CROSS-BORDER MERGERS AND ACQUISITIONS (CbM&As) AFTER THE CONSTITUTIONAL REFORM

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Abstract

The implementation of Cross-Borders Mergers and Acquisitions has always been a tangible option in the mechanism of operation in a global market structure, since this one facilitates and improves the development of the economic interaction of the organizations; nevertheless, the study of this strategies is, in most of the cases, focus on searching the benefits and the grade of success of the implementation under the vision of the organization, giving the existence of the mergers and acquisitions through all the nations as a fact. This is how the interest to analyze how a modification in the constitution over an industry of a nation must be a factor that impacts directly the existence of this phenomena come up, as of the assumption that a modify of the constitution (not the regulatory framework) will impact over the presence of Foreign Direct Investment (FDI).

Key words: Acquisitions, mergers, FDI, institutions, reform.
JEL: G34, P11, L5.

Resumen

La implementación de Fusiones y Adquisiciones Trasfronterizas (FyATs) siempre es una opción tangible en el mecanismo de operación de una estructura de mercado globalizado, puesto que estas facilitan y mejoran el desarrollo de las interacciones económicas de las organizaciones; sin embargo, el estudio de estas estrategias está, en la mayoría de los casos, enfocado en buscar los beneficios y el grado de éxito de su implementación bajo la visión de la organización, dando como hecho la existencia de estas en todas las naciones. Es por ello que surge el interés de analizar como una reforma constitucional sobre la industria de una nación puede ser un factor que impacta directamente en la existencia de este fenómeno, partiendo del supuesto de que una modificación en la constitución (no del marco regulador) impactará la presencia de Inversión Extranjera Directa (IED).

Palabras clave: Adquisiciones, fusiones, IED, instituciones, reforma
1. Introduction

Since the late twentieth century, society has experienced changes in its daily development, work and social activities. All these changes occur as a result of globalization, which seeks to integrate all the elements mixed up in human development activities towards the homogenization of the same, achieving to eliminate barriers to this development. In pursuit of this optimization, the elements belonging to the system must compete to achieve the required position globally, and those who have reached their position should monitor since this position can be lost at any time.

Organizations are not immune to this system of global powers. Before the opening of international markets after the Second World War, there were those nations who envisioned the need for expansion of local organizations toward new frontiers and focused their attention on finding opportunities not possessed in their own territory, while others disobeyed of wrongly form the global trend and they chose to protect local organizations, nations which then would be forced to adapt to market needs, starting from lagging behind the competition system.

Due to this reason, organizations have sought various ways to achieve sustained growth, identifying mergers and acquisitions as an affordable alternative. This type of agreement enables organizations to share or obtain valuable resources, which can promote the development of an organization in the long run. These strategies have been the main reason why organizations have managed to compete on a global level, thus justifying the use of the same important for the development of a competitive advantage, presenting itself as a viable alternative to survive in the changing market.

This work was developed through a qualitative study on positioning strategies to CbM&As regarding the involvement of industry by changing the constitution of a nation, more specifically, in the country of Mexico to the Energy Reform presented by the federal government in 2013 and to take effect in the following year. Because of this, the theoretical basis is given by the theory based on institutions like the main pattern that describes the operation of organizations regarding the conditions raised by the State and society with the main objective analysis of the effects of such changes on the amount of mergers and acquisitions present in a nation.

2. Background

A. Mergers and acquisitions in Mexico.

The CbM&As become important in Mexico since served as a constant need for developing country organizations so that Mexican companies consolidated in the industry are those that were created or expanded from a merger or acquisition (Livio Rivers, 2005). After joining the World Trade Organization (WTO) in 1986, the country faced major structural changes due to the opening of trade borders and the crisis presented in 1982, the survival of organizations is largely due to the bailout granted by the government through various government policies
such as the program called Foreign Exchange Risk Coverage (FICORCA). However, such structural reforms and support trusts the government led organizations to seek a better market position which promote the presence of acquisitions and inclusive basis of the various production factors of organizations,

Because of the national restructuring, by early 90's the executive of Mexico chose to privatize a significant number of public companies, a move that encouraged the emergence of an interest in foreign investment on the national economy. In this context, in 1995 FDI benefited from the privatization through the acquisition of various industries such as railroad, port, airport and gas, with the end of the nineties about 800 inwards operations of CbM&As inwards representing 37,015 billion of foreign investment on national organizations (Garrido, 2001).

![Figure 1. Mergers and Acquisitions in México for the years 1990-2000. Source: Own elaboration based on data obtained in Garrido (2001).](image)

Added to this, the North American Free Trade Agreement (NAFTA) in 1994 forced Mexican firms to maintain a closer relationship with outside organizations, so developed certain partnerships, mainly with US organizations, in order to gain advantages over companies involved in the same industry. Unfortunately for domestic companies, US organizations had almost 100 years of experience in mergers and acquisitions, more than domestic firms which lacked the capacity to visualize beyond the context of cooperation in which they were mixed up.

Because of this, Mexican firms had to coin the concept of M&A a way of emergency so that one could understand the functioning of global markets resulting in the first link between local organizations. In 1994 the privatization of much of the banking system in Mexico, benefited local firms as acquisitions on this sector could only be made by national firms. This connection allowed them to strengthen the position of local firms since they began
to share knowledge, resources and skills from firm to firm, causing a synergy on a macroeconomic level (Rendón and Morales, 2014).

B. Characteristics of cross-border mergers and acquisitions.

Large companies of Mexico have consolidated to follow a trend of cooperatives that allows them to get diversified resources of both local and foreign organizations. Associations of firms in such cooperatives usually end in a merger or acquisition (Rendón and Morales, 2010). While not all mergers and acquisitions made by domestic enterprises are a success, it is important to emphasize that have been used as the basis for the consolidation of various organizations in the country.

To address the presence of this phenomenon is necessary to point to the “must” formalization of these combinatorial processes. Some authors like Livio de los Ríos (2005) state that the presence of these links in the industries are cyclically performed according to the fluctuations in the national economy, while Gary, Kahl and Rosen (2006) explain this process from changes to government policy and commercial barriers to entry. Ghose Ray (2010) for his part explained simply as an opportunity for diversification and expansion of knowledge and technology. Because of this, it can be identified several factors affecting the presence cross-border mergers and acquisitions in a country.

<table>
<thead>
<tr>
<th>Table 1. Factors that determine the presence of cross-border mergers and acquisitions</th>
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<tbody>
<tr>
<td><strong>Value</strong></td>
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<tr>
<td><strong>Cultural and geographic aspects</strong></td>
</tr>
<tr>
<td><strong>Trade barriers and taxes</strong></td>
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<tr>
<td><strong>Costs</strong></td>
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<tr>
<td><strong>Level of market development</strong></td>
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<td><strong>Valuations</strong></td>
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<tr>
<td><strong>Corporate governance</strong></td>
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While the table shows an overview of the presence of acquisitions and cross-border mergers within a country, it is quite complex to point out certain facts from the general to the individual since the analysis should be and not only from the perspective of organizations and their managers but it should take into account the changes in the environment in which organizations develop. However, accurately to identify these factors is difficult as markets act dynamically; it is why it should be studied specific cases to identify patterns of behavior.

3. Planning and definition of the problem.

Through this research it is intended to stress the importance of institutions on the presence of cross-border mergers and acquisitions in the nation by amending the laws on the operation of a sector. So that it can be formulated an identifiable pattern on these changes and creates a strategy to increase CbM&As activities of a nation and the implications these can have at macroeconomic level.

4. Objective research.

Based on institutional theory it seeks to explain the power exercised by the government over the presence of inwards CbM&As and thus solve the problem of lack of FDI. So the goal is to study the amendments to the constitution and attraction strategy inwards CbM&As.

5. Research assumption.

The treated phenomenon originates the following assumptions:

A. A constitutional reform on an industry guide to inwards CbM&As to have a greater presence in the country.

B. Due to the presence of more inwards CbM&As in a country, local companies are forced to adopt these techniques to expand, increasing the amount of outwards CbM&As.


So far, it has been presented the background of the importance that has had the presence of CbM&As in the Mexican economy through consolidation of companies in certain sectors. However, it is also true that over time it has shown that such cross-border strategies are taking an important context because the modifications that are made by the institutions on certain key areas with the implementation of various public policies. The study of these changes may provide a more detailed analysis and report on the relationship between CbM&As and the institutions.
The study of the factors that strengthen the presence of CbM&As helps organizations of developing countries to identify the industrial restructuring as an area of opportunity to diversify their operations. This is because it is conceived empirically that the process of integration of CbM&As often associated as the displacement of an organization in a country built on existing organizations in developing countries. However, there are cases of integration where organizations in an area less developed fail to achieve developed markets.

While there are studies on CbM&As from the standpoint of institutions, most are merely directed to the study of cultural factors and factor society. So, it ends up creating an enormous panorama of study of various homogeneous variables which make it impossible to point to specific details to identify those keys that change the presence of this fact. A focus on a specific event in time as it is the Mexican Energy Reform will enable to take a detailed "picture" of factor accumulation occurred in the time.

It is important to note that the study of this phenomenon is complicated by the spread of information, disparity between the data collected and lack of an official source (Livio de los Rios (2005). Together with most of it is collected by private institutions, leading to recommend for accurate study of this phenomenon, it must be generating a reliable and official sources to compile this information.


Recapturing the sense of the theory of institutionalism, the approach to the study of organizational development is from the realm of amendments that should be made to the structure, according to the various social arrangements. Then institutions are being vital for development of productive activities as production units are subject to the rules of the game. However, most of the literature developed to give explanation to the development of this phenomenon is given basically from a cultural and geographic focus, which is why authors detected that besides seeking to give explanation to this activity from the cultural aspect, are taking into account external factors connected with the implementation of public policy.

Kindleberger (2007) have purely focused on macroeconomic issues to explain the presence of CbM&As, argued that the presence of these would be increased when there was devaluation. Therefore, organizations involved in this activity are hoping to capitalize on this economic deficit or well make a profit by lower capital cost. In this regard Krugman (2000) explains that when nations have a deficit in their public finances level, firms in crisis are often sold to companies in developed countries.

In this context, the literature makes mention that there are factors in the economy that directly affect the presence of CbM&As, therefore now turn to look for a relationship between actions taken by governments on these fluctuations in the economies of countries. In this regard, to discuss FDI takes context as the calculation of this figure takes into account the cross-border mergers by country. Klein, Peek and Rosengren (2002) conducted a study that linked as increasing FDI in the United States was affected by the number of mergers by the same country.
While taking into account the FDI as a feature of the CbM&As, it leads to the explanation for their presence. It is difficult to take as reliable as each investment measures this country differently. Lin, Barth, Jahera and Yost (2013) focus their studies on the factors that increase the presence of CbM&As in the banking sector, one regarding the homogeneity of the banking regulation because it allows economies of scale. Because of this it should identify those public initiatives that promote the reduction of operating costs by allowing the expansion of markets. Focarelli and Pozzolo (2001) conclude that a regulatory system on the banking system it is reduced the amount of CbM&As by a nation.

Thus, Berger (2007) mentioned that the participation of foreign banks is limited due to the protectionism of countries and various regulatory barriers to the banking sector. These barriers increase operating costs making it impossible to achieve economies at scale level, therefore the presence of CbM&As is reduced. Explaining why there is a greater presence of CbM&As in developing countries is explained by Berger (2007), where his studies conclude that these countries often impose barriers to entry for foreign firms through subsidies. In this regard, Buch and DeLong (2004), argue that regulation of the banking system increase the presence of international banks acquisitions because the sense of transparency and accountability.

Therefore, it can be concluded that there is a strong positive or tax relationship between public policies and the presence of CbM&As in a nation. Lin, et al. (2014) conclude that there are two macro factors that determine the amount of outwards CbM&As in a nation, the characteristics of the industry and the country. So, if it is true that there is a relationship between the presence of this phenomenon and institutional changes.

There are characteristics of firms that can change the amount of these integrators, such as deficiency in costs, economic failure, control and governance processes. Holburn and Bergh (2013) mention that managers of the CbM&As take in adding uncertainty and synergies to be gained by performing such operations, the cultural distance of organizations and regulations on the industry. In fact, these regulations determine the industry operating costs in the industry. Further, they state that the laws of the nation set the interest of the CbM&As to operate in a country.

On the other side of Figueiredo and Silverman (2006), there are companies that can build relationships with political parties and make these groups to act on their behalf to increase the presence of international organizations in the country. Dinc and Erel (2013) questioned how governments affect the amount of local and international acquisitions, i.e., as the economy nationalist approach may limit the presence of foreign capital flows and therefore the existence of future acquisitions. The first to address this approach was Golay (1958) where he studied the effects of paternalism in acquisitions in Southeast Asia. The phenomenon becomes important in the last time, due to the financial crises which purchasers of firms that have impaired their economies will always be foreign to economic weakness and the government will try to take care of the national heritage.
In a more extensive analysis Bottazzi, Rin and Hellmann (2012), decided to conduct a more extensive study of the macroeconomics of the nation to determine the volume of the presence of the CbM&As are lower when the cultural distance is greater among nations. However, Morse and Shive (2010) found that patriotism is directly related to the investments received and these are affected in turn by the relations of foreign trade with the nations. Both conclude that there are more variables that determine the presence of this phenomenon within a nation.

In this context, Guiso, Sapienza and Zingales (2009) found that there is a factor that determines the presence of these groups in nations. Such factor was the value of trust. They say that there must be a higher degree of confidence in the government in charge of the country to receive a larger amount of foreign investment. This suggests that this type of trust will be given according to the political party that is in charge and its background in the management of resources. Dinc and Gupta (2011) state that countries further strengthening their institutions and finances are more likely to carry out privatization.

8. Research method

For the preparation of this study an empirical approach with a qualitative analysis is applied. It uses statistical bases of private institutions due to lack of government information. Data presented is considered relevant to explain the phenomenon and bring presents to signal the presence of the phenomenon described above. It is considered a descriptive study that takes the CbM&As as dependent variables present in a nation and as independent variables, constitutional reforms and macroeconomic signals provided from the perspective of the theory of institutionalism.

9. Analysis of results

The investigation has generally view the importance that have institutions so that indirect changes to the laws of the CbM&As remains a factor of change in their presence. However, it warns that there may be several factors that strengthen these fluctuations in the presence of the phenomenon. By the year 2013 the Federal Government of Mexico warned that there would be reforms in various industrial sectors of the country. It mentioned that these changes would provide stability and improve the macroeconomic environment in which the nation had been developed and would be in addition to Mexico a country more competitive.

The modification of the sector was directly aimed at attracting a larger amount of investment and thereby revives the national economy. Although, today the objectives pursued by the reform are far away of the proposed ones. This change was taken as well by the markets. On the other hand, macroeconomic indicators of the country remains volatile, presenting from the last quarter of 2014 continued devaluation of the national currency. Returning to Kindleberger (2007) this would increase the presence of CbM&As.
After reviewing the instability of the national currency's depreciation trend in figure 2, it is important to identify the dynamics of the presence of CbM&As in Mexico. For this, the report database Emerging Markets Information Service for the country in question is taken. While the macroeconomic environment in which they develop organizations would be unfavorable to the presence of foreign investment, the data show otherwise.

From year 2011 to 2012, it has an increase in the volume of CbM&As in the country of Mexico can be explained due to changing political bloc in the country, through the passing of National Action Party to the Institutional Revolutionary Party, the expectations generated this party change in the country can explain this first growth. Then for the period 2012-2013 a decrease in the volume of the phenomenon occurs. This is explained by the failure of the expectations generated by the change of government because of this in 2013 is presented the
proposal to amend the constitution to modify certain industries in the country. This presentation of change may have a direct impact on the growth obtained in 2014.

However, it is important to analyze whether this growth is not due to a trend of global markets for a greater number of CbM&As in this region of the world. For that, it returns to the same database to generate the statistic that can display graphically the trend who has had this phenomenon through the years in Latin America as warn Vaara, Junni, Sarala, Ehrnroot and Koveshnikov (2014) that most M & A are made based on cultural trends that are the markets. Therefore, this activity could be attributed to factors found in Latin American markets.

![Graph showing trend in CbM&As](image)

**Figure 4. Cross-Border mergers and acquisitions in Latino América 2009-2014.**
Source: Own elaboration with data presented by EMIS, 2013-2014.

This shows that although the trend in Latin America has been positive and the country of Mexico, it was following an industry trend, by 2014 Mexico continued the growth of CbM&As while Latin America decreased their amount of presence of this phenomenon with respect the previous year. Besides the trend in the region seem to stay standing by while that of Mexico nuanced growth and it is expected this trend to continue for 2015.

However, the analysis must be more extensive. Since then, it is made the qualitative analysis of the dynamics of the phenomenon both nationally and regionally. It is important to analyze the transactions performed by sector to determine if the CbM&As had a significant presence on the sectors that the constitutional reform intended to amend. These sectors are; telecommunications and energy. By 2013 the most active sector with CbM&As was the service sector. By 2014 the most active sector remained to be the service, however, the telecommunications sector was the one that had the highest value of transactions.

<table>
<thead>
<tr>
<th>Table 2. Top 10 F&amp;A in México for the years 2013 - 2014</th>
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<tbody>
<tr>
<td><strong>2013</strong></td>
</tr>
<tr>
<td>Company</td>
</tr>
<tr>
<td>Compañía Cervecera Coahuila</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Portafolio de construcción</th>
<th>Acquisition Services</th>
<th>Grupo Comex SA de CV</th>
<th>Acquisition Manufacture</th>
</tr>
</thead>
<tbody>
<tr>
<td>Satélites Mexicanos</td>
<td>Acquisition Telecommunications</td>
<td>Portafolio de Construcción</td>
<td>Acquisition Construction</td>
</tr>
<tr>
<td>Philip Morris de México SA de CV</td>
<td>Acquisition Food and beverages</td>
<td>Iusacell SA de CV.</td>
<td>Acquisition Telecommunications</td>
</tr>
<tr>
<td>Office Depot de México SA de CV</td>
<td>Acquisition Services</td>
<td>Grupo Cable TV SA de CV</td>
<td>Acquisition Telecommunications</td>
</tr>
<tr>
<td>Seguros Banorte Generali</td>
<td>Acquisition Finances</td>
<td>Portafolio de construcción Kansas</td>
<td>Acquisition Construction</td>
</tr>
<tr>
<td>Operadora Vips S de RL de CV</td>
<td>Acquisition Services</td>
<td>Grupo Fermaca SA de CV</td>
<td>Acquisition Transport</td>
</tr>
<tr>
<td>Grupo YOLI SA de CV</td>
<td>Acquisition Food and beverages</td>
<td>Iusacell SA de CV.</td>
<td>Acquisition Telecommunications</td>
</tr>
<tr>
<td>Banco Mercantil del Norte SA</td>
<td>Acquisition Finances</td>
<td>Sierra Oil &amp; Gas S de RL de CV</td>
<td>Acquisition Mining</td>
</tr>
<tr>
<td>Red de Carreteras de Occidente SAB de CV</td>
<td>Acquisition Transport</td>
<td>Minera Penmont S de RL de CV</td>
<td>Acquisition Mining</td>
</tr>
</tbody>
</table>

Source: Own elaboration with data from EMIS 2013-2014.

10. Conclusions

While the trend of CbM&As in Mexico came on the rise, the global trend declined just for the year 2014 while in Mexico continued to rise. Further, if the services sector continued to be the highest estimated trading volume, however, the number of CbM&As that were able to be placed in the top 10 are mostly in the telecommunications sector. Therefore, it can be inferred that had to some extent a degree of influence the energy and communications reforms presented in 2013. Also in the study, it is accomplished to display how currency devaluations in some way have affected the presence of CbM&As, yet in 2013 it was not met the assumption of Kindleberger (2007).

It is suggested that it should be conducted more studies that seek to correlate both variables besides looking for a data base of more sustained because a review of the databases presented disparities in data. It is necessary to review other studies of replicable cases to
determine whether Mexico was an isolated case of this phenomenon or has been the same in other cases where it has been presented an amendment to the constitution.

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