LOBBYING AS ONE OF THE TOOLS OF CORPORATE GOVERNANCE

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Abstract. *The article is devoted to the study of modern corporate governance and the use of lobbying as its tool. The relevance of the research topic is due to the tendencies to the active use by managers and shareholders of corporations of means of influencing the market and government institutions. In the course of the research the author generalized the views of numerous domestic and foreign researchers on the nature of corporate governance and the peculiarities of its regulation. The author takes into account the research of consulting and analytical companies, which show that shareholders and investors tend to attach high importance to effective management of the company, and at the same time - put pressure on management to achieve high financial and economic performance in the short term, even at strategic loss. It is noted that the psychology of investing is a special category of knowledge. The role of subjectivity of perception is emphasized, which causes inadequate response of shareholders to internal and external factors, if the information about them was distorted by the executive directors. Based on a number of examples of state and interstate on corporate relations after the lobbying, the author notes the dynamics of increasing the tendency of corporate and shareholder management to use lobbying and other questionable tools for redistribution of corporate property. The regularities of the use of lobbying and other instruments of influence by managers and majority shareholders are highlighted. Particular attention is paid to the importance of further research on the regulation of lobbying, in order to limit its abuse in the context of corporate governance. The author emphasizes the need to develop appropriate tools.*

Keywords: *corporate governance, corporate governance models, chief executive officers, shareholders, goodwill, lobbying, lobbying, abuse of power, corruption.*

JEL Classification: E63, F30, G34

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Introduction. The modern globalized world is characterized by a number of trends that spread to an increasing number of countries. These include the high level of urbanization, the high dynamics of life, the acceleration of the generational change of technologies, and the growing expectations of the quality of life both from ordinary residents and from persons who belong to the highest strata of society - the financial and managerial elite. In the era of the total distribution of telecommunication technologies and the growing popularity of cryptocurrencies, classic investment tools still retain a dominant position. According to data compiled by Finbold, the top 10 publicly traded US companies had a combined market capitalization of $12.82 trillion as of December 21, 2021 [1]. However, the situation is usually not favorable for everyone, and the zeitgeist, which dictates high expectations of profitability, often pushes chief executive officers (CEOs) to make risky decisions that may border on unethical politics or even breaking the law. These include the use of lobbying in order to obtain a competitive advantage for the company, or to realize personal interests.

Lobbying activities of majority shareholders and CEOs of large corporations do not always become public knowledge, especially in countries where lobbying is not legally regulated and borders on corruption (as can be observed in Ukraine and a number of other countries). Nevertheless, its impact on both the success of an individual corporation and the sector of the relevant market can be very tangible. All this determines the relevance of lobbying research as one of the tools of corporate governance in the modern world.

Literature review. The issue of lobbying as a tool for realizing the interests of individuals, their groups or organizations has already been reflected in the publications of domestic and foreign scientists. In particular, such researchers as V. Bezkorovainy, O. Grosfeld, O. Diaghilev, D. Kislov, A. Bentley, L. Zetter, W. Paterson, C. Walker and others devoted their attention to it. The author, who has several dozen thematic publications, including a monographic format, was not left out of consideration of this topic [2]. The basis for this study was also the separate ideas and work of researchers of the problem of corporate governance development, such as: I. Ansoff, S. Pishpek, O. Povazhnyi, V. Yevtushevskyi, R. Kapelyushnikov, D. Zadykhailo, G. Kozachenko, N. Karachina , F. Lopez, V. Ya. Nusinov, T. Peters, D. Kay, A. Silberston, A. Shleifer, A. Cadbury, C. Mallin, G. Shailer. However, existing trends to intensify the use of lobbying in various spheres of public relations and the fragmentation of existing research on its role as a management tool determine the relevance of new research in this area.

Aims. The purpose of the article is to study the peculiarities of using lobbying as a tool of corporate governance in modern conditions.

Methods. The main research methods that were used in the article are general scientific methods of analysis and synthesis, as well as comparative analysis, which became the basis for obtaining research results.

Results. The challenges faced by the leaders of large corporations in today's world are characterized by a dual nature. On the one hand, they are classic, as they include profit expectations, financial risks, the struggle for market share, on the other hand, they should be considered in the modern paradigm of the global information society. Never in the modern history of mankind has the activities of organizations been so transparent to society (even without the consent of the executive management and shareholders). The current level of openness of big business is determined not so much by regulatory instruments from the state as by the activities of the mass media, the presence of social networks where employees can consciously or unconsciously post corporate information, the activity of hackers who can publish reports and other confidential information of any corporation in any - what a moment Quite expectedly, all this puts forward new requirements for the effectiveness of corporate management.

In the most concise interpretation, corporate governance is a set of mechanisms, processes and relationships used by various parties to control and manage the corporation [3; 4]. At the same time, the key feature of corporate management can be considered the separation of property ownership processes from property management processes. It is as a result of this that high economic results are achieved, efficiency increases, and favorable conditions are created for sustainable long-term development of the corporation. The key to success in this case is a kind of symbiosis of two factors:

1) involvement of the maximum number of people in investing (including those who do not understand this field of activity);

2) involvement of the most professional managers in the field of activity in the management of the corporation (including those who do not have the financial resources to open their own business).

But this is in theory, but in practice, the desired performance is achieved only in the presence of a favorable market environment and compliance by the management of the corporation with a number of conditions. These conditions are: rational formation of goals, honesty before shareholders, transparency of operations, strict reporting, prompt response to threats, ability to stop in time (minimize losses).

It is not surprising that according to the compilers of the Code of Corporate Governance of the National Commission for Securities and the Stock Market (in Ukraine), corporate governance is primarily a system of rules, practices and processes by means of which company goals are established and methods are determined their achievement and the monitoring of economic activity results. Good governance requires accountability for achieving the company's ultimate goal of creating long-term shareholder value. Proper management is characterized by a large number of practices and structures that jointly contribute to the achievement of the company's goals [5]. This approach can be taken as the basis of research.

It is worth noting that the specificity of the interpretation of the content of corporate governance is due to the spread of its various models. Historically, various countries have developed a certain management structure of joint-stock companies with stable characteristics and elements that can significantly differentiate it from the structures of other countries. Currently, researchers distinguish three main models of corporate governance - Anglo-American, Western European (or German) and Japanese [6]. It is quite obvious that these models do not exist in a refined form, and each individual country has its own national model, in which one of the mentioned models is pronounced and dominant. But since the listed models refer exclusively to economically developed countries and regions, some propose to single out another model - the corporate model of countries that are in the process of economic and social changes. It also has its own characteristics and unique approaches to the formation of corporate relations [7]. At the same time, in each of the models, either an insider or an outsider approach prevails, given the tendency towards one or another level of concentration of ownership rights.

Both management, shareholders, and potential investors are guided by the same motives, which have long been studied by psychology. The subjectivism of perception determines the fact that each of us is at the same time "three different people": the one that others think about, the one that a person sees himself as, and the one that he really is. This approach is quite applicable to the corporation and corporate management.

The well-known consulting company McKinsey conducts regular surveys of the largest international investors in order to find out how the quality of corporate governance in companies affects their investment decisions. The survey results speak volumes:

1) more than 70% of investors are convinced that the quality of corporate management is as important for the growth of the company's market value as its financial and economic indicators;

2) more than 80% of investors agree to buy shares of companies in which corporate management is carried out effectively, even if they are more expensive than shares of companies with "corporate problems", with similar indicators of profits and sales volumes [8].

The key point in this case is the subjectivity of the perception of the quality of corporate governance of a particular company by investors and potential investors. And if the subjectivity of perception is extrapolated to this question, then investors can be wrong in their assessments and forecasts for three different reasons:

1) due to their own misconceptions;

2) as a result of force majeure circumstances that change the situation;

3) as a result of conscious or unconscious distortion of information by the company's management. And if in the first case the fault lies with the investors themselves, and in the second case there are no obvious culprits, then in the third case the fault lies with the management of the company, which unconsciously (due to poor information or frank unprofessionalism) or consciously (due to silence or falsification of information) misleads both shareholders and potential investors.

And then the most powerful emotions of investors come into force. As one of the most famous investors of our time, Warren Buffett, quite frankly admits, "Investment decisions are driven by fear and greed! Outbreaks of these diseases in the investment community will never end. It is impossible to predict their appearance, duration and consequences."

In recent decades, the world has repeatedly shuddered from high-profile corporate scandals. The cases of "WorldCom", "Enron", "Lehman Brothers" became known not only to specialists in the field of corporate management, but also to everyone who is interested in news. Silence or outright distortion of information, falsification of reporting, became another proof of the falsity of the idea of some corporate optimists about the infallibility of experienced CEOs. Moreover, when the bankruptcy of Enron led to the termination of Arthur Andersen [9], one of the top five auditing firms in the world, the question of the credit of trust in an independent and impartial audit arose. Is it possible to believe in the impartiality of state bodies in such conditions?

Almost every high-profile case of the collapse of a large corporation provokes a reaction from both financial regulators and lawmakers. Modern principles of corporate governance are based on the provisions set forth in three documents that have been published since 1990:

1) The Cadbury Report (The Cadbury Report) of 1992 (Great Britain) [10];

2) The Principles of Corporate Governance (The Principles of Corporate Governance) of 1999, 2004 and 2015 (Organization for Economic Cooperation and Development) [11; 12];

3) Sarbanes–Oxley Act of 2002 (USA) [13]. And if the Cadbury and OECD reports contain general principles recommended for use by corporations, then the Sarbanes-Oxley Act is an attempt by the federal government of the United States of America to legislate a number of principles recommended in these reports.

At the same time, the following five principles can be considered key for the listed program documents:

1) Rights and equitable treatment of shareholders;

2) Taking into account the interests of other stakeholders (Interests of other stakeholders);

3) Performance of the role and responsibilities of the board of directors (Role and responsibilities of the board);

4) Integrity and ethical behavior;

5) Support of the regime of openness and transparency (Disclosure and transparency) [10; 12; 13].

However, even such principles do not establish sufficiently strict restrictions on interaction with state bodies and individual civil servants. Corporations have to come into contact with the state in one way or another. Therefore, the use of lobbying as a very effective, albeit rather ambiguous (from the point of view of legality and ethics) tool is of particular interest in the context of modern corporate governance research.

At one time, the author devoted a lot of attention not only to proving the role of unregulated lobbying in the destruction of civilized corporate governance and the formation of threats to state security, but also to the development of the conceptual foundations of lobbying regulation in Ukraine [2].

If in countries like the USA, where legal lobbying is relatively transparent, there are historically formed traditions and mechanisms of interaction between big business and the state, which are not always shown to the general public, then in countries like Ukraine, most manifestations of big corporate lobbying traditionally remain in the shadows. At the same time, the results of lobbying by large corporations in Ukraine are still more noticeable, first of all, given the much smaller scale of the national economy.

The famous Ukrainian economist Volodymyr Nusinov, in the process of researching the history of the formation of the national model of corporate governance in Ukraine, summarized the work of a number of scientists. He singled out several stages of the formation of the national model of corporate governance in our country, which were characterized by a gradual transition from an outsider dispersed form in 1991-1993 to an insider dispersed form (from 1993 to 1995), an insider moderately concentrated form (1995-2000), and an insider concentrated form (since 2000) [14]. The tendency towards relentless concentration of ownership rights has led to the formation of a small (on a national scale) circle of majority shareholders (and in some cases sole owners) of most Ukrainian companies, which have a significant influence on the economic policy of the state as a whole and the activities of individual civil servants in particular.

Industry lobbying is particularly evident in the conditions of Ukraine. Paradoxically, it has its origins in the times of the USSR, when the so-called "red directors" lobbied for the interests of a large enterprise or an entire industry [15]. After Ukraine gained independence, such directors were joined by majority co-owners and owners of enterprises. At the same time, a number of companies, remaining in state ownership, also continue their lobbying policy.

A vivid example of counter-lobbying at the national level is the relentless fight over tariffs between Ukrzaliznytsia (Ukrainian Railways) and a number of companies whose interests are concentrated in the field of mining and metallurgy. Ukrzaliznytsia is a natural monopolist of rail transport in Ukraine and one of the world leaders in freight transportation by rail [16] (to give you an idea of the scale, Ukrzaliznytsia transported 314.3 million tons of cargo in the period from January to December 2021 [17]). This tariff struggle has been going on for years, with both sides lobbying for their interests both directly and through pressure through mass media [18; 19].

However, in the conditions of globalization, corporate lobbying increasingly manifests itself not only at the national, but also at the supranational level. So, for example, at the end of 2021, it became known that EU competition representatives are preparing to block the agreement on the merger of the world's two largest shipbuilders in South Korea, worth 2 billion US dollars. Government officials have told the Financial Times that the proposed merger between Daewoo Shipbuilding & Marine Engineering and Hyundai Heavy Industries will be stopped as "anti-competitive". And the decision will be published in the near future. At the same time, the European Commission refused to comment for a long time [20]. According to Clarksons Research, these two companies have received new orders for 45 large ships designed to transport liquefied gas from the 75 ordered last year in the world, thus dividing the two into 60% of the world market [21].

In early January 2022, it became known that the European Commission did prohibit, in accordance with the EU Merger Regulation, the acquisition of Daewoo Shipbuilding & Marine Engineering CO., Ltd (DSME) by Hyundai Heavy Industries Holdings (HHIH). The European Commission argued that a merger between the two South Korean shipbuilders would create a dominant position for the new combined company and reduce competition in the global market for the construction of large liquefied natural gas vessels (“LLNGC”). And the parties did not officially offer legal remedies to solve the problems outlined by the Commission [22].

Executive Vice President Margrethe Vestager, responsible for competition policy, said on this occasion that: "Large LNG carriers are an important element in the liquefied natural gas (LNG) supply chain and allow this energy source to be transported throughout the world LNG contributes to the diversification of European energy sources and therefore improves energy security. A merger between HHIH and DSME would lead to a dominant position in the global market for the construction of large LNG vessels, which are in significant demand from European carriers. Given that no legal remedies have been filed, the merger would result in fewer suppliers and higher prices for large LNG carriers. That's why we banned unification" [22].

At the same time, it is not the first time that EU antimonopoly authorities have vetoed a corporate agreement. In 2019, official Brussels blocked a deal between India's Tata Steel and Germany's Thyssenkrupp, allegedly out of concern that it would lead to higher prices for consumers [20]. And although official information regarding the lobbying of both of the above decisions of the EU antimonopoly authorities was never published, we are inclined to the version of the presence of lobbying.

Analysis of cases of lobbying in the framework of corporate governance confirms the existence of certain patterns characteristic of corporate governance in general. At the same time, if some laws are characteristic of countries that can be attributed to a certain model of corporate governance, then others are characteristic of different countries, regardless of the dominant model of corporate governance (Table 1).

Table 1. Patterns characteristic of corporate governance in different countries

First category	Second category
• tendency of the CEO to lobby for processes that affect the share price, with the aim of their redistribution (for the Anglo-American model)	• the company's monopoly position opens up additional opportunities to influence the state and the market (especially when it comes to natural monopolies);
	• majority shareholders are more informed about the real state of affairs in the company, while minority shareholders can be easily misled;
• tendency of the CEO to lobby for processes that affect the company's position in the market, in order to strengthen their own career opportunities (for Western European and Japanese models)	• part of the shareholders (usually they are the majority shareholders) always have significantly greater resource capabilities (including connections with representatives of state authorities and local self-government bodies), which allows them to influence the decisions of state bodies and sometimes even on state policy in a certain field (as can be observed in the case of lobbying for tax benefits, protectionist measures, tariffs set by the state);
	• in the event of a crisis situation, CEOs seek to minimize the negative consequences for majority shareholders, even sacrificing the interests of minority shareholders.

Source: systematized by the author based on [20-22]

In addition, the acquisition by a representative of the company's administration (who is also a shareholder) of the status of a person with an international level of knowledge allows to influence the "goodwill of the company" and indirectly - the price of its shares. This was well observed on the example of the impact of the public statements of Steve Jobs and Bill Gates and can be seen today on the example of the public speeches of Elon Musk. Such speeches, media interviews, publications in social networks, when certain information is brought to the attention of the general public about the changes that await the company, new products, or market trends, usually have a very significant impact not only on the share price, but also on decisions other people (including civil servants), and therefore represent "soft" lobbying.

Thus, managers and majority shareholders of every large corporation are constantly faced with a choice - whether to use lobbying, and if they do use it, then to what exact goal should it be directed?

It is important to note that the analysis of many years of practice shows the strategic profitability of the approach, in which company managers make responsible decisions, focusing on long-term goals. Such companies in the long run generate greater returns for their shareholders, create more jobs and contribute more significantly to overall economic growth than companies whose management is focused on short-term profitability at any cost. Moreover, better performance is shown by companies that pay more attention to the interests of their employees, customers and other stakeholders, taking them into account in their strategy.

However, an analysis of the activities of about 500 executives of large corporations, conducted by the research institution FCLT Global and the consulting company McKinsey, shows that a number of executives continue to feel pressure from shareholders and colleagues who seek to make decisions aimed at increasing profits in the near term, even if at the expense of long-term goals [23]. Therefore, the attention of the scientific community should be focused on the development of such a model of regulation of lobbying activities that will limit the destructive impact of corporate governance on the market, public administration and society as a whole, while maintaining opportunities for CEOs and shareholders to defend the interests of their corporations.

Conclusions. Given that the purpose of a corporation's existence is profit, CEOs and shareholders are constantly under the pressure of opportunities for abuse, both at the corporate and personal level. Despite publicity and strict auditing, large corporations periodically find themselves at the center of scandals related to the concealment of information, falsification of reports and corruption.

Therefore, both the CEO and the shareholders are interested in using any tools of influence on the external environment, including lobbying. In those countries where lobbying is legally regulated, its use is more transparent, while in those countries where lobbying is not properly regulated (as in Ukraine), the results of lobbying by large corporations are more visible. At the same time, lobbying is actively used by corporations not only at the national, but also at the supranational level.

Analysis of cases of lobbying in the framework of corporate governance confirms the existence of certain patterns characteristic of corporate governance in general. At the same time, if some laws are characteristic of countries that can be attributed to a certain model of corporate governance, then others are characteristic of different countries, regardless of the dominant model of corporate governance.

The Anglo-American model is characterized by the tendency of CEOs to lobby for processes that affect the share price in order to redistribute them, while the tendency of CEOs of Western European and Japanese models to lobby for processes that affect the company's position in the market in order to strengthen their own career opportunities.

The following patterns are characteristic of corporate governance, regardless of the dominant model: the company's monopoly position opens up additional opportunities for additional opportunities to influence the market and the state; majority shareholders are more informed about the real state of affairs in the company, while minority shareholders can be easily misled; if necessary, the interests of minority shareholders are sacrificed in favor of majority shareholders; part of the shareholders (usually the majority shareholders) always have significantly greater resource capabilities (including connections with representatives of state authorities and local self-government bodies), which allows them to influence the decisions of state bodies and sometimes even state policy in a certain industry (as can be observed in the case of lobbying for tax benefits, protectionist measures, tariffs set by the state).

If the CEO acquires the status of popular persons in the information space, they can influence the "goodwill of the company" and use "soft lobbying". And although the analysis of many years of practice shows the strategic advantage of the approach in which company managers make responsible decisions, focusing on long-term goals, very often, being under pressure from shareholders, CEOs sacrifice strategic goals for the sake of quick success.

It is advisable to focus further research on the development of such a model of regulation of lobbying activities that will limit the destructive impact of corporate governance on the market, public administration and society as a whole, while maintaining opportunities for CEOs and shareholders to defend the interests of their corporations.

References:

1. 10 largest U.S. companies by market cap dwarf China's top ten by five-fold. By Justinas Baltrusaitis. Finbold. URL: https://finbold.com/10-largest-u-s-companies-by-market-cap-dwarf-chinas-top-ten-by-five-fold/
2. Yarovoi T. S. (2019). Theoretical and methodological principles of functioning of lobbying in Ukraine in the interests of citizens, society, and state security. Kyiv: Lyudmila Publishing House, 384 p.
3. Shailer, Greg. An Introduction to Corporate Governance in Australia, Pearson Education Australia, Sydney, 2004.
4. Compare: Mallin, Christine A. (2006). "Corporate governance developments in the UK". In Mallin, Christine A. (ed.). Handbook on International Corporate Governance: Country Analyses. Elgar original reference. Cheltenham (Gloucestershire): Edward Elgar Publishing. p. 3. ISBN 9781847201744. Retrieved 26 August 2020.
5. Corporate governance code: key requirements and recommendations. Code of the National Securities and Stock Market Commission No: 118 dated 12.03.2020. URL: https://www.nssmc.gov.ua/wp-content/uploads/2020/03/corporate-governance-code_final_ukr.pdf
6. Mostenska T.L., Novak V.O., Lutskyi M.G., Symonenko Yu.G. (2008). Corporative management. Tutorial. Kyiv: Caravela, 384 p.
7. Tretiak V. P. Models of corporate management. 05/06/2019. with. 2 URL: https://cutt.ly/0LsYm9u.
8. Which metrics really drive total returns to shareholders? October 19, 2021. McKinsey. URL: https://cutt.ly/kLsYTFx.
9. Brown, Ken; Dugan, Ianthe Jeanne (June 7, 2002). "Arthur Andersen's Fall from Grace Is a Sad Tale of Greed and Miscues". The Wall Street Journal.
10. Cadbury, Adrian, Report of the Committee on the Financial Aspects of Corporate Governance, Gee, London, December, 1992.
11. "OECD Principles of Corporate Governance, 2004, Articles II and III" (PDF). OECD. Retrieved 2011-07-24. URL : https://www.oecd.org/corporate/ca/corporategovernanceprinciples/31557724.pdf
12. OECD (2015), G20/OECD Principles of Corporate Governance, OECD Publishing, Paris. URL: http://dx.doi.org/10.1787/9789264236882-en
13. Sarbanes-Oxley Act of 2002, US Congress. URL : https://www.govinfo.gov/content/pkg/COMPS-1883/pdf/COMPS-1883.pdf
14. V. Ya. Nusinov, V. P. Goliver. The logic of forming a national model of corporate governance. Scientific Bulletin of the Uzhhorod National University. 2018. Issue 18, part 1. P.103-107.
15. Yarovoi T. S. Some historical aspects of the development of lobbyism in Ukraine as an institution of public administration. International Journal of Legal Studies (Warsaw). 2018. R. 103–115.
16. Rail Transportation and Pipelines. The Geography of Transport Systems. URL : https://transportgeography.org/contents/chapter5/rail-transportation-pipelines/
17. State Statistics Service of Ukraine. Economic statistics / Economic activity / Transport. URL: http://www.ukrstat.gov.ua/
18. Dmytro Ulyanitskyi. From the world by wire: "Ukrzaliznytsia" lobbies to increase tariffs for cargo transportation. December 25, 2015. RBC-Ukraine. https://cutt.ly/pLsYSIN.
19. Oleksiy Kulak. Grishina: Deoligarization of the UZ cannot be done without. 08/03/2021. Ukraine rail monitoring. URL: https://urm.media/grishina-bez-deoligarhizaczi%d1%97-uz-ne-obijtisya/
20. Mehreen Khan and Javier Espinozaz. EU to block $2bn Korean shipbuilding merger between Daewoo and Hyundai. Financial Times. URL: https://www.ft.com/content/03c9ac55-038d-4bb7-a5a7-a8e7fdd1d52a
21. Clarksons Research. URL : https://www.clarksons.com/services/research/
22. Mergers: Commission prohibits proposed acquisition of Daewoo Shipbuilding & Marine Engineering by Hyundai Heavy Industries Holdings. 13 January 2022. URL : https://ec.europa.eu/commission/presscorner/detail/en/ip_22_343
23. How executives can help sustain value creation for the long term. By Ariel Babcock, Sarah Keohane Williamson, and Tim Koller. McKinsey. July 22, 2021. URL : https://cutt.ly/HLsYLkr.