

market intelligence

M&A

*Global interview panel
led by Alan Klein*

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M&A IN ARGENTINA

Roberto Horacio Cruzel and Ramón Ignacio Moyano are partners at Estudio Beccar Varela and are members of its executive committee.

Roberto's practice is focused on M&A, providing general advice to companies, banks and financial institutions, debt restructuring and project financing. He has also been heavily involved in promoting pro bono services in Argentina.

Ramón specialises in giving general advice, which includes M&A, to companies and private clients. He recently advised Finlays (Swire Group) on the acquisition of Casa Fuentes, an Argentine company dedicated to the growing, processing and exportation of tea and yerba mate.

María Shakespear is a senior associate who specialises in M&A and corporate law. She recently advised sellers on the sale of FN Semillas (a seed company) to Bayer.

What trends are you seeing in overall activity levels for mergers and acquisitions in your country during the past year or so?

Maria Shakespear: There have been more M&A transactions to date in 2016 than in 2015 although the numbers are below expectations, probably because there is still a lack of confidence concerning political and legal stability.

Nonetheless we believe that Argentina is headed in the right direction. President Mauricio Macri, in office since December 2015, has proved to have more liberal policies and immediately took measures that tend to facilitate investments, such as the lifting of restrictions on foreign exchange markets and on payment of royalties and dividends abroad. In addition, he took other measures such as those to guarantee transparency in official Argentine statistics and many others. The rate of inflation has been more controlled in recent months, which may cause confidence in Argentina to grow. Finally, the fiscal transparency regime, public-private partnerships (PPPs) and other incentives will probably pour money into the market, creating investment opportunities. As a consequence of this, together with the fact that assets are still cheaper in Argentina than in many other Latin American countries, we do see light at the end of the tunnel and plenty of M&A opportunities in 2017.

Which sectors have been particularly active or stagnant? What are the underlying reasons for these activity levels? What size are typical transactions?

Ramón Moyano: The agribusiness and banking and financial sectors have been very active. As an example of the former, we advised Grupo Don Mario, a group dedicated to research, development and commercialisation of seeds, in the sale of the company LDC Semillas to Gabla, a company engaged in the commercialisation of soya beans. We also advised Simplot, one of the largest privately held food and agribusiness companies in the US, on a new stage of joint venture with local players. The global discussion regarding mega mergers, such as those between Bayer-Monsanto and Dow-DuPont, will definitely have an impact in Argentina, where agricultural production and farmers play a relevant role.

In the financial and banking arena, the sale of Deutsche Bank AG and the sale of the retail business of Citibank were the most high-profile to date in 2016. In addition, there are other banking institutions that may change ownership and some foreign banks that are considering coming (or returning) to Argentina, either as a representative office or a local bank, as there is still room to penetrate the financial market. However, compared to other countries in the region, private credit penetration is still at low levels, as reported by the World Bank development indicators.



Maria Shakespear

Roberto Crouzel: The renewable energy sector has been particularly active, mainly as a consequence of applicable regulation, which will gradually make it mandatory to obtain energy from renewable sources. After the public tender that called for offers to produce renewable energy, the outcome has been that the offers (from companies from different parts of the world) exceeded by around six times the megawatts that were tendered. The government is currently reviewing the offers.

The energy and natural resources sectors also promised to be particularly active and, indeed, there was a lot of activity in those sectors in recent months but, possibly as a consequence of the delay in the adjustments of tariffs, the activity turned out to be less relevant than expected.

The infrastructure sector was stagnant, but is now showing signs of activity as a result of new law initiatives (eg, the PPP bill).

What were the recent keynote deals? What made them so significant?

RHC: We consider the Deutsche Bank and the Citibank consumer business deals the most relevant of 2016 because of the amounts involved and the complexities of the deals in such a regulated market.



“During 2016, the landscape for mergers and acquisitions, and for both local and foreign investments in Argentina, has become friendlier to investors from a regulatory standpoint.”

In your experience, what consideration do shareholders in a target tend to prefer? Are mergers and acquisitions in your country primarily cash or share transactions? Are shareholders generally willing to accept shares issued by a foreign acquirer?

RHC: Mergers and acquisitions in Argentina are primarily cash transactions. Nevertheless, shares do sometimes play a part in transactions. One example would be the merger between CSAV, the Chilean shipping company (the largest in Latin America) and Hapag-Lloyd (a German company), in which CSAV exchanged its container shipping business for a 34 per cent stake in Hapag-Lloyd. CSAV is now expected to make an additional capital injection in Hapag-Lloyd worth US\$509 million in order to finance refurbishment and maintenance works on the merged company’s fleet. Our firm advised CSAV’s subsidiary in Argentina on the due diligence process and other Argentine law-related matters.

In general, we would say that shareholders in Argentina are willing to accept shares issued by a foreign acquirer but that they are not used to doing so. This may occur in sophisticated transactions and require sophisticated shareholders willing to invest simultaneously in Argentina and abroad.

How has the legal and regulatory landscape for mergers and acquisitions changed during the past few years in your country?

MS: During 2016, the landscape for mergers and acquisitions, and for both local and foreign investments in Argentina, has become friendlier

to investors from a regulatory standpoint. As a consequence of this and the stabilisation of the inflation rate, Argentina is becoming a point of focus for overseas investors that intend to strengthen their businesses in the Latin American market.

The main decisions adopted to help create more attractive options for investment and business development are the lifting of barriers for payment of dividends and royalties abroad as well as the new foreign exchange regime (ie, Argentine residents are no longer required to transfer the funds disbursed under financial loans received from abroad into Argentina and convert them into local currency). Another example is the elimination tax on dividends (Law No. 27,260). The removal of such restrictions is very important for investors and has often been a deal breaker for prospective M&A in Argentina. With regard to foreign trade matters, procedures and requisites for the export and import of goods and services have been softened too – the DJAI system, which involved former import affidavits that needed the approval of several national agencies, has been replaced with the Import Monitoring System. This system still requires prior approval, but only for certain products, and regulations have set forth several automatic approvals that have shortened the timing of import procedures.

Small and medium-sized enterprises are also being fostered with attractive tax regimes (Law No. 25,300 as recently amended) and legislation aimed to boost entrepreneurs’ activity is likely to be passed in the coming months (ie, the Entrepreneurship bill that includes crowdfunding and other financing tools is presently being discussed in Congress).

Last but not least, the ‘tax amnesty’ regime regulated by Law No. 27,260 is an amnesty for taxpayers who have until March 2017 to disclose undeclared assets, within Argentina and abroad, without the need to repatriate them to Argentina (the aforementioned Fiscal Transparency Regime). Individuals, undivided estates and companies will be able to adhere to the regime by paying a special tax (of an amount between 5 per cent and 15 per cent) or may avoid payment at all if the assets are invested, for example in bonds or in investment funds. Such investment funds are specifically regulated by Law No. 24,083 and Resolution 672/16 issued by the Argentine Stock Exchange Commission (CNV). There are already a number of funds that offer investments in areas such as real estate, infrastructure and renewable energy. This will probably foster Argentine capital investments and associations with foreign capital in Argentine businesses.

Describe recent developments in the commercial landscape. Are buyers from outside your country common?

RM: Foreign buyers are very common in Argentina. The lifting of restrictions and constraints (mentioned previously) was the most important step in the commercial landscape and already brought local players that know the market to the scene. An example of this worth mentioning is the acquisition of Deutsche Bank by Banco Comafi (a local financial entity) or the acquisition of Ades (an Argentine brand owned by Unilever in the region) by Coca-Cola (which has knowledge of the market).

In addition, the investment funds that are already being offered in the market will probably channel funds from the Transparency Regime but remain flexible and convenient tools for investment in Argentina.

Are shareholder activists part of the corporate scene? How have they influenced M&A?

MS: In general terms, shareholder activists are not relevant in the M&A scene in Argentina as typically there are only a few shareholders per company (usually the majority of shareholdings are concentrated in one or two groups). There are not many listed companies in Argentina.

Argentine Capital Markets are regulated by Law No. 26,831 (the CNV Law) and a set of rules issued by the CNV. Regarding minority shareholders, there are several corporate governance provisions that account for recognition of minority shareholders’ rights, including the possibility to actively participate in the companies they have a stake in. For example, minority shareholders can challenge the purchase price of their shares in a public offering, there are guidelines for determining if an equitable purchase price has been settled and the control of the company cannot be acquired without giving notice to minority shareholders (so they are given the



opportunity to sell their shares at the same price). The control of the CNV in listed companies has increased under the CNV Law and, under certain circumstances, small investors can request the CNV to intervene on their behalf.

RHC: On a different note, there is a growing interest in Argentine companies to pursue initial public offerings (IPOs), following the success of Havanna (a local confectioner) and Grupo Supervielle SA (a provider of financial services) in their IPO in New York in the first semester of 2016. This tendency is motivated by companies that foresee an improvement in Argentina’s economic conditions in the near future, and in light of this, aim to secure financing to gain a competitive advantage. Their success also reflects foreign investors’ growing level of confidence in Argentina.

Take us through the typical stages of a transaction in your jurisdiction.

MS: A transaction in Argentina can start in different ways according to the needs and characteristics of the particular case. There is no mandatory proceeding to be followed although the path is more regulated when the target company is a listed company or belongs to a highly regulated market (ie, financial institutions).

It is typical for the selling party to prepare the target company for the sale. The seller may hire an adviser to prepare a valuation of the company, define the strategy of the transaction and assist the seller throughout the deal.

Once the valuation of the company is completed, depending on the structure of the deal, prospect buyers are contacted (a one-to-one approach is advisable to avoid it being seen as a public offering of the shares) usually through the advisers hired.

THE INSIDE TRACK

What factors make mergers and acquisitions practice in your jurisdiction unique?

Compared with similar business in the rest of Latin America, prices in Argentina are six to seven times cheaper. This is likely to be the case only in the short term, as investors expect a more favourable business environment, in accordance with the pro-market legislation agenda set forth by the current administration. As a result of growing finance opportunities, it is expected that Argentine assets will gain profitability and be more competitive.

What three things should a client consider when choosing counsel for a complex transaction in your jurisdiction?

First, counsel should inspire clients' confidence and trust, making them feel supported. Second, in Argentina, clients have to make sure that the lawyer has high ethical standards in addition to a high level of professionalism. Third, the lawyer should consult with a fully integrated team with the ability to cover different legal areas required for a complex transaction.

What is the most interesting or unusual matter you have recently worked on, and why?

The most interesting or unusual matter we have recently worked on was a merger between Visa (the credit card company) and Banelco (the ATM company) and two other companies (Monedero and Prisma), where Estudio Beccar Varela acted as deal counsel of the transaction. It was a very interesting because it involved a stock purchase agreement and a merger involving 15 major Argentine financial institutions.

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The first step is usually to execute a confidentiality agreement to protect the target and any of the information to be provided, as well as to keep the deal itself under confidentiality conditions. Then a teaser or 'book' of the target company is sent to prospective buyers including its history, chart with shareholders, products and services, brands, financial statements, projections, etc.

After the seller has decided to engage with a buyer or a shortlist of determined prospective buyers it may execute a memorandum of understanding, a letter of intent or a term sheet. Sometimes, prior to the execution of any of these documents, the purchaser is allowed to make a preliminary or limited due diligence or sometimes the seller provides sell-side due diligence.

Once the preliminary agreement is executed, the parties agree on the extension and scope of a due diligence (if this was not agreed under the memorandum of understanding). It is usually carried out through virtual data rooms or by putting at the prospective buyer's disposal the requested

information in a defined location. It involves teams of lawyers, accountants, finance experts, operational, technical and human resources teams from the buyer side. The due diligence stage is critical for the success of the transaction, mainly in the determination of the price (including the possibility of retaining a portion of the price in an escrow) and in determining the existence of deal-breaker contingencies (which in Argentina are usually related to labour, foreign exchange and environmental matters). The due diligence ends within the time frame agreed upon and with the delivery to the buyer of a report prepared by the buyer's lawyers and accounts team.

Conducting management meetings has proven to have a relevant added value to transactions, providing buyers and sellers with not only the chance to meet face-to-face but to gain guidance on aspects of the target company that do not appear clear from the documentation provided in the data room.

If the due diligence outcome is positive, meaning that no deal breakers were found, a negotiation process of the key findings may be started along with the negotiation of the transaction documents.

The closing of the transaction is reached with the execution of the sale and purchase agreement, which may also involve the execution of an escrow agreement (to cover contingencies) and a shareholders' agreement (if the sale does not involve 100 per cent of the shareholding). Also, an insurance coverage to cover contingencies, reps and warranties is increasingly being requested in the region. Subject to the characteristics of the transaction, a filing requesting antitrust authorities' approval (or other regulatory approvals as applicable) may be mandatory. In addition, post-closing tasks contemplated in the transaction documents are carried out.

Are there any legal or commercial changes anticipated in the near future that will materially affect practice or activity in your country?

RHC: There are a number of changes in the commercial and legal fields that are already being considered and that are shaping our practice. Apart from the examples we've already mentioned, the PPP regime can be considered as 'up-and-coming'.

Congress is discussing a bill (the PPP bill) that will foster cooperation between the public and private sectors in order to finance infrastructure and high-cost investments. Other Latin American countries have adopted instruments like this with the same objectives. It is a flexible tool that aims to attract millions of funds to tackle infrastructure problems in a context where the need for investments (including technology, capital, know how and administration of public constructions) in infrastructure in Argentina is so great that it could not be faced by the public or private sectors alone.

In that sense, the regulation tackles typical risks that the private sector faces in public matters by regulating an agreement where public and private

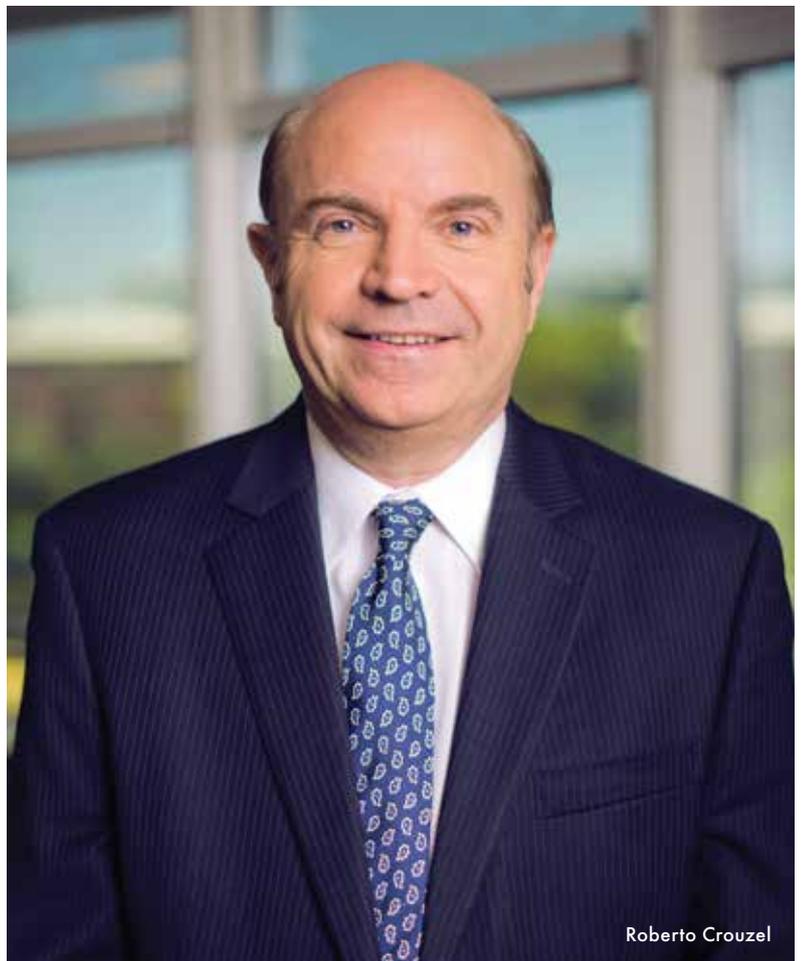
rights and obligations are defined and aligned for the public building or the rendering of services. One of the main aspects is that the state has limited its ordinary prerogatives (ie, changing of conditions based on public interest, the private party may allege breach of the state to suspend its own obligations), there is more clear risk allocation, specific determination of obligations and penalties for breach, payment in due time is regulated and review of price adjustment procedures are also delimited, among others.

RM: On a different note, the new Civil and Commercial Code (Law No. 26,994 passed in 2015) introduced some changes to the Companies Law, the most relevant being the provision stating that companies of a single member or shareholder can be validly incorporated, which was not previously permitted. This will allow single entrepreneurs to limit their liability regarding a given business that was usually a request of foreign investors that are used to these kinds of structures.

What does the future hold? What activity levels do you expect for the next year? Which sectors will be the most active? Do you foresee any particular geopolitical or macroeconomic developments that will affect deal sizes and activity?

MS: If the land is fertile, flowers grow on their own. Argentina is well prepared for transactions to take place and we therefore expect the M&A landscape to flourish. There are businesses that have grown in Argentina and are seen as very attractive, such as those in the agribusiness, mining and energy sectors. These kinds of businesses require capital and investment to continue to grow in the future and, compared with similar businesses in the rest of Latin America, prices of assets in Argentina are still cheaper. We expect to have a challenging year at Beccar Varela, working hand in hand with our current and prospective clients in their new projects. Providing that the environment becomes friendlier for investors, M&A transactions will undoubtedly take a leading role.

RHC: In the long run, we expect that other kinds of businesses will also prosper in the region and we are already adapting legal structures and documents to accommodate for this. For instance, the B corporations use their power in the market to find solutions to social and environmental problems (that is to say, to make money by running a business with social or environmental impact) and are being well received by the general public as well as by current and prospective investors. These companies are particularly interesting for the new generation of investors that want to do business with a real sense of purpose (not just to make money) and who want to carry out transactions in a positive environment, while valuing the principles of general welfare. In the local market, there are a number of examples



Roberto Crouzel

of these companies (ie, Greca, Mafia Bags, La Costurera and Guayaki). In Argentina, there are no regulations on B corporations and any company willing to become such a corporation has to obtain a private qualification or certificate from B-Lab. In the belief that the 'responsible corporations' have come to stay, Beccar Varela has been part of the drafting commission who drafted the bill regulating the B corporations in Argentina and has a very active role in advising these kinds of corporations (our clients are Emprendiem, Sabe la Tierra, En Buenas Manos, Appright, De la Nada and Libertate). In July 2016, President Macri submitted this bill as an initiative and it is now being discussed by Congress.

In addition, the need for conscious decision-making is becoming a global trend and big companies do not want to lag behind. In this regard, large global companies are getting involved with B corporations and increasingly tend to request that their own providers comply with certain core standards of B corporations (eg, mindful environmental policies and diversity of employees). More generally, large companies are also taking responsibility for their impact on local communities and for letting consumers know about their commitment to being responsible and sustainable.

As to any particular geopolitical or macroeconomic developments that will affect deal size and activity, we believe that the much anticipated recovery of Brazil's economy, Argentina's main political and economical partner, will have a positive effect on business activity in the region.

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