construct articulated by Berrone et al. (2012). These are summarized by the acronym FIBER and comprise: (1) Family control and influence; (2) Identification of family members with the firm; (3) Binding social ties; (4) Emotional attachment of family members, and; (5) Renewal of family bonds to the firm through dynastic succession. We connect these five dimensions of SEW to W. Kruk and its actions during the takeover bid and its aftermath.

We find that a SEW perspective can help to explain the outcome in the contested takeover of W. Kruk, whose defensive strategy was heavily influenced by Wojciech Kruk, the Chairman of its supervisory board, and the third generation of the Kruk family to have run the business. The loss of SEW experienced by Wojciech Kruk when selling his shares to V&W appears to have been a strong motivating force in his desire to regain control of the firm. We contribute to the literature on SEW by demonstrating the relevance of this concept in the context of the contested takeover of a family firm.

The rest of the paper proceeds as follows. In section 2 we review relevant literature, followed in section 3 by a description of the corporate governance and legal environment governing takeovers in Poland. In section 4 we outline our methodology and in section 5 we describe the companies involved in the takeover battle, followed by an analysis of the pivotal events in the takeover contest in section 6. After a discussion of the key issues in section 7, the conclusions follow in section 8.

## **2. Literature Review**

### *2.1 Introduction*

We review the literature on family ownership and the crucial concept of socioemotional wealth, which is of recent origin and is now an important focus of much family business research. We also consider the role of SEW in settings where family firms engage in takeovers.

### *2.2 Family ownership and socioemotional wealth*

Family control is relatively common among publicly listed firms around the world (La Porta, López de Silanes, and Shleifer, 1999). Family firms possess unique governance properties that provide advantages in creating value (Aguilera and Crespi-Cladera, 2012). This may derive from specific assets such as family culture or a strong commitment to long-term firm survival (Gedajlovic and Carney, 2010). Although family ownership may enhance a firm's economic value it can also create potential agency issues when family firms obtain outside equity financing (Morck and Yeung, 2003). These agency issues include the possible entrenchment of controlling families and non-arm's-length transactions between related companies. There is thus a risk that family owners may expropriate non-family investors to generate so-called "private benefits of control" (Jensen and Meckling, 1976).

Recent developments in the field of family business research suggest that what differentiates family-owned firms from other firms is the utility that family owners derive from the non-economic aspects of their businesses, referred to by Gómez-Mejía, et al. (2007) as "socioemotional wealth", a concept based upon arguments first advanced in the behavioral agency theory articulated by Wiseman and Gómez-Mejía (1998). Family firms may thus frame problems by assessing the impact of corporate actions on their non-financial wealth (or "affective endowments"). Hence, when family firms must choose between an action that would confer economic gains (but a subsequent reduction of SEW) and an alternative action that would protect SEW (but with uncertain economic benefits), they would tend to favour the latter. Gómez-Mejía et al. (2007) show that family-owned olive oil mills in Spain are less likely to join a cooperative because families want to maintain transgenerational control over their mills, even though joining a cooperative offers greater financial benefits. Furthermore, Berrone, Cruz, Gómez-Mejía, and Larrazza-Kintana (2010) show that U.S. family firms are

more likely to invest in pollution control than non-family firms. Although pollution control initially reduces financial performance and its future financial benefits are uncertain, family firms invest in it because they are concerned about the legitimacy of the family firm and about being a good corporate citizen.

The SEW of family owners might emanate from the satisfaction of being associated with the family name, or from an emotional attachment to the firm, or from the satisfaction derived from family members working for the company (Gómez-Mejía, Cruz, Berrone, and De Castro, 2011). The idea that that heightened identification motivates family members to pursue a favourable reputation because it allows them to feel good about themselves, thus contributing to their SEW, is developed by Deephouse and Jaskiewicz (2013). Using a sample of large firms from eight countries, with disparate governance systems and cultures, they find empirical support for the theory that when a family's name is part of the firm's name, the firm's reputation is higher because family members are particularly motivated for their firm to have a better reputation. The desire to preserve SEW can also explain why family firms might, for example, hire family members irrespective of their abilities or prefer investment projects that are financially less optimal. Several recent studies in the family business literature have linked family preferences for SEW to organizational behaviors and outcomes such as diversification (Gómez-Mejía et al., 2010), pollution control (Berrone et al., 2010), compensation (Jones, Makri, and Gómez-Mejía, 2008), firm valuation (Zellweger, Kellermanns, Chrisman, and Chua, 2012), R&D investment (Chrisman and Patel, 2012), and profitability (Sciascia, Mazzola, and Kellermanns, 2014). The desire to preserve SEW can also potentially explain why family firms may be resistant to takeovers: the subject explored in this paper.

The various non-economic attributes underlying the SEW construct have been summarized using an acronym comprising five dimensions, called FIBER: "Family control and influence, Identification of family members with the firm, Binding social ties, Emotional attachment of family members, Renewal of family bonds to the firm through dynastic succession" (Berrone, et al., 2012, p. 259). All of these dimensions are developed from research found in the family business literature. The first dimension refers to the ability of family members to exercise control and influence over strategic decisions (Chua, Chrisman, and Sharma, 1999; Schulze, Lubatkin, and Dino, 2003). This control can be exerted directly, such as being a CEO or board chairman, or indirectly through the ability to appoint members of the top management team.

The second dimension reflects the notion that the interplay of family and business produces a unique identity within family firms (Dyer and Whetten, 2006; Berrone et al., 2010). In particular, the identity of a family firm's owner is inextricably tied to the business that usually carries the family's name, causing the business to be seen as an extension of the family itself. The third dimension refers to family firms' social relationships with various stakeholders and reflects research arguing that these provide benefits from collective social capital and relational trust (Coleman, 1990; Cruz, Justo, and De Castro, 2012). For example, non-family employees often share the sense of identity of a family firm, promoting a sense of stability and commitment to the firm (Miller and Le Breton-Miller, 2005). Furthermore, family firms are often deeply embedded in their local communities and support associations (Berrone et al., 2010).

The fourth dimension, the emotional attachment of family members, is particularly important where the firm has a long history and so knowledge of past events and shared experiences have a greater influence on current activities and relationships. The boundary between the family and the firm is somewhat blurred in family businesses (Berrone et al., 2010), and so emotions tend to influence the decision-making process (Baron, 2008). A family's emotional attachment to the firm also fosters a sense of legacy, and the loss of the firm represents a highly emotional event for most owners (Sharma and Manikuti, 2005; Shepherd, Wiklund, and Haynie, 2009). The fifth and final dimension refers to the intention to hand the business over to future generations. From the perspective of a family shareholder, the firm is not an asset that may be easily sold because it symbolizes the family's heritage and tradition (Casson, 1999; Tagiuri and Davis, 1992). Family members therefore tend to view the firm as a long-term investment to be bequeathed to descendants (Berrone et al., 2010). Evidence suggests that transgenerational sustainability is commonly seen as a key goal for family firms (Kets de Vries, 1993; Zellweger et al., 2012) and that many family firms have longer term planning horizons than non-family firms (Miller and Le Breton-Miller, 2006; Miller, Le Breton-Miller, and Scholnick, 2008; Sirmon and Hitt, 2003).

Berrone et al. (2012) make the case for the SEW approach to be the dominant paradigm in the family business field as they believe that it helps to explain why family firms behave distinctively. Their five-dimensional FIBER scale addresses the issue of how the SEW construct can be operationalised. This scale is hailed as a significant research achievement by Hauck, Suess-Reyes, Beck, Prügla, and Hermann (2016), who go on to validate it using factor analysis of the responses to a questionnaire sent to German and Austrian family firms. Their

research reveals different degrees of validity across the five FIBER dimensions, resulting in a revised short-form scale, comprising three of the FIBER dimensions, called the REI scale: “renewal of family bonds to the firm through dynastic succession” (R), “emotional attachment of family members” (E), and “identification of family members with the firm” (I).

Another scale for measuring SEW is developed by Debicki, Kellermanns, Chrisman, Pearson, and Spencer, (2016) who focus on measuring the importance rather than the level of SEW. Their SEW importance (SEWi) scale is based on factor analysis of the answers to a questionnaire completed by a sample of U.S. and Polish family firms, and comprises three dimensions: family prominence, family continuity, and family enrichment. The “family prominence” factor captures elements of the “binding social ties” and “identification of family members with the firm” dimensions of the Berrone et al. (2012) FIBER scale. Likewise the “family continuity” factor captures elements of the “family control and influence” and “renewal of family bonds through dynastic succession” dimensions of the FIBER scale. However, the “family enrichment” factor, which emphasizes the importance of meeting family members’ needs and thus enhancing the well-being of the family as a whole, taps into an element of SEW that is not part of the FIBER scale of Berrone et al. (2012) but that is mentioned by other researchers (Chrisman, Chua, Pearson, and Barnett, 2012; Zellweger and Nason, 2008).

### *2.3 Socioemotional wealth and takeovers*

The role of SEW has been studied in settings where family firms engage in takeovers. Gomez-Mejia et al. (2015) argue that family firms face “the horns of a dilemma” when they evaluate possible acquisitions as they are engaged in a “mixed gamble”: whether to maintain current SEW or whether to pursue prospective financial wealth. SEW considerations include the possibility that acquisitions, especially unrelated ones, may lead to loss of family control, dilution of the family firm’s identity, and loosening of its social ties. However, acquisitions can also produce financial gains, for example due to increased market power or cost synergies, and they can also reduce overall risk when the acquired business is unrelated to the firm’s main line of business. Gomez-Mejia et al. (2015) theorize that when deciding whether to engage in acquisitions, decision-makers in family businesses take account of their firm’s financial vulnerability, which they define as performance below aspiration levels. Financially vulnerable family firms solve the mixed gamble dilemma by focusing more on financial considerations and are thus willing to risk an acquisition even if this occurs at the expense of

SEW. Non-vulnerable family firms, on the other hand, focus more on their existing SEW and so are less likely to risk an acquisition, with its uncertain financial upside. The empirical results from their study of U.S. firms during the period from 1997 to 2011 support these predictions.

Patel and King (2016) examine whether the prospect of being acquired motivates family firms to engage in defensive acquisitions to mitigate the threat to their SEW, akin to the “eat or be eaten” concept advocated by Gorton, Kahl and Rosen (2009). Their work focuses on the perspectives of small, medium and large-sized family firms. Based on consistent evidence in the literature (e.g. Palepu, 1986) that firm size is inversely related to the likelihood of acquisition, they argue that larger family firms perceive a lower threat to SEW due to the lower probability of being acquired. Furthermore, larger family firms pose greater post-acquisition integration challenges, and potentially limited synergies from assets that are embedded in family legacy. They argue that smaller family firms are less likely to be targets due to the increased risk of overpayment because of information asymmetry, and also because smaller firms lack the necessary managerial and financial resources to create post-acquisition synergies. In contrast, mid-sized family firms are more attractive as takeover targets as they provide a better balance between synergies and cost, and so are more likely to engage in defensive acquisitions to preserve their SEW. The results of their study of U.S. acquisitions between 1993 and 1997 confirms their hypothesis that medium-sized family firms are more likely to acquire other firms.

### **3 Corporate Governance and the legal environment governing takeovers in Poland**

In markets where share ownership is widely dispersed the traditional conflict of interest is between professional managers and dispersed shareholders (Jensen and Meckling, 1976). This “principal-agent” problem is less important in markets where share ownership is concentrated and where the main conflict of interest is between controlling and minority shareholders, giving rise to the “principal-principal” agency problem (Villalonga and Amit, 2006). The latter agency problem is more prevalent in Poland, where dominant shareholders are common and where the main risk is the expropriation of minority shareholders by controlling shareholders.

Polish companies operate in a dual board system in which the supervisory board has a wide range of powers. By company statute, it appoints and dismisses members of the management board, it proposes the remuneration of management board members, it has the right to create an audit committee, or function as such, and it also has the right to demand documentation and to change the composition of the management board, if needed. Supervisory boards also have obligations to ensure that the financial statements are compatible with the requirements of the Polish Accountancy Act. Supervisory board members together with the CEO are jointly accountable to the company for losses resulting from their activities. The management board is responsible for the day-to-day operations of companies and is accountable to the supervisory board, and to shareholders via general meetings. While management board members are appointed and dismissed by the supervisory board, a company's articles of association may also permit a general meeting of shareholders to elect or fire them. In addition, the articles of association can limit the capacity of the management board by expanding the powers of the supervisory board or the general meeting of shareholders.

The Polish Commercial Code contains a system of safeguards against potential abuse of the rights of minority shareholders. Most important decisions need to be approved by a qualified majority of votes at shareholders' meetings (two-thirds to three-quarters). Every member of the supervisory board, and any shareholder in possession of at least ten per cent of outstanding shares, has a right to call an extraordinary shareholders' meeting. There is a right to appeal against a decision of a shareholders' meeting if it is deemed to violate the company's charter. These protections afforded to minority shareholders in Poland are commonplace in other countries and should be seen against a backdrop of improved shareholder protection across countries since 1990 irrespective of legal origin and stage of legal development (Katelouzou and Siems, 2015).

As a member of the European Union, Poland is bound by Directive 2004/25/EC on takeover bids adopted by the European Parliament and the Council of the European Union in 2004, though this also permits a number of opt-outs. The Directive was formally implemented in Polish law in September 2008 by means of alterations to the *Act on Public Offering, and Conditions Governing the Introduction of Financial Instruments into Organised Trading*, and the *Public Companies Act*. It requires prior announcements of tender offers to purchase blocks of shares, enabling equal treatment of all shareholders and a uniform price for shares and a deadline for the decision (Bogen and Grześkowiak, 2010). Although the Directive was not

fully enacted at the time of the takeover bid for W. Kruk, the key aspects had already been transposed into the legal framework – a situation that was also common in other EU countries (European Commission, 2012).

A bidder must publish an offer document containing the information necessary to enable the shareholders of the target company to reach a properly informed decision on the tender offer. The offer document must, among other things, contain information on: the consideration offered for shares covered by the tender offer; the time allowed for acceptance of the offer; and the bidder's intention with regard to the target company. The management board of the company is under a duty to take all necessary measures to protect the company's interests and can deploy defensive takeover tactics after a tender offer is made, though in practice implementation is restricted by lack of time. The subscription period for shares under a tender offer in Poland is typically at least 14 days and no longer than 70 days. In the case of the takeover detailed here, V&W opted for the shortest window possible, effectively denying W. Kruk the opportunity to use defensive mechanisms.

#### **4 Methodology**

There has long been a debate about the proper definition of a family firm (Lansberg, Perrow, and Rogolsky, 1988; Villalonga and Amit, 2006; Westhead and Cowling, 1998) that has centred either on the percentage family equity stake that confers control or else on the degree of family involvement, which refers more broadly to a family's power to shape a firm's direction. We follow the latter approach. We classify the takeover target in our case study, W. Kruk, as a family firm, even though the extended family at the time of the takeover held only a minority interest of just over 28 per cent of the share capital, albeit this was the largest stake. In this respect we use the definition of family influence specified by Astrachan, Klein, and Smyrnios (2002), which comprises three dimensions: power, experience, and culture. Power was exercised not only through the key family equity holding but also through family involvement at the supervisory board level: Wojciech Kruk was Chairman of the supervisory board and his wife Ewa Kruk, who owned just over 4 per cent of the equity, was also a member of the supervisory board. Their daughter Ewa Kruk-Cieslik had a small equity stake of 1.69 per cent. Experience of running the business has been passed down through the three generations of the Kruk family that has owned and managed the business since Władysław Kruk took over the company from his uncle in 1893. Furthermore, there is a strong emphasis

on the concept of a family culture in the way the company operates that is evident from its Annual Reports (e.g. see W. Kruk, S. A., 2008). The website of W. Kruk also highlights the company's experience and its family culture in the "About Us" section. We retrieved the W. Kruk website content in 2008 and earlier using Wayback Machine, a free service offered by the Internet Archive at <http://www.archive.org>.

The data for the case study comprise a variety of secondary sources, collection of which was assisted by the high profile of the takeover in the Polish media and the fact that it was to some extent fought out in the public arena. As such, it was possible to access numerous Polish and international newspaper and business magazine articles. In addition, company annual reports, press releases, takeover documents, and related literature were accessed.

The case study design inevitably limits the ability of the researcher to generalize findings across an entire population. Nevertheless, Flyvbjerg (2006, p 219) argues that this, in itself, does not reduce the value of a case study: "That knowledge cannot be formally generalized does not mean that it cannot enter into the collective process of knowledge accumulation in a given field or in a society. A purely descriptive, phenomenological case study without any attempt to generalize can certainly be of value in this process and has often helped cut a path toward scientific innovation." In Flyvbjerg's view, generalization is overvalued, whereas "the force of example" is underestimated.

In developing our single case study we follow the approach suggested by Eisenhardt and Graebner (2007) of constructing a narrative of the events that took place (the initial takeover and the reverse takeover) interspersed with quotations from the key participants and other supporting evidence. Our approach also corresponds to one described by Leppäaho, Plakoyiannaki and Dimitratos (2016) in that we present a chronology of the events that integrates our narrative with a theoretical framework. The overarching research question driving our investigation is: with regard to family firms faced with the prospect of acquisition, how do family interests affect the response to a takeover and the desired outcome? The W. Kruk story is intertwined with the theory of SEW to demonstrate the close connection between evidence and theory. Berrone et al. (2012) point out that the case study methodology can be useful for gaining a more profound understanding of SEW arguments and in particular that it can aid understanding of the links between the different dimensions of SEW and how they interact in the decision-making process. According to Dyer and Wilkins (1991) good

storytelling is what makes a good case study. Our single case study provides the opportunity to gain a deep insight into the full range of business, social, and personal aspects of the story; in effect we trade the comparative insights of a multiple case study for contextual insight. This is particularly important in exposing the interaction between the various individuals involved and the different moves and countermoves during the takeover contest.

## **5 The companies involved in the takeover battle**

### *Vistula & Wólczanka (V&W)*

V&W was created by the merger of the firms Vistula and Wólczanka. Vistula was born in Krakow in 1948 when four tailoring firms were formed into an enterprise producing clothes exclusively for men. It participated in the 1991 privatization programme and changed its legal structure from a state owned entity into a company whose shares were owned by the national Treasury. On 30 September 1993 Vistula S.A. was listed on the Warsaw Stock Exchange (WSE). In April 2004 Rafał Bauer became the CEO and proceeded to expand the business, in August 2006 merging it with the Łódź-based firm Wólczanka S.A., Poland's main producer and distributor of men's shirts. He became CEO of the merged firm Vistula & Wólczanka S.A. The profits of the firm in 2007 were three times higher than the previous year and the firm was in the public spotlight after signing a contract with the actor Pierce Brosnan (James Bond) that year to advertise its men's clothing range. In the same year V&W bought the Warsaw-based department store chain Galeria Centrum.

The share register of V&W at the time of the takeover bid was less dominated by a single shareholder, though the stake of the largest shareholder, the insurer PZU, was 18 per cent. The remaining 82 per cent of shares were held by investment funds, pension funds and other investors, with none owning more than 5 per cent (Łyskawa and Zelek, 2008). The management board, headed by CEO Rafał Bauer, comprised three members in total. The supervisory board comprised eight members, headed by Chairman Maciej Wandzel.

### *W. Kruk*

At the time it was taken over, W. Kruk S.A. was the second largest jewellery firm in Poland. It was established in Poznań in 1840 by a goldsmith, Leon Skrzetuski, and was passed on to his nephew Władysław Kruk after his death in 1893. Władysław's younger son Henryk took over the management of the company in 1927. He refused to sign the Volkslist in 1939,

which led to the company being controlled by the German occupiers, and he spent two years in camps and Nazi prisons. Under the post-war communist administration the company lost its premises and production moved to the basement of the family house. Most of the production was sold wholesale through state-owned jewellery shops. In 1974 Wojciech Kruk, Henryk's son, took over the company, introducing new technologies and expanding manufacturing activities. In 1993, the company acquired the Rytosztuka and Jubilart jewellery workshops and in 2000 it took control of the DCG company, with its Deni Cler brand name (luxury clothes for women). The company made its debut on the WSE in 2002.

Wojciech Kruk was the main owner of the company at the time of the takeover bid, with a stake of 22.32 per cent. His wife, Ewa Kruk had a stake of 4.04 per cent and was a member of the supervisory board, and his daughter Ewa Kruk-Cieslik had a 1.69 per cent stake. In total the family owned 28.05 per cent. The CEO Jan Rosochowicz owned a further 2.4 per cent. The other major shareholders comprised mainly investment funds, pension funds and banks, among them ING, AIG, BPH, PKO, Millennium, PZU and BlackRock Group. None of these other shareholders had a stake greater than 10 per cent (Łyskawa and Zelek, 2008). The supervisory board of W. Kruk comprised seven members, headed by Wojciech Kruk as the Chairman, and including his wife Ewa Kruk. The other five members of the supervisory board did not hold any shares in W. Kruk. The management board, headed by Jan Rosochowicz, comprised three members in total and had been appointed by the supervisory board for another 3-year term in June 2007.

## **6 The Takeover Contest**

### *The initial offer*

On 5 May 2008 Vistula & Wólczanka (V&W) announced a public tender offer for shares in W. Kruk, offering to buy 12,180,828 shares (comprising a 66 per cent stake in the company's capital). The offer price was zł 23.7 pence per share, which was 5.5 per cent higher than W. Kruk's closing price the day before, giving a total deal value of zł 288.7 million. The bid would be effective if V&W received offers for 51 per cent of the shares of W. Kruk. Shareholders were able to sell their holdings in W. Kruk between 14 and 27 May 2008.

At the end of March 2008, approximately two months before the takeover bid, the market capitalisation of V&W (zł 808,639,675) was approximately twice that of W. Kruk (zł

380,189,480). This therefore represented a sizeable takeover for V&W. The takeover offer was made in cash, with the deal fully financed by a loan of zł 300 million from the Franco-Belgian Fortis bank, thereby creating additional financial risk for V&W shareholders.

#### *The rationale for the takeover*

The management of V&W explained the reason for the takeover in terms of the benefits from combining the premium clothing products of V&W (under their Vistula and Wólczanka brands) with the premium jewellery and clothing products of W. Kruk (including the brands Deni Cler and Cacharel) to create an umbrella luxury brand. Rafał Bauer, CEO of V&W, declared: "We are aiming to build the most prestigious company in our market" (*Warsaw Business Journal*, 2008a).

The two companies did not compete directly with each other as they had different target markets. V&W produced clothes for men while W. Kruk produced jewellery (mainly) for women. Vistula chose W. Kruk as a takeover target because of the strengths of the W. Kruk brand and its developed sales network. The planned takeover was thus horizontal in nature and the stated rationale was to generate synergies from the combination of complementary products.

#### *The case for the defence*

The Kruk family (holding a stake of just over 28 per cent) immediately announced their intention not to sell their shares. In numerous press interviews Wojciech Kruk, the Chairman of its Supervisory Board, said that he considered the bid a hostile takeover attempt. The Deputy CEO, Piotr Piechowiak, stated that: "The offered price is very low, attractive for the buyer. In my opinion, there is little chance of this takeover (succeeding) because of the dispersed stakeholder structure, but one should not judge" (*Thomson Financial News*, 2008). Thus, at the outset, the management of W. Kruk identified the price offered by V&W as undervaluing their business and justifying the decision to resist.

As the takeover bid was unexpected the management of W. Kruk had no anti-takeover strategy in place. Wojciech Kruk tried to organize a "White Knight" to rescue the firm and engaged in talks with a large Italian jewellery firm, but it was not possible to complete a deal within the two-week period of the V&W offer. Another option considered by Wojciech Kruk was to arrange bank credit to finance a counter offer for W. Kruk shares, but he was wary of a

price spiral if V&W was able to increase its offer. In the end, because of the high cost of bank credit this option was abandoned. Another defence strategy was to propose that the next shareholders' meeting in June authorize W. Kruk to buy back its own shares for the purpose of retiring them, but this option was not pursued either.

The only other protective mechanism in existence was a company statute that gave Wojciech Kruk and his family the power to appoint two members of the supervisory board as long as they had at least 25 per cent of the share capital (Socha, 2009). The statute also granted Wojciech Kruk the power to appoint the head of the supervisory board for as long as his share stake did not fall below 10 per cent. Therefore, the Kruk family would still have had two guaranteed seats on the W. Kruk supervisory board with which to try and thwart the takeover, had they elected to keep their shares. In the end they opted to sell their shares and instead seek to gain control over the V&W supervisory board after completion of the takeover.

#### *The increased offer and capitulation*

On 23 May 2008 V&W raised its offer price by 3.3 per cent to zł 24.5 per share. The new bid caused W. Kruk's shares to rise 1.9 per cent to zł 23.5, outperforming a decline on the WSE WIG index. In response, Wojciech Kruk announced that neither he nor his family planned to sell. However, on 27 May 2008, with indications that the other shareholders were prepared to sell, Wojciech Kruk announced a change of mind: "Not seeing the possibility to continue cooperation as W. Kruk's strategic shareholder, I have decided, with my family, to answer the tender" (*Warsaw Business Journal*, 2008a). Mr Kruk duly reduced his share stake to 3.03 per cent, with 15.02 per cent transferred to companies founded by members of the Kruk family. The family, therefore, sold only a shareholding of around 10 per cent, retaining still 18.03 per cent of their shares. On 30 May 2008 the V&W board announced that the combined number of shareholders who responded to their offer exceeded 66 per cent, the maximum the company wanted to acquire. The successful completion of the offer marked the first successful hostile takeover in the history of the WSE.

#### *The Pac-Man response*

Following the takeover, Wojciech Kruk purchased a five per cent stake in V&W and announced his intention to increase his stake and his desire to sit on V&W's supervisory board. He stated: "I spent several million [złoty] on V&W stock in order to have an influence on what is going on in the company. I want to enter the supervisory board during the next

general shareholders meeting” (*Warsaw Business Journal*, 2008c). However, the chairman of V&W’s supervisory board, Maciej Wandzel, announced that he was opposed to Mr Kruk becoming a member of the supervisory board as Mr Kruk owned shares in both companies and the rate of exchange was yet to be established. He stated: “Mr Kruk shouldn't be [on the board] until the finalization of the V&W and W. Kruk merger, due to a strong conflict of interest” (*Warsaw Business Journal*, 2008c). To avoid this conflict of interest Mr Kruk decided not to stand as a candidate for the Supervisory Board of V&W, designating a proxy instead.

Wojciech Kruk was not the only new investor in V&W. Jerzy Mazgaj, president of upmarket retail grocer Alma Market and the Paradise Group, a leading group of boutique shops, was concerned about the competitive threat posed by the enlarged V&W group and so slowly began buying shares. Mazgaj’s stake was disclosed under the law after crossing the threshold of 5 per cent. Speculation then arose that the Kruk family and Mazgaj could soon own one-third of the company if they teamed up. On 29 June 2008, one day before the AGM of V&W, three investment companies controlled by Kruk family members - WK Investment, EK Investment and ECK Investment - along with Wojciech Kruk and Alma Market, signed an agreement to vote together at the AGM. Together they had a block of shares that represented 20 per cent of the initial capital and of the votes. In Rafał Bauer’s blog (<http://rafalbauer.pl/>), which details the history of the events that unfolded in 2008 from his perspective, he remarks somewhat wistfully on the critical importance of General Meetings in Poland, which he believes is not so well understood. He also remarks that the Polish capital market, despite appearances, is not so big, that people meet in the same pubs and have mutual friends, and that rumours and information are therefore quickly disseminated. In this respect he notes regret at his discovery that one of the key institutional investors, the insurer PZU, had switched allegiance to the Kruk family consortium.

At the AGM on 30 June 2008 the shareholders voted to increase the number of supervisory board members from the then current five to six. All previous members of the supervisory board, apart from Adam Góral, were dismissed. Jerzy Mazgaj, the Chairman of Alma Market who held a 5.88 per cent stake in V&W, as well as Włodzimierz Głowacki, the proxy of Wojciech Kruk, who held 4 per cent, were appointed as new supervisory board members, with Jerzy Mazgaj appointed Chairman. On 15 July 2008 Rafał Bauer resigned as CEO of V&W,

being replaced by Michał Wójcik, who had held the post two years earlier. Jan Rosochowicz, CEO of W. Kruk S.A., became one of the Vice CEOs of V&W.

An Extraordinary General Meeting of V&W shareholders on 26 November 2008 agreed a resolution accepting the merger between V&W and W. Kruk and changes to the V&W statutes. In an interview with the *Financial Times* after he regained control, Wojciech Kruk indicated that the idea of a merger was appealing to him but that he had had no time to consider it and did not trust the new owners to properly safeguard his family company: “If they had come and talked to me, maybe I would have done it. By doing it without me they were risking the brand of the company, risking what they were trying to buy. I had enough money to open 40 new shops and I would have taken all of the staff with me”. The interviewer of Wojciech Kruk concludes that “it was the emotional connection with a company built by his ancestors” that prompted him to fight back after the hostile takeover bid (Cienski, 2008). This clearly reflects the “emotional attachment of family members” dimension of the SEW FIBER scale of Berrone et al. (2012).

## **7 Discussion**

Despite the value placed upon non-financial matters by family firms, shareholder value comes into play once a family company lists on a stock exchange, as in the case of W. Kruk when it listed on the WSE in 2002. With a minority ownership stake, the takeover contest was out of the family’s hands and determined by institutional investors, many of whom held stakes in both companies. After initially resisting the bid, the decision of the family to sell down their stakes and permit the takeover by V&W reflected an acknowledgement that a majority of the other shareholders favoured the transaction. At the same time, however, plans were made to regain control of W. Kruk through a reverse takeover with the support of new investors, and this plan was duly realized.

The W. Kruk case lends support the view that SEW concerns are central to the responses by a family company faced with a takeover. To demonstrate the relevance of the SEW construct to our case study, we now connect the underlying FIBER dimensions of SEW (Berrone et al., 2012) to W. Kruk and its decision-making during the takeover bid and its aftermath. It is evident that the first FIBER dimension, “family control and influence”, was exerted by the Kruk family: at the time of the takeover bid Wojciech Kruk was Chairman of the W. Kruk Supervisory board and his wife Ewa Kruk was also a member of the Supervisory board.

Though not represented on the Supervisory board, their daughter Ewa Kruk-Cieslik had a small equity stake of almost 2 per cent.

The second dimension, “identification of family members with the firm”, is also evident in this case. Wojciech Kruk identified with the firm named after his grandfather, Władysław Kruk, and it can be argued that he saw the business as an extension of the family. In his interview with the *Financial Times* after he regained control, Wojciech Kruk quoted his father, Henryk Kruk, when reflecting upon the challenge of creating a Polish luxury brand: “My father said, ‘It’s difficult to be a rich jeweller in a poor country’” (Cienski, 2008). The third dimension, “binding social ties”, refers to family firms’ social relationships and trust with various stakeholders and the wider community. According to the *W. Kruk Annual Report* for 2007, Wojciech Kruk was also Chairman of the National Chamber of Commerce and President of the Wielkopolska Chamber of Commerce and Industry (W. Kruk, S. A., 2008). In addition he was a member of the upper house of the Polish Parliament, the Senate, for three terms between 1991 until 2001. It is evident that non-family employees shared the sense of identity of W. Kruk as a family firm. The CEO and President of the management board of W. Kruk, Jan Rosochowicz, held a number of conversations during the takeover bid with Rafał Bauer, CEO of V&W, recounted in some detail in Rafał Bauer’s blog (<http://rafalbauer.pl/>). For example, Bauer refers to a phone call he made to Rosochowicz on 8 May 2008 to request a meeting with Wojciech Kruk, but this was turned down. It is evident that Rosochowicz was acting as gatekeeper for Wojciech Kruk, who Bauer refers to as “the Senator”, reflecting his wider public profile.

The fourth dimension, the “emotional attachment of family members”, is particularly evident in this case, given the history of W. Kruk and its survival against significant odds during the Nazi occupation and the post-war communist era in Poland. The decision to oppose the unwanted takeover by V&W is indicative of the emotional importance of W. Kruk to the family. In his *Financial Times* interview after the completion of the reverse takeover, Wojciech Kruk stated: “I thought it inconceivable that someone would try something like that [the takeover offer] against the will of the family” (Cienski, 2008). It seems quite clear that the over-riding aim was to preserve the “will of the family” and the legacy that had been established over three generations.

The fifth and final dimension refers to “renewal of family bonds” to the firm through dynastic succession. In his *Financial Times* interview Wojciech Kruk also stated: “It [W. Kruk] was

paying good dividends and I thought I had peace and quiet for the next three generations” (Cienski, 2008). Kruk’s reference to “the next three generations” signifies the importance of the legacy that had been established over the past three generations and his desire to bequeath the family heritage and tradition to his descendants. In addition, the “family enrichment” factor in the SEWi scale of Debicki et al (2016), which relates to a family’s ability to meet its members’ needs, can also be linked to the W. Kruk case. Wojciech Kruk observed in his *Financial Times* interview: “I had to make a decision to defend the family wealth, and I was not ready to retire” (Cienski, 2008). His reference to the need to “defend the family wealth” speaks for itself.

## **8 Conclusions**

A key mechanism for rendering managers accountable to shareholders is the market for corporate control: namely, the threat that if the managers fail to maximize the share price, the company may become an acquisition target. The first successful hostile takeover in Poland was short-lived, as the management team displaced from W. Kruk very quickly engineered a reverse takeover and regained control of the enlarged group by targeting the supervisory board of V&W. Arguably, the concept from the academic literature that best explains the final outcome of the W. Kruk takeover story is that of SEW: the idea that owners of family firms derive utility from non-economic aspects of their businesses, such as the ability to exercise family influence and to preserve the family dynasty and its values, strongly resonates in this case. Members of an owning family often identify with their firm, especially if it bears the family name, and this is clearly evident in the case of Wojciech Kruk. The third generation of the Kruk family to have run the business, he was instrumental in its growth following the end of communist rule, and eventual stock market listing. His public statement that the takeover risked the brand of the company demonstrates that he valued the firm's public image because it reflected on the Kruk family’s heritage. The loss of SEW arising from selling his shares to V&W appears to have been a strong motivating force in his desire to regain control of the firm. This aim was achieved through cooperation with other shareholders, including the head of another family firm, to form a coalition that was able to unseat the management team in charge of the merged firm.

The results of this case study must be viewed in light of its methodological limitations. Nevertheless, these limitations provide fertile grounds for future research. First, our study is

limited in that it investigates a Polish family firm and so the specific national context could possibly affect SEW considerations. Further case studies of firms in similar transition economy environments will help shed light on whether this is the case. Second, although we view our case through the SEW lens, we do not measure SEW directly, using instead our assessment of the statements and actions of the key participants in the initial takeover and reverse takeover, informed by the multidimensional FIBER scale proposed by Berrone et al. (2012). In the Polish context, there has been limited M&A activity, but there have been many more transactions involving transfers of blocks of shares, so future research on such transactions for a sample of family firms could attempt to measure SEW more directly using survey methods. Finally, we suggest that future studies should adopt a more longitudinal approach, to assess the extent to which the interplay between SEW and financial considerations alters over time.

A practical implication of our case study is that a better understanding of the reaction to takeover bids by family firms can be achieved if it is recognized that, rather than being a tradeoff between purely financial gains and losses, such decisions reflect both financial and SEW considerations. What this case study illustrates perhaps above all else is that the threshold to gain control of listed companies in Poland is low. The Kruk family, with assistance from a concert party ally, gained control of the merged entity with only 20 per cent of the shares. While this might appear to raise concerns about whether the rights of dispersed minority shareholders are adequately protected in Poland, the absence of any dissent from other shareholders at Vistula Group meetings suggests that their interests were not compromised.

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