Selling Twitter to Elon Musk Is Good for Investors. What About the Public?

The New York Times
By James B. Stewart
Tuesday, April 26, 2022

Twitter is "the digital town square, where matters vital to the future of humanity are debated," a triumphant Elon Musk proclaimed in announcing his deal to buy the social media platform.

In other words, Twitter is no ordinary corporation. It serves as something akin to a public utility, a unique global means of communication.

So should Twitter be governed like a conventional public company, with a board of directors focused primarily on reaping the greatest amount of money possible for shareholders, with little regard to the interests of other groups?

In the eyes of some influential business and legal experts, the answer is no. The company's directors should have also evaluated the qualifications of Mr. Musk to serve as a responsible steward for a vital public communications channel — and, based on the public comments made by Twitter's board of directors, there is no evidence that it did so.

"The board should have considered the interest of stakeholders like employees and users in evaluating the long-term value of the company," said Lenore Palladino, associate professor of economics at the University of Massachusetts, Amherst, and a fellow at the progressive Roosevelt Institute in New York.

Mr. Musk is a polarizing figure. He is a world-changing entrepreneur, responsible for companies, like PayPal and Tesla, that have revolutionized enormous industries. He has used his considerable influence — he has 85 million Twitter followers — to inveigh against what he sees as a censorious liberal culture in technology and media.

He is also at times reckless and capricious — traits that have landed him in trouble with federal regulators and on the receiving end of a defamation lawsuit, among other troubles. Just last week, he mocked Bill Gates's beer belly after the Microsoft co-founder was said to have bet against Tesla's stock price.

The question is whether any of that actually or should have factored into the decision by Twitter's board of directors to sell the company to Mr. Musk.

In recent decades American corporations and their boards have operated under a legal doctrine known as "shareholder primacy," which posits that corporate boards should focus on a single goal, which is maximizing returns to shareholders.

Bret Taylor, Twitter's chairman, hewed closely to that doctrine on Monday when he said that the board had evaluated Mr. Musk's offer by focusing on "value, certainty and financing" and that the deal would deliver a "substantial cash premium."

He might as well have been talking about a tool-and-die manufacturer.

There wasn't even lip service paid to Twitter's other stakeholders — its users, employees and advertisers, to name a few — or its profound importance to public discourse. It's unclear whether the board members, in what appears to have been a whirlwind weekend of deliberations, even touched on these topics.

Under current law, mostly established by Delaware courts, boards have "the discretion but not the obligation" to consider the interests of people other than their investors, said Jill Fisch, a professor of business law at the University of Pennsylvania Carey Law School. But few, if any, have exercised that discretion, she said.

In recent years, this shareholder primacy model has come under attack from critics who contend it has enriched shareholders at the expense of just about everything and everyone else: workers, customers, innovation, the planet.

"Corporate leaders and practitioners have been increasingly pledging to pay close attention to the interests of stakeholders, such as customers or society in the case of Twitter, and not only shareholders," said Lucian Bebchuk, a professor at Harvard Law School. Even so, a study of more than 100 recent $1 billion-plus deals that Mr. Bebchuk recently completed found that there had been little impact, with "large gains" for shareholders and corporate leaders and little or nothing for other constituencies.

The Twitter situation shows how "we need to fundamentally change the approach to corporate governance," said Ms. Palladino, the Massachusetts professor.

Mr. Musk has said he isn't buying Twitter to make money (even as he claims that he has plans to "unlock" the company's potential). That is arguably cause for concern. Public shareholders, like any other owner seeking to maximize profits, have a financial incentive to attract and maintain the broadest number of users. That means management needs to bar extremists, in order to avoid offending or driving away many more users, while seeking to prohibit as few others as possible, in order to increase the platform's value to advertisers.