SPECIFICITATEA ACHIZIȚIILOR DE SOCIETĂȚI COMERCIALE

ec.drd. Demetra Lupu Visanescu
Universitatea din Craiova
Facultatea de Economie si Administrarea Afacerilor

Abstract: As you know, the external increase either deals of mergers type, or deals of acquisitions type. The substantiation difference which is between two types of deals is determined by the fact that mergers unlike acquisitions don't generate payments, the shareholders of the societies took over merger are paid with valuable titles of the society resulted after mergers. The aquisitions are those which dominate the international scene of deals with companies, the mergers represent less than 3% of total number of deals with companies. Actually, when mergers seem to achieve between two relative equal companies, the majority represents aquisitions because a company dominates/dictates the combining operation. The number of „real' mergers being so small, practically „the mergers and acquisitions" vise actually „the acquisitions". Further we will achieve a study of achievement approaches of acquisitions of economic entity which develop more and more striking at international level, and in Romanian economy.

Keywords : acquisitions,commercial societies

Deals of firms' acquisitions supose the taking over of control over target firms either direct acquisition of titles, or buying public offers.

Together with direct acquisition of titles is foolowed the capital disposal or taking over of participants with the goal to have an influence or a control over iot.

The capital disposal suposes the purchase of shares or social parts should not exercise an influence or a control over issuing a plus value of available capitals'disposal. The situation is opposite in the case of participants'taking over, which achieves with the goal to establish long period links with the society whose actions or social parts are bought, making an advantage through exercise an influence or a control.

The acquisition of a significant part of the capital of other firm is achieved through subscription at social capital in constitution time or increasing the social capital, with direct acquisition of titles from shareholders of vised societies-in quoted societies the titles'acquisition can achieve trough personal properties stocks-or title exchange.

The procedure which a natural or a legal person publishes his desire to acquire or give totally or partly the titles of a society represents purchasing or exchanging public offer. Traditionally, in practice are distinguished public offers of good purchasing and public offer of hostile purchasing. The firt offer is during restructuring process and it i s followed by a negociation agreement between purchasing society and target society. Unlike good purchasing public offer, unaccpeted by vised society, begins often a more advantageous purchasing counter-offer. In this way it can reach in situation which offer price is superior to market value of target society. To take over the control in the society which launched the hostile offer accepts to pay a big enough control bonus. The results of studies madi in the U.S.A showed „control bonuses associate at purchasing public offera increased with 35%".

Many times hostile purchasing public offersare destined to fail as happened with taking over of british American Tabacco Industries PLC by Hoylake made especially for it. The defensive strategy achieved by the management of target company, in our case BAT, launched by the document titled „Increasing Value of shareholders" rewsisted in the front of remarkable offer launched by Hoylake. In exchange, a big success of such hostile offer was the taking over by Vodafone Air Touch with help of France Telecom of german Group Mannesmann.

From technically point of view, the acquisition consists of taking over company or independent unit by other company with the purpose to large the patrimony of this economic entity. The international acquisition consists of taking over/transferring of assets and operations of a national company or branch in host country by/towards a foreign company, the first becoming a branch or subsidiary of the last.

From control view exercised in the obtained company, the acquisitions can have three forms:

minority acquisitions: the control of the company vises 10-49% of votes number of purchased company; (approximately one third of firms acquisitions total in developed contries were minority; in comparision with cca. one fifth developed countris)

majority acquisitions: the control of company vises 50-99% votes number of purchased company;

completed or integral acquisitions: 100% control (Completed acquisitions represented over half of toital number of mergers and acquisitions with firms in 2000.)

The acquisitions which involve less than 10% of financial assets of host company constitue actually, portofolio investments, wich represent clear financial investments and don't involve long time relationship, so these don't take part of our searching objectives, without minimize their importance (portofolio international investments had $105 billion, meaning 13 % of international mergers and acquisitions total, in 1999.)

Of course the four mergers categories are reproducible in case of acqusitions, with similar features, so they are:

horizontal acquisitions- International acquisitions cases are very numerous (It is the case, for example, of deals which resulted from big American trusts from the beginning of the century, as well as American Tabacco Company, Standard Oil Company, the acquisitions of vehicles devision Volvo by Ford Developing Romanian Bank by Societe Generale (December, 1998 etc). The repeated horizontal acqusitions represent in the same time, a valid alternative for an increasing strategy (We can say here the strategy of ConGra, which acquired: in 1980, Banquet Fooda, in 1983, Armour Foods, in 1986, RJR Nabisco Frozen Foods; in 1990 Beatrice Foods, in 1991 Golden Valley Microwave Foods.0 The justifying of this acquisition form stays in revaluation of significant scale economies, the increasing of market quote. The advantages which come from horizontal acquisitions stay in the increasing of incomes, strenght of negoociation force with mergers and customers, more effective promote of products, more efficient development and revaluation of ditribution cahnnels doubled by a bigger flexibility, followed by diminution or even elimination of competition (The acqusition of American Motors by Crysler, for example, the reason is that it was smaller than Ford or General Motors and the target firm was almost in bankruptcy). So, the horizontal acquisitions go often to takingover some firms with strong or weak different points by acquisition firm (for example, one can have a searching department-very strong development, meanwhile the other can benefit by a production department, ensemble or marketing), through junction whose increase of value chain of acquisition company, finall beneficiaries being shareholders.

vertical acquisitions-acquisition firm folllw mainly the exercise of a more increased control over quality and delivery of raw materials, of subensembles (in case of „up" acquisitions or products, over price policiesand, not finally, the ensurance of direct contract with customers (in case of „down" acquisitions). The advantages which come from this type of deals with firms are extremly tempted, the elimination of the dependence of extern mergers or the creation of own production unities. The vertical acquisitions can represent:

an extension of products- it takes place when are functionable links between acquisition firm and target firm, in production area or distribution and when commercial products don't compete directly, even if they are sold on the same maeket;

an extension of market- it takes place when both companies trade own products in different geographic areas, making easy the penetration of the target firm;

combination betwen both.

However, we meet famous vertical acquisitions (it is the acquisition case of Electronic Data System by General Motors, with the purpose to enter in new markets and to revaluate the distribution system of EDS to revaluate its own computer system. Other example iks offered by takingover in 1989 of oil exploitation company, Texas Eastern, by a takingover company and manufacturing of oil based products, Enterprise Oil , now these are very rare, from antitrust legislation views, and because of exercising control over the target firm isn't obligatory its acquisition (for example, Mark firm by Spencer, which profited by the fact that it has the capacity to act 75% of its mergers'production, they succeded to obtain either an advantageous price, or terms in exchange of a long term colaboration).

concentric acquisitions-the acquisition of related company (in this category takes part the acquisition of KFC, Pizza Hunt and Taco Bell by PepsiCo, on the one hand can be looked as horizontal acquisitions, on the other hand as vertical acquisitions, but which have a common point; fast food marketing and cooling drinks in the industry of restaurants.). The common element can be represented by using some similar production factors, as well as training of working place, equipments, capital resources or raw materials or common sale markets. In the international statistics of United Nations concentric mergers and acquisitions don't appear separately registered, these being integrated in the category of conglomerate acquisitions.

conglomerate acquisitions-these are developed between companies with total different activity and structure and knew a special ampleness during 1960s. The increase of interest for company acquisitions at a small price and resold of this (totally or partly0 at superior prices, the opportunities of these diversifying diminuated, the companies exercising a big interest in basis „core business" activity/ The main motivations of this form of acquisition consisits of reduction of risks of two economic entitites and shareholders, in the penetration in a very atttractive industry or speculations with companies. Operational synergetic effect is more reduced only in other acquisitions types or inexistent, but other favourable effect appear, as well as staff's flexibility, technology transfer or marketing apttitudes (takingover of Miller Brewing and 7Up by Philipp Morris represents conglomerate type acquisitions. The first was a success, while the second didn't reduce provided effects being sold to PepsiCo. A fail registered Mobil Corporation which acquired Montgomery Ward and Co, registering profits inferior to done investments.)

The ecquilibrium between 4 mergers and acquisitions types changed easy. However, the number of horizontal acquisitions increased during the time , number of acqusitions and valuable ampount (represent 56% of total number of mergers and acquisitions made in 1999 and 71% as valuable amount (except 1987).

In the beginning of mergers and acqusitions at the middle of 1990s, concentric or lateral integration received new valances being appealed more intensive. After these formed new areas and opened new markets, the engine of these trends were made by telecommunication area,. These firms made numerous mergers and acquisitions with IT-internet provider firms and informational technology firms (such case represents Mannserman by British Vodafone, however the last one became suddenly leader on German market and an important player on European unique market.)

With the agrre/disagree view of managerial teams of both companies, the acqwuisitions can have 3 forms:

good acquisitions: In the moment which an acquisition company identified a possible target, should establish an adecquate price or a band of a price which it is disposed to pay. In these criteria are decided the abordation way of managers'target company. If the acquisitions firm has reasons to believe that 2 managerial teams will communicate to shareholders these terms with the proposel to approve the acquisition. Supposing these are agrre, the acquisition firm buys the target company shares pauying own shares, cash or a combination of both. In this case the shareholders of the target company become shareholders of the acquisition company. Such deal id a good acquisition, being more frecquent between deals through acquisition.

hostile acquisition: in case when the target company management oppositeacquisition, from different reasons, the acquisition firm appelas dirwectly at thse shareholders and the situation can degenerate in a hostile deal. This firm makes often a purchasing offer which asks the shareholders who want to take the control to offer shares at certain price. The price can be exposed cash or shares of the acquisition firm. Because thepurchasing offer appelas directly at shareholders, this creates the premises that the acquirer buys step by step or unitary the company, even without manager's agreement. This offer is ussually named „takingover offer". But these offers can be good too, case in which the management of target firm recomand shareholders to offer their shares.

neutral acquisitions: In the last situation, the managers of the target company don't exercise any pressure over offers, meaning they don't refuse, but don't accept the offer. The situation of these acquisitions forms is bigger than hostile acquisitions.

In the last decade, the taking over and definite hostile mergers increased at cca. 5% of valuabele total amounty but less than 0,2% of total number of mergers and acquisitions. On the international market of merger and acquisition, in 1999 form cca. 17 000 deals, only 30 were hostile nature, according to UNCTAD> In 1987-1999, form 104 hostile takings, only 100 vised the target companies from developed contries, 4 of developed countries and none of them in European South-East countries.

Table no.1. Comparative analysis of firm mergeres and acquisitions from agreement perspective of contractant parts

Mergers	Acquisitions	
Good, achieved through negociation	Good	Hostile
1. Companies don't meet resistence of vised firm 2. Pay is made through change of shares 3. A single offer appears 4. An anticipated announcement is made 5. Management has an important quote of firm shares 6. The offerer firm with cash surplus searches a big opportunities target, but it needs cash.	1. Companies don't meet resistence of vised firm 2. Pay is made through cash or change of shares 3. A single offer appears 4. An anticipated announcement is made, only in a certain degree 5. Management has an important quote of firm shares 6. The target firm has performancews over middle of respective industry 7. The target firm comes from increasing industries 8. Tobin's rate of firm and industry is equal or bigger than target rate of hostile takingovers.	1. Companies don't meet resistence of vised firm 2. Pay is made through cash 3. The offer people are multiple 4. The announcement is anticipated 5. management holds a reduces quote in firm shares 6. The target firm has performances under middle of respective industry 7. The target firm comes from mature industries 8. Firm and industry rate is reduced 9. The offer people are plate.

Source: Hurduzeu, Gh, The acquisitions of firms on the capital markey, Rditura Economica, 2002, pg. 26

All these booms of hostile takingovers appeared in 1987s and 1997s (over 200, meaning cca 12% of the total of mergers and acquisitions closed every year0. For theirr calssification as hostile takings, the authors took in consideration next criteria: the deals for the first announcement, or closing the deals involved in an unrequired offer for the target company control or merger proposal with the presentation of a certain price (bear bug0; deals for a 12 months period before the publishing offer were registeres buyer's intensions of shares to capture target firm control of if there were serious ideas about achievement of a taking over; there were taken the deals of hostile considered by Wall Street Journal or Dow Jones New Retrieval and Securities Data Corporation.

Three formsa of previous acquisitions are the result of the counfuntation between strategic interdependence need and organisational sutonomy. After desired integration level, are distinguished 4 types of acquisitions:

absorbition type: in case which the options of participant parts at deal vises the obtaining of an increrased degree of strategic interdependence with the goalof touching presented profile, correlated with a reduced autonomy for touching this interdependence. The differences between initial firms, especially when these are big corporations, consolidation of operations and organisationa; culture of both company.

preservation: in the case that options of participant parts to deal vises an increased degree of startegic reduced interdependence, but a high autonomy degree. The preservation of firm autonomy of the target foirm has the objective of preservation for management methods, practices and present motivations, a possible elimination of them affecting the success of business.

symbiose-in case the options of participant parts at deal vises the obtaining of an increased degree of strategic interdependence and a high autonomy degree. In this acquisition form takes place a substantial transfer of apptitudes, but without modifies the acquired arganisational cappacities according to the acquisition. The main effect in progressive degree obtained through coexistence and mutual dependence more and more accentuated. The possible conflict between both featrures imposes the necessities of borders through their flexibility.

holding: in case the options of participant parts at deal vises the obtaining of an increased degree of strategic interdependence and a high autonomy degree. This acquisition vises the formation of a group of companies, which acquisition company has the right to take the control in acquired companies (Holdings appeared at the end of 19th century, when the legislation of New Jersey allowed the existence of corporations wich have the goal the acquisition of shares from other corporation. The efficacy of this method vis-a-vis of mergers stays less small acquisitions necessary for taking the control then a company as a total, as well as isolation of delivery channels of risks between possible lost company and mother company, in the limit of capital hold by the last one,. A major disadvantage of holdings represents the vulnerability in the antitrust legislation ant the risk that the profit be charged for more times: at the target company's level, at international transfer tine towards mother company, at its level ans shareholders'income.

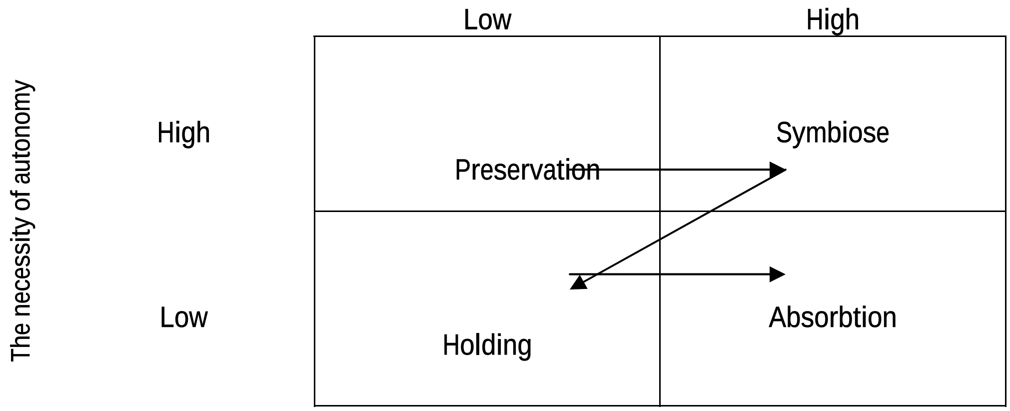
At their time, holdings seem in 2 forms, after their goal:

pure holding-when acquisition firm has onkly the financial control objective of the target firms;

mixed holding-when the acquisition firm developes own business activities in or near the target company;

Fig 2. Acquisition types after integration degree

Need of strategic interdependence



Source: Hurduzeu, Gh, Firms acquisitions on the capital market, Editura Economica, 2002, pg 41

From the horizont time view vised by investors, thse are who initiated the majority of deals, the acquisitions are classified:

strategic orientation- promoted by investors through combination, both companies will evidence the valuable chain. The expansion decision is motivated by the existence of operational and financial; synergies, so a big business development, with long term gain objectives.

tactic orientation-promoted by financial investors because the target firm is subevaluated on the market, and their goal consists of trading with firms. Their action is motivated by purchasing price more reduced reporting with the value of assets of vised firm (the existent differences) between stock capitalization and intrinsec value of firm or reporting with cash flux which should generate ina near future reported ti made investment (positive effect of financial; forced effect). The future of tactical acquisitions consisst of fact that acquired firm isn't incorporated in „mother" society being separately managwedf, independent of purchasing firm. The furctification of some opportunities through a bigger financial gain and a short time interval, constitute the main advantage of this acquisition form and with this goal is appelaed at borrows. The valorification of investment can take place in 2main ways: the sae of asset-stripping company or the sale of the firm as economic entity. Of course, sometimes, these acquisitions are hostilr, the result is preffered neither by shareholders, nor by managerial team of the target firm. This kind of parctices were frecquently in 1980s, the main promoters being so-called hunters, predators or raiders. A special category represents the inventors who acquire in stock shares of the target firm, which follows to be acquires before the officiasl announcement regarding the deal, waiting for a bigger price offered by purcheasing firm (arbitrageurs or the arbs).

The achievement techniquies of the acquisition type of commercial society are:

-agreement between firms, after negociations about closing a deal;

-approval of the acquisition terms by Management Councils of involved companies;

-the obtaining of the acceptance from shareholders;

-signing of the acquisition contract;

-the exchange of old shares with the firm shares resulted in taking over and the made of possible pays of shareholders who didn't accept the total takibgover.

In the case which managers of vised company reject any proposals, the acquisition firm can appeal at target firm shareholders through thender offer or takeover bid. These acqusitions are achieved through a lot of pay techniques:

cash offers-supposes the purcheasing of the target firm titles at a cash price. The advantages of this form of acquisitions stay in a fixed and sure price which the target firm shareholders will take, having a benefit of bigger cash, but it presents the disadvantage fiscal imposal wich gains are dued.

share-for-share exchange- supposes the titles exchange between acquisition firm and target firm, which can be titles emitted before operations or special for acquisition finance. The advantages of this form of acquaitioon consists of smaller financial effort of byuyers., the pay late of the income (the gain wasn/t registered0 and co-interesting of shareholders of both (or more) companies involved in deals for the firm and its evolution, but it presents diadvantages of costs of the new titles , the modification of market price of acquisition company and dilution of the control in the firm.

mixed public offers- it is more often pay form, which consists of combining of 2 techniques previous presented: cash amounts plus shares in exchange of the target firm shares. The advantages of both pay forms come over investors who choose for acquisitions through mixed public offer, ewhile risks gave by their diadvantages are diminished.

The achievement of purchasing public offer , as well as exchange public offer for the purpose of the acquisitions of control positions in the target firm has 2 different dimenssions:

Proceduyral normative dimenssion- linked by dimenssions and formalities involved in the launching and ending of a purcahsing public offer. In practice, are met 2 launching variants of this kind of offer:

normal procedure-with its main stages; constitution of offer, opperations made on stock in offered period and focus of purchasing public offer.

simplified procedure- the deal schedule is shoeter, as a general rule, the deal doesn't accompany by major confusions about the target firm; there take place in case of the acquisition of a smaller participation of 10%, as well as offers made by firms which hold the majority package of shares of the target firm. The specific of the last consists of the fact that their creator obliges himself to accept all titles which are presented as an answer at his offerand competitive offers aren't authorized.

Economico-financial dimenssion-about commercial and financial term for the succeded operation.

In conclusion, form their analysis, we can appreciate the deals of the acquisitions of the conomic entities which are considered being achieving modalitites of synergies. Suc reasons show the fact that thse represent the means of strategies of involved parts, of acquisition anf merger. Talking about reasons of acquisaitions form thier views we add new dimenssions at new created images: agency theory, a big empire. However neither these don't explain why wave deals appear, nor certain industriual sectors support periods which mergers and acquisitions are intensive. The explanation of these waves deals can achieve through changes which take place at legislation level in competitive and fiscal area.

REFERINȚE:

Săcărin M.	Grupuri de societăți şi repere ale interpretării conturilor consolidate, Ed Economică 2002.
Nussenbaum M.	Encyclopedie de gestion, vol. 3, Ed Economica, Paris, 1997.
Hurduzeu Gh.	Achizițiile de firme pe piața de capital, Editura Economică, 2002.
Comment R., Schwert W.	Hostillity în Takeovers: în the Eyes of the Beholder, 1997.
Schmitz PW, Sliwka D.	On synergies and vertical integration. Int J Ind Organ 2001.
Kesner IF, Shapiro DL, Sharma A.	Brokering mergers: an agency theoryperspective on the role of representatives. AcadManage J 1994.

Weston J, Weaver S. Mergers and acquisitions. The McGraw-Hill Executive MBA Series. McGraw-Hill, 2001.
Trautwein F. Merger motives and merger prescriptions. Strateg Manage J 1990.

World Investment Report, Cross – Border Mergers and Acquisitions and Development, United Nations, Geneva, 2000
UNCTAD, Cross-border M&A Database, 2001