MNC open offers under Sebi lens

16 Feb 2009, 0100 hrs IST, Vijay Gurav, ET Bureau

MUMBAI: Foreign parents of some of the smaller MNC subsidiaries in India may not be strictly adhering to Sebi's pricing norms while making an open offer in India, prompting the market regulator to look into such cases in the interest of shareholders.

While Sebi has prescribed specific norms for open offers resulting from an indirect change in control, the matter of concern, according to merchant bankers, is that promoters are not following a uniform method to calculate the offer price.

Such concerns relate to the reference date they consider while pricing the open offer. There have been many cases of indirect acquisition or indirect change in control, most commonly seen in subsidiaries of MNCs, where the parent company is acquired by another MNC through a global acquisition.

In such cases, the offer price — which is an average of past 26 weeks, or two immediately preceding weeks prior to the open offer, whichever is higher — has to be calculated, based on two reference dates: first, the date of public announcement for global acquisition of parent company and second, the date of public announcement for an open offer in India. The higher of the two prices worked out using two different reference dates should ideally be offered to shareholders.

Some feel no consistent policy is being adopted while pricing open offers in India. "In some cases, the date of announcement of global acquisition has been considered, and in some, it wasn't. It is only in current market conditions that such issues become relevant as the historical price will be higher than current prices," said a merchant banker.

Recently, Sebi sought clarification from Disa India, the Indian subsidiary of Denmark-based Disa Holding, on pricing of the open offer, after which the foreign parents have deferred the offer. They are also likely to revise the terms and conditions of the offer after Sebi issues its observations. The offer for an acquisition of 20% equity at Rs 1,657 per share was originally scheduled to open on February 5, 2009.

Disa India is the latest example of an indirect change in control, resulting from global acquisition of a parent. On March 11, 2008, Mid Europa Partners announced the acquisition of Disa globally from Procuritas. The global deal was completed on September 4, 2008.

About three-and-a-half months later, an open offer was made to shareholders of Disa India at a price of Rs 1,657 per share, which was based on the average prices for the 26-week and 2-week periods preceding December 17, 2008. The foreign parents have not considered March 11, 2008, the date of announcement of global acquisition, as a reference date for the calculation of the open-offer price.

"The term "Public Announcement' has not been defined under Sebi Takeover Code, which creates confusion about what reference date should be used for pricing the open offer," said Mehul Savla, CEO of RippleWave Equity, a Mumbai-based private equity firm.

In deals where the parent company was listed globally and there was an open offer, the date of global acquisition has been considered for pricing. However, when the global deal is between unlisted companies, there is no formal open offer and usually a press release is issued relating to the global acquisition, says Mr Savla.

Any global acquisition is subject to anti-trust approvals and take 1-2 months before the transaction is completed. In India, an open offer is generally made within four working days for any acquisition that results in any change in control. However, for indirect change in control, an open offer has to be made in India within three months of consummation of the global acquisition.