



**HAL**  
open science

# MERGERS AND ACQUISITIONS COMPARATIVE ECONOMIC ANALYSIS OF LAWS: FRANCE vs USA

Georges Cavalier, Thomas Straub

► **To cite this version:**

Georges Cavalier, Thomas Straub. MERGERS AND ACQUISITIONS COMPARATIVE ECONOMIC ANALYSIS OF LAWS: FRANCE vs USA. Program in Business Law, 2008, Essex, United Kingdom. <hal-00325835>

**HAL Id: hal-00325835**

**<https://univ-lyon3.hal.science/hal-00325835v1>**

Submitted on 30 Sep 2008

**HAL** is a multi-disciplinary open access archive for the deposit and dissemination of scientific research documents, whether they are published or not. The documents may come from teaching and research institutions in France or abroad, or from public or private research centers.

L'archive ouverte pluridisciplinaire **HAL**, est destinée au dépôt et à la diffusion de documents scientifiques de niveau recherche, publiés ou non, émanant des établissements d'enseignement et de recherche français ou étrangers, des laboratoires publics ou privés.



HAL Authorization

**MERGERS AND ACQUISITIONS  
COMPARATIVE ECONOMIC ANALYSIS OF LAWS:  
FRANCE vs USA**

Georges A. Cavalier<sup>1</sup>  
*Maître de conférences*  
University Jean Moulin (“UJM”) – Lyon 3

Thomas Straub  
*Professor of Management*  
University of Applied Sciences Bern

---

<sup>1</sup> Comments are welcome: [thomas.straub@bfh.ch](mailto:thomas.straub@bfh.ch) or [cavalier@univ-lyon3.fr](mailto:cavalier@univ-lyon3.fr).

## Summary

*“From the economic point of view, common law is more efficient than civil law.”* Is this recent statement published in an economic report valid for mergers and acquisitions (M&A)?

The main objective of this paper is to compare the legal performance of M&A in France and in the United States. The purpose is to quantify the impact of both legal systems on the long-term performance of M&A transactions.

To carry out this research, a specific methodology was developed and the results of which are evaluated. Two legal structures for M&A transactions were retained: the purchase of shares (share deal), and the purchase of assets (asset deal). Each of these acquisition structures was then subdivided into eleven steps composing the process, for example from preliminary information, letter of intent, due diligence, stock or asset purchase agreement, closing, to litigation with formal summons.

Performance was then measured by taking into account *time*, *cost*, and *satisfaction* factors. The time factor was broken down into person-days and the number of days, weeks, or months required to complete each step. French and U.S. respondents were asked to fill out a questionnaire with reference to a specific acquisition project. A typical question was for instance: *What is your estimate of working days to complete this step (person-days)?* Radar charts were used to compare the mean of each performance factor. In order to check for correlations among the performance factors, an inter-factors analysis (regression) was carried out.

The research findings are presented in this paper. Results show that a share deal in France is generally cheaper and participants indicate a significantly greater amount of satisfaction than in the U.S. However, for the time factor, the results vary. The conclusion is that the application of the civil code rather than common law does not reveal substantial differences as far as M&A transactions are concerned. One reason is that in both France and the U.S. these transactions are carried out following standard procedures in compliance with common contractual practices.

## Table of Contents

<u>Summary.....</u>	<u>2</u>
<u>I Introduction.....</u>	<u>4</u>
<u>II Improvements to the Doing Business Methodology.....</u>	<u>6</u>
<u>III New Research Methodology.....</u>	<u>7</u>
<u>IV Research Findings.....</u>	<u>10</u>
<u>A. Main Results.....</u>	<u>12</u>
<u>B. Detailed Results Based on the Transaction Structure.....</u>	<u>14</u>
<u>1. Share Deal.....</u>	<u>15</u>
<u>2. Asset Deal.....</u>	<u>16</u>
<u>C. Interfactor Analysis.....</u>	<u>17</u>
<u>V Conclusion.....</u>	<u>18</u>
<u>A. Tentative Explanations of the Research Findings.....</u>	<u>18</u>
<u>B. Limitations.....</u>	<u>21</u>
<u>C. Future Research.....</u>	<u>21</u>
<u>Annex 1: Year of the Deal (%).....</u>	<u>24</u>
<u>Annex 2: Extracts from the English Version of the Questionnaire.....</u>	<u>25</u>
<u>Annex 3: Informant Competence: Position.....</u>	<u>33</u>
<u>Annex 4: Informant Competence: Year of Experience.....</u>	<u>34</u>
<u>Annex 5: Informant Competence: Involvement in M&amp;A Activities.....</u>	<u>35</u>
<u>Annex 6: Scaling Details.....</u>	<u>36</u>
<u>Annex 7: Interfactor Analysis.....</u>	<u>38</u>

---

## I Introduction

1. “From the economic point of view, common law is more efficient than civil law.” This is the somewhat alarming message transcribed in the *Doing Business Reports* published by the World Bank.<sup>2</sup> *Doing Business* addresses elementary business operations such as setting up a company, layoff of workers, etc, and examines relative time and cost issues. In 2007, France improved its rank by 4 points, reaching the 31<sup>st</sup> position, just after Korea.<sup>3</sup> Following that wake-up call, the French Ministry of Justice and other legal practitioners and scholars across France launched various research projects to evaluate the economic attractiveness of French law as compared to that of American law. A group of these professionals was mandated to examine the economic attractiveness of mergers and acquisitions (M&A) in France.<sup>4</sup>
2. Discussions on the increase in volume and value of M&A during the last decade have become common in economic and business press. According to an article in the *Neue*

---

<sup>2</sup> See the various reports published since 2004 and available on <<http://www.doingbusiness.org>>. See also ASSOCIATION HENRI CAPITANT, LES DROITS DE TRADITION CIVILISTE EN QUESTION – A PROPOS DES RAPPORTS DOING BUSINESS DE LA BANQUE MONDIALE, Société de législation comparée, 2006 ; S. Valory, *Promouvoir le droit français*, Droit & Economie 2005, n° 93, p. 6, and the interview from Ms. E. Filiberti (p. 9); compare *Entretien avec Bertrand du Marais*, Rev. Lamy dr. aff. 2005, no 79, p. 3, and F. Rouvillois (dir.), *Le modèle juridique français, un obstacle au développement économique ?*, Paris, Dalloz, 2005. B. du Marais (dir.), *Des indicateurs pour mesurer le droit ? Les limites méthodologiques des rapports Doing Business*, La Documentation Française, Paris, 2006, 153 p.

<sup>3</sup> France did not score better in 2008, remaining the 31<sup>st</sup>, right before Slovakia: see *Doing Business 2008*.

<sup>4</sup> See the research program “Economic Attractiveness of Law” (*Attractivité économique du droit*) available at [http://www.gip-recherche-justice.fr/aed/publications\\_va.htm](http://www.gip-recherche-justice.fr/aed/publications_va.htm).

*Zürcher Zeitung*,<sup>5</sup> the M&A carousel turned faster than at any other time during the last five years.

3. Is the World Bank's statement "*From the economic point of view, common law is more efficient than civil law*" also valid for M&A? The main objective of this research is to compare M&A legal performance in France and in the United States. The research was divided into two sub-parts: first, to compare the legal performance of *share* deals between the two countries, and, second, of *asset* deals.
4. The World Bank's statement lays down the hypothesis that the international research team (the "Research Team") set out to verify.<sup>6</sup> When the Research Team analyzed French M&A rules, they realized that the reasoning is not always purely legal. For example, for a *share* purchase agreement, the French Supreme Court (*Cour de cassation*, hereafter "*Cour de Cassation*") agreed with a Court of Appeal decision, which upheld for "valid consideration" ("*cause réelle*") the transfer of 90% of the shares of a company in difficulty, for a negative price, which would absorb liabilities.<sup>7</sup> Even if the price of the stock was absorbed by the liabilities, the seller's advantage in the acquisition would subsist.
5. While it is one thing to use economic analysis to interpret a contractual concept,<sup>8</sup> it is still another to say that there is a general economic analysis for M&A.<sup>9</sup> Even if economic aspects of M&A are familiar to French lawyers, there is little publication in a law and economics perspective. The purpose of this paper is to quantify the impact of the French and the U.S. legal systems on the long-term performance of share and asset deals.<sup>10</sup>

<sup>5</sup> Neue Zürcher Zeitung. 2005. *Mächtiger werdende Wellen von Fusionen und Übernahmen. Nach den "Mega-Deals" kommen in Amerika die kleineren Fälle aufs Tapet.* Neue Zürcher Zeitung, Oct. 15, 2005.

<sup>6</sup> The team was based in Switzerland (Universities of Bern and Geneva – Prof. Thomas Straub), the United States (Louisiana State University – Prof. Olivier Moréteau), and France (University Lyon 3 – Prof. Yves Reinhard and Georges Cavalier).

<sup>7</sup> Cass. com., Feb. 22 1983, Bull. civ. IV, no 72, p. 61; JCP G 1983 IV 150, which upheld the decision from Paris, 3<sup>rd</sup> ch., June 24, 1981, D. 1983, somm. comm. 71, J.-C. Bousquet; see also, among an abundant literature, C. Freyria, *Le prix de vente symbolique*, D. 1997, p. 51.

<sup>8</sup> Like the Romanist concept of *causa* ("*cause*," sometimes roughly translated with the English concept of "*consideration*") or good faith.

<sup>9</sup> See also J. Mestre, *La distinction du fait et du droit en matière économique*, Droit et technique de cassation, *Cour de cassation*, Oct. 2005, invitation available on <http://www.courdecassation.fr/manifestations/manifestations.htm>; O. Favereau, *Qu'est-ce qu'un contrat? La difficile réponse de l'économie*, in LE CONTRAT, Dalloz, 2008, under the direction of C. Jamin (in press).

<sup>10</sup> Long-term performance (or *effectiveness*) is under investigation, not short-term performance (or *efficiency*).

6. Improvements to the *Doing Business* methodology were suggested (II), and a specific research methodology was developed (III). Results, tentative explanation, and proposals for reform (IV) are presented below.

## II Improvements to the *Doing Business* Methodology

7. The methodology of the *Doing Business Reports* measures the economic performance of a few legal operations, using *time* and *cost* factors.<sup>11</sup> With complex transactions such as M&A, some authors<sup>12</sup> demonstrated that there are other variables that influence long-term performance of a company.<sup>13</sup> In general terms, the “*recent change in the environment of companies, including rules and regulation, play an essential role in the company’s choice of strategy and determines the consequences of diverse strategic decisions.*”<sup>14</sup>
8. First, the *time* factor is not sufficiently representative. For instance, 5 persons can carry out a task in one day, but the same task may require 5 days to be carried out by one person. Therefore, the Research Team divided the *time* factor into *person-days*, which represent the amount of work done by one person in a day, and *step-time*. This latter measurement estimates the number of days, weeks, or months required to complete each phase, irrespective of the number of persons working to complete the phase.
9. Second, *time* and *cost* are essential factors for measuring economic performance, but may not be sufficient to determine the operation’s level of success. For example, a lengthy and expensive M&A transaction can still be successful economically speaking, and vice versa. Other authors evaluate economic performance by interviewing business leaders and M&A specialists to assess their level of *satisfaction* following the transaction.<sup>15</sup> Therefore, as an improvement to the *Doing Business* methodology, the Research Team included the factor *satisfaction*.

---

<sup>11</sup> *Doing Business 2008* changed, to some extent, the methodology: see *Doing Business 2008* (French version), p. 72.

<sup>12</sup> D. K. Datta, G. Pinches, Factors Influencing Wealth Creation from Mergers and Acquisitions: a Meta-analysis, *Strategic Management Journal*, 1992; T. Straub, Reasons for frequent failure in Mergers and Acquisitions: A Comprehensive Analysis, Deutscher Universitätsverlag (DUV), 2007.

<sup>13</sup> D. K. Datta, G. Pinches, Factors Influencing Wealth Creation from Mergers and Acquisitions: a Meta-analysis, *Strategic Management Journal* 1992.

<sup>14</sup> *Id.*

<sup>15</sup> J. Veiga, M. Lubatkin, R. Calori, P. Very, *Measuring Organizational Culture Clashes: A Two-Nation Post-hoc Analysis of a Cultural Compatibility Index*, Human Relations, Sage Publications, Ltd. 2000, vol. 53, p. 539.

10. Third, *Doing Business Reports* are based on a limited number of answers to a questionnaire.<sup>16</sup> The answers are subjective and may not be statistically representative. Therefore, as an improvement to the *Doing Business* methodology, a larger number of answers were gathered. These improvements are included in the new model developed by the Research Team.

### III New Research Methodology

11. The model designed by the Research Team is detailed below.

12. Three legal methods for implementing M&A transactions were first identified: the purchase of shares (*share deal*), the purchase of assets (*asset deal*), and the *merger*. In the United States the merger is a type of share deal.<sup>17</sup> The Research Team therefore decided therefore to include the merger as a type of share deal. Consequently, the main distinction is between a share deal and an asset deal. Each of these two methods was then divided into eleven phases: (1) preliminary information, (2) letter of intent, (3a) financial audit, (3b) legal audit, (4) share or asset purchase agreement, (5) ancillary documents, (6) regulatory authorizations, (7) closing, (8) post-closing, (9a) litigation without formal summons, and (9b) litigation with formal summons. Details of these phases are provided below.

13. The preliminary information phase (1) starts from the first informal contact with the company being acquired (Target), including instructing lawyers, business bank, and identifying constraints such as timetable, up to execution of the confidentiality agreement (included).

14. The letter of intent phase (2) starts from the execution of the confidentiality agreement, including discussion on the planning of external communication, first legal implications, deal structure, and ends with the letter of intent (included).

15. Due diligence starts with posting the due diligence request list, including the audit-investigating process in the data room, and ends with the share/asset purchase agreement (excluded). In the due diligence phase, the Research Team distinguished the *financial* and the *legal* steps. The *financial* due diligence process (3a) concerns accounting verification, financial audit, balance sheet and profit and loss account validation, etc. The *legal* due diligence process (3b) concerns the audit of contracts, litigations evaluation, environmental issues assessment, etc.

<sup>16</sup> The number of experts interviewed increased in the *Doing Business 2008* report.

<sup>17</sup> According to interviews with practitioners.

16. The share or asset purchase agreement phase (4) starts with the negotiation of the agreement, including discussion of drafts, negotiation of the representations and warranties (if any), the indemnification period, the schedules, the timetable for execution, and ends with consulting the Workers Council and the execution agreement (included).
17. The ancillary documents phase (5) starts with the negotiation of the ancillary documents, which include escrow and shareholder agreements, minutes of shareholders' meeting, financing and labor contracts, intellectual property licenses, etc. up to execution (included).
18. The regulatory approval phase (6) is the process of obtaining the Competition Authority and other regulatory approvals to complete the transaction.
19. Closing (7) starts a week preceding the closing date, at which time certificates or other documents are delivered, and payment/share/asset are transferred.
20. Post-closing (8) is the phase after the closing date: typically, this is where price adjustment (e.g., earn-out) occurs, and indemnity requests are made. Disputes however are not included in this phase, as phases 9a and 9b are specifically dedicated to dispute assessments.
21. The litigation phase (9a and 9b) includes any disputes which occurred after the deal. Two types of disputes are distinguished: disputes *without* formal summons before a court or an arbitration tribunal, and disputes *with* formal summons. The first set of questions (9a) was to evaluate whether disputes *without* formal summons had occurred; the second set of questions (9b) was to evaluate disputes which occurred *with* formal summons.
22. The performance is measured by evaluating each of the above phases in relation to *cost*, *time* (*person-days* and *step-time*), and *satisfaction*.<sup>18</sup> The responses were reported on a Likert scale, numbered 1 (very low) to 5 (very high); each number corresponded to the respondents' best perception. The main reason why self-perception was used was that M&A detailed secondary information<sup>19</sup> is rarely

---

<sup>18</sup> J. Veiga, M. Lubatkin, R. Calori, P. Very, *Measuring Organizational Culture Clashes: A Two-Nation Post-hoc Analysis of a Cultural Compatibility Index*, Human Relations, Sage Publications, Ltd. 2000, vol. 53, p. 539.

<sup>19</sup> Primary information allows the reader to access original and unedited information. Primary information requires the reader to interact with the source and extract information. Secondary information is "edited primary information," that is second-hand versions. They represent someone else's thinking. For instance, authors writing about the merger between Mercedes and Chrysler are providing "secondary" information about the merger. "Primary" information about the merger would be information from the merging companies themselves.

available. Moreover, the research shows that self-perception measures are dependable, in particular when evaluated by top managers.<sup>20</sup>

**23.** The following questions were asked:

- What is your estimate of the number of working days to complete this phase (*person-days*)?
- What is your estimate of the *time* needed to complete this phase (days, weeks, or months, depending on the question)?
- What is your estimate today of the *cost* (euros) to complete this phase?
- How *satisfactory* was this phase for you?

**24.** The respondents were asked to answer the questions in reference to a specific acquisition (the “deal”) that occurred preferably between Jan. 1, 2000 and Dec. 31, 2004,<sup>21</sup> and where both the acquirer and the Target were privately held companies and located in the United States or in France. Therefore, transnational deals or deals where the Target was listed on a stock exchange, were not included in the scope of the study. Also, the type of companies under scrutiny was specified in the hypothesis. The following information was requested: details on the economic sector (services, industry, both) of acquirer and Target; specific activity, number of employees, annual turnover (before tax) of the acquirer *after* the deal; turnover (before tax) of the Target *before* the deal; complexity, number of sites of Target, number of type of products sold by Target, number of national markets in which Target operated, number of employees of the combined company after the deal, etc.

**25.** In this study a cross-sectional research method based on a sample survey was used to test a comprehensive model. According to Churchill (1999),<sup>22</sup> a cross-sectional study is the best-known and most important type of descriptive design if measured by its frequency of use compared to other methods. It is the predominate mode of analysis in empirical economic research (Bowen and Wiersema 1999).<sup>23</sup>

---

<sup>20</sup> P. R. Nayyar, On the Measurement of Corporate Diversification Strategy: Evidence from Large U.S. Firms, Strategic Management Journal 1992, vol. 13, p. 219.

<sup>21</sup> Both in France and in the U.S., approximately 60 % of the deals under investigation were legally completed in year 2004: see pie chart on Annex 1, p. 24.

<sup>22</sup> G. A. CHURCHILL, *MARKETING RESEARCH: METHODOLOGICAL FOUNDATIONS*, Harcourt, New York, 1999.

<sup>23</sup> H. Bowen, M. Wiersema, *Matching Method to Paradigm in Strategy Research: Limitations of Cross-Sectional Analysis and Some Methodological Alternatives*, Strategic Management Journal no 20, p. 625-636 (1999).

26. The questionnaire was developed with two phases of pre-test. A sample with more than one thousand potential informants extracted from the database *The Leadership Library*<sup>24</sup> was contacted in the United States, and in France using local professional organizations.<sup>25</sup> The questionnaire was published on Internet<sup>26</sup> and the data were collected on an Excel table. According to the methodology, the legal factors represented some *variables*, independent of one another, which influenced the post-merger or acquisition economic performance.
27. Because the data on each deal were obtained from a single respondent, the data quality was highly dependent on the informant's competence. In the survey the informant competence was tested by a number of questions about tenure and position. Most informants were attorneys (partners or associates), C-level managers, and/or heads of M&A.<sup>27</sup> The informants were therefore highly competent to respond to the survey. More than 70% of the respondents had worked for their current company for more than six years and provides additional confirmation of the participants' competence. Furthermore informant's competence was also measured by asking about their involvement in M&A activities. The results show that all the informants were involved in M&A activities. More than 60% were *much* or *very much* involved.<sup>28</sup>
28. The distribution of transaction years was similar in both countries. 41 responses came from the US and 34 from France. The response rate was 5.4% of the sample population. In addition, no significant non-response bias was identified.

#### IV Research Findings

29. In the following paragraphs the research findings according to the objectives are presented. A radar chart presents the results and allows identifying all the phases of the transaction process. These phases are abbreviated as follows:
- *PrelimInfo* (step 1): preliminary information;
  - *LOI* (step 2): letter of intent;

---

<sup>24</sup> See <http://www.leadershipdirectories.com>.

<sup>25</sup> The French Society of General Counsels (*Association française des juristes d'entreprises*) – (<<http://www.afje.org>>), and the French society of Business Attorneys (*Association des Avocats Conseils d'Entreprises*) – (<http://www.avocats-conseils.org>).

<sup>26</sup> The questionnaire was available in French and in English at the following Internet address: <http://fdv.univ-lyon3.fr/fusac/>, an extract of which is in Annex 2, p. 25.

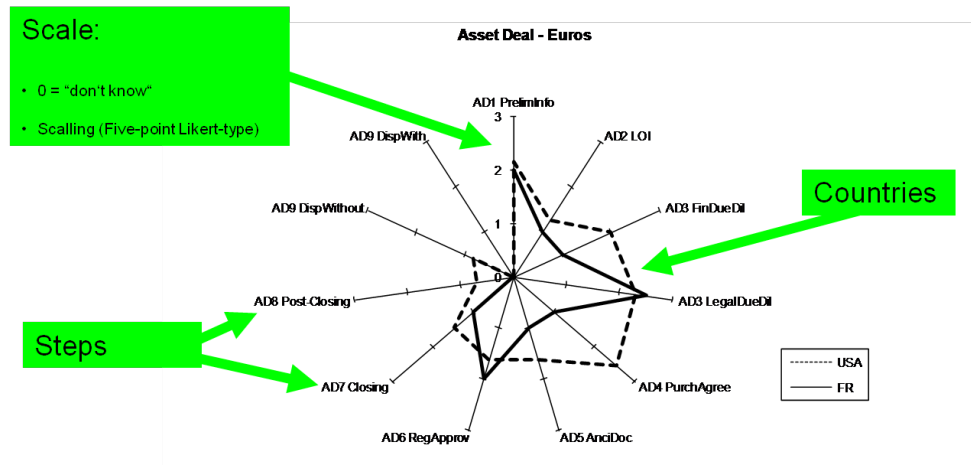
<sup>27</sup> In the US 80% of the respondents to the questionnaire were partners of law firms, and 40% in France: see bar chart in Annex 3, p. 33.

<sup>28</sup> See pie charts in Annexes 4 and 5, p. 34.

- *FinDueDil* (step 3a): financial audit;
- *LegalDueDil* (step 3b): legal audit;
- *PurchAgree* (step 4): share/asset purchase agreement;
- *AnciDoc* (step 5): ancillary documents;
- *RegApprov* (step 6): regulatory authorizations;
- *Closing* (step 7): closing phase;
- *Post-closing* (step 8): post-closing phase;
- *DispWithout* (step 9a): dispute *without* formal summons;
- *DispWith* (step 9b): dispute *with* formal summons.

30. As mentioned (see supra § ), the results were scaled from 1 up to 5,<sup>29</sup> where the result “1” indicates “very low,” and 5 indicates “very high.” As a consequence, the score of 5 is very good for *satisfaction*, but is a bad score for the *cost* and *time (person-days and step-time)* factors. For each country, the scaled results were reported on the radar chart, using a dotted line (-----) for the U.S., and a straight line (——) for France. The reading of the radar chart is as follows:

Figure 1: How to Read the Results



31. Results are discussed below: the main results (A) compare M&A legal performance in France and in the United States irrespective of the deal structure. The detailed results are then discussed based on the transaction structure (B), that is the comparison of the

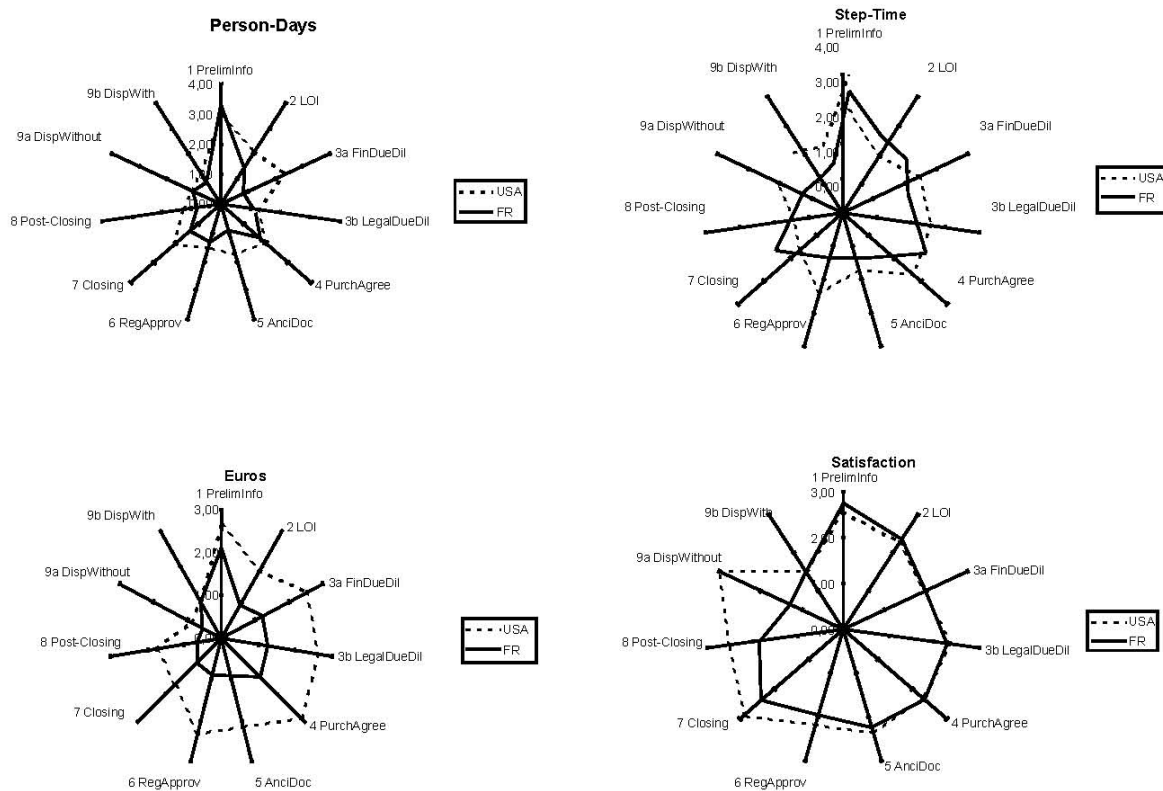
<sup>29</sup> For scaling details, see Annex 6, p. 36.

performance of *asset* deals and *share* deals in France and in the United States. An interfactor analysis (regression) was carried out to test the accuracy of the results (C).

### **A. Main Results**

**32.** The main objective was to compare M&A transactions, irrespective of their legal form. The comparative analysis of both countries provided the following results:

Figure 2: Research Findings Summary: Person-Days, Step-Time, Euros, and Satisfaction



33. The results show that in general M&A transactions in France are cheaper and require less *person-days*. However, there is some variation depending on the step. M&A transactions in France need fewer *person-days* for all steps, except for the *Dispute without formal litigation* phase (9a) where person-days are the about the same in both the U.S. and France. With respect to *cost*, M&A transactions in France are significantly cheaper for all steps except for step *Dispute with formal litigation* (9b) where costs are about equal for both countries.

34. The results for *satisfaction* and *step-time* are not as uniform. Satisfaction for steps starting with the exchange of *preliminary information* (1) to the drafting of *ancillary documents* (5) is approximately the same in both France and the U.S. This is also true for step *Dispute with formal litigation* (9b). However, satisfaction is notably higher in the U.S. from step *Regulatory approvals* to *Dispute without formal litigation* (6 thru 9a). With respect to *step-time*, the results show that neither country has an overall advantage in the time required to complete each step. The U.S. requires less time for drafting the purchase agreement, the ancillary documents, and closing (steps 4, 5 and 7). In France, the step-time is shorter for the exchange of *preliminary information*,

drafting and negotiation of the *letter of intent*, *due diligence*, and *disputes* (steps 1, 2, 3 and 9).

35. In summary, the conclusions are:

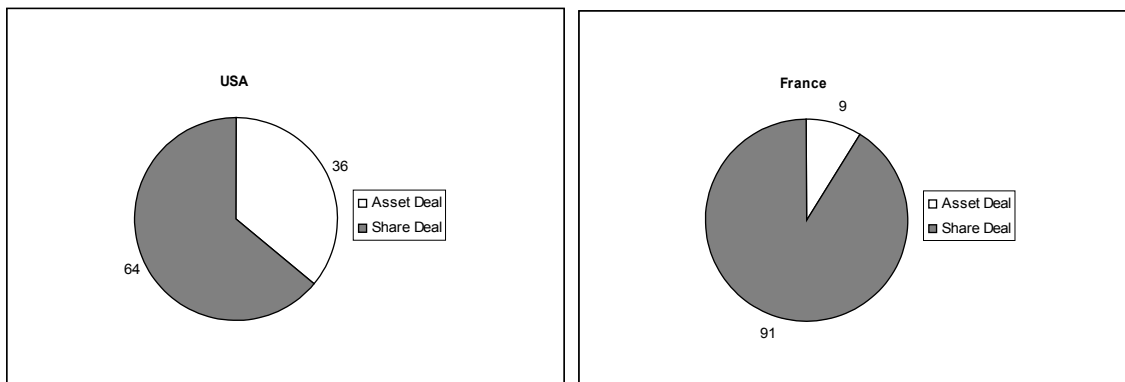
1. There is not a significant difference in the legal performance of M&A;
2. M&A appear cheaper in France, but this difference can be explained by the size of the transaction (see regression *infra* § seq.).

36. Below are detailed results of the study, based on the transaction structure.

### B. Detailed Results Based on the Transaction Structure

37. Results are hereafter detailed depending on whether the transaction is structured as a *share* deal (1), or as an *asset* deal (2). As a preliminary point, one must note the different distribution of the deal structure percentage:

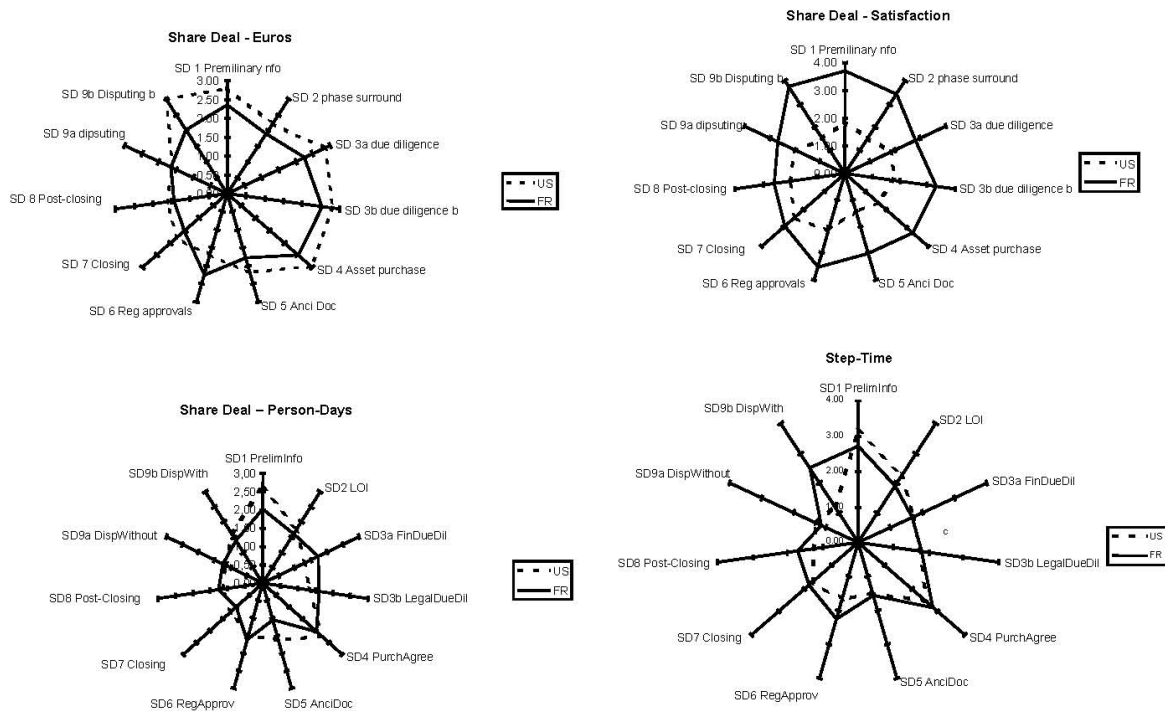
Figure 3: Deal Structure: Asset Deal (“AD”) and Share Deal (“SD”)



38. In both countries, even if the majority of deals are structured as *share* deals, the number of *asset* deals in France (9 %) is significantly lower than in the U.S. (36 %). The share deal results are discussed first.

1. SHARE DEAL

Figure 4: Research Findings for Share Deal (“SD”): Person-Days, Step-Time, Euros, and Satisfaction



39. The results show that a share deal in France is generally cheaper and respondents indicate a significantly greater amount of satisfaction in France than in the U.S. However, for person-days and step-time, the results vary by step. A share deal in France needs fewer person-days for the exchange of preliminary information, negotiation and drafting of the “*letter of intent*”, “*purchase agreement*” and “*ancillary documents*” (steps 1, 2, 4 and 5). However, for the due diligence (steps 3a and 3b), the U.S. requires slightly fewer person-days. For closing, post-closing and disputes (steps 7 thru 9b) the number of person-days is about the same. With respect to the length of each step, a share deal in France is only shorter for the beginning of the transaction process (steps 1, 2, and 3). The U.S. has shorter lengths for all other steps.

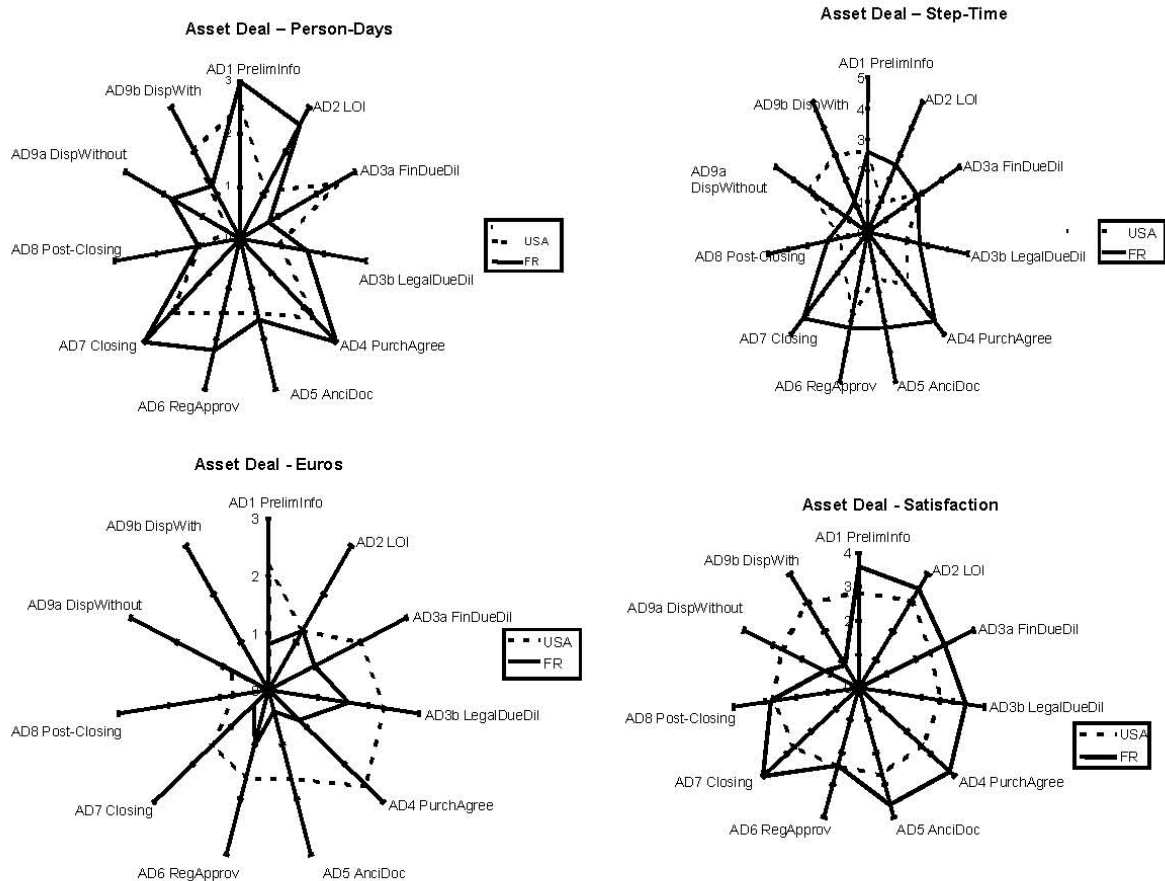
40. Therefore, the following conclusions can be proposed:

1. There is no radical difference in legal performance of share deal;
2. Share deals are slightly cheaper in France;
3. Share deals are generally more satisfactory in France;

- Time to complete the share deal transaction is about the same in France and in the U.S.

## 2. ASSET DEAL

Figure 5: Research findings Asset Deal (AD): Person-Days, Step-Time, Euros, and Satisfaction



41. The results for *asset deals* are noteworthy: the radars do not have the same shape for both countries as they did for the previous analysis of *share deals*. An *asset deal* in France is cheaper (as are *share deals*), but generally requires more person-days and is subject to lengthier step-time. An *asset deal* requires a greater number of person-days in France for all steps except “*financial due diligence*” (3a) and “*dispute with formal litigation*” (9b). The length of each step is longer in France for all steps except for the disputes (9a and 9b). Although *asset deals* in France generally require more person-days and longer step-time, satisfaction is greater in France for all steps, except for disputes (9a and 9b).

42. Therefore, the following conclusions are proposed:

1. Greater differences are noticed for *asset* deals than for *share* deals;
  2. Asset deals are generally cheaper in France;
  3. Asset deals are generally more satisfactory in France;
  4. Asset deals are generally longer to complete in France.
- 43.** The above findings were tested through an interfactor analysis to check whether, for instance, the time to complete a deal was dependant on the type of the deal, or whether the cost of the transaction was dependant on the size of Target.

### C. Intefactor Analysis

- 44.** An interfactor analysis was carried out to verify the accuracy of the above conclusions. The analysis was made using regressions, but also a comparison of averages. Regarding the economic performance factors, the following relationships were tested:
1. Relationship between *cost* (dependent variable) and *company size* (independent variable) was tested via linear regression;
  2. Relationship between *satisfaction* (dependent variable) and *cost* (independent variable) was tested via linear regression;
  3. Comparison of *person-days* regarding the deal type was tested via comparison of averages.
- 45.** Regression analysis refers to techniques available for studying the relationship between two or more variables. More specifically it refers to the techniques used to derive an equation that relates the criterion variable to one or more predictor variables;<sup>30</sup> it considers the frequency distribution of the criterion variable, when one or more predictor variables remains fixed at different levels.<sup>31</sup>
- 46.** The results<sup>32</sup> show that a significant positive relationship exists between cost and company size (+ 0.34/6.64). This demonstrates that the cost to complete a deal is relative to the company size.
- 47.** Further it can be observed that satisfaction has no significant relationship with cost and is therefore not a function of cost (-0.04/-0.66). This result shows that it is not

---

<sup>30</sup> A predictor variable is a “*variable that can be used to predict the value of another variable (as in statistical regression).*” (WordNet 2.0 Copyright (c) 2003 by Princeton University).

<sup>31</sup> Churchill, G.A. 1999 Marketing research: Methodological Foundations. Harcourt: New York.

<sup>32</sup> See generally Annex 7, p. 38 (to process the regression analysis, SPSS software was used).

sufficient to measure only the cost of the deal in order to evaluate the economic outcome, but to evaluate other factors as well, such as satisfaction. Satisfaction is therefore an important measurement of this study.

48. Another result shows that an asset deal (2.9)<sup>33</sup> takes more person-days than a share deal (2.2) in both countries.<sup>34</sup> This evidences that an asset deal is more complex to carry out than a share deal requiring (i) identifying the assets, and (ii) applying a particular set of transfer rules to each asset. This is contrary to share deals, which do not require identification of the underlying asset and need the application of only one set of legal rules.

## V Conclusion

49. To conclude, some tentative explanations of the research findings (A), the limits of these findings (B), and a roadmap for future research (C), are set out below.

### A. Tentative Explanations of the Research Findings

50. The research findings show that by and large neither the French nor the U.S. system seems to be superior to the other. One example of this conclusion is the similarity shown in the general shapes of the main radars.<sup>35</sup>
51. The results based on the structure of the transaction<sup>36</sup> indicate a preference for share deals rather than asset deals in both countries.<sup>37</sup> However, asset deals are twice as frequent in the U.S. (36% of transactions) as in France (18% of transactions).<sup>38</sup> France's apparent preference for share deals over asset deals may be explained by the tax burden placed on the latter: asset deals are subject to 5% stamp duty (*droits d'enregistrement*), whereas share deals are subject to a 1.1% stamp duty capped at 4,000 euros. Therefore, a potential acquirer will typically favor a share acquisition for tax reasons. In the U.S. however, asset deals are subject to low stamp duty (if any). In lowering its stamp duty for asset acquisitions, France would leave a greater choice between share and asset deals for buyers and sellers on the basis of the *legal* merits of each deal structure alone.

---

<sup>33</sup> According to five-point Likert scale: 1 = very low; 5 = very high. For details, see Annex 6 (Person-Days)

<sup>34</sup> See Annex 7 (3).

<sup>35</sup> See supra § .

<sup>36</sup> See question 15 of the questionnaire in Annex 2.

<sup>37</sup> See supra § .

<sup>38</sup> *Id.*

- 52.** The first recommendation is that the French legislator level the tax playing field between asset and share deals. The French draft law *Modernization of the Economy*, which should be adopted summer 2008, proposes the harmonization of stamp duty on the transfer of most business concerns (*cession de fonds de commerce*<sup>39</sup> which is the archetype of an asset deal) and on share transfers to a standardized 3% for a share deal capped at 5,000 euros, and for an asset deal not exceeding 200,000 euros.<sup>40</sup> If such a provision should lower the stamp duty for most asset deals (from 5% to 3%), it would raise the stamp duty applicable to share deals from a 1.1 % capped 4,000 euros, to a 3% capped at 5,000 euros.
- 53.** There is another tax dimension in the asset and share deal choice in the U.S. and in France. This is related to the favorable business corporation tax regime offered by section 338 of the U.S. Internal Revenue Code, which allows a share deal to be treated as an asset deal enabling a step-up in basis and therefore in some circumstances partial goodwill<sup>41</sup> depreciation. As a result, the U.S. allows a step-up in basis not only for asset deals but for share deals as well.<sup>42</sup> In France, this step-up in basis is not available for share deals.
- 54.** To summarize, the U.S. has taken steps towards equalizing the tax regime for share and asset deals. This relative tax neutrality in the U.S. may explain why asset deals are more frequent than in France. However, from a *legal* standpoint, France has a lot to offer by favoring asset deals: France provides potential buyers and sellers with a unique concept – the *fonds de commerce* – simplifying the legal aspects of asset deals. It also offers a favorable tax regime, but limited to the *contribution* (in exchange for *stock* consideration) of such assets. This could be expanded to promote the *sale* (in exchange for *cash* consideration) of these assets.
- 55.** The unique concept of *fonds de commerce* (business concern) refers to an aggregate of most business assets, both tangible and intangible, used in a business. The

---

<sup>39</sup> Also translated as *going concern*

<sup>40</sup> Proposed art. 15 of Draft law relating to the Modernization of the Economy. See Rev. droit fiscal, no 19-20, May 8, 2008, comm. 312, p. 15; cf. P. Serlooten, *Observations sur la difficulté de légiférer en matière fiscale, l'exemple des cessions de droits sociaux*, in LIBER AMICORUM CYRILLE DAVID, LGDJ, 2005, p. 53.

<sup>41</sup> *Goodwill* is the positive difference between the purchase cost and the fair market value of the assets and liabilities acquired with a company. Goodwill may exist, for instance, where the assets recorded on the acquired company's balance sheet are worth more than their historical cost, or where the gathering of the target company to the buyer creates synergies, either in the form of cost reduction and / or revenue enhancement.

<sup>42</sup> Under 338(h)(10), the Target recognizes gain as if it had sold its assets to the acquiring corporation. However, no gain or loss is recognized when the target selling corporate shareholders sell their Target's stock to the acquiring corporation. The acquiring corporation thus acquires Target with a stepped-up tax bases in the target corporation's assets.

fundamental characteristic used to determine the existence of a business concern is a clientele attached to a particular group of business assets (i.e. the premises where the activity takes place). In addition to its clientele, the business concern may consist of leasehold rights, equipment, tools, merchandise, etc. This concept of business concern is significant because it reduces the number of regulations to one single set of rules – applicable to individual assets which make up the going concern.

- 56.** Along with this favorable legal regime, France extends the possibility of avoiding capital gains taxation where a business concern – including all liabilities attached thereto – is *contributed* to a newly-incorporated company in exchange for shares.<sup>43</sup> This tax incentive applies to a partial business transfer (*apport partiel d'actif*, hereafter Partial Business Transfer), which is the *contribution* of a complete branch of business activities, that is *all the assets and liabilities of a division of a company which, from an organizational point of view, constitute an independent business, that is to say an entity capable of functioning by its own means*.<sup>44</sup>
- 57.** The French tax code allows the taxpayer to avoid certain onerous consequences of such transfer: capital gains realized upon the Partial Business Transfer are exonerated if certain conditions are met.<sup>45</sup> Furthermore, valuation of the contribution is made at current market value (not at historic cost) if followed by the sale to a third party of the shares received in exchange. However, this favorable regime is only available for assets and liabilities *contributed* to a company in exchange for shares and is therefore not available for the *sale* of assets and liabilities with payment in cash.
- 58.** Therefore, prior to a recent French *Cour de cassation* decision, practitioners were accustomed to advising their clients to contribute their business concern to a newly incorporated company and to sell the shares received in exchange instead of selling directly the business concern itself; thereby reducing the uncapped 5% stamp duty on the sale of a *business concern* to a low 4,000 euros capped stamp duty imposed upon the sale of the *shares*. However, the French *Cour de cassation* recently characterized as abusive the process of (i) contributing a business concern to a newly incorporated company controlled by the seller, (ii) immediately followed by the sale of the

---

<sup>43</sup> The favorable *legal* mechanism remains available and allows the direct transfer, not only of all assets, but also of all liabilities (*transmission universelle de patrimoine*) without having to follow each specific transfer rule applicable to each class of assets or liabilities.

<sup>44</sup> French General Tax Code, Art. 210 B.

<sup>45</sup> In particular, depreciation and capital gains on subsequent disposals of the assets must be calculated under the same conditions that would otherwise be applicable if the Partial Business Transfer had not occurred.

company's shares to the buyer for lowering stamp duty only.<sup>46</sup> Said otherwise, the Partial Business Transfer regime is not a traditional way of raising cash from the disposal of assets, but rather to make a contribution in exchange for shares.<sup>47</sup> Therefore, one may suggest the extension of the Partial Business Transfer regime to the *sale* of assets. This improvement would certainly give France competitive advantage in M&A transactions.

- 59.** The second recommendation to the legislator is to extend the legal and tax mechanism governing a *contribution* of all assets and liabilities to the *sale* of assets. In this case, asset deals would be treated on an equal basis with share deals, not only from a legal standpoint, but also as far as stamp duty and capital gains are concerned.
- 60.** The conclusion is that the economic impact of the application of the civil code rather than common law is not alarming as far as M&A transactions are concerned. Both in France and in the U.S., these transactions are carried out following standard procedures in compliance with common contractual practices. Although differences exist in both systems, they remain incidental, including their economic impact.

## **B. Limitations**

- 61.** Not all determinants and dimensions that might affect M&A performance were taken into account, for example finance, accounting, or organizational behavior. Moreover, the study did not capture all the possible interrelations among the variables. It was limited to a certain number of companies, to two countries, and to a specific sample of informants. General limitations of the statistical methods and the survey design, for example items for some variables, might represent additional limitations of this study.

## **C. Future Research**

- 62.** New models with a greater interdisciplinary approach could be developed and tested, as well as models with a higher degree of complexity, for example interrelations between the different factors. Future research could focus on the difference between share deals and asset deals in each country. A verification of industry effects in cross-industry analysis could also be taken into account. The same study could be repeated

---

<sup>46</sup> Cass. com., March 20, 2007, *SAS Distribution Casino France*.

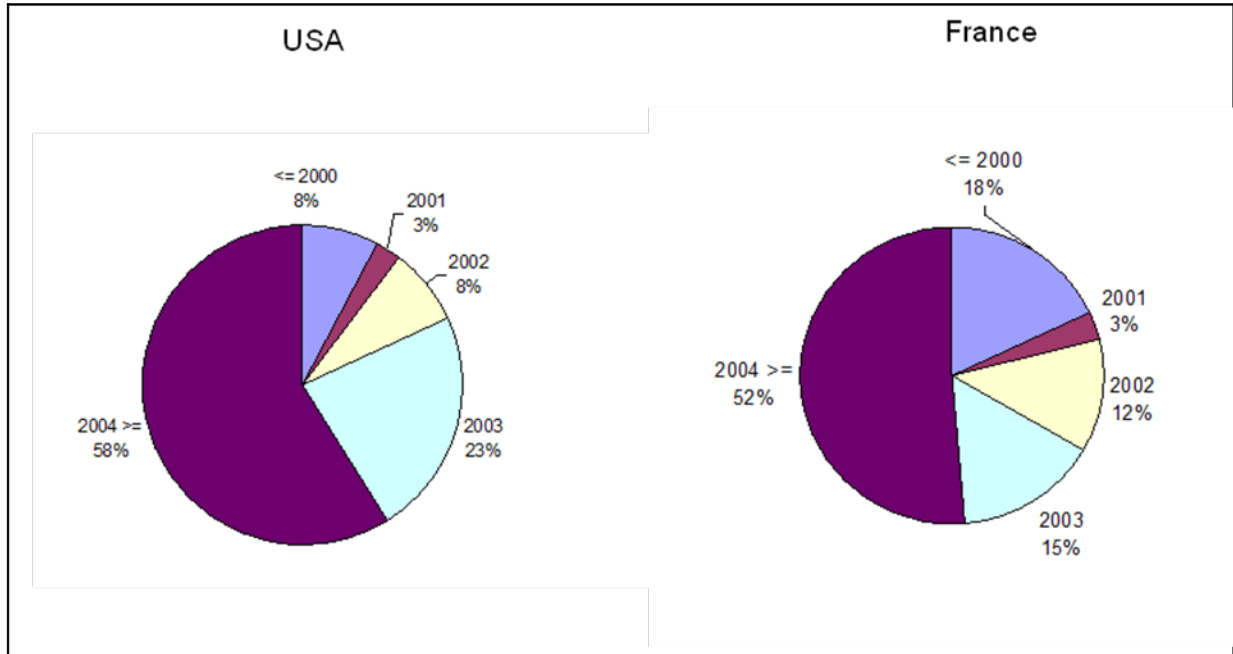
<sup>47</sup> This explains why the non recognition of capital gains is subject to keeping the shares received in exchange of the contribution for three years.

in other countries. Other researchers could replicate this research analysis in the same context to confirm the stability of these findings.

**ANNEXES**

<u>Summary.....</u>	<u>2</u>
<u>I Introduction.....</u>	<u>4</u>
<u>II Improvements to the Doing Business Methodology.....</u>	<u>6</u>
<u>III New Research Methodology.....</u>	<u>7</u>
<u>IV Research Findings.....</u>	<u>10</u>
<u>A. Main Results.....</u>	<u>12</u>
<u>B. Detailed Results Based on the Transaction Structure.....</u>	<u>14</u>
<u>1. Share Deal.....</u>	<u>15</u>
<u>2. Asset Deal.....</u>	<u>16</u>
<u>C. Interfactor Analysis.....</u>	<u>17</u>
<u>V Conclusion.....</u>	<u>18</u>
<u>A. Tentative Explanations of the Research Findings.....</u>	<u>18</u>
<u>B. Limitations.....</u>	<u>21</u>
<u>C. Future Research.....</u>	<u>21</u>
<u>Annex 1: Year of the Deal (%).....</u>	<u>24</u>
<u>Annex 2: Extracts from the English Version of the Questionnaire.....</u>	<u>25</u>
<u>Annex 3: Informant Competence: Position.....</u>	<u>33</u>
<u>Annex 4: Informant Competence: Year of Experience.....</u>	<u>34</u>
<u>Annex 5: Informant Competence: Involvement in M&amp;A Activities.....</u>	<u>35</u>
<u>Annex 6: Scaling Details.....</u>	<u>36</u>
<u>Annex 7: Interfactor Analysis.....</u>	<u>38</u>

**Annex 1: Year of the Deal (%)**



## Annex 2: Extracts from the English Version of the Questionnaire

### Annexe: Questionnaire

Source : <http://fdv.univ-lyon3.fr/fusac/>

#### The Differentiated Approach to Contracts in Merger or Acquisition Operations

This study is designed to produce a better understanding of how the execution of an M&A transaction is impacted by the legal context. Completing the survey should not take more than 10-15 minutes.

**ALL INFORMATION WILL BE MAINTAINED AS STRICTLY CONFIDENTIAL.**

Start the questionnaire



12.11.2007

#### Conditions:

Please answer this questionnaire with reference to:

- a specific acquisition project (the "Deal") that occurred preferably between Jan. 1, 2000 and Dec. 31, 2004, and
- a Deal where both the acquirer and the target company are located in the United States.

Do not consider a transnational Deal, or a Deal where the target company is listed on a stock exchange.

Please indicate the year when the Deal was legally completed:  
2000 or before / 2001 / 2002 / 2003 / 2004 or after

2 - Please indicate the turnover of the acquirer company in euros (turnover before tax) after the Deal:  
≤ 50 million / ≤ 100 million / ≤ 200 million / ≤ 500 million / > 500 million

3 - Please indicate the turnover of the target company in euros (turnover before tax) before the Deal:  
≤ 50 million / ≤ 100 million / ≤ 200 million / ≤ 500 million / > 500 million

4 - Please indicate the economic sector (services, industry, or both) in which the acquirer company operates:  
services / industry / mixed

5 - Please indicate more specifically the type of activity of the acquirer company:

6 - Please indicate the economic sector (services, industry, or both) in which the target company operates:  
services / industry / mixed

7 - Please indicate more specifically the type of activity of the target company:

8 - Please, based on your own judgment, assess the complexity of the Deal:  
Very complex / Complex / Average / Simple / Very simple / Don't know

12.11.2007

**Step 1 Preliminary Information:**

**The purpose of these questions is to estimate the preliminary phase of the Deal, starting from the first informal contacts with target (but also, and not limited to, instructing consultants, establishing initial contacts with business bank, identifying constraints such as time table, etc...) up to the signing of the confidentiality agreement (included).**

16 - What is your estimate of working days to complete this step (Person-Days)?  
≤ 10 / ≤ 20 / ≤ 30 / ≤ 50 / > 50 / Don't know

17 - What is your estimate of time to complete this step (weeks)?  
≤ 1 / ≤ 2 / ≤ 3 / ≤ 5 / > 5 / Don't know

18 - Your estimation of cost to complete this step nowadays (euros)?  
≤ 10.000 / ≤ 20.000 / ≤ 30.000 / ≤ 100.000 / > 100.000 / Don't know

19 - How satisfactory was this step for you?  
Very satisfactory / Satisfactory / Average / Unsatisfactory / Totally unsatisfactory / Don't know

20 - Please, explain the reason for this level of satisfaction / unsatisfaction:  
21 - Do you have any specific comments on this step?

12.11.2007

**Step 2 Phase Surrounding the Letter of Intent:**

**The purpose of these questions is to estimate the phase surrounding the letter of intent, starting from the signing of the confidentiality agreement (but also, and not limited to, discussion on the planning of external communication, first legal implications, Deal structure proposal) and ending with the signing of the letter of intent (included).**

22 - What is your estimate of working days to complete this step (Person-Days)?  
≤ 10 / ≤ 20 / ≤ 30 / ≤ 50 / > 50 / Don't know

23 - What is your estimate of time to complete this step (weeks)?  
≤ 1 / ≤ 2 / ≤ 3 / ≤ 5 / > 5 / Don't know

24 - Your estimation of cost to complete this step nowadays (euros)?  
≤ 10.000 / ≤ 20.000 / ≤ 30.000 / ≤ 100.000 / > 100.000 / Don't know

25 - How satisfactory was this step for you?  
Very satisfactory / Satisfactory / Average / Unsatisfactory / Totally unsatisfactory / Don't know

26 - Please, explain the reason for this level of satisfaction / unsatisfaction:  
27 - Do you have any specific comments on this step?

12.11.2007

**Step 3 Due Diligence:**

**The purpose of these questions is to estimate the phase starting from the sending of the due diligence request list (including the audit-investigating process, the data room) to the signing of the asset purchase agreement (excluded). Below are distinguished the financial and the legal steps of the due diligence process.**

**Sub-Step 3-1 Financial Due Diligence:**

**The purpose of this first set of questions is to estimate the financial due diligence process only, such as accounting verifications, financial audit, balance sheet and profit and loss account checking, etc.**

28 - What is your estimate of working days to complete this step (Person-Days)?  
≤ 10 / ≤ 20 / ≤ 30 / ≤ 50 / > 50 / Don't know

29 - What is your estimate of time to complete this step (weeks)?  
≤ 1 / ≤ 2 / ≤ 3 / ≤ 5 / > 5 / Don't know

30 - Your estimation of cost to complete this step nowadays (euros)?  
≤ 10.000 / ≤ 20.000 / ≤ 30.000 / ≤ 100.000 / > 100.000 / Don't know

31 - How satisfactory was this step for you?  
Very satisfactory / Satisfactory / Average / Unsatisfactory / Totally unsatisfactory / Don't know

32 - Please, explain the reason for this level of satisfaction / unsatisfaction:  
33 - Do you have any specific comments on this step?

12.11.2007

**Sub-Step 3-2 Legal Due Diligence:**

**The purpose of this second set of questions is to estimate the legal due diligence process only, such as reviewing contracts, evaluating litigations, assessing environmental issues, etc.**

34 - What is your estimate of working days to complete this step (Person-Days)?  
≤ 30 / ≤ 60 / ≤ 120 / ≤ 180 / > 180 / Don't know

35 - What is your estimate of time to complete this step (weeks)?  
≤ 2 / ≤ 8 / ≤ 16 / ≤ 24 / > 24 / Don't know

36 - Your estimation of cost to complete this step nowadays (euros)?  
≤ 10.000 / ≤ 20.000 / ≤ 30.000 / ≤ 100.000 / > 100.000 / Don't know

37 - How satisfactory was this step for you?  
Very satisfactory / Satisfactory / Average / Unsatisfactory / Totally unsatisfactory / Don't know

38 - Please, explain the reason for this level of satisfaction / unsatisfaction:  
39 - Do you have any specific comments on this step?

12.11.2007

**Step 4 Asset Purchase Agreement:**

**The purpose of these questions is to estimate the phase starting from the negotiation of the asset purchase agreement (including, and not limited to, discussing over the drafts, the time table for execution, consulting the work council, if necessary) to the signing of the asset purchase agreement (included).**

40 - What is your estimate of working days to complete this step (Person-Days)?  
≤ 10 / ≤ 20 / ≤ 30 / ≤ 50 / > 50 / Don't know

41 - What is your estimate of time to complete this step (weeks)?  
≤ 1 / ≤ 2 / ≤ 3 / ≤ 5 / > 5 / Don't know

42 - Your estimation of cost to complete this step nowadays (euros)?  
≤ 10.000 / ≤ 20.000 / ≤ 30.000 / ≤ 100.000 / > 100.000 / Don't know

43 - How satisfactory was this step for you?  
Very satisfactory / Satisfactory / Average / Unsatisfactory / Totally unsatisfactory / Don't know

44 - Please, explain the reason for this level of satisfaction / unsatisfaction:  
45 - Do you have any specific comments on this step?

12.11.2007

**Step 5 Ancillary Documents:**

**The purpose of these questions is to estimate the phase starting from the negotiation of the ancillary documents (such as escrow agreement, shareholders agreement, minutes of shareholders meeting, financing contracts, labor contracts, license contracts, etc...) to the signing of these ancillary documents (included).**

46 - What is your estimate of working days to complete this step (Person-Days)?  
≤ 10 / ≤ 20 / ≤ 30 / ≤ 50 / > 50 / Don't know

47 - What is your estimate of time to complete this step (weeks)?  
≤ 1 / ≤ 2 / ≤ 3 / ≤ 5 / > 5 / Don't know

48 - Your estimation of cost to complete this step nowadays (euros)?  
≤ 10.000 / ≤ 20.000 / ≤ 30.000 / ≤ 100.000 / > 100.000 / Don't know

49 - How satisfactory was this step for you?  
Very satisfactory / Satisfactory / Average / Unsatisfactory / Totally unsatisfactory / Don't know

50 - Please, explain the reason for this level of satisfaction / unsatisfaction:  
51 - Do you have any specific comments on this step?

12.11.2007

**Step 6 Regulatory Approvals:**

**The purpose of these questions is to estimate the process of obtaining various regulatory approvals necessary to complete the transaction (competition authority approval, other regulatory approvals, etc...).**

52 - What is your estimate of working days to complete this step (Person-Days)?  
≤ 10 / ≤ 20 / ≤ 30 / ≤ 50 / > 50 / Don't know

53 - What is your estimate of time to complete this step (weeks)?  
≤ 1 / ≤ 2 / ≤ 3 / ≤ 5 / > 5 / Don't know

54 - Your estimation of cost to complete this step nowadays (euros)?  
≤ 10.000 / ≤ 20.000 / ≤ 30.000 / ≤ 100.000 / > 100.000 / Don't know

55 - How satisfactory was this step for you?  
Very satisfactory / Satisfactory / Average / Unsatisfactory / Totally unsatisfactory / Don't know

56 - Please, explain the reason for this level of satisfaction / unsatisfaction:  
57 - Do you have any specific comments on this step?

12.11.2007

**Step 7 Closing:**

**The purpose of these questions is to estimate the phase starting from the week preceding the closing date to the closing date itself, where proof of ownership or other documents are delivered, and payment transferred.**

58 - What is your estimate of working days to complete this step (Person-Days)?  
≤ 1 / ≤ 2 / ≤ 3 / ≤ 5 / > 5 / Don't know

59 - What is your estimate of time to complete this step (days)?  
≤ 1 / ≤ 2 / ≤ 3 / ≤ 4 / > 4 / Don't know

60 - Your estimation of cost to complete this step nowadays (euros)?  
≤ 10.000 / ≤ 20.000 / ≤ 30.000 / ≤ 100.000 / > 100.000 / Don't know

61 - How satisfactory was this step for you?  
Very satisfactory / Satisfactory / Average / Unsatisfactory / Totally unsatisfactory / Don't know

62 - Please, explain the reason for this level of satisfaction / dissatisfaction:  
63 - Do you have any specific comments on this step?

12.11.2007

**Step 8 Post-Closing:**

**The purpose of these questions is to estimate the post-closing phase, after the closing date: typically, this is - for instance - where price adjustment occurs, indemnification requests are made, earn-out follow-up is carried out. However disputes must not be considered in this step, as step 9 is specifically dedicated to disputes assessments.**

64 - What is your estimate of working days to complete this step (Person-Days)?  
≤ 10 / ≤ 20 / ≤ 30 / ≤ 50 / > 50 / Don't know

65 - What is your estimate of time to complete this step (weeks)?  
≤ 1 / ≤ 2 / ≤ 3 / ≤ 5 / > 5 / Don't know

66 - Your estimation of cost to complete this step nowadays (euros)?  
≤ 10.000 / ≤ 20.000 / ≤ 30.000 / ≤ 100.000 / > 100.000 / Don't know

67 - How satisfactory was this step for you?  
Very satisfactory / Satisfactory / Average / Unsatisfactory / Totally unsatisfactory / Don't know

68 - Please, explain the reason for this level of satisfaction / dissatisfaction:  
69 - Do you have any specific comments on this step?

12.11.2007

**Step 9 Disputes:**

The purpose of these questions is to estimate if disputes occurred after the Deal. Below are distinguished disputes without any formal summons before a court or an arbitration tribunal, and disputes with such formal litigation.

**Sub-Step 9-1 Disputes without formal litigation:**

The purpose of this first set of questions is to estimate if disputes, without any formal summons before a court or an arbitration tribunal, occurred.

70 - What is your estimate of working days to complete this step (Person-Days)?  
≤ 30 / ≤ 60 / ≤ 120 / ≤ 180 / > 180 / Don't know

71 - What is your estimate of time to complete this step (months)?  
≤ 6 / ≤ 12 / ≤ 24 / ≤ 48 / > 48 / Don't know

72 - Your estimation of cost to complete this step nowadays (euros)?  
≤ 10.000 / ≤ 20.000 / ≤ 30.000 / ≤ 100.000 / > 100.000 / Don't know

73 - How satisfactory was this step for you?  
Very satisfactory / Satisfactory / Average / Unsatisfactory / Totally unsatisfactory / Don't know

74 - Please, explain the reason for this level of satisfaction / unsatisfaction:  
75 - Do you have any specific comments on this step?

12.11.2007

**Sub-Step 9-2 Disputes with formal litigation:**

The purpose of this second set of questions is to estimate if disputes arising after formal summons before a court or an arbitration tribunal, occurred.

76 - What is your estimate of working days to complete this step (Person-Days)?  
≤ 30 / ≤ 60 / ≤ 120 / ≤ 180 / > 180 / Don't know

77 - What is your estimate of time to complete this step (months)?  
≤ 6 / ≤ 12 / ≤ 24 / ≤ 48 / > 48 / Don't know

78 - Your estimation of cost to complete this step nowadays (euros)?  
≤ 10.000 / ≤ 20.000 / ≤ 30.000 / ≤ 100.000 / > 100.000 / Don't know

79 - How satisfactory was this step for you?  
Very satisfactory / Satisfactory / Average / Unsatisfactory / Totally unsatisfactory / Don't know

80 - Please, explain the reason for this level of satisfaction / unsatisfaction:  
81 - Do you have any specific comments on this step?

12.11.2007

**SECTION IV: Personal information (confidential, for classification purpose only)**

82 - What is your current position?

Attorney (partner) / Attorney (associate) / C Level: CEO / C Level: COO / C Level: CFO / C Level: General Counsel / Head / responsible for M&A / Management / Other

83 - If you are in the above category "other," please specify your current position and your level of responsibility:

84 - How long have you worked for this company (years)?

1-5 / 6-10 / 11-15 / 16 or more

85 - How involved are you in M&A activities?

Not at all / A bit / Average / Much / Very much

86 - How clear was this questionnaire?

Not at all / A bit / Average / Much / Very much

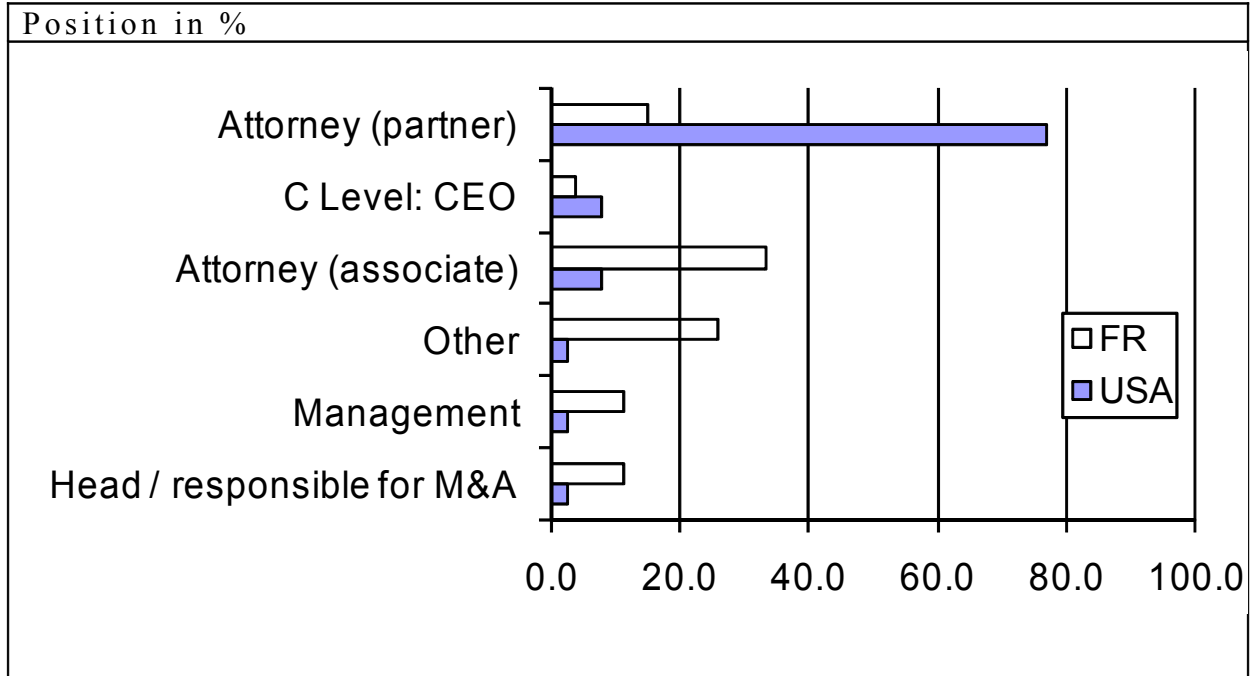
87 - Thanks a lot for your contribution! If you are interested in a summary of the findings, check this box.

88 - Would you like to add any additional comments?

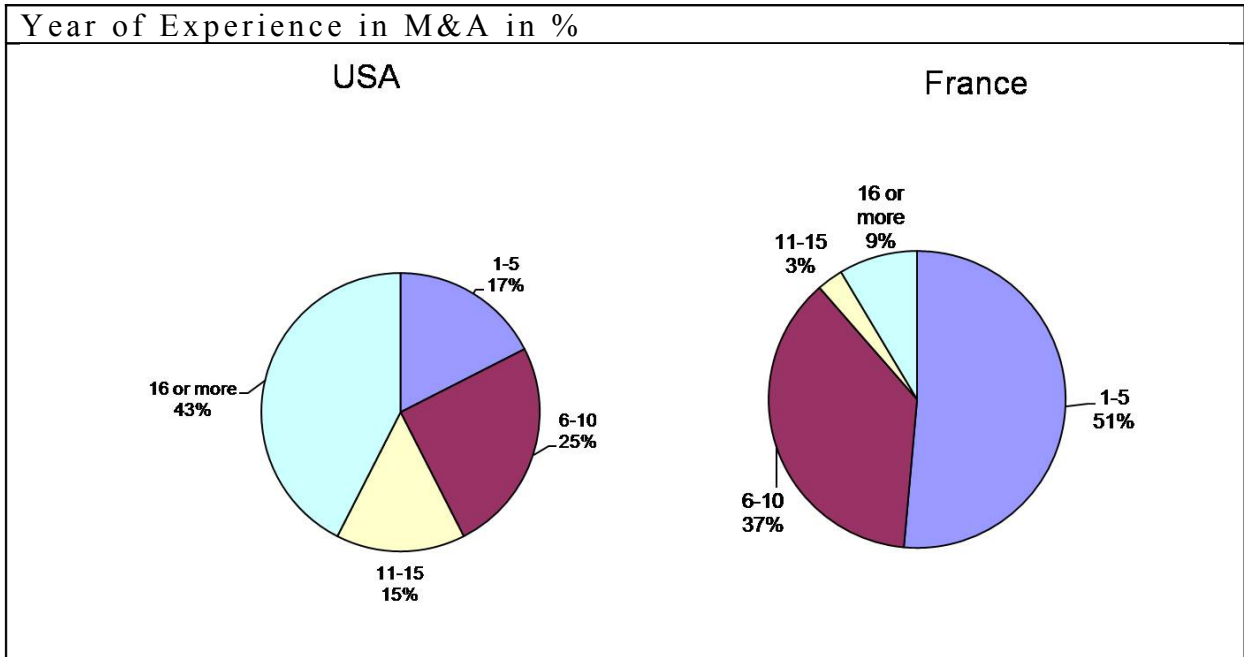
89 - Would you like to inform us about your email address?

12.11.2007

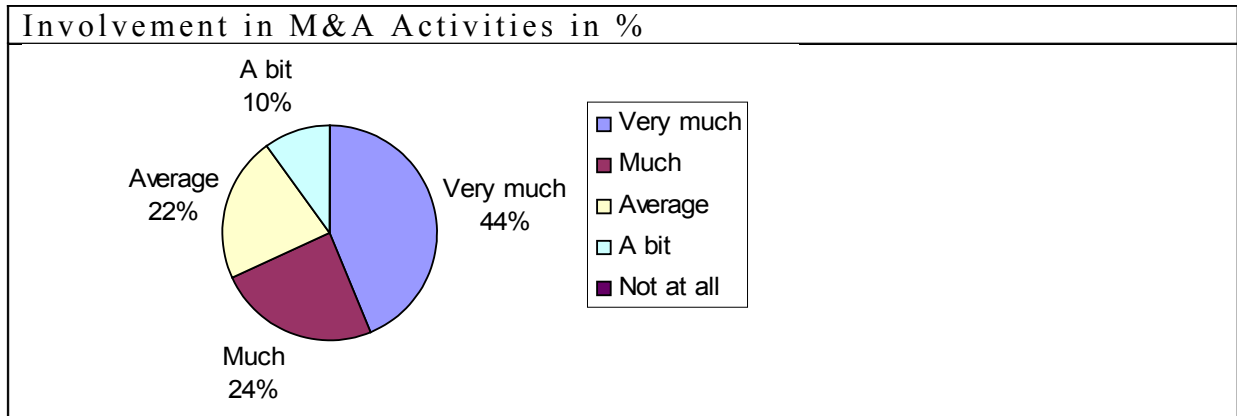
**Annex 3: Informant Competence: Position**



**Annex 4: Informant Competence: Year of Experience**



**Annex 5: Informant Competence: Involvement in M&A Activities**  
**Informant competence: Involvement in M&A activities**



**Annex 6: Scaling Details**

Euros & Satisfaction	
<b>Euros:</b>	<b>Satisfaction:</b>
0 = don't know	0 = don't know
1 = <= 10.000 €	1 = totally unsatisfactory
2 = <= 20.000 €	2 = unsatisfactory
3 = <= 30.000 €	3 = average
4 = <= 100.000 €	4 = satisfactory
5 = > 100.000 €	5 = very satisfactory

Person-Days		0	1	2	3	4	5
		<=	<=	<=	<=	>	
1. Preliminary Information (PremInfo)	don't know	10	20	30	50	50	
2. Phase Surrounding: The letter of Intent (LOI)	don't know	10	20	30	50	50	
3. A. Financial Due Diligence (FinDueDil)	don't know	10	20	30	50	50	
B. Legal Due Diligence (LegalDueDil)	don't know	30	60	120	180	180	
4. Purchase Agreement (PurchAgree)	don't know	10	20	30	50	50	
5. Ancillary Documents (AnciDoc)	don't know	10	20	30	50	50	
6. Regulatory Approval (RegApprov)	don't know	10	20	30	50	50	
7. Closing (Closing)	don't know	1	2	3	5	5	
8. Post Closing (PostClosing)	don't know	10	20	30	50	50	
9. A. Disputing without Formal Litigation (DispWithout)	don't know	30	60	120	180	180	
B. Disputing with Formal Litigation (DispWith)	don't know	30	60	120	180	180	

Step-Time		0	1	2	3	4	5
		<=	<=	<=	<=	>	
1.Preliminary Information (PremInfo)	don't know	1	2	3	5	5	
2.Phase Surrounding: The letter of Intent (LOI)	don't know	1	2	3	5	5	
3. A. Financial Due Diligence (FinDueDil)	don't know	1	2	3	5	5	
B. Legal Due Diligence (LegalDueDil)	don't know	2	8	16	24	24	
4.Purchase Agreement (PurchAgree)	don't know	1	2	3	5	5	
5.Ancillary Documents (AnciDoc)	don't know	1	2	3	5	5	
6.Regulatory Approval (RegApprov)	don't know	1	2	3	5	5	
7.Closing (Closing)	don't know	1	2	3	4	4	
8.Post Closing (PostClosing)	don't know	1	2	3	5	5	
9.A. Disputing without Formal Litigation (DispWithout)	don't know	6	12	24	48	48	
B. Disputing with Formal Litigation (DispWith)	don't know	6	12	24	48	48	

**Annex 7: Interfactor Analysis**

**7 (1-a) Regression Analysis for Share Deal: Cost and Satisfaction**

**Coefficients<sup>a</sup>**

Model		Unstandardized Coefficients		Standardized Coefficients	t	Sig.
		B	Std. Error	Beta		
1	(Constant)	3.862	.144		26.858	.000
	SD_1_preliminary_nfo_4__Your_estimation_of_cost_to_complete	-.027	.042	-.049	-.657	.512

a. Dependent Variable: SD\_1\_preliminary\_nfo\_5\_\_How\_satisfactory\_was\_this\_step\_for\_

**7 (1-b) Regression analysis for Asset Deal: Cost and Satisfaction**

**Coefficients<sup>a</sup>**

Model		Unstandardized Coefficients		Standardized Coefficients	t	Sig.
		B	Std. Error	Beta		
1	(Constant)	3.537	.152		23.329	.000
	AD_1_Preliminary_nfo_4__Your_estimation_of_cost_to_complete	.058	.050	.109	1.165	.246

a. Dependent Variable: AD\_1\_Preliminary\_nfo\_5\_\_How\_satisfactory\_was\_this\_step\_for\_

**7 (2) Regression analysis: Cost and Company Size**

**Coefficients<sup>a</sup>**

Model		Unstandardized Coefficients		Standardized Coefficients	t	Sig.
		B	Std. Error	Beta		
1	(Constant)	2.271	.137		16.549	.000
	Company_size	.002	.000	.343	6.638	.000

a. Dependent Variable: Cost

7 (3) Comparison of Person-Days: Asset Deal (left) and Share Deal (right)

