The evolution of Corporate Governance Systems:

An analysis based on Cross border M&A deals

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1 Introduction
In this part, we are going to introduce the research background, purpose, structure and main contributions of this paper in order to present a general picture of the whole research.

1.1 Research Background
Since the 1990’s cross border M&A activity has increased substantially. The volume of such transactions has been growing worldwide, from 30 percent of the total M&A volume in 1998 to 45 percent in 2007, reaching US$1.6 trillion.

The key strategic challenge for companies have become how to survive and prosper in an increasing competitive environment, knowing that there is a market ready to sanction firms that are not able to deliver growth and profits. The takeover process in the market for corporate control is considered one of such sanctions. Companies are encouraged to undertake cross border M&A’s in order to maintain and improve their competitive position. Indeed, these transactions are growing so rapidly in importance precisely because they are the fastest way to acquire tangible and intangible assets in different countries. Cross border M&A deals allow firms to restructure existing operations at the regional or global level, and to exploit synergies in the aim to obtain strategic advantages.

In brief, these deals are tools for companies to purchase quickly a portfolio of local assets, which has become a key source of competitive strength in a globalized economy. A considerable part of the current expansion of cross border M&A activity consists of major deals in industries in which a limited number of companies dominates the market. The strategic interactions among leading companies play a key role in industry consolidation. Without a doubt, in a business environment characterized by strong strategic interdependence and uncertainty, once the current situation is modified by the move of a major player (say, to acquire a foreign firm), it can deeply impact key competitors and generate a chain reaction of countermoves by rivals anxious to protect their
positions at both domestic and international levels. By undertaking a cross border merger or acquisition, top management minimizes the major potential regret, which takes places when successful integration by other competitors has been under evaluated, or when they become a target company for a takeover. Thus, even companies reluctant to pursue these transactions, may be forced into them due to the fear of becoming a target company to be acquired. Such pre-emptive behaviors can create “strategic comfort” rather than shareholder value or economic wealth. Moreover, if they do not move rapidly enough, there may be fewer interesting partners left. However, by moving, they will help amplify a bandwagon effect.

1.2 Research Purpose
The past century was characterized by five great M&A waves - one at its beginning, and successive waves at the end of the 1920’s, 1960’s, 1980’s and 1990’s. The latter wave differentiates itself by the dramatic surge of cross border M&A's, especially mega deals, deals worth over US$3 billion. First of all, why did cross border M&A rise so rapidly through the 1990’s? Which were the regional and industrial patterns? What were the key drivers that brought these international waves? The corporate finance literature is ample on the M&A’s causes and financial effects, but there are few papers on the determinants of cross border M&As. These papers tend to either lump together M&A’s with other international investments such as Foreign Direct Investment (FDI) or to analyze only a specific aspect involved in a cross border M&A transaction. Cross border activity transcends companies’ boundaries. As a result, local companies disappear and become international companies. This change impacts deeply on the way companies do business, their managerial culture and their organizational structure. The post-integration process involves different legal, fiscal, and economic aspects as well as organizational and cultural issues. One such issue is the design of the new Corporate Governance. The way firms are governed – their ownership
structure and control process, the strategic objectives they pursue, the rights they respect, the responsibilities they recognize, and the distribution of the value they create – has become a matter of great importance, not only for their directors and shareholders, but also for the wider community.

The Corporate Governance debate could be conducted at a company or country level. The latter refers to Corporate Governance systems, defined as “a more or less country-specific framework of legal, institutional and cultural factors shaping the pattern of influences which stakeholders exert on managerial decision-making” (Weimer and Pape, 1999).

The literature was hampered by the lack of a clear framework until 1999 when Weimer and Pape (1999) proposed a taxonomy of Corporate Governance Systems. Based on eight features, the two authors classified industrialized countries in four groups: the Anglo-Saxon, German, Latin and Japanese model. The concept of the firm, the board system, the importance of stock markets in the national economy, the salient stakeholders able to exert influence on managerial decision-making, the presence or absence of an external market for corporate control, the ownership structure, the extent to which executive compensation is dependent on corporate performance and the time horizon of economic relationships were all elements used by Weimer and Pape to distinguish Corporate Governance models among countries. In other words, companies’ Corporate Governance systems presented similar features within the same model.

If we look at the worldwide literature in the Corporate Governance field, we find several studies about convergence of Corporate Governance systems over the last decade. Some authors illustrate arguments in favor and against further harmonization, but still there is not a consistent conclusion agreed by all scholars. Indeed, cross border M&A activity appears like a challenge for Corporate Governance not only at company
level, but also at the macro level. When two companies belonging to two different systems of Corporate Governance are combined together to establish a new legal entity, the design of a new CG will be influenced by both systems.

The Weimer and Pape’s classification dates back from 1999. In the period from 1999 to 2007, 342 mega cross border M&A’s took place worldwide, among which 263 took place among developed countries and 150 of those 263 involved countries regrouped in two different Corporate Governance systems. The most arguable questions are as follows: What has been the impact of cross border M&A on the taxonomy of systems of Corporate Governance? How have the features used by Weimer and Pape changed from 1999 to 2007? Do the four models still represent the national systems of Corporate Governance?

In order to answer to these research questions, as a first step, we will conduct a critical analysis of the features used by Weimer and Pape. We will explain the methodology used by the two authors to make their judgments, and as a result, we will be able to understand if it is feasible or not to analyze all the salient features in the current situation. Furthermore, as a second step, an accurate analysis will be carried out in order to understand the relationship between cross border M&A activity and the evolution of Corporate Governance systems.

1.3 Main Contributions of this Paper

Looking through our research process, we can summarize at least three aspects that make this paper valuable. First, as we mentioned before, most of the M&A related researches are based on the causes and consequences of domestic deals. In this paper, our sample is selected based only on the cross border M&A’s wave. We think this paper will update the current cross border M&A research results and give some useful hints of the new characteristics of worldwide cross border activity.
Second, this research qualifies and quantifies each characteristic used in the taxonomy of Corporate Governance systems introduced by Weimer and Pape in 1999. Last but not least, this paper investigates the evolution of Corporate Governance systems under an international perspective. We will explore the relationship between cross border merger and acquisition and the taxonomy of Corporate Governance system.

1.4 Framework of this Paper

In order to understand the linkage between Corporate Governance systems and cross border M&A activity, this paper is organized as follows. We will first conduct a literature review, in which we are going to introduce both the concepts of Corporate Governance and cross border M&A in terms of historical roots, definitions, systems and related concepts. Second, we will analyze the evolution of Corporate Governance focus on the convergence debate. Third, we will look into the worldwide development of cross border M&A. Fourth, we will investigate and evaluate the qualitative and quantitative impact of cross border M&A on the taxonomy of systems of Corporate Governance. Finally, we will present the findings of this paper and indicate the possible drawbacks.
2 Literature Review
In this section, first, we are going to introduce a brief literature review on Corporate Governance in terms of historical roots, definitions and systems. Then, we will provide several theories in favor and against further convergence of Corporate Governance systems. Furthermore, we will make a summary of cross border M&A related concepts and classifications.

2.1 Corporate Governance
2.1.1 Corporate Governance Roots
The theoretical roots of Corporate Governance date back from 1932 when Berle and Means presented their work The Modern Corporation and Private Property (1932) focused on the separation of ownership and control in large American corporations.

Berle and Means argued that capital in the U.S. had become heavily concentrated during the previous few decades in the hands of a relatively small number of companies with enormous power. As these companies grew, it became difficult for the original owners to maintain their majority as stockholders, and shares became dispersed among a large number of small shareholders. The consequence was the usurpation of power by the company’s managers, those who ran the day-to-day affairs of the firm. Managers’ interests, as Berle and Means affirmed, were not necessarily in line with those of the shareholders. Whereas owners/shareholders preferred that profits be returned to them in the form of dividends, managers preferred to either reinvest the profits or to enlarge their own benefits, in the form of higher salaries. In fact, the authors were concerned overall about the emergence of a powerful class of professional managers, insulated from the pressure not only from stockholders, but also from the larger public. Berle and Means warned that the ascendance of management control and unchecked corporate power had potentially serious consequences for the democratic character of the United States.
In 1937, Ronald Coase in *The Nature of the Firm*, tried to understand why and under what conditions firms were established and continued to perform. Coase's analysis considered the conditions under which it made sense for an entrepreneur to hire help instead of contracting out for some particular task. For this purpose as well as to explain the size of a company, he used the concept of *transaction costs*, defined as the coordination processes between the different actors wasted resources (in terms of money and time).

Fifty years later, Eugene Fama and Michael Jensen in *The Separation of Ownership and Control* (1983) proposed the *agency theory* as a way of understanding Corporate Governance. This theory is directed at the ubiquitous agency relationship, in which one party (the principal) delegates work to another (the agent), who performs that work. In this particular case, the theory is used to explain the relationships between managers (the agent) and shareholders (the principals). In detail, two agency problems can take place. The first comes up when the objectives of the principal and agent conflict or when it is difficult or expensive for the principal to verify appropriately what the agent is actually doing. The second is related to the problem of risk sharing that arises when the principal and agent have different attitudes towards risk.

Later, Jensen and Meckling (1976) applied the *agency theory* to the modern corporation and modeled the agency costs of outside equity. According to them, ownership and control of corporations are not fully coincident, as there is potential for conflicts of interest between owners and controllers that, combined with the inability to write perfect contracts and/or monitor the controllers, ultimately reduce the value of the firm. Some contracts focus only on the agent's behavior, and others focus on outcomes of interest to the principal. In particular, contracts are considered efficient if they can minimize the sum of the following agency costs:
• *Monitoring costs* borne by the principal to reduce agent actions that would harm the interests of the principal;

• *Bonding costs* borne by the agent to guarantee that the agent will not take actions to harm the interests of the principal;

• A *residual loss* incurred because monitoring and bonding may not fully align agent behavior and principal interests.

All these notions are considered the basis of the major studies of Corporate Governance.

### 2.1.2 Corporate Governance Definitions

Corporate Governance does not have a shared definition in literature and it is not easy to describe unambiguously. There are widely divergent views of the nature of governance. This is definitely linked to the complexity of governance matters and the various angles of the approach which can be chosen. Corporate Governance is a subject that is notoriously difficult to define in one sentence.

It is susceptible of two different perspectives: *shareholder-oriented* or *stakeholder-oriented*. A shareholder perspective of Corporate Governance is based on the assumption that a corporation is a private property and that executive and non-executive directors are fiduciary of corporations’ shareholders. In the narrow sense, Corporate Governance refers to the structure and functioning of the Boards of Directors, and their relationship to management, especially in public companies. Management runs the company solely in the interest of shareholders. Sternberg (1998) gives a clear definition in favor of this orientation: “*Corporate Governance describes ways of ensuring that corporate actions, assets and agents are directed at achieving the corporate objectives established by the corporation’s shareholders*”. The role of the board of directors is to mitigate the agency problems related to Berle and Means’ (1932) dilemma of the separation of ownership from control in listed companies.
On the other hand, a stakeholder perspective rests upon the concept that corporations are superordinate entities in which a variety of parties have vested legitimate interests. The word stakeholder was introduced in an international memorandum at the Stanford Research Institute in 1963, referring to “those groups without whose support the organization would cease to exist”.

The OECD Principles of Corporate Governance (2004) provides one of the most used broad definitions since it serves as a reference for all OECD member countries: “Corporate Governance defines a set of relationships between a company’s management, its board, its shareholders and other stakeholders. Corporate Governance also provides the structure through which the objectives (i.e. strategy) of the company are set, and the means of obtaining those objectives and monitoring performance are determined”. This view considers that the corporation should be governed in accordance with the key company stakeholders (e.g. managers, employees, shareholders, creditors, suppliers and the government). In doing so, the company would take into account long-term social and environmental factors, being represented by a number of different groups (unions, NGOs, regulators...).

Corporate Governance has succeeded in attracting a good deal of public interest because of its apparent importance for the economic health of corporations and society in general. The way companies are governed – their ownership and control, the goals they pursue, the rights they respect, the responsibilities they recognize, and the distribution of the value they create – has become a matter of great significance, not only for their directors and shareholders, but also for the wider community. Corporate Governance is considered the outcome of the relationships and interactions between several agents such as employees, suppliers, customers and the community as a whole. An optimal structure has to be designed in order to minimize institutional costs resulting from the conflict of interests among these players. OECD (2004) affirms that “good
Corporate Governance should provide proper incentives for the board and management to pursue objectives that are in the interests of the company and shareholders and should facilitate effective monitoring, thereby encouraging firms to use resources more efficiently.

Nowadays, the increase of institutional costs is due to the higher number of agency relationships, typical of today’s large companies, and the impossibility to write contracts between principals and agents that specify the exact duties of the latter. The companies’ performance, value, organizational structure and corporate strategies may be significantly impacted by the size and identity of these costs. A substantial amount of literature concerns on the relationship between Corporate Governance and performance. The results are often contradictory, which may be largely due to insufficient data. If some authors affirm that good Corporate Governance at the board level has a significant impact on share prices, there are finds little qualitative evidence to either prove or disprove such a link. Thus, institutional costs can impact the capital structure of a company when such costs are borne by shareholders and, as a result, the cost of equity financing increases, involving a debt financing and/or direct or indirect state subsidies. Regarding corporate strategy, if employees play an important role in its definition, there might be losses in the efficient redeployment of resources. On the other side, if employees are not completely involved in the information and decision making process within the company, there may be a lower commitment to the enterprise’s development and more social costs may arise.

James Wolfensohn, President of the World Bank, also declared: “The governance of companies is more important for world economic growth than the government of countries”. Generally speaking, Corporate Governance is considered a key element in enhancing investor confidence, promoting competitiveness, and ultimately improving economic growth. Good Corporate Governance should ensure that stakeholders with a relevant interest in the company’s performance are fully taken into
account leading to a significant contribution to prevent malpractice and fraud, although it cannot avoid them absolutely. The efforts undertaken to improve governance by many national and international institutions and bodies, in particular via enacting rules, standards or recommendations, have to be respected and serve as models against which directors of these institutions or business firms can measure their conduct.

2.1.3 Systems of Corporate Governance

Corporate structures and governance arrangements vary widely from country to country. The narrow and the broad definitions of Corporate Governance are both related to the level of the individual enterprise (company). At the macro level (country) the definition is different and refers to systems of Corporate Governance.

The evolution of the corporate forms followed different routes and reached different destinations in corporate practice, company law, and associated institutional development of Anglo-American, European and Asian forms of corporate enterprise. The result is the creation of different systems of Corporate Governance.

A system of Corporate Governance is defined as “a more or less country-specific framework of legal, institutional and cultural factors shaping the pattern of influences which stakeholders exert on managerial decision-making” (Weimer and Pape, 1999). National economies developed different capital market mechanisms, legal framework, factor markets and private or public institutions to act as owners or Corporate Governance principals in the economy. The Corporate Governance system is of crucial significance because it can influence the decisions undertaken by firms and ultimately has an impact on the wealth created in a country (Braendle, 2006).

Corporate Governance systems differ across countries. Sheridan and Kendall (1992) affirmed: “Different countries have different ideas as to
what constitutes good Corporate Governance”. Indeed, Corporate Governance systems are composed of many elements. These elements include ownership structure, financial regulation, capital markets, labour and its regulation, debt structures, bankruptcy laws and banking supervision.

The causes and consequences of different Corporate Governance systems have been the subject of extensive studies. Moerland (1995a, b) argued about the difference between “market-oriented” and “network-oriented” systems of Corporate Governance. The key feature of the “market-oriented” system is the active role of the market for corporate control and it refers overall to the Anglo-American countries. On the other side, the “network-oriented” system is characterized by the existence of oligarchic groups, which influence managerial decision-making through networks of stable relationships such as cross-shareholdings and interlocking directorships. This system prevails in European and Asian countries.

Another distinction among Corporate Governance frameworks is between “outsider” and “insider” based systems. This distinction is based on CG issues which are directly traced back to the ownership structure of corporations. The “outsider” scheme is qualified by low ownership concentration, a clear separation of ownership and control, lower debt/equity ratios and mature financial markets. By contrast, the “insider” system is characterized by highly concentrated ownership, high debt/equity ratios and a higher rate of bank credits. The latter is due to the closer relationship with banks that are often represented on the board of major corporations along with other stakeholders including related firms and employees. The “outsider” system typically reflects the system of Corporate Governance in the Anglo-American countries. As opposite, the second system prevails in European and Asian countries. However, until 1999 the debate on systems of Corporate Governance was hampered by the lack of a clear framework. The Anglo-American countries
presented obvious differences compared to other countries, but there was not a structured scheme in the literature.

Weimer and Pape (1999) proposed a taxonomy of systems of Corporate Governance based on the division proposed by Moerland (1995a, b) of four groups of industrialized countries:

- **The Anglo-Saxon** countries: the United States, the United Kingdom, Australia and Canada;
- **Germanic** countries: Germany, the Netherlands, Switzerland, Sweden, Austria, Denmark, Norway and Finland;
- **Latin** countries: France, Italy, Spain and Belgium;
- **Japan**.

In this paper, when we talk about industrialized economies we always refer to the United Kingdom, the United States, Canada, Australia, Austria, Denmark, Finland, Germany, the Netherlands, Sweden, Switzerland, Japan, Belgium, France, Italy and Spain.

To support this classification, Weimer and Pape (1999) presented an illustrative research focused on eight characteristics useful to identify systems of Corporate Governance:

- The national prevailing *concept of the firm* in terms of the role of the “company” in the national culture;
- The *board system*: one tier vs. two tier structure;
- The *importance of stock markets in the national economy*, based on two indicators used by the World Federation of Exchange (WFE): the market capitalization of domestic companies as a percentage of Gross Domestic Product (GDP) and new equity raised through public offerings as a percentage of the Gross Fixed Capital Formation (GFCF);
- The salient stakeholders able to exert influence on managerial decision-making;
- The *presence or absence of an external market for corporate control* which refers to the process by which ownership and control of listed
companies is transferred from one group of investors and managers to another;

- The *ownership structure* in terms of the ownership concentration (the presence of absence of large shareholders) and the identity of shareholders (individuals, banks, other financial institutions, non-financial institutions, government, foreign);
- The extent to which *executive compensation is dependent on corporate performance*;
- The *time horizon of economic relationships*: long or short relationships based.

Each characteristic is automatically linked and influence each others. For example, the nature of the market for corporate control highly depends on the structure of ownership or the executive compensation is influenced by the relationship between managers and shareholder.

However, the two authors have tried to identify four groups or styles of Corporate Governance systems: the **Anglo-Saxon**, the **Germanic**, the **Latin** and the **Japan** system. To a greater or lesser extent, the qualification of all characteristics supports the division between these four classes of governance systems. However, national governance systems within one country group might show relevant differences, and systems in countries attributed to different groups might display noteworthy similarities (Weimer and Pape, 1999).

In the **Anglo-Saxon** systems, companies are conceived as a combination of managerial directors operating for the benefit of shareholders, or as an instrument for the creation of *shareholder value* (Weimer and Pape, 1999). The concept of shareholder value was introduced in 1985 by Alfred Rappaport in his book *Creating Shareholder Value*, referring to the concept that planned actions by management and the returns to shareholders should outperform certain bench-marks. Indeed, a company creates value for the shareholders when the shareholder return exceeds
the required return to equity. In other words, a company creates value in one year when it outperforms expectations. This is considered fundamental for the Anglo-Saxon culture and it is the major goal of all corporate strategies. In addition, the common law legal system is oriented to protect shareholders who are also the most important stakeholders able to exert influence on managerial decision-making. In the USA, this is demonstrated, among others, by the Securities Exchange Act (1934), the Securities Investor Protection Act (1970), the Insider Trading Sanctions Act (1984) and the Private Securities Litigation Act (1995). Similar regulatory framework in the UK include the Company Securities Act (1985, revised in 1989), the City Code on Takeovers and Mergers and the Financial Services Act (1986). “One share one vote” is the fundamental democratic principle in these countries.

The board system is one-tier, in which executive and supervisory responsibilities of the board work together. The board is constituted by executive (“insider”) and non–executive (“outsider”) board members. The latter advice insider directors on major policy decisions while bear the interests of shareholders in mind. Both members are appointed and dismissed by the general assembly of shareholders. Traditionally, U.S. boards are relatively small and contain few executives. The CEO is typically also the Chairman. The small size and the high presence of outsider members in the board of large firms are consistent with the preference of the institutional investors that hold most of their equity. British boards have similar U.S. sizes but different structures, with half of the directors being “insiders” and the Chairman usually differs from the CEO.

These countries rely heavily on stock markets to assemble and allocate capital. In 1995, the total market capitalization of firms in the Anglo-Saxon countries was equal to 82.1 per cent of their GDP’s and the new capital raised was equal to 10 per cent of the GFCF as Table 1 shows.
The most important feature is the external market of corporate control that plays an active role in the economy. The takeover process is seen to act as a discipline on firms, allowing control to be transferred from inefficient to efficient management teams and encouraging a convergence between the corporate management and the shareholders.

The structure of ownership is characterized by low ownership concentration and large presence of individuals as shareholders, especially in the United States. This structure clarifies partly the presence of an active market for corporate control. The wider corporations are held, the less mechanisms shareholders can use effectively to influence managerial decision-making in a direct manner (e.g. by the exercise of voting rights...
at the general assembly, board opposition to management proposals and informal dialogue) (Weimer and Pape, 1999).

Typical executive compensation instruments are share-option plans or multiyear bonuses, both strongly linked to the company’s performance. These remuneration programs serve to align the interest of managers and shareholders. They supported this finding by a sample of 220 listed companies, top management owned shares in “their” company in 100 percent of these cases.

To conclude, the time horizon of economic relationships has been defined “short”, partly explained by unrestricted markets for capital, labor, goods and services which allow fast adjustments to changing circumstances.

The German conception of firm considers the company as an autonomous economic entity constituting a coalition of various participants, such as shareholders, corporate management, employees, suppliers of goods and services, suppliers of debt and customers, striving for the continuity of the firm as a whole (Moerland, 1995a). Compared to the Anglo-Saxon model, the concept is completely stakeholder-oriented instead of shareholder-oriented.

This is reflected into the two-tier board system present in Germany, the Netherlands, Austria and Denmark. It is constituted by a management board (Vorstand) and a supervisory board (Aufsichtsrat), completely separated. The management board is appointed for 5 years and dismissed by the supervisory board. The supervisory board is composed by non-executive independent directors in charge for 5 years. From a practical point of view, its role is to give advice on major policy decisions. The Supervisory Board is composed by employees’ representatives (Trade unions) and by shareholders representatives. The right of employees to participate in decision-making is so-called “codetermination”. The Co-determination Act was introduced in Germany after the World War II and
expanded in the 1970s. It states that companies with fewer than 2,000 employees should have 2/3 of the Supervisory Board elected by shareholders and 1/3 elected by the employees. In companies with more than 2,000 employees the ratio is 1/2 elected by the shareholders and 1/2 by the employees. The general rule in Germany states that the Supervisory Board shall consist of three members. Exceptions allow the Board of Supervisors to have as many as 21 members. For companies with more than 20,000 employees the Board of Supervisors consists of 20 members equally representing the shareholders and the employees. The Germanic framework is not based on the principle “one share, one vote” because there are several instruments to limit the power of shareholders that weaken the influence of independent shareholders on managerial decision-making.

The salient stakeholders are employees and industrial banks. Banks can have a double role: they can act both as shareholders and as supervisory board members. Especially in Germany, banks can influence the decision process by holding large block of shares because there are no regulatory restrictions, apart from some generous prudential rules. This is an important distinction compared to the United States system where the Glass-Steagall Act (1993) and the Bank Holding Company Act (1956) do not allow commercial banks to participate on their own account in the shareholders’ capital of non financial corporations. Besides, by legal device, known as Depotstimmrecht, banks can have the right to assemble the voting rights conferred to them by custody shares of individual investors who have delivered their proxies. Considering the number of interlocking board seats the role of local banks increases substantially in the corporate network.

Stock markets play a moderate role in the national economy. As table 1 shows, in 1995, the total market capitalization of firms was equal to 41.7 percent of their GDP’s and the new capital raised was equal to 6.5 percent
of the GFCF. The external market for corporate control is substantially absent; only 3 takeovers took place between 1950 and 1999 in Germany. German companies are usually not influenced on managerial decision by stock markets, but by the negotiation table between the Management Board and the Supervisory Board.

The structure of ownership is characterized by a large shareholder, so called blockholder, and the high presence of non financial corporations as shareholders. Interlocks, pyramids and cross-shareholding are commonly accepted among firms. In Germany, the latter is subject to a limitation of 25 percent of the voting rights associated with those shareholdings. The ownership structure partly explains the absence of the market for corporate control because there is an implicit agreement that such shareholdings are not used to launch unwelcome takeovers (Franks and Mayer, 1990). However, in 2002/3 the Takeover Act and Cromme Code were introduced. The Takeover Act obligates shareholder to launch a mandatory takeover bid with respect to all of the shares of the company in the case they own an amount of share over 30 per cent of the voting rights of the target company. The Cromme Code harmonizes a wide variety of laws and regulations and contains recommendations and suggestions for complying with international best practices on Corporate Governance. The use of performance-related compensation for executives is uncommon. Although variable remuneration has became more and more important in these countries.

The institutional environment and the characteristics of the structure of ownership have influenced the economic relationships, characterized by stable and long linkages.

In Latin countries, the concept of company is more similar to the German perspective, stakeholder-oriented, than the Anglo-Saxon one. The most common allowed board system is one-tier, but France and Italian companies can choose either a one-tier or a two-tier board of directors, but the majority of public companies usually chose the unitary
system. In Italy, the dual system was introduced only in 2003. Limited to the one-tier system, in France, corporate laws do not make a clear distinction between executive and non-executive members, but in reality the latter are usually shareholders’ representatives. Concerning the dual system, in Italy, the Supervisory Board is composed only by shareholders’ representatives. Employees do not have a key role in the management of the company in Latin countries.

The salient stakeholders able to exert influence on managerial decision-making are financial holdings and cross-holdings, families and government control (Moerland, 1995a, b). In France, one form of financial holding is where corporations and their subsidiaries hold each other’s voting rights reciprocally. Another is where firms place their shares within a “limited” group of “friendly” companies. Banks as shareholders are important both in France and Spain, but not in Italy where it is forbidden for banks to hold shares and in Belgium where there are some legal restrictions for banks to become shareholders in non-banking corporations.

The importance of stock markets is defined as “moderate”. In 1995, the total market capitalization of firms in the Latin countries was equal to 27.3 per cent of their GDPs, the lowest level compared to other Corporate Governance systems; and the new capital raised was equal to 6.5 per cent of the GFCF. The market of corporate control is almost absent, but the number of hostile takeovers is higher than in the Germanic countries (Moerland, 1995 a, b).

Latin countries are characterized by relatively high ownership concentration especially in Spain, Italy and France. The ownership structure is characterized by pyramids and cross-shareholdings. French companies can take cross-shareholdings only up to a limit of 10 percent and also subsidiaries may own up to 10 percent. In addition, French and Italian corporate regulation involves that concert parties that hold more than one-third of a company’s capital are required to launch full takeovers. In the Latin system, the existence of cross-shareholdings is an
implicit agreement not to undertake hostile acquisitions. In terms of ownership composition, major shareholders are non financial corporations. Compared to the Anglo-Saxon system, performance related executive remuneration is not so common, except in France where the percentage of executive compensation is similar to those in the UK and Canada. Finally, the economic relationships are defined as long-term have been sustained by the existence of cross shareholdings, family ownership and government control.

The Japan system defines Corporate Governance only in Japan. In this system, the cultural features impact deeply on the Corporate Governance debate such as the sense of “family”, the importance of “achieving consensus” and the concept of “lifetime employment”.

The concept of company is similar to the German and Latin systems, stakeholder-oriented. The critical component of Japan’s system is the presence of large-scale inter-corporate networks, known as keiretsu. They involve companies that share the same names and logos and organize relationships among major financial institutions, trading companies and industrial producers. Keiretsu were established in part in the prewar family-centered holding companies, the so-called zaibatsu, and in part after the Second World War.

The Japanese board system includes a board of directors, an office of representative directors and an office of auditors, all of them with different duties. Japanese firms often set up an informal substructure of the board of directors, called “outsider” members. From a practical point of view, this system reflects the one-tier board system in the USA and the UK. In fact, the board is appointed and dismissed by the general assembly of shareholders. Japanese boards are usually huge and dominated by executives of the firm, arguably reflecting the concept that a board sampling of the firm’s managers best represents the interest of the organization.
Salient stakeholders are employees, other financial institutions, shareholders and banks. The cultural tradition of familyism has determined the presence of employees as stakeholders. Employees have a say in a considerable breadth of corporate affairs, such as wage determination, the way in which work is organized, and the way in which managerial choices are made that would affect the lives of the employees. Shareholders are also important stakeholders in the firm, but their role is different from that in most Western governance systems. The Japanese shareholders seem to own their securities for strategic reasons, like consolidating long-term business ties, or for symbolic purposes, in the sense that they are considered as a ticket of admission to the corporate network. Japanese banks are so-called city banks which are the nuclei in the corporate webs of the keiretsu. City banks influence companies as lenders, as shareholders holding up to maximum 5 percent of the company’s shares (introduced by Anti-Monopoly Act), and as well as by transferring former bank director to non-financial companies in the keiretsu.

Stock markets play an important role in Japan's economy. In 1995, the total market capitalization of firms in Japan was equal to 83.5 per cent of his GDP, the highest level compared to other Corporate Governance systems; but the new capital raised was equal only to 0.5 per cent of the GFCF.

In Japan, there is no active market for corporate control. It could seem a contradiction because most of the companies are listed. However, this situation can be explained by a cultural reason because achieving consensus is one of the cultural tenets, and by the Japanese ownership structure.

The structure of ownership is characterized by relatively stable cross-shareholdings between financial and non-financial companies. In Japan
cross-shareholdings are relatively small on a bilateral basis, but the number of such ties is high, especially in *keiretsu*. Other major shareholder classes are: individuals, banks, other financial institutions and non-financial institutions; all with the same importance.

Performance-related executive remuneration is not commonly used because according to Japanese culture it is not necessary to align the interests of managers and shareholders by means of performance-dependent pay. Finally, long-term and stable economic relationships characterize the Japanese systems due to *keiretsu* structures and the idea of long term employment.

### 2.1.4 Patterns Evolution in Corporate Governance Systems

Over the last decade there has been an intense debate concerning the *convergence* of Corporate Governance systems around the world, at either the national or firm level. Generally speaking, the concept *convergence* refers to the trend of Corporate Governance systems to change towards a unique global framework, a new system, presumably the *best* system of Corporate Governance.

If we look at the literature in the field of Corporate Governance, we find different arguments in favor and against a further harmonization of Corporate Governance systems. This is due to the significant nature of the question. Corporate Governance systems are composed by several elements, which follow different convergence paths. For example, there is an accepted consensus on the idea that good information is necessary for good Corporate Governance, but much less convergence on whether financial markets or banks are the best at providing such information (Hansmann and Kraakman, 2001).
Braendle (2006) compared and tested different theoretical mechanisms for the implementation of a further harmonization of systems such as obligatory legislation, market forces and listing requirements. First, obligatory legislation for firms represents one opportunity for the national policy maker to enforce international guidelines, especially if it is initiated by outside pressures. However, while some firms do adhere voluntarily to high principles, there are several companies that do believe it is not necessary to abide high standards. This suggests the need to introduce national legal regulation in order to force companies to respect high standards. However, over-regulations could lead to opposite findings due to the existence of different flexibility levels of a company. OECD (2004) declared “the Corporate Governance framework should be developed with a view to its impact on overall economic performance, market integrity and the incentives it creates for market participants and the promotion of transparent and efficient markets”. Second, market force is considered a significant mechanism because companies seem fascinated for good Corporate Governance standards. A certain convergence of the systems is taking place due to the needs and the practices chosen by large enterprises. Finally, listing requirements are considered key tools to achieve certain standards because companies listed in the same stock exchange are subject to the same requirements, even if they are from two different countries.

Hansmann and Kraakman (2001) both stated that Corporate Governance systems in Germany, Japan, and the US showed signs of convergence towards each other. According to these authors there are three principal features driving economies towards consensus: the failure of alternative models (e.g. manager-, labour-, and state-oriented models of corporate law), the competitive pressures of global commerce, and the shift of interest group influence in favor of an emerging shareholder class.
Brandley (1999) sustained that an increase of institutional investors in the ownership structure will push for a proceeding harmonization. Institutional investors are defined as entities, which invest in or buy and sell securities for their own account and include banks, pension funds, and mutual funds (Braendle, 2006). The growing importance of these players impacts on the convergence debate because they have an active role in affecting Corporate Governance principles and performance. Thus, they tend to endorse the same standards in all companies they invest.

Pagano (2002) argued that proceeding integration of the financial markets, like the creation of the pan-European stock exchange Euronext, and a strong M&A activity support the harmonization of Corporate Governance systems.

Gilson (2000) looked at convergence in terms of functional, formal and contractual convergence. Functional convergence takes place when organizations are flexible enough to react to demands by market players and there is not the necessity of a formal change in the rules. Formal convergence occurs when a change in the law forces the adoption of best practices. Finally, contractual convergence occurs when firms change their own Corporate Governance practices by committing to a better regime, possibly because the legal system lacks flexibility or laws cannot be changed.

Bris and Cabolis (2004) suggested that cross border mergers provide an alternative mechanism for the contractual (Gilson, 2000) transfer of Corporate Governance. According to international law, a 100 percent acquisition by a company from a foreign country results in a change of nationality for the target, and therefore a change in the law that protects investors.

In addition, as companies have undertaken cross border business combination in product and capital markets, there is an emerging convergence of financial accounting standards and practices (Tarca 2002).
The surge of international business activity has highlighted diversity in financial reporting practices. As a result, harmonization practices include the development of International Financial Reporting Standards (IFRS) by the International Accounting Standards Board (IASB).

On the opposite side, three major theses argue against convergence of systems of Corporate Governance systems: Roe and Bebchuk (1999) developed a theory of *path dependence* of corporate structure. In other words, the corporate structures at time $t_1$ depend overall on those that existed at an earlier time $t_0$. Indeed, the two authors identified and analyzed two sources of *path dependence*: structure driven path-dependence, concerning the ownership structure, and rule-driven path dependence, regarding the financial and corporate regulation. In fact, these sources of path dependences are likely to lead to persistence in ownership and control structures for efficiency motivations due to the fact that initial ownership situations impact on which corporate regulations would be efficient. A second barrier to the convergence process is defined as *rent-seeking*, meaning that identified players would impede changes even in the case of the improvement of the systems.

Finally, Schmidt and Spinder (2000) introduced the concept of *complementarily* to show that national Corporate Governance systems are systems of complementary interdependence elements. This concept is based on the idea that all elements fit together to create a consistent system. So, if a single aspect is modified, the result would automatically lead to an inconsistent framework.
2.2 Cross border M&A Related Concepts

2.2.1 Definitions Of Cross border M&A

A merger or acquisition is an activity through which two or more companies are united into one. M&A’s are one of two types of external growth for companies as well as takeover techniques used in an active external market for corporate control. The company’s location distinguishes domestic (companies’ headquarters are located in the same country) from cross border M&A’s (companies’ headquarters are located in different home countries). The terms cross border M&A and M&A are often used interchangeably, but there are different fundamental distinctions.

A cross border merger occurs (UNCTAD, 2000) “when the assets and operations of two firms belonging to two different countries are combined to establish a new legal entity”. If the new legal entity results in the liquidation of the purchased company’s assets and the survival of the acquirer company assuming all of the debt and equity of the other firm that ceased to exist, it is known as statutory merger. On the other hand, if the new company creates a new legal entity in which none of the two separate companies still exists, it is known as consolidation. Both cases result in a changing shareholders’ structure. The new common board will manage all business activities in the interest of the shareholders from the two separate entities. Furthermore, the headquarters of the new firm can be established in both companies’ countries involved or only in one defined country. For example in 1999 the cross border merger between Uniphase Corp (United States) and JDS Fitel (Canada) which had two corporate headquarters, one in Ottawa and the other in California.

A cross border acquisition occurs (UNCTAD, 2000) “when the control of assets and operations is transferred from a local to foreign company, the former becoming an affiliate of the latter”. It is also known as a takeover or a buyout, and involves the purchase of one firm (the target) to another (the bidder). It usually refers to a purchase of a smaller firm by a larger
one. The target company that is being sold and acquired is affected by a change in owners of the company. The transaction may take the form of a purchase of assets or the purchase of stock. In the latter, if the acquisition involves the purchase of 100 per cent of the target company voting’s shares, it is called Full Acquisition; if it engages the acquisition of 50 to 99 per cent, it’s a Majority Acquisition and from 10 to 49 per cent, a Minority Acquisition. On the other hand, if a smaller firm acquires management control of a larger or longer established company and keeps its name for the combined entity. This is known as a reverse takeover. The country of the purchaser or the bidder is known as the “home country” and the country of the acquired company or the target is known as the “host country”.

The acquisition could be in foreign affiliates, meaning that the capital increases in a foreign affiliate already owned by the acquirer, or in a local firm. In the second case, if the acquired company is a public firm, the transaction is called privatization, otherwise it is known as an acquisition of a private local firm. In an acquisition, some or all shareholders of the target company agree to sell their shares and the new board will coordinate all business activities only in the interest of the acquirer. Statutory Mergers and Full Acquisitions may be treated as identical, but the key difference is that a new legal entity is set up in the first case.

Finally, there is not a formal definition of mega cross border M&A deals. Some define mega cross border M&As as deals worth over $1 billion, others refer to transactions whose value exceeded $10 billion U.S dollars. Each author provides its own definition. For this research, the term mega relates to cross border M&A deals whose value exceeded $3 billion U.S dollars.
2.2.2 Types of Acquisition

There are many standards used to classify acquisition deals. In the following paragraphs, we are going to introduce the most common three standards. These classifications are used to categorize both domestic and cross border deals.

First, depending on the attitude or recommendation of the target company’s management or Board of Directors, acquisitions are usually categorized as being friendly or hostile. An offer made directly to the firm’s management or its Board of Directors is defined as a friendly takeover. If the board feels that its shareholders will be better off accepting the offer than rejecting it, the board recommends accepting the bid. In a hostile takeover, the acquirer bypasses the target’s management and approaches the target company’s shareholders directly with a tender offer for the purchase of their shares. Indeed, a tender offer is an offer to purchase a certain number of shares at a specific price and on a specific date. It can also be used in friendly takeovers, when the target’s management approves the offer before it is presented to shareholders. Compared to friendly takeovers, a hostile acquisition may lead to further difficulties in the integration process.

Second, based on the characteristics of the industries and business areas in which the transaction parties are operating, M&A transactions can be mainly divided into three types: horizontal, vertical and conglomerate. Horizontal M&A’s take place between two companies with the same or similar products, technologies or markets. By the concentration of resources, the creation of a new firm aims to achieve synergies, increase market power and payoff ability. Vertical M&A’s take place among firms in client-supplier or buyer-seller relationships. The new firm intends to reduce uncertainty and transaction costs as it considers forward and backward linkages in the production chain and to realize economies of scope. Quality control is another advantage of a vertical integration
strategy, whether buying up or down the supply chain. Finally, conglomerate M&A’s consist of all mergers and acquisitions which are neither horizontal nor vertical. They take place between two companies that operate into two unrelated industries with different products and markets, as well as no special technology relationships. The new firm seeks to diversify risk, particularly to reduce the cost of capital (defined as the rate of return required on invested funds) and deepen economies of scope. The distinction among these three categories, however, is not always clear-cut. Recent developments related to the economic environment may make it even more complicated, and could significantly affect formal corporate links.

Third, based on companies’ motivations, acquisition transactions can be classified also into: strategic acquisitions and financial acquisitions. Strategic acquisitions occur when one company acquires another as a part of its overall business and wish to improve the strength of a firm’s strategy. There are several reasons for blending together two companies:

- To create or achieve synergies: meaning that the combined entity is more profitable than the two companies separate. Synergies can be static (cost reduction or revenue enhancement) or dynamic (e.g. innovation-enhancing) in character;
- To increase the size of the acquiring company: a larger company can achieve also financial, managerial and operational synergies. Furthermore, the rise of economies of scale in capital allows greater companies to access to capital at lower-cost;
- To increase the market power and the market dominance of the acquiring company, especially for companies eager to create opportunities for anti-competitive practices and raise barriers to entry;
- To enter and access quickly in new foreign markets, discovering new opportunities: by cross border M&A, acquiring companies can
use the marketing process, distribution system and long-building
credit of the acquired company, so as to take the aimed market
quickly and introduce easily other related products into the market;
• To achieve economies of scale or scope;
• To access quickly to advanced technology or natural resources: for
companies located in countries without advanced technology or
natural resources, cross border M&A transactions become a tool to
acquire them;
• To share intangible assets: by cross border M&A, the “bidder”
company does not only acquire various tangible assets, but also
share intangible assets of the “target” company, such as R&D or
technical knowhow, patents, brand names, the possession of local
permits and licenses, and supplier or distribution networks. These
intangible assets are defined as strategic, because they are not
available elsewhere in the market and they take time to develop;
• To anticipate competitor’s actions: in oligopolistic industries, cross
border M&A deals can be carried on in order to avoid becoming a
potential target company, e.g. the mining industry;
• To reduce risks (operational risks, foreign exchange risks, etc.) by
product or market diversification: through cross border M&A deals,
a company may be able to dodge tariff and non-tariff barriers and
thereby lower the level of uncertainty across countries;
• To satisfy managerial preferences: corporate managers can pursue
their own self interest, such as executive power, prestige, job-
security or remuneration.

Cross border M&A deals are usually undertaken, when companies believe
to achieve more than one strategic objective. In developing countries, the
reason for cross border M&As is rarely access to proprietary technology or
skills. The advantages to undertake a cross border acquisition depend
more on rapid market entry, local market knowledge, established
distribution systems and contacts with the government, suppliers or
customers.
Financial acquisitions occur when the bidder believes that the price of the target company is less than the intrinsic value of the firm’s assets. The intrinsic value is defined as the value which is justified by assets, earnings, dividends, definite prospects and the factor of management. Financial acquisitions are encouraged by imperfections of capital markets that lead to the undervaluation of company assets. By similar reasoning, they are also motivated by economic crises that lead to sharp falls in asset prices. The acquirer does not buy in the intent to build an enterprise for the long term, but the purchase is for the short to midterm and, after investing, repositioning, and combining them with other synergistic assets, will resell then to a strategic buyer. The acquirer is usually a private equity fund or a holding company. The most common reason to undertake a financial acquisition is that the acquirer believes that the target company is badly managed (disciplinary takeover) or motivated by tax gains associated with the purchase. Finally, a Financial acquisition could be structured as a leveraged buyout (LBOs) that takes place in order to buy a public company and make it private. It is defined as leveraged buyouts because the transactions are financed mostly by debt. Most of the motives mentioned above refer both to domestic and cross border M&A transactions. Ghoshal (1987) developed a special framework to explain global strategy. This framework is shown in Table 2. The vertical axis illustrates the objectives pursued by the international company, and the horizontal axis illustrates sources of competitive advantages.

The author presents three major sources of competitive advantage: national differences, scale economies and scope economies. First, national differences within the company due to cross border M&A transactions would provide the company greater ability to move operations to the lowest cost country, develop corporate competences to manage with the risks from market changes or change in government policy, and improve the capability to learn and adapt in different business cultures. Second,
scale economies set up by the surge in market volume due to the *cross border* deal would result in greater efficiency in each part of the value chain, the necessity to balance scale and flexibility, and benefits from the experience curve. Finally, the economy of scope created by the introduction of new products, markets and business due to *cross border* M&A would result in sharing investments and costs, lower several risks raised by geographic, product, market, and business diversification, and the capability to share knowledge across units.

**Table 2 Global strategy: an organizing framework**

<table>
<thead>
<tr>
<th>Strategic objectives</th>
<th>Sources of competitive advantage</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>National differences</td>
</tr>
<tr>
<td><strong>Achieving efficiency in current operations</strong></td>
<td>Benefits from differences in factor costs-wages and cost of capital</td>
</tr>
<tr>
<td><strong>Managing risks</strong></td>
<td>Managing different kinds of risks arising from market or policy-induced changes in comparative advantages of different countries</td>
</tr>
<tr>
<td><strong>Innovation learning and adaptation</strong></td>
<td>Learning from societal differences in organizational and managerial processes and systems</td>
</tr>
</tbody>
</table>

Source: Ghoshal (1987), *Global strategy: an organizing framework*

### 2.2.3 Modes of Entry and *Cross border* M&As

Thinking about modes of entry into a new market, it is useful to compare *cross border* M&As with other modes of entry such as exporting, licensing, franchising, joint ventures, or wholly subsidiaries. The literature (Harzing, 1999) has identified a number of firm-specific, host country-specific and industry-specific factors that influence the mode of entry of companies into foreign markets. Indeed, companies involved in *cross border* M&A transactions may present common features. These characteristics allow
the understanding of motives behind big players’ choice to follow this type of external growth.
In detail:

- Companies with lower R&D intensity prefer to acquire technological capabilities abroad using cross border M&As, while those with stronger technological skills are more likely to enter by green field ventures;
- More diversified investing companies tend to enter into new markets through cross border M&A deals;
- Larger corporations are traditionally more inclined to buy than smaller ones; although the number of cross border M&As by the latter has increased in recent years;
- Companies tend to buy or merge in countries with similar cultural and business practices;
- Firms that already have an affiliate in a host country tend to prefer takeovers as a way of expansion in the same country in order to avoid adding local production capacity and competition;
- Companies established by a previous domestic or cross border M&A are more likely to undertake further cross border deals.

2.2.4 Financing and modes of payment

Cross border M&A’s are financed in a number of ways: with cash, by issuing stock, by borrowing or issuing debt or by a combination of cash and debt or of cash and stock of the purchasing entity (hybrid financing).

In making the decision on how to finance a cross border M&A’s, managers consider several elements: tax and accounting implications, capital structure and information effects.

The target shareholders usually prefer a stock than a cash offer for tax reasons, because they do not have to pay a capital gain tax on the appreciation of their stocks if they receive the purchaser’s shares, rather than the cash for their stocks ceteris paribus. The premium in equity-
exchange offers are much lower compared to the case of a cash offer because the target shareholders have a tax preference for equity-funded acquisitions. If a merger is financed with a stock-exchange, it may qualify for a pooling of interest (book value method) accounting treatment under which the items on the balance sheets of the two companies are added together, and the merged company’s reported income would simply be the sum of the income of the two separate legal entities. If an acquisition is financed with cash, the acquisition must be treated under purchase method of accounting under which the acquiring company is assumed to have purchased the assets of the acquired company at the purchase price. The merged company has no cash implications in the choice among the two accounting methods, but it is of interest to managers because it affects reported earnings.

The financing of a M&A is in part influenced by its implication on the company’s capital structure. Firms that are underleveraged may have an incentive to finance new deals to move toward their long-run optimal debt ratio. On the other side, companies prefer to finance new deals by exchanging stock when they are overleveraged.

Finally, companies have the preference to made a cash offer when their stocks are underpriced. Stock offers have the advantage that the bidder company pays more for the good acquisitions than for bad acquisitions since the target company’s stock price is likely to perform better after making a good acquisition.
3 Data Collection

In this part, we will explain in detail the sources of data collection used in this research as well as the selection criteria used to create a significant sample to analyze Weimer and Pape’s features.

3.1 Source of Data

The data used for this research comes from the following sources:

- The analysis of cross border M&A activity as well as mega deals is based on UNCTAD statistics. These statistics are based on information reported by Thomson Financial. The UNCTAD database on cross border M&As contains information on both ultimate and immediate host (target) and acquiring (home) country. Transaction amounts recorded in the UNCTAD M&A statistics are those at the time of closure of the deals, and not at the time of announcement. The data cover only those deals that involve an acquisition of an equity stake of more than 10 percent: partial and full acquisition, mergers and joint-ventures. The M&A values are not necessarily paid out in a single year;

- The analysis of the feature “the concept of the firm” and “ownership concentration” is based on the available information of the companies’ web sites included in the sample such as mission, strategy, corporate values, shareholder structure and information related to major shareholders;

- The analysis of the feature “the importance of stock market in the national economy” is based on the ratios provided by the World Federation Stock Exchange (WFE); indeed the exchange’s market capitalization to the national gross domestic product (GDP) and the exchange’s investment flows-capital raised to the national gross fixed capital formation (GFCF).
The analysis of the feature “performance-dependent executive compensation” is based on the data provided by Business Week about CEO’s compensation in the fiscal year 2008.

3.2 Sample Selection Criteria
For the analysis of Weimer and Pape’s classification, we are going to select a sample based on the following criteria:

- Transactions: cross border M&As;
- Timeframe: from 1999 to 2007;
- Value: deals worth over US$3 billion;
- Location of companies involved: industrialized countries.

This first sample was used to evaluate the feature “market for corporate control” of the Weimer and Pape’s Taxonomy. Furthermore, for the analysis of “the concept of the firm”, “the extent to which executive compensation is dependent on corporate performance” and “the ownership structure” we selected a second sample. Indeed, within the first sample, we are going to analyze only the final combined entity, at time 2009, created by companies belonging to the Anglo-Saxon systems with a company located in the Latin, German and Japanese model. For this reason, we decided to exclude companies belonging to these cases:

- The final combined entity formed between 1999 to 2007 has been acquired or has acquired a company located in a country not included in the taxonomy of Corporate Governance systems;
- The final combined entity has been sold in several parts to different acquirers;
- The transaction refers to an Initial Public Offer;
- The acquirer company was a private equity or a new company formed by private equities or companies for the purpose of making an acquisition;
• The two companies still exist in two different operating entities;
• The final combined entity is a subsidiary of another company;
• The target company has been sold to another company;
• The final business company failed in bankruptcy.

3.3 Final Sample Description
Concerning the first sample, from 1999 to 2007, 342 mega cross border M&As took place worldwide for a total value of US$2,884.50 billion. Out of them, 263 took place among developed countries and, from these, 150 involved countries regrouped in two different Corporate Governance systems.

For the second sample we consider:
• 12 combined entities created by a target company located in the German Corporate Governance systems and a bidder company located in the Anglo-Saxon regime;
• 3 combined entities created by a target company located in the Latin Corporate Governance systems and a bidder company located in the Anglo-Saxon regime;
• 1 combined entity created by a target company located in the Japanese Corporate Governance systems and a bidder company located in the Anglo-Saxon regime;
• 26 combined entity created by a target company located in the Anglo-Saxon Corporate Governance systems and a bidder company located in the German regime;
• 20 combined entity created by a target company located in the Anglo-Saxon Corporate Governance systems and a bidder company located in the Latin regime.
4 Cross border M&A’s Waves

In this part, we will first have a review on the evolution of cross border M&A activity from 1999 to 2007, focusing on mega deals. And as a further step, we are going to analyze the motivations that have driven this cross border M&A waves.

4.1 Regional and industrial trends of Cross border M&As

M&A deals usually take place in waves, meaning that there is a concentration of deals in a specific period of time with common characteristics. Explanation of this phenomenon could be related to the fact that managers attempt to improve the strategic position of their firms though preemption in the competition of scarce targets.

The past century saw five great M&A waves - one at its beginning, and successive waves at the end of the 1920’s, 1960’s, 1980’s and 1990’s. While most of the earlier M&A activity was confined to North America and Great Britain, the most recent wave has involved all of the major industrialized countries of the world. From the 1990’s M&A waves have been characterized by an increasing percentage of cross border M&A deals. The volume of cross border M&As has been growing worldwide, from 30 percent of the total M&A volume in 1998 to 45 percent in 2007.

After the first famous cross border business combination between Royal Dutch (Netherland) and Shell (the United Kingdom) in 1907 and the second one between Lever Brothers (the United Kingdom) and Margarin Unie (Netherland) in 1929, there was a long period of time without any cross border transactions. Only throughout the 1990’s the volume and the number of cross border M&As increased, then declined after the stock market crash in 2000, and improved again between 2003 and 2007.

According to UNCTAD data, cross border deals involved US$ 1,144 billion in 2000 and US$ 1,637 billion in 2007. Both represented respectively
approximately 90 percent of all Foreign Direct Investment (FDI) inflows. This suggests that \textit{cross border} M&As have become by far the single biggest mean of integrating the world’s economies.

A critical feature of these \textit{cross border} M&A waves is the important role played by the so-called mega \textit{cross border} deals, defined as those transactions whose value exceeded three billion U.S. dollars.

\textbf{Table 3 Mega \textit{cross border} M&A deals, 1999–2007}

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of deals</th>
<th>Percentage of Total</th>
<th>Value (billion US$)</th>
<th>Percentage of Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999</td>
<td>36</td>
<td>0.41 %</td>
<td>364,900</td>
<td>40 %</td>
</tr>
<tr>
<td>2000</td>
<td>51</td>
<td>0.50 %</td>
<td>635,900</td>
<td>47 %</td>
</tr>
<tr>
<td>2001</td>
<td>29</td>
<td>0.35 %</td>
<td>225,400</td>
<td>31 %</td>
</tr>
<tr>
<td>2002</td>
<td>18</td>
<td>0.27 %</td>
<td>103,700</td>
<td>21 %</td>
</tr>
<tr>
<td>2003</td>
<td>13</td>
<td>0.20 %</td>
<td>764,000</td>
<td>19 %</td>
</tr>
<tr>
<td>2004</td>
<td>12</td>
<td>0.17 %</td>
<td>84,700</td>
<td>15 %</td>
</tr>
<tr>
<td>2005</td>
<td>38</td>
<td>0.45 %</td>
<td>26,690</td>
<td>30 %</td>
</tr>
<tr>
<td>2006</td>
<td>54</td>
<td>0.60 %</td>
<td>387,300</td>
<td>35 %</td>
</tr>
<tr>
<td>2007</td>
<td>90</td>
<td>0.89 %</td>
<td>733,800</td>
<td>45 %</td>
</tr>
</tbody>
</table>

Source: UNCTAD

The trend in mega \textit{cross border} M&A deals reflects the general trend in \textit{cross border} activity, as it increased and decreased sharply in the periods of time characterized by higher or lower \textit{cross border} M&A activity. In average, they accounted for 32 per cent of total \textit{cross border} M&A value from 1999 to 2007, with a peak of 50 percent in 2007. The number of such deals nearly duplicated from 2000 to 2007. Although, compared to
the total number of *cross border* M&A’s, the percentage has always remained under 1 percent, meaning that the average value of mega *cross border* deal transactions has increased over time as it is shown in Table 3. From 1990 to 2000, the total value of *cross border* M&A deals increased significantly from $151 billion to $1,144 billion. In particular from 1997 to 1998 the total transaction value increased by 89 percent. This wave of the late 1990’s was at least five times larger (in real terms) than its predecessor, and it involved firms from a greater number of industrialized countries and included many more service transactions (Evenett, 2003).

In 2000, industrialized economies played a key role both as “seller” and “buyer” countries: 96 percent and 94 percent of the total number of mega *cross border* M&A involved respectively a *target* company and a *bidder* company located in industrialized economies. In terms of value, 86 percent and 88 percent of the total value of mega *cross border* M&A involved a *target* company and a *bidder* company located in industrialized economies.

Due to the modest role played by developing companies in this wave, it might be more accurate to call them “international” waves rather than “global” waves of *cross border* M&A (Evenett, 2003).

In 1999, the United States was the most important target country with total mega *cross border* M&A of US$ 139.7 billion. European companies represented the largest *bidder* countries for US companies: 10 *cross border* M&A deals of 12 between the United Stated and foreign companies involved European firms. This trend was mainly influenced by the globalization of European industries and enhanced by the rapid growth of the United States market. The United Kingdom played a key role both as buyer with a total value of $154 billion and as seller country with a total value of $80 in the same year.
In 2000, Germany was the major target country, with total mega cross border M&As of US$ 224.1 billion related overall to the mega acquisition of Mannesmann AG (Germany) by Vodafone AirTouch PLC (the United Kingdom) for US$202.8 billion. Concerning this deal, Vodafone Group Plc launched an offer, just one day before the merger plan between Air Touch Communications (the United States) and Bell Atlantic (the United States). In the same year France, a Latin country, became the second bidder country with total mega cross border M&As of US$121 billion. No company located in Africa and in Asia was involved in any mega cross border transactions.

In terms of industry composition, this first growth of cross border M&A was related overall to the telecommunications and pharmaceutical industries. The demand for telecommunication services substantially increased in the areas of mobile telephony, international calls, and business data services. Mega cross border M&A deals in the telecommunications industry were worth a total value of US$129.40 billion in 1999. Global demand was triggered by the globalization of business operations across all industries, and associated with it, labour, capital and resource mobility. The speed of new technology implementation expanded the potential market as well as worldwide de-regulation and privatization changed the competitive environment.

The consolidation wave in the pharmaceutical industry involved small and large companies. It was driven by the need to share the costs for expensive Research and Development (R&D) and to exploit synergies. All the largest pharmaceutical companies have grown through M&As rather than organic growth. In 1999 the key drivers in the cross border merger between Zeneca Group Plc (United Kingdom) and Astra AB (Sweden) into AstraZeneca Plc were related to cost reduction, synergies and complementary product lines. In addition, the corporate headquarters were located in the United Kingdom, while responsibility for corporate R&D was placed in Sweden. In 1999 a deal that was worth $21.9 billion
between Hoechst (Germany) and Rhône Poulenc (France) established Aventis. Aventis was the product of the first transnational merger to combine large rival companies from France and Germany. Those and other consolidations have led to a further concentration of the industry.

The top five and ten largest Transnational Corporations accounted for 28 and 46 per cent of the world sales of pharmaceutical products compared to 19 and 33 per cent respectively in 1995. The life sciences market grew rapidly in the 1990’s, driven by “growing populations, increasing life expectancies, higher standards of living and by the advances of basic knowledge and applied technology in the areas of biotechnology and genetic engineering” as it was declared in the creation of Aventis.

In addition, a new era in aerospace mergers began with the official start of operations for Europe’s largest aerospace company. Three companies merged into the European Aeronautic Defence and Space Company N.V. (EADS): DaimlerChrysler Aerospace AG (DASA) of Germany, Aérospatiale - Matra of France, and Construcciones Aeronáuticas SA (CASA) of Spain for US$6.70 billion. The company is still headquartered in the Netherlands in Schiphol-Rijk and operates under Dutch law.

After reaching a peak in 2000, cross border M&A fell sharply in number and value until 2003. In 2003 only 13 mega deals took place for a total value of US$76.40, the minimum level reached from the beginning of the new millennium. Despite the economic slowdown and the events of September 11, the United States remained the largest target country only in terms of number of mega cross border deal cause the United Kingdom represented the major target country in terms of value reached (US$54.4 billion).

In terms of country composition, new developing countries were involved in international transactions. Banacci (Mexico) was acquired by Citigroup
Inc (The United Kingdom) for US$12.5 billion, the third largest deal in 2001. An investor group located in the United Kingdom acquired De Beers Consolidated Mines located in South Africa. However, the trend in country composition is not consistent over this period of time because the year later, in 2002, no companies located in developing countries undertook a mega cross border M&A deal.

The downturn in cross border M&A deals was a result of the interplay of factors operating at the micro, macro and institutional levels. First, the decline was related to the consolidation process of some industries acquired through M&As in the previous years and the need for companies to manage the post-acquisition integration. Then, weak economic growth, tumbling stock markets and forecasts of reduced profits, mostly in developed markets, slumped cross border M&A in financial services and telecommunication industries- Further aggravating the decline was a pause in privatizations and a loss of confidence in the wake of corporate scandals and the demise of some large corporations.

However, from 2004 to 2007, cross border M&A deals grew worldwide at an average annual rate of 42 per cent, to reach US$1.6 trillion in 2007, the highest level in cross border M&A’s history. More than 4,661,709 of these deals took place. In 2004, cross border M&As started to pick up again thanks to an increase in corporate profits, lower interest rates and the recovery of asset prices. The services sector accounted for 63 percent of the total value of cross border M&As, with financial services responsible for one-third of its value. Indeed, the three major cross border deals involved financial firms, such as insurance companies and banks. In November, a major landmark was reached with the takeover of Abbey, the sixth largest bank in the United Kingdom by Santander Central Hispano SA for $15.8 billion. The acquisition was defined friendly because the target Board of Directors, leading by Luqman Arnold, suggested to the shareholders to accept the offer. Later, in 2008, Santander became the
third largest bank in the world in terms of profits, and the seventh in terms of stock market capitalization. This transaction was the greatest cross border deal in banking since 1980 when the Chinese HSBC acquired the English Midland and signed a change to the Anglo-Saxon’s mentality. Indeed, the belief of the Anglo-Saxon market toward cross border acquisitions in the financial sector was that only domestic mergers could lead to cost reduction and the exploitation of synergies.

The growth in value and number of cross border M&As in 2004 was largely due to transactions taking place among developed countries’ companies: their value rose by 29 percent compare to the previous year. For the first time, China became the largest target country for cross border M&As in developing countries.

The value of cross border M&As undertook by private equity companies, defined as cross border investments funds that lead to an ownership of at least 10 percent for financial motivation, rose from around US$69 billion in 2003 to US$107 billion in 2004, accounting for 28 percent of all cross border M&As.

Both the value and number of cross border M&As rose again in 2005. Cross border M&A transactions reached US$716 billion, in other words an increase of 88 percent compare to 2004, close to the values reached in 1999, the first year of the latest cross border M&A boom.

This new surge in cross border activity presented a several similarities as well as differences compared to the previous one. First, the value and number of cross border M&As in 2005 were comparable to the averages in 1999 - 2001 as well as in terms of mega deals. Second, the top three target countries in terms of share of total sales by value - the United Kingdom, the United States and Germany - were the same as in the 2000 wave. In contrast, there was a different industrial trend. The percentage of the primary sector was higher in the previous wave, at the expense of
services; this is shown in the fact that the top three target industries in 2005 were mining, quarrying and petroleum. Big mining companies preferred to undertake acquisitions rather than invest in Research and Development (R&D). Indeed, there was an expectation of growing demand and high prices as it happened in the petroleum sector. Mining companies preferred to increase market power than to increase the number of competitors. In the petroleum industry, a mega cross border merger transaction was carried out between Shell Transport & Trading Co (United Kingdom) and Royal Dutch Petroleum Co (Netherlands). In November 2004, following a period of turmoil due to the shock that Shell had been overstating its oil reserves, the company announced that the Shell Group would shift to a single capital structure. The new business entity was named Royal Dutch Shell plc, with its principal listing on the London Stock Exchange (LSE) and the Amsterdam Stock Exchange (ASE). The company’s headquarter and tax residency was in The Hague in the Netherlands. The business combination was completed on July 2005. Stocks were issued at a 60/40 advantage for the shareholders of Royal Dutch in line with the original ownership of the Shell Group. The third major difference compared to the previous increase of cross border deals was the entrance of new types of investors in such cross border M&A transactions, such as private equity firms, hedge funds and Sovereign Funds. In detail, SWFs are defined as “government investment vehicles that are funded by the accumulation of foreign exchange assets and managed separately from the official reserves of the monetary authorities” (UNCTAD, 2007). SWF benefited from a quick accumulation of reserves in the previous years, high risk tolerance and high rate of return. With a record amount of funds raised in 2005 of US$261 billion, private equity firm invested mostly in firms in need of venture capital, distress companies and in firms divested by large enterprises that wished to concentrate on core business. They were largely located in the United States and the United Kingdom, and the majority of the investments by private equity funds were traditionally made in their home markets. In
2005, 10 percent of all private equity funds raised were spent outside Europe and North America, adding to global funds – which are a mixture of funds raised in more than one country – that accounted for another 20 percent. Investments in the funds were encouraged by low interest rates, high liquidity of investors and the good performance of private equity funds.

Cross border M&As increased by 23 percent to US$880 billion in 2006, and the number of deals increased by 14 percent to 6,974, reflecting the M&A activity boom of these years. The surge in the value of cross border M&As was boosted by the increasing growth of capital markets, favorable financial conditions worldwide and the growing of company asset values. According to the World Investment Report (2007), the higher stock prices, growing purchasing power of investors, and the desire of companies to capture an increasing market share in global environment led to a further increase in the number of mega deals. In 2006, the number of such deals rose to 54, compare to 38 in 2005.

Regarding the regional trend, cross border M&A activity nearly doubled in North America. This is partly explained by a number of mega deals completed in Canada in natural resources. For example, the mega cross border acquisition of Falconbridge Ltd (Canada), a natural resources company with operations in 18 countries, by the Swiss-based mining company Xstrata PLC for US$17.40 billion. In Europe, a large number of cross border M&A transactions was due to the strength of European companies after successful cost-cutting and restructuring efforts. Indeed, the four largest cross border transactions involved companies located in the European Union. Cross border mergers and acquisitions took place especially in the consumer goods and services information, including financial services, and in energy supply and basic materials
In 2007, the value of mega cross border M&A transactions amounted to US$823 billion, 25 percent higher than the previous record in 2000. This year took place the biggest banking takeover in history: a consortium comprising RBS, Fortis, and Banco Santander acquired ABN AMRO for US$98.2 billion. ABN AMRO was one of the largest banks in Europe and had operations in about 63 countries around the world. Although due to the 2008 financial crisis the Dutch government nationalized the divisions owned by Fortis. The UK government is now in effective control over the divisions allocated to RBS due to its financial bail-out of the Scottish bank. So the process of integrating some of ABN AMRO’s divisions into the new owners, and divesting others, continues. Cross border M&A activity was stimulated by continued robust corporate profits and rising equity prices. The financial crisis (June 2007) with the sub-prime mortgage crisis in the United States did not impact cross border M&A transactions this year.
4.2 Factors motivating cross border mergers and acquisitions

There is not a unique methodology to explain cross border M&A activity. The corporate finance literature is ample on the causes and financial effects of M&As, but there are few papers on the determinants of cross border M&As, which tend to either lump together M&As with other international investments such as Foreign Direct Investment (FDI) or to analyze only a specific aspect involved in a cross border M&A transaction, as the impact on company performance.

In the industrial organization (IO) literature two basic motivations are noticeable behind M&A transaction: efficiency and strategic motive. Efficiency gains arise because takeovers increase economies of scale or scope or other synergies, such as tax considerations or acquisition of funds. Strategic gains take place if M&As change the market structure and thus a company’s competitive position and profit level is increased by forming monopolies or oligopolies.

The main problem with these theories is that they provide a limited understanding of this form of external growth. If some cross border M&As occur for the same reasons as domestic M&As, e.g., synergies, market power, and/or managerial preferences, others are more likely related to economy-wide shocks, such as cross country differences in macroeconomic conditions, economic integration, legal regimes, political systems, culture, regulatory environments, and tax systems.

Since the 1990’s, the process of globalization have involved a profound reconfiguration of the world economy compared to earlier periods of internationalization. In this new and continuously evolving environment, cross border M&A deals reflected companies’ strategic responses to protect and develop their competitive positions. The market is without boundaries. The presence of a global market pushes companies to go abroad and exploit new international opportunities. Through cross border
M&A, multinational firms strengthened their international position: cross border M&A progressively replaced greenfield investments in foreign direct investment (FDI). A greenfield investment (UNCTAD, 2000) is defined as the establishment of a new production facility.

Each deal seems to rest on a story and a rationale that cannot be told briefly. There seems to be a multitude of reasons and motives for these “reshuffling of the deck”.

The majority of companies have declared that behind a mega cross border M&As they had an ambitious corporate strategy plan of becoming the worldwide leader in their own industry. For example, Gerard Mestrallet, CEO of Suez Lyonnaise des Eaux SA (France), declared that the strategic goal of the company was to become a multiservice-utility, a company that can offer all services related to the fields of electricity generation and distribution; under this intent, the company undertook two mega cross border acquisition deals with Tractebel SA (Belgium) and Nalco Chemical Co (United States) for a total value of $12.30 billion in 1999. Another example is the cross border acquisition carried out by UBS to purchase PaineWebber Group Inc. in order to become the world’s largest wealth management firm for private clients in 2000.

The change in the industry structure boosted also a trend towards a greater rationalization. In 1999, the European steel industry led to merger discussions between Koninklijke Hoogovens NV (Netherlands) and British Steel (United Kingdom). Then, telecommunications companies were encouraged to acquire and merge in order to develop new products and services or to integrate different business areas. On the other side, companies operating in traditional industries such as automobiles, characterized by excess capacity, slow growth and great competition were forced to undertake cross border M&A deals in order to maintain or increase their global market position and achieve economies of scale in various activities. Signed on 27 March 1999, the Renault–Nissan Alliance
was the first of its kind involving a Japanese and a French company, each with its own distinct corporate culture and brand identity, linked through cross-shareholding.

As a result, cross border M&A patterns are characterized by different industrial evolutions as well as company’s motivations behind which transactions diverge. However, according to the World Investment Report 2000, three major environmental changes have influenced the vast increase of cross border M&A throughout the 1990s:

- Technological development;
- Changes in the policy and regulatory environment, including the formation of the European Union and regional trade agreements, the privatization process, the deregulation of industry, the liberalization of Foreign Direct Investment and trade regimes, and the review of merger policies and industrial regulations;
- Capital market expansion.

4.2.1 Technological development

New technologies have changed the way companies do business and the competitive scheme on the world’s technology leaders. First, new information and communication technologies allowed companies to improve the communication systems across companies located in different countries as well as the global transfer of goods and personnel. It facilitated a better management of worldwide operations and created new instruments to organize contacts within and between companies as well as with consumers. In this way companies could compete more effectively in an ever challenging environment. Then, cross border M&A transactions were a fast way of sharing the costs of innovation and accessing updated technological assets in order to maintain high pioneering standards and to enhance their innovation skills. The surge in “dot com” stimulated cross border M&A activity between “old economy” and “new economy” companies in search of new opportunities to discover.
4.2.2 Changes in the Policy and Regulatory environment

The policy and the regulatory framework changed deeply in the 90s. The formation of the European Union promoted the restructuration of national, regional (intra-EU) and cross border (non-EU) M&As. In 1999 and in 2000, 71 of 96 mega cross border M&A involved at least one company located in an EU country. The creation of a single market (1992) and the launch of the Euro strengthened the initial cross border M&A wave. European firms in particular were motivated to restructure and grow in order to retain competitiveness. European industrial companies were also pooling their money, skills, and research to avoid being swallowed up by U.S. companies. The introduction of the single European currency created a liquid market in European corporate bonds. Companies issued Euro-denominated bonds to refinance debt and to raise money for buyout.

The worldwide restructuring process was stimulated also by regional trade agreements in the developing countries, like ASEAN in South-East Asia and MERCOSUR in Latin America, although the markets involved were not as many and the integration processes were less strong than in the European Union.

The privatization and deregulation processes of some industries enhanced cross border M&A deals in telecommunications, transportation, power generation, water supply, rail transports, airport construction and financial services. Following the deregulation of the Italian telecommunication market (January 1998), Renato Soru founded Tiscali S.p.A. This company undertook a mega cross border acquisition two years later for US$4,90 billion with World Online International NV (Netherlands). Companies operating in these industries changed completely. New competitive pressure revolutionized their corporate strategies and they became dynamic international investors. In many developing economies, privatization programs have increased the availability of “target” companies. In 1999, a large privatization in the petroleum refining
industry involved the acquisition of YPF SA (Argentina) by Repsol SA
(Spain) for US$13, 2 billion. Furthermore, the increase of liberalization
programs of Foreign Direct Investment (FDI), Bilateral Investment
Treaties (BITs) and Double Taxation Treaties (DTTs) facilitated cross
border M&A activity.

Table 4 National Regulatory Changes, 1991–1999

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<td>64</td>
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<td>76</td>
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<tr>
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<td>79</td>
<td>101</td>
<td>108</td>
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<td>Regulatory changes not favourable to FDI</td>
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<td>2</td>
<td>6</td>
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<td>Total Regulatory Changes</td>
<td>82</td>
<td>79</td>
<td>102</td>
<td>110</td>
<td>112</td>
<td>114</td>
<td>151</td>
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Source: UNCTAD

As table 4 shows, of the 140 national changes in FDI laws in 1999, 131
liberalized conditions for foreign investors, and over the period 1991-1999
only 6 per cent of the 1,035 policy changes discouraged foreign investors.
Examples of such changes relevant to cross border M&A deals included the
removal of compulsory joint venture requirements, restrictions on
majority ownership and authorization requirements.
BITs and DTTs together were concluded at a rate of one every two
working days during 1999. In 1999, 49 percent of the total BITs
completed was among developing economies. Furthermore, multilateral
agreements sustain these trends: World Trade Organization agreements,
World Bank and IMF programs.
Deregulation facilitated new entrants to obtain a license and to launch new
services, and this fueled further competition that reshaped industries. For
example, the founding of ING as one company was started in 1990 when
the legal restrictions on mergers between insurers and banks were lifted
in the Netherlands. Merger reviews policy have also been adopted or
strengthened in industrial and developing countries influenced by the competition framework used in the region. In 1990, the European Commission’s Merger Regulation and Italy’s Policy Merger Review (PMR) were approved; later, Denmark’s and Netherlands’ PMR were signed in 1997.

4.2.3 Capital market expansion

The boom of the financial market impacted intensely the cross border M&A activity. The proceeding integration of the financial market is considered a focal in the convergence process of Corporate Governance systems (Pagano, 2002).

The liberalization of capital markets started in the mid-1980s, but only by the end of the 1990s most developed countries have completely liberalized their capital accounts, with virtually unrestricted facilities for cross-border loans and credits, foreign currency deposits and portfolio investment. Also in many developing countries, financial transactions were significantly liberalized. The growing number of available “target” companies, both among publicly listed and non-listed companies changed the market for corporate control as well as the players involved. Financial advisors had to expand their business services to satisfy companies’ requirement.

Corporate managers were under a strong pressure from the stock market to participate actively in the global restructuring process, to deliver growth and profits to their shareholders. Otherwise, the sanction from the market was the takeover process. In addition, new ways of raising capital, due partly to the liberalization of foreign equity ownership, and the decrease of cost of debt encouraged cross border M&A activity. Bank loans were still the most important source to finance M&A, although direct financing by issuing or swap common stocks and the issuance of corporate debt had gained importance. The exchange of stocks between acquiring and acquired company involved the issue of new stocks of the acquiring
companies to the stockholders of the acquired companies in return for the released of their stock. Indeed, mega *cross border* deals could be also concluded with a minimum of fund. Otherwise it would be hard to complete the transaction only based on cash payment due to their sheer value. For example, the acquisition of AirTouch Communications (United States) by Vodafone Group PIC (United Kingdom) would not have been possible; the deal size was US$60.3 billion, the largest completed *cross border* M&A deal ever. Deals using mainly one of these two types of financing, corporate debt or swap stocks, accounted for about one-third of the total value and a half of the total number of the *cross border* M&A deals for which information on sources of funds is available.
5 Cross border Deals and Systems of Corporate Governance

In this section, we are going to analysis the impact of cross border M&A activity on each characteristic used by Weimer and Pape to classify systems of Corporate Governance. In detail, we will investigate how the taxonomy fits to the current Corporate Governance regimes, using the evidence of an international perspective.

5.1 The concept of the Firm

The concept of the firm captures a number of essential elements: the firm as a moral player, as the owner of economic, social and environmental responsibilities, as related to other actors at various levels, and as an operator in a horizon of uncertainty and change. It is assumed that all these aspects that constitute the firm are interrelated and might be articulated in various degrees.

In terms of role and purpose, the concept of company should reflect the economic, political, socio-cultural and environmental dimensions of a society. If a society is separated in clear and different dimensions such as the economic, political and socio cultural, the role of the company may be observed just from an economic point of view, and the responsibility of the firm depends only on economic purposes. In reality, the various dimensions, while maintaining certain autonomy, are strongly interconnected. They overlap at some levels, but are also obviously embedded in ‘nature’ (environmental dimension). Accordingly, the concept of the firm should reflect this complex understanding of society.

According to the Weimer and Pape’s classification, the notion of the company could be conceived in two ways: shareholder-oriented (instrumental) or stakeholder-oriented (institutional). In the first case, corporate actions are driven by the needs of the holders of the company’s equity, usually thought to be measured by stock price, earnings per share (EPS) or other financial measurements. Traditionally this perspective
reflects the Anglo-Saxon mentality. On the other side, the stakeholder’s notion affirms that a corporation is responsible, in addition to shareholders, for those groups who have a stake in the actions of the corporation such as managers, employees, shareholders, creditors, suppliers and the government. This definition reflects the German and Japanese conception. Regarding Latin countries, their concept of the firm is between an instrumental and an institutional view. In other words, Weimer and Pape used the concept of firm to define the drivers of corporate actions.

The way companies are conceived is of crucial importance because it impacts the structure of the board system, the role of the financial markets, the presence or absence of the market for corporate control and the ownership structure at the macro level. For example, people that believe in a stakeholder model consider that a dual scheme is the only guarantee for a balanced respect for the interests of the different types of stakeholders involved. Another example concerns the development of financial markets. In mature financial markets, a company is considered just as “tradable assets”; in non developed financial markets a company is seen as a “productive institution” to be passed on to future generations.

In brief, the majority of the aspects used to define the taxonomy of Corporate Governance systems are deeply influenced by the concept of the firm. Indeed, this concept depends on the view of the society. As a consequence, we might affirm that in the case a country shifts its perspective from shareholder to stakeholder oriented; this change will influence its national Corporate Governance system. This finding would be completely wrong because there is not a direct relationship among these elements. In reality, each aspect influences the others. So, for example a change in the market for corporate control due to a new regulation policy, could modify the way companies are perceived. In other words, we argue that the analysis of the evolution or the possible change of the national
concept of the firm is influenced directly and indirectly by a significance amount of factors, but they do not depend on each other. However, we are not going to discuss the factors behind the evolution of the prevailing concept of the firm at the regional level, but the current orientation of companies in a globalized business environment.

Cross border merger and acquisition activity may combine together companies with two difference perspectives of the concept of the firm. In other words, cross border deals undertook between the Anglo-Saxon companies and firms located in other Corporate Governance systems. Among all mega cross border M&A deals concluded between 1999 and 2007, 74 deals involved a target company located in the Anglo-Saxon system with a bidder company located in German (41 deals), Latin (28 deals) and Japanese systems (5 deals). In addition, 51 deals involved the Anglo-Saxon system as a bidder country respectively as a target system, German (35 deals), Latin (13 deals) and Japanese (3 deals) countries. As a total, 130 deals, for a total value of US$1,414 dollars, involved companies located under two Corporate Governance systems with two distinct concepts of the company.

As a proxy to analyze the impact of cross border M&A transactions on the concept of the firm, we look to corporate information disclose of the company’s web site. In a globalized environment, in order to increase their credibility, companies communicate who are the beneficiaries of the corporate actions such as, for example, shareholders, employees, clients, suppliers or the whole community, especially if such firms are listed in stock markets. However, companies do not use to disclosure the same kind of information, if they are not mandatory by law. So, some web sites present much corporate information such as the mission, value or the purpose of the firm. In other cases, basic or no information is presented in the company web site.
By looking to the available information we classify mega cross border deal into three cases: company shareholder-oriented, company stakeholder-oriented and company without any addition information disclose.

First, based on our sample, we focus on mega cross border deal where the acquirer company is located in the United States, the United Kingdom, Canada or Australia, and the target company is located in one country of the German, Latin or Japanese regime. Based on Weimer and Pape’s taxonomy, we would expect to find more shareholder oriented concept of the firm than the stakeholder oriented. Instead, on 16 companies, 10 companies declare that the driver for company’s actions is to create value for stakeholders. For example Abbott Laboratories, that acquired that German Knoll AG in 2001 for US$6.9 billion declared that “Abbott’s board of directors plays a vital role in providing strategic direction and overseeing management performance on stakeholders”. Another example is the strategy of NYSE Euronext, the trans-American stock exchange “our focus includes creating a sustainable business for stakeholders through integration and innovation, ensuring best practices on Euronext markets, maintaining close dialogue with users and promoting corporate responsibility and social responsible investment”. However, in 5 companies we find strategic mission or vision oriented to create shareholder value. For example, the strategy of Imperial Tobacco Group that affirms is: “To create sustainable shareholder value by growing our operations organically and through acquisitions”.

On the other side, if we look at cross border M&A’s undertook by a bidder company located in the German system, the most stakeholder orientation regimes, and a target company located in the Anglo-Saxon, we find that on 26 combined entity, 18 companies affirm their stakeholder orientation, instead 6 firms are driven by a shareholder perspective and the remaining 2 do not publish on their web site the beneficiary of their value creation. Just for example, Roche Holding AG, the company acquired the American Genentech Inc in 1999, affirms that “Roche's commitment to all
stakeholders is reflected in its operating businesses' focus on value creation, in a management culture that conforms to modern standards of Corporate Governance and in the group's policy of communicating transparently”.

By looking at international companies, the prevail concept of the firm tend to converge toward the stakeholder perspective. In corporate strategy, the stakeholder orientation must be understood in a wide sense as the strategic need to account for those groups who can affect the achievement of the firm’s objectives. Each company analyzes the stakeholder environment from the standpoint of its organizational mission and seeks to formulate strategies for meeting stakeholder needs and concerns. So, in corporate mission, companies may declare their major stakeholders. RWE AG, electric company that bought the English Innogy Holdings PLC for US$7,40 billion in 2000, affirms “our aim is to create sustainable value for our investors, customers and employees. Therefore, our strategy centres on organic growth, supplemented by value-increasing acquisitions. This is the basis on which we want to let our shareholders take part in the Group's success in the future”.

A new focus toward the stakeholder perspective does not substitute the attention of companies towards shareholders. They still play a key role as a driver of the company’s actions. This is shown by the growing attention in the company’s web site’s Investor Relations section, in which a wide number of information is presented in order to increase investor’s trust and corporate credibility. Indeed, to increase shareholder value in terms of stocks return, companies have had to improve their reputation in the financial markets. For this purpose, companies have declared that their strategic objectives are driven by the needs of all their stakeholders and as a result they have been able to maintain better economic relationships with such players with higher return.
5.2 Board Systems

According to the taxonomy of systems of Corporate Governance introduced by Weimer and Pape, the board system represents one of the main differences between the German Corporate Governance and the other systems: one-tier vs. two-tier model. However, such classification is not consistent within countries classified under the same Corporate Governance system, expect for the Anglo-Saxon and Japan system. Among the German countries, only Germany, the Netherlands, Austria, Sweden and Denmark have the two-tier board system. On the other side, in Switzerland and Norway local legislation allows company to choose between the unitary or dual system. In Sweden companies can adopt only the unitary board. Regarding Latin countries, Belgium has a one tier system except for insurance companies and banks which are allowed to use the dual system. Furthermore, France, Italy and Spain companies may choose between the unitary and the two-tier structure.

In addition, the unitary and the dualistic board system features could vary from country to country concerning for example the size of the board, specific member’s requirement or the eligible status. Generally speaking, the unitary system has a Board of Directors whose members are appointed at the general meeting of shareholders. The Board is composed by executive and non-executive members. Indeed, executive members are responsible for the operations and the daily executive of board decision. Monitoring duties are carried out by independent non-executive directors. Thought, member directors who are independent to the firm may lack to the knowledge or information to be effective controllers. This body owns broad power and the authority to act in the name of the company. Positive features of this board system are related to the flexibility and speed for the board organization to assume decisions. Especially, it ensures that the information needed will be available to all its members by direct information access. On the other side, the dual
board system consists of a Supervisory Board and an executive Board of Management. The first oversees the direction of the business while the Management Board is responsible for the day by day running of the business. This structure attempts to separate the functions of supervision (monitoring) and that of management. Indeed, members of one board cannot be members of another. Shareholders have the commitment to nominee the members of the Supervisory Board (other than employee member), while the Supervisory Board appoints the members of the Management Board. This system presents two major disadvantages: the presence of only outsider members in the Supervisory Board who are automatically less well informed than insiders and the existence of an additional decision-making body.

Over the last decade, recent developments illustrate a trend towards specialized rules for listed companies and indicate growing convergence of internal control mechanisms independent of board structure. New codes of Corporate Governance have been introduced during the past few years and most of them are based on two crucial assumptions: Boards of Directors are ultimately responsible for the direction of the corporation and the principle for board decision making to work for shareholder value as an ultimate criterion.

Principle V of the OECD Principles of Corporate Governance (1999) holds the same view by highlighting the board’s accountability to the company and shareholders. As the OECD Principles are the common basis of most Corporate Governance Codes, we find sections about the duties and responsibilities of boards within all Codes.

Recently unitary and dualistic systems have been influenced each others. In 2002 the new German Corporate Governance Code reinforces the strategic role of the Supervisory Board (Aufsichtsrat) as an attempt to incorporate a key advantage of the one-tier model. On the other hand, the revised Combined Code (2003) in the United Kingdom and also the French
revised Principles of Corporate Governance (2003) strengthen the presence of independent directors on one-tier boards in Europe. In addition, in the Anglo-Saxon countries the separation of CEO and Chairman of the Board as well as the introduction of committees (e.g. audit committee) are signs for a change from the one-tier board system towards the two-tier system. Cadbury (1995) suggests that American boards are moving towards a de facto dualistic scheme by means on increasing proportion of non-executive directors in the board and an executive board committee made wholly of executive directors. The same is true for the UK (Kaplan 1997). The financial scandals intensified these changes. A Sarbanes-Oxley Act with its rules is clear sign for a move towards the German system with a two-tier board, where the legislator sets lots of rules. So some recent U.S. legislative moves bring the regulatory system closer to certain provisions in place in Europe, like the requirement that senior corporate officers must certify the fairness of corporate accounts or face criminal charges, criminal sanctions for executives and directors if found to have defrauded shareholders.

Cross border M&A transactions represent a challenge for the debate about the convergence in board systems. In the case of the acquisition, the acquired company usually adopts the governance structures of the acquirer, but in the case of a merger the two companies merge into a new legal entity and set up a new board system. Particular interesting, it is the case of a cross border merger and acquisition between companies which use the unitary and the dualistic system respectively. For example, in 2000 the board system of EADS NV, the merger of three companies DaimlerChrysler Aerospace AG (DASA) of Germany, Aérospatiale - Matra of France, and Construcciones Aeronáuticas SA (CASA) of Spain, was created by a dual-headed management structure, with two Chairmen and two co-Chief Executive Officers. The company declares that the reason behind this structure is
the necessity to have "a proper balance and stability required for a company with such a unique industrial and multi-national heritage".

Our finding is that the traditional distinction between the unitary and the dualistic system seems slowly disappearing. The recently trend do not show a convergence of one system toward another, but the strong evolution of these two systems towards each other. This trend is pushed mostly both by new regulatory policy and by cross border M&A integration. For the first point, Corporate Governance Code, national and regional laws tend to introduce new board rules in order to reinforce the current Corporate Governance structure. Since October 2004 EU companies are allowed to incorporate also a new legal form, Societas Europaea (SE). All firms within the EU Member States incorporating as a SE may choose between a unitary and dualistic organizational structure. The SE definitely highlights a step to further convergence of the two main Corporate Governance systems. For example in 2006 the Allianz, as a result of the cross border merger with RAS, decide to convert into a European Company (SE - Societas Europaea). Concerning the second point, cross border mergers and acquisitions have a key role in the convergence path of board systems. When one company decides to go abroad and to undertake a transaction with another company characterized by a different board system directly faces the integration issues of two different board systems. Despite the nationality of the companies, the Corporate Governance structure of the new legal entity may lead to the combination of the Corporate Governance systems of the two separated companies. The creation of Aventis, a legally French company set up by the cross border merger of a German and a French firm, is a typical example of Corporate Governance convergence driven by cross border transaction. Aventis adopted some of the key characteristics of the Corporate Governance of Hoechst and Rhône-Poulenc. Indeed the new board system was a combination of the German and the Latin system.
5.2.1 The case of Aventis

Bris and Cabolis (2004) analyses the Corporate Governance structure resulting from the cross border merger between the French company Rhône-Poulenc and the German firm Hoechst carried out in 1999. A cross border merger undertook between the German and the Latin system, characterized respectively by the dualistic and the unitary system.

According to the two authors, the case is particular interesting for several reasons. First, the French and the German companies were both listed in the New York Stock Exchange (NYSE) and both operated in the pharmaceutical industry. Then, the new company, legally a new French company, was created by an exchange of Rhône-Poulenc shares for Hoechst shares and it was considered a merger of “equals”. There was not a “formal” acquirer in the development of Aventis. This is fundamental because it shaped the perception of the transaction in the company as well as it established the legal effects of the merger. Finally, the Corporate Governance structure of Rhône-Poulenc and Hoechst were quite different. Rhône-Poulenc had adopted the unitary system which is similar to the U.S. structure. On the other side, Hoechst was set up in Germany under the dual scheme.

The new firm was structured as Hoechst, with a two-tier system allowed also in France. The reason behind the adoption of the dual system was linked overall to the former Hoechst shareholders and the new Aventis management, which was headed by former Hoechst executives.

**Supervisory Board:** First of all, concerning the size of the board, in Rhône-Poulenc the Board of Directors was composed by a range from twelve to eighteen members, three of whom were employee representatives. In Hoechst the Supervisory Board had twenty members, half of whom were employee representatives. The new company decided to adopt a Supervisory Board of sixteen members, four of whom had to employee representatives. Second, in Hoechst members of the
Supervisory Board had to be individuals. Even though the French law allows companies to be members of Supervisory Board, Rhône-Poulenc’s and Aventis’ by-laws state that only natural persons were eligible. Third, while the members of the Board of Directors at Rhône-Poulenc had to own at least ten shares during the chargeable period, the members of the Supervisory Board at Hoechst do not have this requirement. In Aventis, the member of the Supervisory Board had to hold at least one share in the firm. Four, the term office adopted in Aventis was five years as in Hoechst compare to six years in Rhône-Poulenc. Last but least the remuneration composition for Rhône-Poulenc members of the Board of Directors was an attendance fee while at Hoechst it was composed of a fixed part and a variable part. Aventis adopted the same fixed/variable structure as Hoechst.

**Management Board:** The size of the Management Board was established by the Supervisory Board at Hoechst, on the contrary it was fixed at seven in the by-laws of Aventis. The members of the Management Board at Hoechst could be removed only for a material cause. Aventis’ decided that by laws state such members can be revoked at any time by the Supervisory Board in accordance with the provisions of the French Commercial law. No age restriction was in place for the members of the Management Board in Hoechst, but in Aventis they cannot be older than 65. This feature seems to be carried over from the Rhône-Poulenc rule imposed over the members of the Board of Directors. In Hoechst there were no restrictions concerning the resolutions made by the Management Board, while at Aventis, the French law oblige some decisions to be approved by the Supervisory Board, as well as any decision that is of major strategic significance.
5.3 Salient Stakeholder

Weimer and Pape (1999) identified specific group of salient stakeholders in each system able to influence the managerial decision process. As we mentioned before, in the Anglo-Saxon model shareholders were considered the major stakeholders compared to industrial banks, especially in Germany, employees and oligarchic groups of the German system. Instead in the Latin countries, financial holdings, the state, families and oligarchic groups were considered the salient stakeholders and, finally, in the Japan regime, salient stakeholders were city banks, other financial institutions, employees and in general oligarchic groups. Nevertheless, the two authors did not define the way such stakeholders extent their influence on the decision process and they do not specify any indicators to measure or at least to evaluate their capability to influence corporate decisions.

In accordance to the two authors, three major ways allow stakeholders to influence corporate decisions and we will explain the most important. The first way is by setting in the board system. Corporate value, mission and strategy are completed and set up by board members. As a result, all decisions made by the company depend mostly on them. The second instrument is by acquiring voting shares. Thus, the stockholders can express their needs and concerns in the shareholder meetings. However, in a company characterized by low ownership concentration, the impact of the vote of a single shareholder is minimum and not sufficient to impact on decisions made by top management. In the contrary, the presence of a major shareholder in a company with low ownership concentration can impact all decisions undertaken by the company. The third tool depends on the relationship between customers and suppliers. In other words, if a company depends only on one supplier, such player has the capability to determine all the choices made by the company. We can affirm the same in the opposite situation, one client for many suppliers.
In addition we identify another tool to influence corporate decision: political pressures or regulations. All companies, both public and private, are impacted by the government philosophy, their beliefs on the business world and their international role. As a result, the role played by *cross border* M&A’s activity varies from country to country. Some view such activity as an instrument to increase the competitiveness of the industry and encourage these types of deals by, for example, incentive tax regulations or other facilities. On the other side, other countries are adverse to *cross border* deals because they do believe that such transactions are methods for foreign countries, not for companies, to increase power (or to conquer) in their own country. As a consequence, companies are able to undertake foreign mergers or acquisitions.

What we want to show, in this research, is the complexity of the subject presented by Weimer and Pape. It is difficult to find a common methodology to compare the evolution of the role played by the salient stakeholders in the taxonomy of Corporate Governance systems from 1999 to 2007. Compared to the other features used by the taxonomy, this characteristic does not qualify for a simple analysis for the following reasons. First, Weimer and Pape did not well-defined the methodology they followed to investigate the salient stakeholders. Second, they do not use a common standard in the investigation process of the taxonomy; instead they identified the salient stakeholders by looking at three different tools to influence corporate decision making process: board seats (for German system), ownership structure (for German and Latin systems) and customer-supplier relationship (for Japan system). Therefore, we cannot compare a feature not based on a unique indicator, but based on three points of view. Third, as the word stakeholder, refers to shareholders, employees, customers, suppliers, lenders and society, we do not find feasible and possible to analyze the impact of the mega *cross border* M&A’s on this aspect proposed by Weimer and Pape.
5.4 Importance of Stock Markets in the National Economy

Each country has its own belief about the role of the financial markets in the economy. The significance of capital markets reflects two major aspects of a Corporate Governance system: the salient stakeholders as a result of different approaches for financing companies in different regions of the world (banks vs. financial markets) and the ownership structure, in terms of concentration and major shareholders.

Weimer and Pape (1999) proposed two ratios used by the World Federation of Exchanges (WFE) to evaluate the significance of stock markets in the national economy:

- The exchange’s market capitalization to the national gross domestic product (GDP);
- The exchange’s investment flows-capital raised to the national gross fixed capital formation (GFCF).

Based on these figures they demonstrated the role played by stock markets in the Anglo-Saxon, German, Latin and Japan systems. As mentioned before, Table 1 shows the exchange’s market capitalization to the national gross domestic product (GDP) in 1995. Japan’s national economy presented the higher ratio, equal to 83.5 percent, while the percentage of the Anglo-Saxon countries was equal to 82.1 percent. In the German system the ratio was equivalent to 41.7 percent and finally in Latin countries was just 27.3 percent. On the other hand, Anglo-Saxon companies used more intensively their stock markets for raising new capital: the exchange’s investment flows-capital raised to the national gross fixed capital formation (GFCF) was equal to 10.0 percent versus 6.5 percent of German countries, 3.9 percent of Latin countries and 0.5 percent of Japan.

These figures supported the traditional distinction between market-oriented and network-oriented systems of Corporate Governance. The
Anglo-Saxon governance system has been always characterized by a
dynamic market orientation, with liquid capital markets which can quickly
pursue market opportunities wherever they occur. By contrast to the
flexibility and the speed to easily access new capital, the downside of the
market-oriented system is the inherent volatility and short term objectives
that cause periodic stock market panics and occasional crashes.

Traditionally, German Corporate Governance systems have been
committed to a long term industrial strategy supported by stable capital
investments that build enduring relationships with key stakeholders.
However, the depth of such relationships led to a lack of flexibility that
made difficult to chase opportunities for new businesses and industries.

The Latin Corporate Governance system has been considered as network-
oriented, with the presence of dominant block holders such as the state,
families, or industrial groups. Ownership concentration provides for
solidity and long term horizons, with strong relationships with stakeholders. The existence of block holder relationships precludes the
entrance of other players in the industry and decrease the integrity of the
equity market.

Finally, Japan has been the most network-oriented country. In detail, the
concept of company is the institutional centre of long enduring and deep
economic relationships of investors, employees, suppliers and customers.
Though, in 1995 the stock markets played an important role only in terms
of their size. This is explained by the close dependence on bank finance
(city banks) and insider control.

Over the last decade, the magnitude of stock markets in national
economies has changed substantially. The explosive growth of the
international financial system has often appeared to dwarf domestic
economies and generated a vigorous interdisciplinary analysis of the
institutions of Corporate Governance around the world. Gerard and Marquis (2003) affirmed: “There are now more non-US companies traded on Nasdaq andNYSE than there are German corporations traded on the Deutsche Boerse”. In addition, this rapid integration of capital markets is considered also one of the major reasons behind the surge of cross border M&A’s as well as an argument in favor of further harmonization of Corporate Governance systems.

Table 5 Importance of stock markets in 2005

<table>
<thead>
<tr>
<th>Data Based on stock exchange(s)</th>
<th>COUNTRY CLASS Country</th>
<th>Gross Domestic Product (GDP) 2005</th>
<th>Market Value Domestic Companies (MVDC)</th>
<th>MVDC as % of GDP</th>
<th>Gross Fixed Capital Formation (GFCF) 2005</th>
<th>New Capital Raised (NCR) 2005</th>
<th>NCR as % of GFCF</th>
</tr>
</thead>
<tbody>
<tr>
<td>ANGLO-SAXON</td>
<td>NYSE United States</td>
<td>12,487.2</td>
<td>13,632.3</td>
<td>109.2%</td>
<td>2,486.5</td>
<td>175.0</td>
<td>7.0%</td>
</tr>
<tr>
<td></td>
<td>London SE United</td>
<td>2,109.0</td>
<td>3,058.2</td>
<td>145.0%</td>
<td>353.8</td>
<td>51.8</td>
<td>14.7%</td>
</tr>
<tr>
<td></td>
<td>TSX Group Canada</td>
<td>1,175.4</td>
<td>1,482.2</td>
<td>126.1%</td>
<td>240.5</td>
<td>43.2</td>
<td>18.0%</td>
</tr>
<tr>
<td></td>
<td>Australian SE Australia</td>
<td>680.0</td>
<td>804.0</td>
<td>118.2%</td>
<td>175.8</td>
<td>33.2</td>
<td>18.9%</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>16,451.6</td>
<td>18,977.7</td>
<td>115.3%</td>
<td>3,256.6</td>
<td>303.3</td>
<td>9.3%</td>
</tr>
<tr>
<td>GERMANIC</td>
<td>Deutsche Börse Germany</td>
<td>2,650.8</td>
<td>1,221.1</td>
<td>46.1%</td>
<td>453.8</td>
<td>4.9</td>
<td>1.1%</td>
</tr>
<tr>
<td></td>
<td>NASDAQ OMX Nordic Exchange 1 Finland</td>
<td>832.1</td>
<td>802.6</td>
<td>96.5%</td>
<td>161.0</td>
<td>5.5</td>
<td>3.4%</td>
</tr>
<tr>
<td></td>
<td>NASDAQ OMX Nordic Exchange 1 Denmark</td>
<td>832.1</td>
<td>802.6</td>
<td>96.5%</td>
<td>161.0</td>
<td>5.5</td>
<td>3.4%</td>
</tr>
<tr>
<td></td>
<td>Euronext 2 Netherlands</td>
<td>3,134.4</td>
<td>2,706.8</td>
<td>86.4%</td>
<td>619.2</td>
<td>65.9</td>
<td>10.7%</td>
</tr>
<tr>
<td></td>
<td>Euronext 2 Sweden</td>
<td>3,134.4</td>
<td>2,706.8</td>
<td>86.4%</td>
<td>619.2</td>
<td>65.9</td>
<td>10.7%</td>
</tr>
<tr>
<td></td>
<td>SIX Swiss Exchange</td>
<td>347.6</td>
<td>935.4</td>
<td>269.1%</td>
<td>74.2</td>
<td>2.7</td>
<td>3.6%</td>
</tr>
<tr>
<td></td>
<td>Wiener Börse Austria</td>
<td>289.1</td>
<td>126.3</td>
<td>43.7%</td>
<td>59.3</td>
<td>6.7</td>
<td>11.3%</td>
</tr>
<tr>
<td></td>
<td>Oslo Børs Norway</td>
<td>281.2</td>
<td>191.0</td>
<td>67.9%</td>
<td>52.6</td>
<td>4.4</td>
<td>8.4%</td>
</tr>
<tr>
<td></td>
<td>Total 1</td>
<td>3,568.7</td>
<td>2,473.8</td>
<td>69.3%</td>
<td>639.8</td>
<td>18.7</td>
<td>2.9%</td>
</tr>
<tr>
<td>LATIN</td>
<td>Euronext 2 France</td>
<td>3,134.4</td>
<td>2,706.8</td>
<td>86.4%</td>
<td>619.2</td>
<td>65.9</td>
<td>10.7%</td>
</tr>
<tr>
<td></td>
<td>Euronext 2 Belgium</td>
<td>3,134.4</td>
<td>2,706.8</td>
<td>86.4%</td>
<td>619.2</td>
<td>65.9</td>
<td>10.7%</td>
</tr>
<tr>
<td></td>
<td>Borsa Italiana Italy</td>
<td>1,671.6</td>
<td>798.1</td>
<td>47.7%</td>
<td>344.2</td>
<td>14.7</td>
<td>4.3%</td>
</tr>
<tr>
<td></td>
<td>BME Spanish Exchanges</td>
<td>Spain</td>
<td>1,066.3</td>
<td>959.9</td>
<td>90.0%</td>
<td>313.8</td>
<td>8.9%</td>
</tr>
<tr>
<td></td>
<td>Total 4</td>
<td>2,737.9</td>
<td>1,758.0</td>
<td>64.2%</td>
<td>658.0</td>
<td>23.6</td>
<td>3.6%</td>
</tr>
<tr>
<td></td>
<td>Tokyo SE Japan</td>
<td>4,259.2</td>
<td>4,572.9</td>
<td>107.4%</td>
<td>989.2</td>
<td>24.6</td>
<td>2.5%</td>
</tr>
</tbody>
</table>

Sources: WFE

Figures x US$ 1,000,000,000

1 NASDAQ OMX Nordic Exchange includes Copenhagen, Helsinki, Iceland, Stockholm, Tallinn, Riga and Vilnius Stock Exchanges
2 Euronext includes data from Belgium, France, Netherlands and Portugal
3 The sum does not include NASDAQ OMX Nordic Exchange and Euronext
4 The sum does not include Euronext

Table 5 illustrates the two ratios used by Weimer and Pape ten years later in 2005. In this relatively short period of time the Market Value of Domestic Companies (MVDC) in the Anglo-Saxon equity markets propelled from a total of US$7,612.1 billion to US$18,977 billion. The MVDC as percent of GDP was equal to 115 percent. There is an equally composition of this figure: the values varied from 109 percent to 145 percent.
compared to 1995 where the minimum percentage was 64.4 percent in Canada and the maximum was 121.7 percent in the United Kingdom.

The total of the German system do not consider Finland, Netherlands, Demark and Sweden cause NASDAQ OMX Nordic Exchange includes Copenhagen, Helsinki, Iceland, Stockholm, Tallinn, Riga and Vilnius Stock Exchanges and Euronext includes Belgium, France, Netherlands and Portugal. As a consequence, the German figures in 2005 are not completely comparable to those in 1995. However, without including NASDAQ OMX and Euronext, all German countries grew to 86 percent in 2005. Swiss Exchange played a key role in the national economy: the Market Value of Domestic Companies grew from US$398.1 billion in 1995 to US$935 billion in 2004.

The same story regards the Latin system. The total does not consider France and Belgium because, as mentioned before, Euronext includes also Netherlands and Portugal. By the way, the role played by stock markets increased also in these countries. In Italy the percentage is twice as higher and in Spain is three times higher compared to 1995. Surprisingly, compared to other systems of Corporate Governance, Japan is not anymore the leader country in terms of significance in the national economy. The MVDC as percent of GDP has increased only by 28.91 percent in ten years.

Regarding the second ratio, the New Capital Raised as percent of GFCF has decreased in the Anglo-Saxon countries from 10 percent to 9 percent. Indeed, the major US stock exchange presents a decrease from 9.4 percent in 1995 to 7 percent in 2005. This figure is considerably smaller for the Germanic and Latin countries: 3 percent and 4 percent respectively, obviously because some countries are not considered. Germany presents a considerably decrease from 5.7 percent in 1995 to 1 percent in 2005. Japan has more than duplicated the ratio between NCR
and GFCF. However, it still maintains a low score compared to other industrialized countries.

The global integration of financial markets affects significantly the Weimer and Pape’s taxonomy. First of all, there is a great convergence toward the Anglo-Saxon model. The importance of stock markets in Latin and in German countries has increased dramatically by the observation of the first ratio. Of course, incipient capital markets tend to grow quicker than developed stock markets. However, in the same time, there is not a consistent convergence by observing the second indicator. The low level of the second indicator could be explained by the fact that global financial transactions have increased with more companies raising equity outside their home countries.

The financial globalization process supports further harmonization of Corporate Governance systems especially regarding the ownership structure, as companies usually go public in order to expand their shareholder base worldwide. Other reason to be listed in an international stock exchange is related to the desire to increase product visibility as well as provide “free advertising” for sales in that country. In addition, it may improve the practicability of an employee stock ownership plan for employees in the host country. Nowadays it is common for a national company to be listed in a foreign market. So even if a country has low ratios, in reality domestic companies could be listed in other financial markets and as result such companies adopt the same Corporate Governance structure of the foreign country.

Concerning the listing location, this may be affected by differences in regulation. Each country has a reporting framework that reveals its political, legal, cultural and business environment, which may differ from that of other countries and result in the disclosure of different financial information. However, capital markets compete to attract more and more
firms by designing a regulatory environment that is expected to lower the capital costs of the enlisted companies. Research about companies that list on foreign stock exchanges has found that a stock exchange’s reporting requirements influence a company’s choice of exchange (Cheung and Lee, 1995).

Nowadays a lot of European companies draw up annual reports using the US’ accounting standard. The emerging convergence of financial accounting standards and practices is considered a major driver of Corporate Governance convergence as companies have become involved in cross border activities in product and capital markets (Walton and Haller, 1998).

As we can observe by Euronext and NASDAQ OMX Nordic Exchange, European stock markets are now more integrated than ten years before. In 2007, Euronext NV (Netherlands) merged with NYSE Group Inc (United States), creating NYSE Euronext, the major trans-national financial market in the world and with the higher rate of liquidity. As a result, the correct expression to be used in the taxonomy would be “the importance of stock markets in the regional economies” and not anymore in the national economies.

The creation of global stock markets also impacts on the division into four groups suggested by Scott (1985), De Jong (1989), Moerland (1995a,b) and Weimer (1995). In other words, Euronext is the stock exchange both of a country classified under Germanic system, such as the Netherlands, and of two Latin countries, such as France and Belgium. So, under this point of view, the integration process of financial systems appears to break the traditional classification of the Anglo-Saxon, Latin, Germanic and Japanese systems.
5.5 Market for Corporate Control: An international perspective
The market for corporate control is defined as a governance mechanism for public listed companies. It is typical tool of developed financial markets involving companies usually with highly dispersed ownership. The market for corporate control reflects the historical development of a distinct type of market, wherein the trading of corporate equity occurs on a very large scale and gives the power to control these corporations (Windolf, 1994). OECD (2006) sustained that “regarding the market for corporate control, the market should function in an efficient and transparent manner. Rules should be clearly articulated and disclosed as well as transparent prices and fair conditions for shareholders. Anti takeover devices should not be used to shield management and the board from accountability”.

The takeover process operates to stimulate better performance for management. The function of the market for corporate control is enforce efficiency, putting productive assets in the hands of the highest value user. Indeed, when outsider investors perceive that a company is underperforming and below its potential value, they wish to take it over, while shareholders are willing to sell their stocks for a premium, yielding an economic return. In this manner, managers are monitored by both their stockholders and outsider investors. In addition Mitnick suggested that market for corporate control is based on three mechanisms: friendly transactions, tender offers and acquisitions in private markets.

Motivation and type of takeover activity across countries are strongly influenced by various institutional characteristics of the national business system.

According to the taxonomy of systems of Corporate Governance (1999), the Anglo-Saxon model is the only system characterized by the existence of a very active external market for corporate control, and indeed the most active in the world with regard to hostile takeovers. In the US and
UK, takeovers represent a central market-based mechanism for Corporate Governance. This is obviously linked to several elements. First, companies are considered “tradable assets”. Then, major stakeholders are shareholders, so the takeover process is seen as an instrument to incentive a convergence of interests between the management and these players. In addition, the ownership structure is characterized by low ownership concentration and high presence of individual shareholders that incentive the takeover mechanism. Finally, the presence of developed stock markets allows takeovers to play a central function.

On the other hand, in the Japanese and German systems, the Corporate Governance structure is characterized by the presence of banks that undertake long-term relational lending and establishing equity ties with industrial firms. Similarly, both systems have strong inter-firm groups bounded by horizontal cross-shareholding agreements or pyramidal blockholdings. These elements of stable ownership and banking monitoring effectively prevent hostile takeovers.

Latin countries have large blockholdings and interlocking directorates among financial, business and government elites. The absence of an active market for corporate control may help prevent ‘breach of trust’ and support firm-specific or relationship-specific investments by different stakeholder groups.

As a consequence, the existence of an external market for corporate control is the result of several interconnected factors, such as the ownership structure of companies, the existence of floating markets and the regulatory framework. Specifically, low ownership concentration, developed financial markets and regulation in favor of M&A activity encourage the existence of an active market for corporate control. However, there is not a direct relationship between these characteristics and the market for corporate control. For example, Japan is characterized
by developed financial markets, but the market for corporate control is completely absent at a national basis.

Weimer and Pape (1999) identified only the Anglo-Saxon system with the existence of an active market for corporate control. The two authors analyzed the market for corporate control based on the national takeover market. On the contrary, with the investigation of cross border M&A activity, we identify the role played by the market for corporate control in an international perspective. Indeed, the two authors considered the number and volume of takeover mechanisms undertaken by a national company to merge or acquire another national firm. On the other hand, we consider the number and value of deals completed by a national company to merge or acquire a foreign company. This is consistent to our research objective to analyze the impact of cross border M&A activity on the taxonomy of Corporate Governance systems, by using a sample of mega cross border deals.

**Table 6 Mega cross border M&A deals in US$ billion, 1999-2007**

<table>
<thead>
<tr>
<th>Bidder Company</th>
<th>Target Company</th>
<th>Anglo-Saxon</th>
<th>German</th>
<th>Latin</th>
<th>Japan</th>
</tr>
</thead>
<tbody>
<tr>
<td>Anglo-Saxon</td>
<td></td>
<td>591,7</td>
<td>530</td>
<td>75,2</td>
<td>20</td>
</tr>
<tr>
<td>German</td>
<td></td>
<td>420,4</td>
<td>105,9</td>
<td>53,3</td>
<td>0</td>
</tr>
<tr>
<td>Latin</td>
<td></td>
<td>329,8</td>
<td>115,1</td>
<td>109,6</td>
<td>5,4</td>
</tr>
<tr>
<td>Japan</td>
<td></td>
<td>38,6</td>
<td>11,4</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

Source: UNCTAD

Table 6 shows the value of mega cross border deals undertaken by companies located in different Corporate Governance Systems from 1999 to 2007. As we can see, the majority of mega cross border deals took place within companies located in the Anglo-Saxon countries for a total value of US$591.7 billion. The Anglo-Saxon companies played a key role
in the international takeover activity: 204 mega cross border M&A deals out of 262 involved a company located in the Anglo-Saxon system for a total value of US$3,222.3 billion, as showed in Table 6.

Surprisingly, German and Latin companies were involved in more deals with companies located in a different system than within their own system. The strong rise of cross border M&A activity in the German Governance context is influenced overall by the takeover of Mannesmann (Germany) by Vodafone (United Kingdom) that was worth US$202.8 billion, approximately half of all the takeover deals that took place between the Anglo-Saxon and German companies in eight years.

Latin companies play a moderate role in the takeover process. As table 7 shows, 80 mega cross border M&A deals that took place involved at least a Latin company for a total value of US$688.4 billion. In recent years, Japanese M&A increased substantially, but largely due to a large increase in number of domestic deals. Japanese cross border deals increased from just 164 per year in 1991-97 to 216 in 1998-2005, whereas domestic deals increased from 90 to 1,041 per year. Japan played a marginal role in the international takeover process. Concerning mega cross border deals Japanese companies have acquired 5 companies located in the Anglo-Saxon systems and 2 companies located in the Netherlands. Interesting is that 2 deals involved Japan Tobacco, a cigarette manufacturing company listed in Tokyo Stock Exchange. In 1999, the company acquired RJ Reynolds International (Netherlands) and in 2007 the English Gallaher Group PLC, in the largest ever foreign acquisition in Japanese history. In March 1999, the Renault–Nissan Alliance was the first of its kind involving a Japanese and a French company, each with its own distinct corporate culture and brand identity, linked through cross-shareholding. Renault has a stake of 44.4 percent in the Japanese automaker Nissan, while Nissan in turn has a 15 percent stake (non-voting) in Renault.
Table 7 Number of mega cross border deals, 1999-2007

<table>
<thead>
<tr>
<th>Bidder Company</th>
<th>Target Company</th>
<th>Anglo-Saxon</th>
<th>German</th>
<th>Latin</th>
<th>Japan</th>
</tr>
</thead>
<tbody>
<tr>
<td>Anglo-Saxon</td>
<td>79</td>
<td>41</td>
<td>28</td>
<td>5</td>
<td></td>
</tr>
<tr>
<td>German</td>
<td>35</td>
<td>17</td>
<td>14</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>Latin</td>
<td>13</td>
<td>8</td>
<td>16</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>Japan</td>
<td>3</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td></td>
</tr>
</tbody>
</table>

Source: UNCTAD

However, the low level of cross border activity has been an important point of debate in Japan. The Japanese government has proclaimed a goal of a five-fold increase in Foreign Direct Investment (FDI). Even if several studies also show the positive impact of FDI in Japan, of which acquisitions are an important element. Thus, Japanese firms have invested less in acquisitions of foreign firms than their counterparts in other countries.

In recent years, the diversity of Corporate Governance systems has changed and cross border M&A activity has increased globally. However, the majority of such deals involved companies located in the same Corporate Governance context. Indeed, the corporate tax rate, cultural and geographic distances, or differences in Corporate Governance regimes between merging partners have a deterrent effect on cross border M&A operations. The cultural distance between merging partners tends to increase the organizational cost of firms' integration (for example, less cooperation between teams), harming the profitability of cross border M&As. Furthermore, bidder companies look cautiously at Corporate Governance practices of the target. They evaluate whether the target could be integrated easily (or not) into the buyer's business. In this respect, differences in Corporate Governance systems incur in matching costs
between partners. Similar Corporate Governance practices also enable acquiring firms to evaluate gains from merging more effectively.

Based on this international analysis, the market for corporate control still plays a different role in each Corporate Governance system. Our first finding is that the international takeover process plays a key role for Anglo-Saxon companies. As it was ten years ago, features of Corporate Governance systems related to the regional market for corporate control seem to reflect the current international situation. Second, it is impressive the increasing role played by the international takeover process in the German Corporate Governance system. Weimer and Pape affirmed that the market for corporate control is completely absent on national basis in German countries. Instead, the hostile takeover of Mannesmann (Germany) by Vodafone (United Kingdom) represents a watershed change towards growing international markets for corporate control (Höpner, Jackson 2001). The Mannesmann acquisition reflects the erosion of previous barriers to hostile takeovers due to both regulatory reforms and incremental changes in the social organization of capital markets. Höpner and Jackson (2001) suggested that the absence of markets for corporate control can be viewed as a necessary condition for the historical development of the German model. On the opposite, while true international convergence remains far off, the emergence of a market for corporate control contributed to develop a new “hybrid” model of Corporate Governance, characterized by the institutionalized participation of labor within an increasingly open capital market.

In Latin countries, the international market for corporate control plays a marginal role. Even if France has long had a number of ‘Anglo-Saxon’ features in its legal and institutional Corporate Governance regime, like the Commission des Opérations de Bourse (COB) created as the US Securities and Exchange Commission (SEC) in 1967, liberal elements co-exist with a range of dissuasive measures and facets of the French
Corporate Governance regime, such as concentrated ownership and the prevalence of dominant shareholders. Indeed, the majority of these dissuasive aspects within French companies have not changed as French capitalism has internationalized in recent decades.

According to the 2000 World Investment Report, Japan was the ninth largest M&A target country in the world in 1999. This was explained by three major features: changes in business culture, changes in the regulatory framework and changes in corporate structure. However, by the investigation of our sample, we find that, concerning mega cross border deals the market for corporate control is still completely absent.

5.6 Ownership Concentration

Systems of Corporate Governance in the industrialized countries vary significantly with respect to their ownership structures. Two dimensions of the ownership structure were analyzed by Weimer and Pape in their paper: the ownership concentration and the identity of the equity’s owner. However they used just the first dimension as a key feature to indentify the taxonomy of Corporate Governance systems. They affirmed that the Anglo-Saxon system is characterized by lower ownership concentration compared to other systems. In addition, the Japanese ownership structure is characterized by more widely dispersed ownership than the German and Latin system where the equity ownership is held by major stockholders.

Before to analysis of the impact of cross border M&As on the ownership concentration, we have to define the concept of ownership concentration. When could a company be characterized with a higher or a lower ownership concentration?

Weimer and Pape do not specify the amount of shares hold by a shareholder that determined a high or low ownership concentration. For instance, in Germany, according to article 21, section 1 WpHG (Securities Trading Act) “an issuer must be notified if the voting rights of a holder reached, exceed or fall below certain thresholds. These thresholds amount
to 3 percent, 5 percent, 10 percent, 15 percent, 20 percent, 25 percent, 30 percent, 50 percent and 75 percent of total shares outstanding”. In Denmark, the regulatory legislation is a little bit different. Shareholders according to the Danish Companies Act section 28 are required to provide updated information on their holdings once they cross threshold levels of 5 percent, 10 percent, 15 percent, 20 percent, 25 percent, 30 percent, 40 percent, 50 percent, 60 percent, 75 percent and 95 percent. As result, national legislation impacts the examination of ownership concentration.

In this research, we link the concept of ownership with the amount of shares held by the major shareholders. As many academic papers, we take a shareholding of around 5 percent as being “controlling”. That is aligned with our research purpose that wishes to investigate the ownership structure of a company that undertook a cross border transactions. We use the same methodology as in the feature “the concept of the firm” and we investigate the ownership structure of the combined entity between an Anglo-Saxon company and a company located in another system characterized by a lower ownership concentration. We decide to use the company’s web site to find such information for the following reasons. First, we are able to understand the capability for a private individual to obtain data about the company shareholder structure; if it is easy and immediately to find it or complicated and not well-defined. Companies are not always eager to communicate their ownership structure because it impacts the market company evaluation. In other words, companies with a higher ownership concentration are less suitable for a market for corporate control, and as a consequence, they receive lower evaluation from investors. As a result, companies do not tend to disclose voluntary corporate information that could negatively impact on their evaluation. Second, the communication of the shareholder structure is not mandatory by law. So by looking at the corporate web site, we will able to identify which companies belonging to which Corporate Governance systems are more transparent; although, we have a drawback
by conducting the analysis in this manner. In the case the information of shareholder structure is not disclosed, we cannot be completely sure about the absence of a major shareholder.

Within our sample, we find the shareholder structure only in 3 combined entity of 16 located in the Anglo-Saxon Corporate Governance system: Vodafone, British America Tobacco and Imperial Tobacco Group plc. Vodafone’s shareholder structure presents two major shareholders Axa S.A. with 4.61 percent of total shares and Legal & General Group Plc with 4.43 percent as on May 2009. However, both shareholders were below the percentage of five percent to be considered concentrated. The major shareholder in Imperial Tobacco is Reinet Investments SCA with a total amount of share equals to 4.22 percent, also under the minimum percentage to be classified as “blockholder”. Finally, Imperial Tobacco Group Plc presents only the profile of share register holders. As a result, we can affirm that the Anglo-Saxon companies still maintain a low ownership concentration; assuming also that the absence of the shareholder structure means the absence of major shareholders.

If we look at the other systems, especially in companies located in the German system we find the opposite situation. Of a total of 26 deals between the German and the Anglo-Saxon model, 15 companies declared on the web site the presence of at least a major shareholder over five percent, 3 companies affirmed that they are not “aware” about the presence of a major shareholder and the remaining 8 companies did not disclose clear information about their shareholder structure. As a result, we can affirm that the taxonomy of Corporate Governance still represent the current situation of the German company characterized by lower ownership concentration.

The only Japanese companies presented in our sample present only the shareholder composition in terms of investor status, but there is neither the shareholder structure nor the disclosure about major shareholder.
5.7 Performance - Dependent Executive Compensation

The extent to which executive compensation is dependent on corporate performance is a key factor to classify the Anglo-Saxon pay system versus other practices. Based on top management compensation’s data, Weimer and Pape evaluated the executive performance of the Anglo-Saxon, German, Latin and Japanese systems and they concluded that only the Anglo-Saxon system presents executive performance highly related to the performance of the company. In the Latin countries, they affirmed that there is a “moderate” relationship between executive compensation and corporate results, and a very “low” relationship in German countries and Japan.

The Anglo-Saxon executive compensation practices, especially in the United States, have been highly incentivized and lucrative. Incentive mechanisms are useful instruments to reduce potential misaligning of shareholders’ and executives’ interests, and higher amounts paid are explained by the higher risk associated with large option holdings. Although, the Anglo-Saxon CEO’s recompense could be the result of self-serving managerial “rent extraction”, with captured Boards of Directors paying out ridiculous amounts to self interested CEOs. In other systems, CEO compensation levels have been lower, bonus payments smaller and their remuneration packets have contained fewer, if any, stock options.

In recent years, compensation mechanisms seem to have evolved toward a global pay system. There is not a unique consensus confirming that this trend is taking place and some critics believe that the divergence between the Anglo-Saxon and other systems will persist and may even widen. According to Randall (2008), the future evolution of executive compensation will be influenced by the following market forces: the company’s ownership structure, cross border hiring, cross border M&A activity and the growing number and size of multinational company. First, concerning the company’s ownership structure, in firm with lower
ownership concentration, performance-dependent executive compensations play a key role to align managers’ and shareholders’ interests (Clegg, 2001). In this manner, the use of stock plans or other long term compensation whose value depends on the company’s stock price serves to incentive managers to create shareholder value. On the other side, companies characterized by higher ownership concentration with the presence of a major shareholder tend to be adverse to share-based incentives mechanism, especially stock options, since managers could be transformed into major shareholders and thereby dilute the share power held by the controlling group (Bates, 2000). Second, the number of foreign CEOs is increasing as well as the market for CEOs is becoming global. As a result, worldwide companies have to offer to their CEO larger compensation packages in order to avoid that they decide to “migrate” towards the Anglo-Saxon companies. For instance, former AG CEO Klaus Kleinfel left that company in 2007 to become Chief Operating Officer (COO) in Alcoa, and, for this, he received a huge signing bonus and an option-linked remuneration package.

Third, the increasing cross border M&A activity is considered another force that could enforce a shift in executive compensation practices. The international consolidation wave impacts on companies’ managerial packages due to the fact that when companies are combined together they will adopt a single pay system. Finally, the growth of companies which operate on a multinational basis is considered a crucial element to boost future trends. Indeed, when multinational corporations take a decision regarding the executive package, they will adopt the same executive pay structure for the whole group.

Executive compensations are composed basically by four pay packages: base salary, annual bonus, stock options and long term incentive pay (LTIPs). Base salaries are fixed amounts paid to top management not related to company’s corporate results. On the other hand, annual bonus, stock options and long term incentive pay are all performance-dependent executive remuneration, either directly or indirectly. Annual bonuses are
the main cash payments awarded when a firm has met specified yearly targets established in the beginning of the year. *Stock option* grants give to the executive the right to buy a specific number of shares from their company at a given exercise price after a vesting period that typically last several years. *Long term incentive plans* are generally bonus payments that are designed on performance variables measured over a period of several years.

The total amounts of each form of compensation, and the composition of its variable element, could vary widely across countries. We are going to identify and analyze the CEO’s compensation practices among companies belonging to two different pay practices regimes that have completed a mega *cross border* M&A deal. The analysis is based on the CEO’s remuneration disclosed in the web site of *Business Week* as fiscal year 2008. For each CEO the web site presents these features: executive profile, CEO’s background and education, corporate headquarters, board of director’s memberships and total compensation. We focus on the latter information. Indeed, when the information is available, the total compensation is split into salary and bonus that composed the total annual compensation, and stock options and all other compensation that represent long term compensation. However, the stock option part may disclose three different elements: restricted stock awards, total value of options and total number of options. As a result, these data has to be observed as a whole.

On average, the CEO’s annual compensation in final companies located in the Anglo-Saxon model was around US$ 1,770,819 at the end of the fiscal year 2008. Base salary made up about 67 percent and the rest was composed by bonuses. However, if we consider the total compensation, base salary represents only 29 percent, bonus accounted for another 46 percent and the rest was related to other compensation. Within our sample, Miles D. White, Abbott Laboratories’ CEO, had the higher total
compensation equal to US$ 10,228,396, composed by 82 percent of long term incentives plan in the fiscal year 2008. In our data, the percentage of executive performance-dependent remuneration is undervalued because we do not consider stock options because, as we explained before, we do not find always the same part of stock plan.

Regarding the CEO’s annual salary of a German company that acquired a company located in the Anglo-Saxon system, the CEO’s annual compensation on average is composed by 51 percent of base salary and 49 percent of annual bonuses. If we also consider long term incentive plans, the total German remuneration is composed respectively by 32 percent of base salary, 44 percent by bonuses and the rest of long term incentive plans. In end of the fiscal year 2008, Wolfgang Reitzle, CEO of Linde AG, that acquired in 2006 the English BOC Group PLC for US$14.10 billion, received the higher executive bonus equals to US$ 6,892,462. Even if within a sample of 26 German combined entities, we obtained information only on 21 companies, the executive performance-dependent trend is well-defined and clear toward the Anglo-Saxon scheme.

If we look at cross border business combination between an acquirer firm located in the Latin system and a target firm located in the Anglo-Saxon model, we find that in the majority of case the total amount of annual bonus is more than the base salary. Also the Latin pay systems seem to tend toward the Anglo-Saxon pay structure.

About the Japanese system, we cannot make any analysis because for Nippon Sheet Glass Co. Ltd. no data is available in the web site of Business Week.

The analysis of the composition of CEO’s remuneration leads to several findings. First, cross border activity drives that executive-dependent compensation is becoming a more and more typical form of remuneration, even outside the Anglo-Saxon system. Annual bonuses are considered a
crucial incentive aspect of total CEO’s compensation. Based on our data, at the end of 2008, in German final companies, the annual average bonus/salary ratio was equal to 105 percent, meaning that the value of the base salary and the annual bonuses was almost similar. The same path is quite clear also for long-term incentive compensation. As a result, the taxonomy used by Weimer and Pape does not represent the current situation of CEO’s remuneration, in other words, the distinction between high and low performance-dependence compensation is disappearing. Second, the increase in the use of executive dependent performance remuneration will help to a general increase in total compensation, because top management will request a higher return for assuming more risks, such as a lack of diversification or the risk of market fluctuations in the firm’s share price.
5.8 Time Horizon of Economic Relationships

The last salient feature to identify the four groups of Corporate Governance systems is the time horizon of economic relationships. According to Weimer and Pape (1999), this aspect refers to the general time horizon of economic relationships within the national economy. Although they did not identify a unique relationship as well as an indicator to evaluate this aspect, they considered this aspect in a broader manner.

Inside a company, several economic relationships take place among different players such as shareholders, board members, managers, employees, suppliers and clients. Weimer and Pape (1999) defined the Anglo-Saxon system as characterized by short-term economic relationships without explaining in which way they did this evaluation. We do not know if the two authors referred to the economic relationship between shareholders and the company or between managers and the company. In the first case, the evaluation mechanism could be based on the share holding period. In the second, manager turnover could be taken into consideration. Thus, we are not able to identify neither the economic relationship taken into account nor the methodology to make an evaluation.

In addition, we do not know Weimer and Pape’s definition of short and long period. The two authors did not specify how long an economic relationship is considered short or long oriented. For instance, the Japanese model is defined as long-term oriented due to the institutional ties between stakeholders and the sense of familyism. Though, German and Latin countries are considered also long-term oriented due to different motivations. In the first case, it is due to the employee influence and the shareholder structure characterized by the strong presence of non-financial corporations and banks; in the second, it is more linked to the presence of family and government in the shareholder structure. What we want to demonstrate is that the idea of long-term is not the same in all
countries. The presence of family in Latin countries could not be compared, in terms of time, to the presence of banks in German countries.

As a result, it seems a hard work to identify the evolution of the time horizon of economic relationships without making strong assumptions. In fact, if we do a personal identification regarding specific economic relationships and we define the time horizon, we will not analyze the development of the taxonomy of Corporate Governance systems introduced by Weimer and Pape, but we will create a completely new feature, useful to distinguish among different Corporate Governance regimes. The latter goes beyond the purpose of this research.

To summarize, in order to be consistent with our goals, we are not able to analyze the impact of cross border M&A activity on this aspect of Corporate Governance, due to the lack of a proper explanation of time horizon of economic relationship by Weimer and Pape.
6 Conclusion and Drawbacks of this Papers

Our research purpose was oriented to analyze the effect of cross border M&A activity on the taxonomy of Corporate Governance systems introduced by Weimer and Pape in 1999. With this intent, we developed the paper arguing about the features used by the two authors to identify Corporate Governance regimes by using mega cross border transactions. Through this analysis we obtained the following major findings. First, cross border M&A activity weakens differences among Systems of Corporate Governance, especially among the Anglo-Saxon, the German and the Latin Corporate Governance systems. In general terms, combined entities created by two systems belonging to two different Corporate Governance regimes assume characteristics of both systems. Second, the impact on the salient features tends to follow different convergence paths, both within the same Corporate Governance regimes and compared to the same features of another regime. Indeed, the Anglo-Saxon model tends to change only its perspective of concept of the firm and its board system, whereas in the German and Latin countries can be observed changes in the board system, the importance of the stock market and the executive performance. Furthermore, some aspects tend to influence each others.

For instance companies design new board systems by considering key aspects belonging to both the unitary and the dual scheme. Others seem to converge towards a unique model, for example the increasing role played by stock markets both in Latin and German countries as in the traditional definition of the Anglo-Saxon system. Third, as a result, we are able to affirm that there is not a well-defined convergence path useful to foresee the future evolution of Corporate Governance regimes. All the key features are strongly interconnected and all depend on many elements that do not allow full understanding of future trends.

Although we have tried to analyze the evolution of Corporate Governance systems, there are still drawbacks within the research and we are going to point out the two most relevant issues.
The first is data availability. Companies do not tend to disclose voluntary corporate information concerning their shareholder structure or executive compensation. Hence, our findings are based only on available data. The second is related to the fact that the analysis was not conducted on the following features of Weimer and Pape’s classification: “the salient stakeholders able to exert influence on managerial decision-making” and “the time horizon of economic relationships”. Such characteristics suffer the major limitation of the taxonomy of Corporate Governance systems that are only descriptive and they lack of a clear methodology to make an evaluation of the future trends.
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