

M&A Operations in the current context

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Introduction

- What do we understand as M&A?
- Why do companies merge and acquire each others?
- What legal operations of M&A can we contemplate?

M&A in context pre- crisis

- Operations:
 - Merger
 - Acquisition of public corporations: takeover
 - Acquisition of private corporations:
 - Open bid
 - One to one
- Bidders:
 - Industrial
 - Financial – private equity

A comment on valuation

- Multiples:
 - Enterprise value: Multiple of EBITDA
 - Equity value: $EV - \text{Financial debt}$
- Discounted Cash Flow
- Substantial value

A normal process – Open bid (I)

- Who is a seller?:
 - (i) family
 - (ii) private equity and other financial investors or
 - (iii) industrial changing strategy
- Start of process: Selection of investment bank:
 - Selection criteria
 - Role – Valuation / Preparation of Information Memorandum / Organisation of process / Help in negotiation
- List of potential bidders + Teaser
- Letters of interest + confidentiality letter + information memorandum

A normal process – Open bid (II)

- Non binding offers
- Selection of bidders
- Vendor's Due Diligence
- Data room + Due diligence
- Management Presentations / Visits on site
- Binding offers
- Share Purchase Agreement (SPA) + Connected contracts and documents
- Conditions precedent: antitrust authorisation
- Execution

A normal Process – One to one

- Letter of intent: legal nature and effects
- Due diligence + Negotiation
- SPA
- Conditions precedent
- Execution

SPA

- Object of sale: assets / shares
- Price: fix, variable, defferred
- Review of price: Net Financial Position / other parameters
- Conditions precedent: antitrust / consent of third parties
- Representations and warranties
- Indemnity: limitations / severability of sellers
- Guarantee: defferred price / bank guarantee / escrow /others
- Non compete / penalties
- After sale collaboration of sellers
- Connected contracts: Lease / License / Service and Labour contracts

Due Diligence

- Financial:
 - Object: financial statements / EBITDA / Debt / projections
 - Auditors
- Legal
 - Object: fulfilment of legal requirements / review of contracts / title of rights and assets / detection of contingencies
 - Areas: civil / real estate / corporate / administrative / intellectual property / labour / litigation / tort
 - Lawyers
- Tax
 - Object: detection of contingencies
 - Lawyers or auditors

Anti trust

- Relevance in M&A
- Relevant authority: European thresholds /
National level thresholds
- Absolute magnitudes
- Relevant market concentration

Private Equity

- Private equity industry:
 - Venture capital
 - Expansion
 - Leverage Buy Out (LBO)
- The economics of LBO activity
- The problem of financial assistance in LBO

M&A in current context

- Lack of financing
- Dramatic reduction in Private Equity activity:
LBO financing drastically cut
- Initially (2008) sellers still expected former prices:
 - Multiples pre crisis
 - EBITDA 2007
- Current (2009)
 - Expectations have dropped
 - Difficulties in the purchaser part

Operations in current context

- Seller near insolvency
- Seller in insolvency proceeding
- Purchaser lacking financing
- Price formulas:
 - Defferred
 - Earn out
- But the right moment to buy!