Turning Compliance into A Competitive Advantage: A

Preliminary Research Study

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TURNING COMPLIANCE INTO A COMPETITIVE ADVANTAGE:
A PRELIMINARY RESEARCH STUDY

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Paper
Under pressure from regulatory authorities and financial markets, businesses have been forced to revise their management and governance systems in depth. In truth, the recent financial scandals and debacles have exposed the poor standards of supervisory boards, a lack of transparency and the absence of counterbalancing powers. In strategic or financial analysis, understanding corporate governance has become imperative. Decisions in the areas of value creation, risk management and financing policies are made within a complex decision-making framework, wielding power and influence at the top of the business; a system which remains impenetrable to most of the stakeholders in an organisation.

This paper seeks to provide a first multi-disciplinary approach to corporate governance rules in France and in the United States, the way they are applied and their implications for value creation.
From the 1929 crash to recent financial scandals, Enron and WorldCom in particular, it can be seen that active thinking about corporate governance has evolved largely during economic crises in which the disappointment of shareholders about the poor returns on their investments was in sharp contrast to the position of the company directors to whom they had entrusted their interests.

In the United States, as early as the 1930s, this state of affairs had led to legislation offering significant protection to the rights of the shareholders. Later, the ensuing decades of prosperity did indeed witness the economic thought process exalt the competencies of business leaders and establish The Era of the Managers (see Galbraith, 1968), as opposed to the short-sightedness of the owners of capital. The main idea is that the individuals who actually make the decisions within a business no longer belong to the shareholder class but to a new category that sets itself apart and imposes itself through technical and organisational ability, enter the Managers! However, the return to crises in the Eighties caused a reversal of the power status and led to the publication of working and organisational rules. Companies were required to serve, to the best of their ability, the legitimate authority on which they depend, namely their shareholders. Even though regulation was imposed progressively on listed companies, firstly in New York, then in London, and subsequently in Europe¹ and Asia, its application often remained unreliable.

¹ See the statement of the President of the American Pension Fund Calpers in le Figaro, March 9, 2001.
During the relative financial opulence of the Nineties many drifts took place:
- the upward trend of the variable remuneration (stock-options) of executives, along with an attempt to favour their private interests.
- the introduction of new financial tools and new accounting methods that made it possible to conceal the true level of debt of a business, and were used in order to boost artificially the balance sheet of a company, thus raising its stock market value and making stock-options more lucrative;
- deregulation in the banking industry, which by relaxing the rules, undermined the institutional control mechanisms;
- the arguable ethics of the ruling classes who questioned the protestant ethic associated by Weber (1905) with the spirit of capitalism and the cynical behaviour of financial analysts from well-known investment banks which praised publicly the quality of shares that they were actually shedding internally.

The consequence was series of spectacular excesses and financial scandals such as the Enron affair (2001), Andersen (2002) and WorldCom in the United States, Vivendi Universal (2002) and Crédit Lyonnais (1994) in France or Parmalat (2003) in Italy.

It must, therefore, be accepted that the hitherto established rules highlighted inefficient corporate governance, arguable accounting procedures, outrageous financial rewards, a tendency towards misinformation and the greed of some senior executives. Far from protecting businesses from value destroying strategies, these rules were often penalising all stakeholders.

\[2\] In France as in the United States, businesses such as Vivendi and Enron, with debts of 19 and 16.7 billion euros, have caused a significant drop in the stock exchange rates and indices.
(investors, employees, executives, suppliers, etc.). Under pressure from regulators and financial markets, companies were forced to revise their management and supervisory systems in depth in order to regain the trust of investors and partners.

In the light of these facts, it appears that the structuring of the thought process governing corporate governance calls for a permanent debate on such fundamental questions as conflicts of interests, asymmetrical information, and the measure of performance or value created.

Also raised was the problem of self-regulation of the capitalist system. The fundamental principle on which it is based and as described by Adam Smith in The Value of Nations (1776), is that a system left to regulate itself either destroys itself eventually, or recovers its equilibrium. The return to that condition is notably subject to re-building the trust of investors, shareholders and employees as well as that of various stakeholders\(^3\) defrauded by such illicit behaviour.

From then on, the main question concerns the propensity of businesses to self-regulate themselves, or does this require the intervention of legal authorities? It appears that, following natural phenomena, corrections carried out by businesses had to comply with the definition and the application of radical and wide-ranging reforms in corporate governance. They signalled the end of managerial values and pointed to two other possible pathways: that of the shareholder value in a contractual framework of relationships in the United States, and that of

\(^3\) Corporate governance is the whole of the processes, bylaws laws and institutions having an influence on the manner in which the business is managed, administered and controlled. The governance also includes the relations between the numerous players involved (the participants) and the aims of the business. The major players are the shareholders, the governance and the administrative council. Other participants include the employees, the suppliers, the clients, the banks or other lenders, neighbours, the environment and the wider community. Post, Preston and Sachs (2002) use this definition of the word ‘stakeholder’: « In a business, the stakeholders are individuals or groups that contribute, voluntarily or otherwise, to the value creation capability and activity and who are its potential beneficiaries and/or assume the risks thereof ». This definition is at variance from the older version by Freeman (1983) who includes competitors as business stakeholders. Holders of each type of interest in the affairs of the business can group together.
the partnership value in a voluntary framework of relationships in France. We intend to explore these pathways in this paper.

**COMPLIANCE REQUIREMENTS AND PERSPECTIVES ON VALUE CREATION**

**Corporate governance rules in force in the United States**

*The Sarbanes-Oxley law and its addenda*

Adopted in July 2002 by Congress, the Sarbanes-Oxley law aims principally at re-establishing the trust of investors and at reinforcing corporate governance. Under this law, companies with a stock market capitalisation of over $75 million must comply with certain administrative and financial procedures.

Several main principles can summarize it:

- Accessibility, transparency and reliability of information
- Liability of executives and supervisory board members
- Strict application of controls by independent auditors

Therefore, CEOs must have their accounts certified by the Securities and Exchanges Commission. This exercise must be complemented by the filing of a specific report specifying the efficiency and relevance of the internal control (section 404).
Sarbanes-Oxley was somewhat amended later, notably by the intervention of Richard Breeden. The former President of the SEC\textsuperscript{4} produced no fewer than 78 recommendations contained in a report made public in May 2003. Eventually, the latter should form the basis of corporate governance reform and its precepts should be applicable to all large and medium enterprises.

The aim of these precepts is to put an end to the era in which executives and executive-chairmen enjoyed a regal power over their supervisory board members and in which the decision-making power was concentrated in the hands of one single person. By establishing an action and power distribution framework while instituting a number of behavioural rules, Richard Breeden’s precepts should allow every supervisory board member to become independent of executive management:

- Prohibition of the simultaneous exercise of both the functions of Chief Executive Officer (CEO) and chairman of the supervisory board.

- Ineligibility to sit on the supervisory board of any executive working with the company under governance.

- Better remuneration of supervisory board members but with the obligation to ring fence 25% of their post-tax income for the purchase, on the stock market, of shares in the company governed.

\textsuperscript{4} SEC or Securities and Exchange Commission is the regulating body of American Stock Markets.
- Supervisory board members prohibited from sitting on the boards of more than two companies listed on the stock exchange

- Supervisory board obliged to meet at least 8 times a year.

- Members of the supervisory board obliged to receive special training each year in order to better understand firm’s activity and sector.

- Members of the supervisory board prohibited from retaining their seat for more than ten years.

- Obligation to replace one of the supervisory board members each year in order that collegial relationships within the board do not result in routine.

- Ban on remunerating executives with stock options.

- Creation of a ceiling on remuneration for executives, which can only be exceeded occasionally after a vote of approval from the shareholders.

Reinforcement of the direct democracy granted to small shareholders. For instance, in the case of MCI, this was achieved by the creation of an Internet site especially dedicated to shareholders who wished to alert supervisory board members and other shareholders about their concerns, with the possibility of voting resolutions without the need to convene a general shareholders meeting.
These rules show the various standards that must be strictly observed in order to be listed on the New York Stock Exchange. In perfect application of the Sarbanes-Oxley law, it is used as reference for any American business listed on the stock market. Arranged around 13 points, it defines a rigorous framework of corporate governance.

Listed companies must have a majority of independent supervisory board members, in other words natural persons who have no material link with the company. Their meetings are held very regularly in order that everyone is able to put forward their own arguments.

Companies must have an Appointment Committee and a Remuneration Committee composed solely of independent supervisory board members, all complying with a single charter. All structures require the support of an Audit Committee made up of a minimum of three members. The adoption and distribution of a corporate governance guide as well as a Business Ethics Code remain compulsory all companies listed on the NYSE. In respect of foreign companies, they are expressly required to provide their current governance practices and, as the case may be, to justify their differences.

Lastly, in order to gain certification, each Company must observe all of the preceding standards; NYSE will publish any failure to comply (a severe penalty for investors).

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6 Codified in section « 303A of the NYSE’s Listed Company Manual ».
7 Paragraphs 1 and 2.
8 Paragraph 3.
9 Paragraphs 4 and 5.
10 Paragraphs 6 and 7.
11 Paragraphs 9 and 10.
12 Paragraph 11.
13 Paragraphs 12 and 13.
The American approach presents a rather rigorous and dictatorial aspect. It is indeed a strong response made to the failures and financial impropriety that were observed within large groups and which resulted in substantial crisis of confidence among investors. This desire to design and create a legislative framework is the result of work, carried out with little discussion, which had as its primary aim, the safeguard of the interests of owners. The quest for shareholder value is clearly advanced; supervisory board members must be heavily represented in the composition of the company’s capital.

**Corporate governance rules in force in France**

**The Viénot I Report (July 1995)**

Since 1995, several reports have aimed at strengthening the independence of supervisory board members vis-à-vis the chairman of the supervisory board, who held too much individual power.

Keen to guarantee greater transparency towards the shareholders of listed companies, the Viénot I Report (1995) offers various pathways:

- Define the strategy of the company, designate the proxies, supervise executive management and ensure a wide distribution of information to the shareholders: this is a summary of the four missions attributed to the supervisory board representing the shareholders and the social interest of the company. The Viénot Committee emphasises the idea that a supervisory board
member must be motivated by the interest of the company, in other words, he should strive towards its prosperity and durability.\textsuperscript{14}

- The supervisory board organises the Annual General Meeting (AGM), determines the agenda, appoints and dismisses the chairman and chief executives of the company. In the case of major strategic directives, the opinion of shareholders in a general shareholders meeting is valuable. As a privileged channel of information to the market, the supervisory board will have a tendency to state its position on operations concerning the company’s shares.

The Viénot Committee gives the widest room for manoeuvre to the various boards to express their views on the accumulation of roles of chairman of the supervisory board and CEO. Such freedom respects the diversity of companies and allows them to adopt an appropriate Modus Operandi. The chairman is charged with defining and putting forward strategies, the latter must then be decided by the supervisory board. Note that French law is very flexible, as it allows two types of organisation\textsuperscript{15} to be contemplated.

Both boards always defend the results obtained by executive management. The Viénot I Report specifies that the presence of at least two independent supervisory board members\textsuperscript{16} within the supervisory board is a guarantee of the quality of deliberations and competencies. Viénot recommends a maximum limit of five mandates (6 years maximum) and also that cross participations and reciprocal mandates should not be developed as those could destabilise supervisory boards. It appears that four meetings are necessary to the smooth

\textsuperscript{14} Halfway proposal between the maximum revenue from shares and the social interest defended respectively by Anglo-Saxons and the French.

\textsuperscript{15} Executive Board and CEO; Supervisory Board and Executive Board perfectly dissociated.

\textsuperscript{16} In the Viénot I report, a supervisory board member not salaried by the company and with no major share holding or partnership links is regarded as independent.
running of a supervisory board, given that the board will be supported by the work of the various committees\textsuperscript{17} guaranteeing the relevance and the rigour of internal methods.

\textit{The Viénot Report II (July 1999)}

It must be clearly stated that the first Viénot Report led many companies to clarify and define their Modus Operandi voluntarily. “Corporate governance” gradually imposed itself in the minds of people.

Once again, a committee under the presidency of Marc Viénot, composed of the directors of large companies was constituted in order to add to the preceding report; this led to the Viénot II Report. The desire to include company directors in the reflection process is a proof that in France the purely legislative aspect is neglected to the benefit of discussion with the players directly concerned, which marks a distinct difference with the United States.

The Viénot I and II Reports stress the information given to shareholders, the periodic inspection of the composition, the organisation and the running of the supervisory boards, the presence of at least two independent supervisory board members on the boards, the rights and duties of the board, the creation of an audit committee and a remuneration committee.

\textsuperscript{17} Several committees can be envisaged: remuneration, audit, appointments while remaining alert to reciprocity.
**NRE 2001 Laws (New Economic Regulation Laws)**

The New Economic Regulations (NER) of May 2001 have significantly modified the workings of the supervisory board by dissociating the executive and supervisory functions. It has had the effect of reinforcing the independence of the supervisory board members vis-à-vis the chairman of the board. In correlation, it has increased transparency for the shareholders, which encourages companies to meet the demands of financial rating and financial markets interests (shareholder value).

Article 116 of the NER laws requires listed businesses to discuss the social and environmental consequences of their activities, in the framework of their corporate duties. No real sanctions are envisaged if this article is not complied with, meaning that companies are not obliged to satisfy the interests of stakeholders (partnership value). It appears that France is the only country where this question has been dealt with by legislation.

**The Bouton I (September 2002) and Bouton II (October 2003) Reports**

Once again, this report was initiated by social partners\(^{18}\) wishing to present an effective safeguard against any management abuses or strategic errors. The Bouton I Report (September 2002)\(^{19}\) stresses ethics, the perceived relevance and transparency of information, the supervision and management of businesses.

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\(^{18}\) AFEP-AGREF and MEDEF.

\(^{19}\) See annexe XX for further details.
Presented as an updated synthesis of three previous reports, the Bouton II Report (October 2003) is regarded as the reference code for corporate governance in France. The supervisory board is presented as a collegiate body charged with formulating strategy and motivated by the social interest of the company. These reports specify that a majority of shareholder controlling a business must distribute information transparently to the market and to other shareholders. The necessity to establish committees facilitating the work of the supervisory board is stressed.

Other laws were adopted, such as the Financial Security Law (August 2003) aiming to enhance transparency, and also the internal supervisory procedures and financial information processing. These requirements later softened the Breton Law (July 2005) because they appeared to be too constrictive and difficult to apply in smaller businesses.

Lastly, the General Regulations of the Financial Markets Authority (January 2004) largely adopted the recommendations in previous reports and came into compliance with European directives. The latter specifies that the supervisory board must inform the shareholders of the chosen form of corporate governance and justify the choice. This approach, also known as ‘apply or explain’ has the aim of telling various players whether the company complies with a normative legislative framework or applies its own form of corporate governance. By encouraging businesses to present certified results, the Financial Market Authority seeks, above all, to reinforce the shareholders’ rights through four main principles: accessibility of information, quality of proceedings during General Shareholders Meetings, fluidity of the voting process and liability of the investors. This policy is echoed by all credit rating agencies.

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20 Each state has been solicited by the European Commission in order to define a standard framework.
21 Information, control and organization.
22 Reference to the obligation to publish in respect of internal controls (Section 404 of the Sarbanes-Oxley law)
that are more willing to integrate the qualitative elements of corporate governance before publishing their opinion.

The Viénot (1999) and Bouton (2002) reports establish a normative frame that allows a substantial increase of the transparency and the efficiency of the boards, by means of tight controls. This regulatory system, associated to the French legislation (NER law), strongly recommends a flexible access to financial information, the regular evaluation of the supervisory board, the rigorous scrutiny of accounts and the recourse to external and independent supervisory board members. Appointed for their expertise, removed from the pressures of executive management, will the latter be more inclined to evaluate serenely the various strategic directions and therefore enhance the performance and the profitability of business? Such questions draw up a new research agenda for future work on the theme of corporate governance that will have to be carried out jointly with an accurate survey of business practices and the performance results stemming from them. The French directions, in corporate governance, also favour discussion with the recurrent wish to open the thought process to all players (the trade unions, the social dimension). A vision of partnership is forming in order to optimise the integration of the company and its Modus Operandi into its environment.

It seems, therefore, that an agency problem is emerging from the relationship between executive management and shareholders. The former, with better information available, can often steer the management of the company towards their own interests and the problems of growth. The latter, being less well informed, are keener to favour the distribution of cash flow and the increased value of their shares. In order to minimise these tendencies, the latest
reforms (in France and in the United States) attempt to reduce the asymmetry of information and drive executive management closer to the interests of the shareholders.

From a practical as well as from a theoretical viewpoint, the fundamental problems touched upon in the framework of the re-evaluation of corporate governance show up recurring elements such as the permanency of conflicts, the asymmetry of information, and the difficulties in measuring the value created by the company. Other questions also remain about the various interests that have to be met by the application of the general policy of the company. On this point, two perspectives are generally presented as typical forms of corporate governance: the shareholder approach and the partnership approach.

**Corporate governance perspectives on value creation**

**Shareholder value**

The main objective of this first approach remains the highest market value of the shares in order to favour the creation of value for the owners (shareholder value). The supervisory board operates and organises itself in accordance with precise prerogatives (remuneration, information, etc.) that allow alignment of the interests of executive management with those of the shareholders.
The EXXON example

Exxon’s corporate governance is articulated around a framework\textsuperscript{24} in perfect compliance with New Jersey Law. It can be qualified as a Charter, and its main objectives are to meet the interests of the shareholders and the efficiency of the supervisory board. The latter is composed of members (between 10 and 19 members\textsuperscript{25}) elected by the Annual General Meeting. The board must meet at least eight times, requires a rigorous presence of its members and evaluates itself at the end of each year. The renewal of mandates is hardly limited, only by age (72 years).

Being charged with electing its chairman and vice chairman, the supervisory board may opt for the combination of the functions of chairman and CEO\textsuperscript{26} (recommended within EXXON Mobil). The chairman (combining both functions) Rex W. Wilson and his Vice-President J. Stephen Simon devote all their activities to the Exxon Mobil group. The other 10 supervisory board members occupy executive positions in other companies, causing a reciprocity problem.

The supervisory board appoints a steering committee\textsuperscript{27} under absolute majority rules, as well as various delegate committees\textsuperscript{28} with the purpose of seconding the board’s work. Each

\textsuperscript{24} Exxon report, ‘Corporate Governance Guidelines’, amended by the board of directors on October 26, 2005.
\textsuperscript{25} Composed of 12 members in December 2005.
\textsuperscript{26} Advised in article 4 from Exxon Mobil Corporation, ‘Bylaws’, revised July 31, 2000.
\textsuperscript{27} Exxon Mobil Corporation, ‘Byelaws’, revised July 31, 2002.
\textsuperscript{28} The various delegate committees are: Audit, Remuneration, Finance, Appointments, Public Affairs, Board Affairs.
committee\textsuperscript{29}, composed almost entirely of independent supervisory board members, has a charter guaranteeing the independence and the total objectivity of its members. The Exxon group requires that each of these different committees evaluates itself each year and informs the supervisory board of its activities and recommendations, which the board will publish those.

The Exxon capital is distributed between institutional investors (52%), the public (47%) and executives (1%). Small shareholders are therefore in a position to bring its weight to bear to ensure that the rules of governance adopted by the group are applied; the power of the executives remains therefore relatively small.

Fitting perfectly inside the American legislative framework, the corporate governance defended by Exxon remains largely share-based. Consequently, the prime motivation of the supervisory board is the maximum stock market value of the shares.

\textit{Partnership value}

Perceived in the second approach as a knot of contracts between various dependent partners (executives, suppliers, clients, employees, shareholders, etc.), the company seeks to satisfy their respective interests as best. This type of governance favours the creation of value for all stakeholders (stakeholder value) at financial and human levels (competences and expertise).

\textsuperscript{29} Three members minimum.
The Total example

The Total Company, strengthened by the presence of Daniel Bouton and Bertrand Collomb (Chairman and CEO of Lafarge) on the supervisory board [both initiators and authors of reports stipulating recommendations and guidance in respect of corporate governance at French national level], adopts a single combined representation, in which the function of Chairman and CEO has rested with Thierry Desmarest since 1995. Thus, in order to define the organisation of the various boards, the association with the 2002 Bouton report is evoked in the first few pages of the Total annual report. Far from limiting itself to the corporate governance rules generally observed in France, the group decided in 2004 to transcribe and adapt its Group Code of Conduct to cover its financial activities

Out of its 15 members with a minimum of 500 shares, 13 members of the supervisory board at Total are independent supervisory board members. During the eight meetings held in 2005, the supervisory board established a strategy, evaluated itself and ensured the distribution of information, supported and seconded by only two specialist committees. In the first instance, the Audit Committee made up of three independent supervisory board members assumes fully its role of assistant and partner by selecting two auditors and by scrutinising the internal and external audits. Control within the group is carried out at three levels (group, sector and profit centres), each person in charge is therefore heavily involved.

30 “Code of financial ethics”.
31 73% of supervisory board members have directorships in other companies.
32 I.e. double the recommendations made in the various Bouton reports. The rate of presence has reached 90%.
33 Seven meetings held instead of the four generally required.
34 Ernst & Young Audit and KPMG Audit
The internal control reference system chosen by Total (COSO\textsuperscript{35}) ensures the reliability of information and the compliance with laws and regulations\textsuperscript{36}.

Then the three-member\textsuperscript{37} strong appointments and remuneration Committee is entrusted with the role of proposing new supervisory board members and defining the remuneration of executives\textsuperscript{38}.

Executive management is articulated around the executive board (COMEX)\textsuperscript{39}, which is the actual board that implements the strategy previously defined by the supervisory board. The COMEX is supported by the Group Management Committee (CODIR)\textsuperscript{40} to carry out more relevant coordination and control of all the entities comprising the Total Group.

Small shareholders hold the majority of Total’s capital (84%), followed by executive management (9%) and intra-group holdings (6%). This distribution of capital leads executives to consider their decisions, thereby retaining a part of their managerial value (in accordance with the stakeholder approach).

Total’s corporate governance tends to steer towards a partnership approach, each supervisory board member acting in a defined and predetermined corporate interest. Beyond the immediate satisfaction of the shareholders, the aim of the organisation is the desire to fulfil, as best it can, the diverse expectations of stakeholders and to assume its social responsibilities.

\textsuperscript{35} Committee of Sponsoring Organizations (Treadway Commission).

\textsuperscript{36} Notably those in Section 404 of the Sarbanes-Oxley act.

\textsuperscript{37} Two must be independent.

\textsuperscript{38} 16.9 million euros in 2004 for the executives, including 8 million for COMEX (40% of remuneration is variable).

\textsuperscript{39} COMEX is composed of the Chairman and CEO and six delegate executive directors.

\textsuperscript{40} 22 representatives of the various activities of the group.
The rules that imposed themselves progressively on corporate governance are of a diverse nature, but all share the same aim: to enable the shareholders to trust within reason the executives whom they have selected. To that end, they tend towards several essential conditions, notably:

- The quality of information to the shareholders (about the state of the business, its aims, its policies, its results): such information must be (a) monitored by persons independent from executive management (auditors, supervisory board members, members of the audit committee); (b) as complete as possible; (c) really meaningful (hence the improvements of the value creation indicators); (d) comparative (benchmarking); (e) available immediately (see profit warnings); and of course public, or in any case perfectly accessible. In any event, failure to divulge information is severely sanctioned by financial markets.

- The reality of the power exercised directly by the shareholders: important decisions must be made during general shareholders meetings; and the board of directors that represents it must be endowed with real powers, notably on strategy;

- The convergence of objective interests between executive management and the shareholders: notably about the appropriate methods of remuneration for executives; or the progressive prohibition of cross-interests between companies and consequently between their boards of directors. In short, “Let us not ask that executives be saints: let us make sure that their well-understood purpose is indeed to serve us”;

- Finally, the protection of minority interests: notably the importance attached to the fact that a sufficient proportion of supervisory board members are ‘independent’.

The impetus of the global movement towards corporate governance has progressively modified the workings of businesses and the definition of their strategies. It has exercised a
powerful influence on market trust and consequently on the economic development of the planet.

**Evaluating compliance strategies: differences between creation and appropriation of value**

The question of evaluating the various types of corporate governance must not hide another fundamental debate about the ambiguities and the differences between the creation and the appropriation of value by the company. This discussion, even if it remains theoretical, allows some detachment from the legal frameworks previously presented and to relocate the discussion in the field of corporate strategy.

Publications in the field of strategy reveal several approaches, which oppose each other over the basic principles of explaining and forecasting company performance, and substitute the appropriation of value to that of value creation.

The notion of value appropriation stems from two trends in research on corporate strategy. In one of these, which has its roots in industrial economics (see Caves and Porter, 1977); the stress is placed on strategies aiming to position the company and/or to manage its actions with a view to facilitating the appropriation of profits within the company’s value chain. The second trend, the resource-based view, stresses rather the prevention of appropriation by other companies, of the company’s revenues by means of isolating mechanisms (see Rumelt, 1984). Both perspectives focus on factors touching on the appropriation of value but only provide scant explanation of the origin of the revenues. Essentially, both approaches look inwards at
the company and, therefore, partially hide the market mechanisms that might intervene in the
creation and accumulation of the company’s profits.

Moreover, these approaches are in contradiction with the approach on the creation of value
based on the notion of creative exchange. On this point, Moran and Goshal (1996) suggest
that such focusing on the appropriation of value as the essence of the business strategy is ill-
adapted and misleading, both as a description of what successful businesses are currently
doing and equally as a prescription of what businesses must do in order to achieve durable
success; the manner in which success is defined is of little importance. It must be pointed out
that these authors do not postulate any antinomy between creation and appropriation of value,
rather the complementarity in the construction of effective long-term strategies.

These two perspectives seem to be only compatible by being integrated to a wider vision,
which is that of value creation. Therein, the creation of value rests on the hypothesis that what
is good for Society is not necessarily bad for the company, and what is good for the company
is not necessarily a burden on Society. This presupposes a dynamic vision of the creation of
value based on continuing innovation; the benefits of which that are not translated as profits
for the company would become progress for Society (see Simon, 1991).

This analysis has allowed the justification of the articulation between creation and distribution
of value. It also illustrates that the use of the term ‘creation of value’ can be a source of
confusion. Contrary to a widespread notion, it does not hide the distribution angle, inherent in
any economic process, on condition that it rests on the hypothesis of a creative exchange
between the various participants.
Works on the theme of value creation reveal a large number of misunderstandings, but also close links between the creation and distribution, and creation and appropriation of value. In an attempt to clear up the confusion, the various approaches need to be put back into the theoretical, economic, political, social, etc. context in which they originated. Several paradigms have been prominent, based on the various types of relationships between a company and its environment. Research efforts seem to converge on the corporate quest for an optimal level of satisfaction of the various stakeholders (clients, shareholders, etc.); without regarding one of those groups as being superior to the others as the French framework suggests.

**APPRECIATION OF THE ADVANTAGES/BENEFITS OF THE VARIOUS SHAREHOLDER STRUCTURES**

Contrary to received wisdom, the ultimate aim of corporate governance is to optimise the value of the business for all stakeholders.

The appreciation of the potential advantages of different types of shareholder structures in relation to the quality of corporate governance is a function, partly of the balance between costs and profits linked to powerful control, and partly the advantages that executive management or the main shareholders grant themselves.

Fama and Jensen (1983) then Demsetz (1983) have analysed the link between the structure of the shareholdership, the performance and the value of the enterprise. Their works show that the concentration of business capital leads to limited efficiency and leaner profits. A way of
explaining the lower performance of some businesses with a family shareholding would stem from the existence of divergent interests between the controlling shareholders and the minority shareholders. For their part, Burkart, Gromb and Panunzi (1997) have shown that control exercised by majority shareholders allows a better-optimised use of resources, but is also likely to discourage initiatives from executives. Moreover, Bolton and Van Thadden (1988) have put forward the idea that the possession of a large block of shares had a positive influence on the results of the company but also had the disadvantage of causing a reduced liquidity of the shares.

Based on a sample of companies in the Standard and Poor’s 500 index, Anderson and Reeb (2003) showed that the performance of family-owned businesses was on average better than that of other businesses. The out-performance is very strong for companies with a family shareholding inferior to 32% of the capital then it declines after this threshold, whilst remaining positive. Harbula (2004) believes that beyond above that threshold, the intention of the family is to maintain control, which reduces its motivation to increase value. Besides, the author notes similar results in respect of French companies: companies with just one single majority shareholder have outperformed businesses with fragmented shareholdership. Measured against The Economic Value Added (EVA) benchmark, the latter generated a value greater than the average of the sample.

One of the main factors that can explain these results seems to be related to the specific characteristics of the large French companies included in the author’s sample. The latter are made up of nucleuses of shareholders and cross-shareholdings. This type of structure brings a form of security to executive management by locking up a significant part of the capital, which makes a hostile takeover difficult, as underlined by the author. Nevertheless, while it
protects and gives executives significant room for manoeuvre in their strategic choices, the risk of expropriation of the profits generated by this control remains a major preoccupation. Moreover, the long-term view adopted in that case can, paradoxically, be detrimental to the evaluation and the communication of results showing the good short-term performance of the business.

It seems therefore interesting that the hypothesis resulting from these works is that the relationship between the degree of ownership of the main shareholder and performance is not linear. It follows that the determination of the optimal level of share ownership in terms of yield (substantial liquidity offered to the minority shareholders, non-exclusion of hostile takeover opportunities, limitation of the expropriation of private profits linked to majority shareholder control) becomes a fundamental preoccupation (Harbula, 2004).

The performance and the creation of value of companies seems therefore linked to the nature of shareholding structure. It follows that attention must be focused not only on the intrinsic and sector-based fundamentals of a company, but also on the way in which it is managed and on the consideration that the shareholders and managers afford to minority shareholders and other stakeholders. This proposition calls for an accurate and deeper empirical examination.\textsuperscript{41}

\textbf{DISCUSSION}

The theoretical field and the practices of corporate governance have grown from the evolution of the operation of companies. Historically, successive thought processes, theoretical as well

\textsuperscript{41} For instance, we can suggest the use of indicators such as the Fortune Corporate Reputation Index and/or the Reputation Quotient (see Fombrun, Gardberg and Sever, 2000) in order to measure the value created by the various stakeholders.
as practical on this subject, have sought the best coordination and alignment of the specific respective interests of executives and owners. Under the influence of global exchanges, externalities between continents, nations and dissimilar categories of partners have multiplied. This global movement has amplified the necessity to steer the analysis and the control of organisations’ workings towards a true partnership in the decision-making responsibility.

This approach thus stimulates the emergence of new questions on the measures, the alternative models of governance (European, Anglo-Saxon), and the role of institutions in their development. From there, it is possible to draw up several investigative pathways on the performance vis-à-vis the different partners, the endogenous variables of value creation, re-interpretation of the creation of value and its distribution, and the possibility of substituting or complementing governance systems between partners, notably because of the cognitive cost savings that they are likely to realise (see Chatelin and Trébuck, 2003).

Lastly, the recurring drifts and the progressive evolution towards a unilateral approach to corporate governance may be the harbingers of the necessity to revise the workings of the established economic system. In other words, under pressure of events, the search for a balance in corporate governance seems to reveal the foundations of a new capitalism, the dogma of which being that ‘acting for the general interest would be acting for the shareholders’ interest’ (see Stiglitz, 2002).

REFERENCES


