CHANGING PLACES - FROM A SELLERS' MARKET TO A BUYERS' MARKET - CUATRECASAS

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The credit crunch has prompted not only a change in the relative power of vendors, purchasers and banks in transactions, but also the emphasis each is placing on the terms of deals, say partners Fernando Torrente, Francisco MartÃnez Maroto, Federico Roig, Javier Carvajal and Juan Aguayo of Cuatrecasas.

Uno de los aspectos de la crisis crediticia es cómo ha afectado a las operaciones de Fusiones y Adquisiciones, cómo ha variado el equilibrio entre vendedor, comprador y bancos, además del énfasis que se otorga ahora a los términos acordados en las operaciones, afirma el equipo de F&A de Cuatrecasas.

Esto implica un periodo de negociaciones más amplio, análisis más exhaustivos de los términos de la compra y mucha más creatividad en la estructura de la transacción.

Last year was a record year not only in terms of deal volume but also of deal values in Spain, and among the main reasons for this was the considerable activity of private equity houses (PEHs) and the ready availability of debt finance. But this scenario has changed considerably, says Fernando Torrente, a senior corporate partner at Cuatrecasas.

The prevailing liquidity crisis is impacting not only on who the dominant players are in transactions – PEHs are now much less active, while companies are much more acquisitive – but also how deals are being done.

'Up until the middle of last year there were greater numbers of transactions following the same structure and finance formulas. There is now clearly a need to be more exact and flexible in transactions – the main deal elements require much deeper examination. Times are clearly much tougher.'

Getting creative

An inevitable consequence of this is that the parties in transactions have to be much more objective in assessing the rationale behind deals, and creative in how they are structured and financed, says fellow corporate partner Francisco Martínez Maroto.

'The due diligence process is once again much more involved. Clients may have concerns over the businesses on offer but they also want to check the financial and economic situation of the seller, to avoid any difficulties in the future.'

A lack of access to debt finance from banks is also prompting parties to look to alternatives to fill the gap he says, with clients keen to secure funding in advance, and an apparent increase in vendor loans on offer.

'We are beginning to see more club deals among PEHs, as well as an increase in vendors offering purchase loans or willing to defer payments in order to facilitate sales. In addition, we are seeing a rise in 'buildup' transactions, with acquirers buying smaller companies to benefit from synergies and generate cash flow to make successive purchases through that business.'

Clients are looking much more closely at the terms of deals, says partner Federico Roig, with fewer auction sales and more emphasis on the detail of representations and warranties – there is no one size fits all.

'Previously, sellers were often driving the whole process, insisting on straightforward negotiations and standard terms and conditions – in such a market few wanted to put emphasis on an issue that might place a purchase in jeopardy.'

Now he sees fewer buyers in the market and more emphasis on specific issues. 'Negotiations are taking longer and there is the return of MAC (Material Adverse Change) clauses, which simply wasn't the case up until last year.'

Inevitably this means that lawyers are more deeply involved in the terms of deals while buyers are looking for greater security, suggests partner Javier Carvajal.

'The truth is that last year we were seeing sellers be very commercial, auctions often involved multiple bidders and none of which would dream of putting a MAC clause even into a non-binding offer. Today commercial advantage is less important, there is less money on the table, and parties are seeking greater protection. We have definitely moved from a sellers market to a purchasers market.'

The current emphasis on liquidity has changed the rules of the transactional game, says Torrentes. 'Previously, sellers could make a market and the investment banks would readily fund PEH transactions. The onus now is on the buyer to prove they meet the capital requirements, and those perhaps with the best positions are the industrial players – who are returning cash rich.'

One alternative potential outcome suggests Juan Aguayo is that PEHs may place greater emphasis on their existing company investments.

'One scenario is that PEHs may try to do more deals via the businesses that they already own – it is easier to buy when you can present healthy accounts and an operative company behind you.'