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Fortis Healthcare: Finding the best medicine

The legitimacy of Fortis' board is under question, and therefore, the legitimacy of the process it has adopted to sell the company is equally under question. Investors have called for greater independence at the board level to support an objective decision-making process. Yet, in continuing to rely on known associates, the board is widening the trust deficit with investors. Administering a selling process that limits the full discovery of price, leaves investors worried that they are being short-changed. IiAS believes the board should run a process that allows all potential bidders to bid, albeit within a tight time-line.

Investors have questioned the legitimacy of Fortis Healthcare Limited's (Fortis) existing board because all its current members have had past tenured relationships either with the Singh brothers, or with companies of the group. [Two institutional shareholders, Jupiter Asset Management Limited and Eastbridge Group that together hold 12.04%, have asked the company to convene an EGM](#) to remove the then four board members, and appoint three independent directors¹.

Investors want independent oversight on the sale process, yet they continue to be burdened by those associated with the group. Both Rohit Bhasin (appointed as an additional director) and [Deepak Kapoor, who has been appointed head of the expert advisory committee](#)², are closely associated with PricewaterhouseCoopers (PwC), a firm that has been the auditors of the Religare companies (companies by the same group) for a long period of time. Standard Chartered, which has been appointed to aid the expert advisory committee, was a large investor in Fortis in the past (through its private equity arm; [on March 31, 2017 Standard Chartered Private Equity \(Mauritius\) III Limited owned 3.05% of Fortis' equity](#)).

Because the board's legitimacy is being questioned, the process it is following for this sale is equally in question. Fortis' board heeded, only in part, [IiAS' advice on setting up a committee](#) to help it decide which of the five bids is best suited for Fortis. By allowing the committee to decide only on the binding offers, the board has already cut its wings: only two of the five are binding offers. [Brian Tempest, in an interview with CNBC](#), said that the board was looking at making a "wise decision" on the best suitor for Fortis. [As IiAS has argued before, at the very least, this means the company could put out a vendor information document](#) outlining all the potential risks associated with the acquisition – based on the outcome of the due diligence the Manipal-TPG combine has completed – or create a

¹ IiAS recommended voting against the appointment of Lt. Gen. Tejinder Singh Shergill as an Independent Director on Fortis' board at their recent postal ballot

² Renuka Ramnath, appointed as a member of the expert advisory committee, is an independent director on the board of IiAS.

data room that allows potential bidders a few days to comb through. If the argument is the financial urgency for a capital infusion ([Fortis Healthcare's debt is rated ICRA C / ICRA A4](#)), then [the Rs.1.6 bn loan it has recently raised](#) should help it tide over the immediate cash flow requirements. Given its credit quality, Fortis may well have to raise short-term finance at excessive rates; but surely, with five bidders for the business, access to finance will no longer be a concern for Fortis.

Fortis' acquisition is fraught with potential liabilities. The auditors while reviewing the second and third quarter results [have stated](#) that till the various investigations into the company's affairs are completed, they are unable to opine on the company's financial results, state of affairs, cash flows and operations. There is no clarity on the potential outcome of [Fortis getting impleaded in the Daiichi - Singh brothers litigation](#) (over Ranbaxy), the [outcome of an investigation into the alleged reuse of medical supplies by Fortis Mulund against FDA regulations](#), and a multitude of other issues.

Despite these uncertainties, for five bidders to stay in the transaction showcases the value of Fortis' assets, and this creates leverage for the board. With just two bidders being considered seriously this process loses its bite. IiAS argues that the true price discovery will occur only if more bidders are allowed to compete in the bidding process - with the confidence that they know what to expect. If all the five bid, the discovered price may well be above what they themselves have currently offered.

Price is not the only consideration in this battle. Each bid differs in its structure - some carving out parts of the business, some acquiring the entire company, while others limiting themselves to providing financial support. And, then there is the element of control. As [the current promoters own less than 1% of the equity](#), it's the board that needs to decide which of the bidders will be better suited to establish control. Does Fortis want to become controlled by an Indian hospital group? Does it want international parentage? Or does it want to be institutionally-owned and professionally managed? These are not easy decisions for the board, and decisions made by the current board are likely to be perceived as being laced with 'compromised independence'. Finding favour with shareholders, then, will likely to be difficult.

Fortis' current board should avoid making existential decisions for Fortis until shareholders have voted on the resolutions to overhaul the current board in the EGM called by its 12.04% shareholders. At the same time, it must simultaneously display greater boldness and more patience. We have seen an unprecedented five bids coming in for an asset. If the board continues its current path, we may see another unprecedented event: a Indian class-action suit.

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