IMPLICATIONS OF RESTRUCTURING ON
THE SME’s ACTIVITY

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ABSTRACT. The aim of this paper is to emphasize the importance of the operations of restructuring on small and medium enterprises in the current crisis. Small and medium enterprises can not face alone the current financial conditions imposed in particular by the phenomenon of globalization. Competitive working on world market requires the adoption of those measures for reorganizing the company to be taken in relation to the existing and new operational requirements that are necessary, the adoption of a system of effective flight management and an appropriate strategy.

Key words: restructuring, conflict of interests, M&A, LBO, MBO

JEL Classification: G34, J2, D74

1. Introduction

Most enterprises appeals to internal restructuring operations through mergers, partial consideration of assets or purchase of shares in other companies. The purposes for resorting to such operations may be:

- limiting the number of companies;
- The disappearance of companies that have no object of activity;
- compensation for poor or beneficiary results;
- Harmonization of the periodic and operational structure.

The merger is a form of restructuring operations based on common interests of the participating companies which aims increasing efficiency or elimination of potential competitors that would distort the optimum deployment of specific business.

Mergers were entered in the movements of concentration that have characterized the stage of economic development in the 1970. The aims were essentially economic, because mergers allowed companies to provide the most important technical structure, having direct consequences on the ability of competition. Only companies that have achieved a certain level of economic development were able to allocate resources for investment in research and development, thus have a competition advantage in relation to competitors and be able to penetrate new markets.

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Can perform restructuring operations both companies whose results are favorable but wish to consolidate market position and enterprises in difficulty to prevent a possible liquidation or dissolution of the company.

Such companies may resort to mergers and acquisitions "to gain access to more financial resources to achieve efficiency, to improve the competitive position or even to benefit from new opportunities."

Restructuring operations like mergers have different effects on participating enterprises in such operations primarily through extinguishment of the debt obligations following such compensation between the merging enterprises.

In some cases it is possible that the corporation which was formed by merger to benefit some production capacity of one of the old enterprises which normally would have purchased from third parties paying an appropriate price.

Acquisition are accomplished through the purchase of securities of the society envisaged in a proportion to which offer to the new shareholders the majority advantage in order to influence decisions taken by the newly formed company management.

In the years 2006-2007, the Romanian economy was faced with a number of issues arising from the transition and amplified by: the delay of finalizing the privatization, slow restructuring of some economic sectors of activity, relatively small number of banks, insufficient training of managers, and difficulties in the functioning of markets in a competitive way.

Other reasons which led to the slowing of the economic development: existence of a small number of entrepreneurs to develop well-founded marketing studies, to provide reliable information on the current situation and perspective of various internal and external markets, low level of the technical units of research and development.

In handling the issues related to merger and acquisitions, a very important aspect is the future structure of the corporate shareholders in what will shape the operations of economic restructuring.

Regarding conflicts of interest arising between the old and new shareholders believe that participating companies must know the following information:

a) In the event of privatization, the introduction of clauses by the state in the merger contract may lead to maintaining a significant capital in new companies created, however, this leads to changing the management team;

b) A motivation for taking control can lead to conflicts of interest between acquiring firm management and the target, target company taking steps to prevent the transactions;

c) Keeping a part of the capital of the new founded company in favor of the state lead to negative implications with a direct impact on ownership structure, in the direction of dispersion;

d) Reorganization has positive effects in the case of a concentrated shareholding of the new corporation;

e) A good cooperation between companies involved in restructuring operations can result in keeping the management team from the target company;

f) Managers’ agreement to start operations restructuring offers potential advantages in the greater opportunities to preserve their jobs.

Management structure in the new corporation can be significantly influenced by the laws and practices in the area in the country of one of the corporate partner where the operations of a company reorganization took place between two or more companies from different countries.

Thus, we should follow the issue on the capitation invested, the proportions of the local and foreign amounts. In this sense, we are particularly interested in whether the proportion of local or foreign capital will lead to the same proportion as the structure of the new corporation? If not, should highlight the factors that determine the changing of the leadership.

2. Developments in operations of mergers and acquisitions in Romania

By the year 2003, our country has recorded a low number of operations and mergers and acquisitions, the attractiveness of foreign investors being extremely low due to low economic growth registered in Romania until this year.

Since 2003, mergers and acquisitions market in Romania has witnessed new forms, some of these being very complex. Unlike ordinary transactions began to appear non-cash, earn-out or increase capital transaction for development.

Regarding the non-cash transactions, “many of them were not completed due to restrictions on the sale of the shares immediately and divergent visions on how to pay, meaning that Romanian shareholders are attracted by cash transactions.”

Romania was placed on the fifth place among the 11 countries of Central and Eastern Europe assessed on the activities of mergers and acquisitions in 2006, after Russia, Poland, Hungary and the Czech Republic, according to a report by PricewaterhouseCoopers.

During the year, total transactions reached 5.2 billion dollars, a slight decrease compared to 2005 when he came to 5.8 billion dollars taking into account transactions with foreign capital invested in Romania and the Romanian capital invested in foreign companies.

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3 Tiron Tudor Adriana, Combinări de întreprinderi: fuziuni și achiziții, Editura Accent, Cluj, 2005, p. 140;
But the fundamentals of the market have changed radically: while in 2005 a single transaction (purchase Mobifon by Connex-Vodafone) represented approximately half of the market in 2006 a number of increasingly high-value transactions with average value were completed.

As regards investment flows attracted by transactions in Romania, Austria takes first place in value invested (868 million U.S. dollars), money from the UK and the United States is maintaining the fifth place in the top, but the volume of investments were lower than the previous year followed by Indian investments (Ranbaxy - 324 million) and Romanian (about 8% of market value).

The most dynamic area of mergers and acquisitions in 2006 was the production with 21 deals, maintaining the leadership position during the past 4 years, closely followed by construction (including real estate) with 20 transactions, financial services with 17 transactions, media with 13, pharmaceutics and services, each of this with 12 transactions.

The most significant acquisitions of local companies in 2007 were the acquisition by Erste Bank for 7.2% shareholding held by BCR employees, estimated at around 543 million dollars, and the acquisition of the Therapy Company by the company Ranbaxy therapy for an amount of approximately 324 million dollars.

The most important acquisitions by Romanian companies of foreign companies in 2006 were the acquisition of RTB Bor Cuprom (complex of mines and foundries in Serbia) for an amount of 400 million dollars and the purchase of Petrom to OMV gas network from Bulgaria for 284 million dollars.

Following Romania's accession to the European Union there is an increasing number of opportunities for businesses in terms of activity that take place in the context of broadening the market and emphasis of the competition.

The mergers and acquisitions in Romania in 2007 have made strong progress, the value of mergers and acquisitions exceeding five billion, according to a KPMG study.

Thus, the biggest transaction was the Rompetrol, 2.5 billion, follows Petromservice approximately 300 million euro investment in Ford Automobile Craiova to 57 million euros etc.

Meanwhile, sectors that have attracted the most important investments in 2007 were real estate, financial services, retail and pharmaceutical.

Forecasts of the KPMG consultancy company showed that activity in the field of mergers in the Central and Eastern Europe in 2008 will increase by 72% while markets in Romania and Bulgaria will be the main target.

In future, the Romanian economy could be affected in 2008 by structural problems, the current account deficit is one of the factors is taken into account.

Regarding Western Europe, more than 8,000 investments were made in the first 10 months of last year, worth 950 billion euros, while in Eastern Europe were made around 1700 investment values around 120 billion.
Mergers and acquisitions market in Romania recorded 46 transactions in the first quarter of this year, totaling 631.55 million euros, down by 82% compared to the similar period of the last year.

During the first six months of this year have been concluded 78 transactions (of which only 43 announced value), which totaled less than 1 billion euros.

Graph 1. Market value of M&A

Source: Raiffeisen Investment

Global market for mergers and acquisitions (M & A) recorded a strong rebound in the first six months of 2009, returning to the level of 2003.

Consultants' fees obtained in mergers and acquisitions have come in the second quarter to the lowest level of the last decade, based on reducing the number of deals.

M&A Market was contracted worldwide with 36% less in the first half compared to the same period a year earlier, based on the volatility of capital markets and more difficult access to finance, which have "paralyzed" retailers and customers, while attention was captured by government aid.

3. Advantages and disadvantages of restructuring operations of enterprises

International practice has revealed a number of benefits of the restructuring operations of enterprises. In some cases it is more buying a business than internal financing of expansion when the replacement price is higher than the market value of the acquired company.
Horizontal mergers or acquisitions of companies that have a low market share, may lead to an increase in their market position and to lower costs. Also, vertical mergers and acquisitions lead to reductions in supply costs and to lower production costs because of the supply of raw materials of high quality and at prices more advantageous.

Effects of the acquisitions can be: “increasing their market power, overcoming barriers to entry, avoiding the costs involved in developing new products internally and bringing them to market, increasing the speed at which the firm can enter a new business, diversifying the firm more easily, and avoiding severe competition, often from foreign firms.”

Besides the advantages already mentioned, there are more issues that are often brought into question before starting the process of restructuring of various enterprises and that is the control on the new holding company formed through merger or acquisition.

The basic idea is that “the transfer of managerial control from the target to the acquirer may affect the internal governance mechanisms of the company, to the detriment of innovation activities.”

In the case of sleeping partners company or firms, partners can yield parts of the interest just in restrictive conditions, if this possibility was expressly provided in the constitutive act. Thus, the personal factor has here a role extremely low in the decision to change leadership of the new company, which may be an advantage for the old leadership in the sense that it can keep the workplace.

In the case of companies with limited responsibility, cession of their parts can be held with the agreement of members holding at least three quarters of the capital, so they may reinforce the old position.

There are situations in which mergers and acquisitions are done in an aggressive or hostile way, when the decision of reorganization does not involve the governing bodies of the target company, often in the case of takeover offers.

In connection with the legal field, in our country, the old shareholders have a preference right at subscribe the new shares issued by the company, in case of the capital increasing. In addition, the new shareholder can have control over the enterprise, if the old shareholders to give up to the right preference.

European Economic Community since 1978 issued Directive III of the mergers and acquisitions of public limited liability companies in order to protect the interests of the shareholders of the merging companies, creditors, bond holders and employees.

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Another important aspect of this problem is that the managers in both the acquiring and the target companies are expected to devote a lot of their time and resources to managing the operations, to the detriment of long-term activities and especially of Research and Development (R&D) investments.

4. Conclusions

In market economies, frequently changes occur in the number and size of enterprises so worldwide, take place concentration and restructuring of the economy achieved through acquisitions and mergers.

Firms must be competitive, innovative, and flexible so they need to use various operations to achieve their objectives.

Merger or acquisition can produce effects on all participants in commercial transactions, financial or otherwise, customers, suppliers, competitors of the donors or reorganized companies.

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