

# Reconstructing argumentative interactions in M&A offers

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RUDI PALMIERI\*

## RECONSTRUCTING ARGUMENTATIVE INTERACTIONS IN M&A OFFERS

This paper brings to light the important but insufficiently recognized role played by argumentation in financial activities and, more in particular, in corporate mergers and acquisitions (M&A). This role shows to be crucial in many phases of the M&A process, in particular in the public offer phase, when corporate managers have to convince shareholders of the expediency of the proposed deal but also need to show the acceptability of the transaction to a wide public of stakeholders (employees, customers, politicians, analysts, investors, regulators, media), involved in the discussions surrounding a deal. The paper intends to show how the pragma-dialectical model of critical discussion (Van Eemeren & Grootendorst 1984, 1992a, 2003) can be applied for reconstructing the argumentative interactions entailed by M&A offers. The purpose is to specify the different scenarios within which the discussions are structured and to single out the main arguments put forward by the participants in the discussion. This reconstruction shows, on the one side, the relevance of argumentation in this type of interaction and constitutes, on the other side, the fundamental basis for realizing a consistent evaluation of the argumentative strategies that support (or reject) the expediency and acceptability of a proposed transaction.

*Keywords:* argumentation, confrontation stage, critical discussion, information, mergers and acquisitions.

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## 1. Introduction

The importance of information in finance is hard to overestimate. Information in financial markets is incomplete because of the uncertainty about future events and asymmetric, as it opposes companies' insiders, owning private information, and the general public of investors, constantly in search of this information for managing their investments (cf. Barone-Adesi 2002; Leland & Pyle 1977).

The whole system of financial communication aims at satisfying this high demand for information not only by fostering its diffusion into the markets but also by "translating" it and making it more comprehensible for those (lay) investors who lack time or skills for acquiring and mastering this information, actually indispensable for constructing appropriate reasoning allowing expedient financial decisions. Indeed, what makes information extremely relevant for financial decisions is the fact that it constitutes the base on which the decision-maker justifies his/her decision. Information constitutes the premises for all types of financial reasoning, in particular of those inferential moves that are argumentative in nature. In fact, not all types of reasoning are properly argumentative. Argumentation is a social and interpersonal activity through which an individual aims at persuading another individual (or a public) to accept an opinion (or a proposal) by supporting it with adequate reasons.

As suggested by Rigotti (2003) human interaction is feasible only through communication. A strong argumentative commitment is expected to be the case in those spheres of communication supporting the interactions like finance that require a high rate of rationality. Argumentation, being that communication discourse which provides reasons in support of a position, is an essential component for the full realization of all the interactions in which personal and social opinions, desires, goals, and interests are involved.

In the financial context argumentation is applied in the numerous transactions and negotiations characterizing daily business where one party has to convince the other one to settle a deal. Mergers and acquisitions (M&As) between public companies are a particular case in point, as there two companies discuss and negotiate a deal by attempting to persuade each other on the expediency of the reciprocally proposed terms.

Together with bankruptcies, M&As are probably the most interesting and exciting financial events, attracting the attention not only of economists, investors and other market participants, but also of media and the society in general. From the economic viewpoint, M&As represent significant corporate events: they can affect the industrial sector concerned, they bring on important changes in the structure of the firms, they involve huge amounts of capital (billions of dollars, indeed!), they have a sensitive impact on stock prices. Beside mere financial aspects, social issues too are very often bound to M&As. The after-merger reorganization might entail lay-offs, resulting in negative reactions by employees and unions. Recent cases like Alitalia (Italy) and Société Générale<sup>1</sup> (France) have shown how politicians as well may be implicated in a deal, especially when the doom of a company with national importance – like an airline or big bank – is at stake. The well-known case of the Vodafone-Mannesmann hostile takeover (February 2000) is a typical example showing the relevance of extra-financial issues in M&As (cf. Höpner & Jackson 2001, 2005; Nowak 2001). This takeover, in fact, generated a long and intense argumentative controversy, in which both economic and socio-cultural values were challenged by a large public of stakeholders.

Communicative processes in corporate mergers and acquisitions (M&As) have been object of deep investigations within the literature in management, corporate strategy and corporate communication (Balmer & Dinnie 1999; Bastien 1992; Colombo et al. 2007; Cornett-Devito & Friedman 1995; Demers, Giroux & Chreim 2003; Schweiger & Denisi 1991). These studies focus on the post-merger integration phase as a typical issue of corporate communication, considering the efforts made by corporate managers for integrating the two merged firms into a new single corporation, with a particular emphasis on the communications towards employees.

There is not an analogously developed literature about the role of communication in other phases of the M&A process. Moreover, the argumentative processes are not considered for the crucial phase in which

<sup>1</sup> In January 2008, rumors suggested Société Générale could have been acquired by another bank. The French government explicitly opposed a merger with a foreign bank (The Wall Street Journal Europe, January 30, 2008)

corporate managers propose the deal to shareholders through a public offer and argue for the expediency of their proposal.

The present paper represents the first segment of a larger personal research aiming at identifying, analysing and evaluating the argumentative strategies performed in the public arena of financial markets in favour (or against) a merger offer, in order to establish to what extent the quality of communication and argumentation affects the realization of M&A deals.

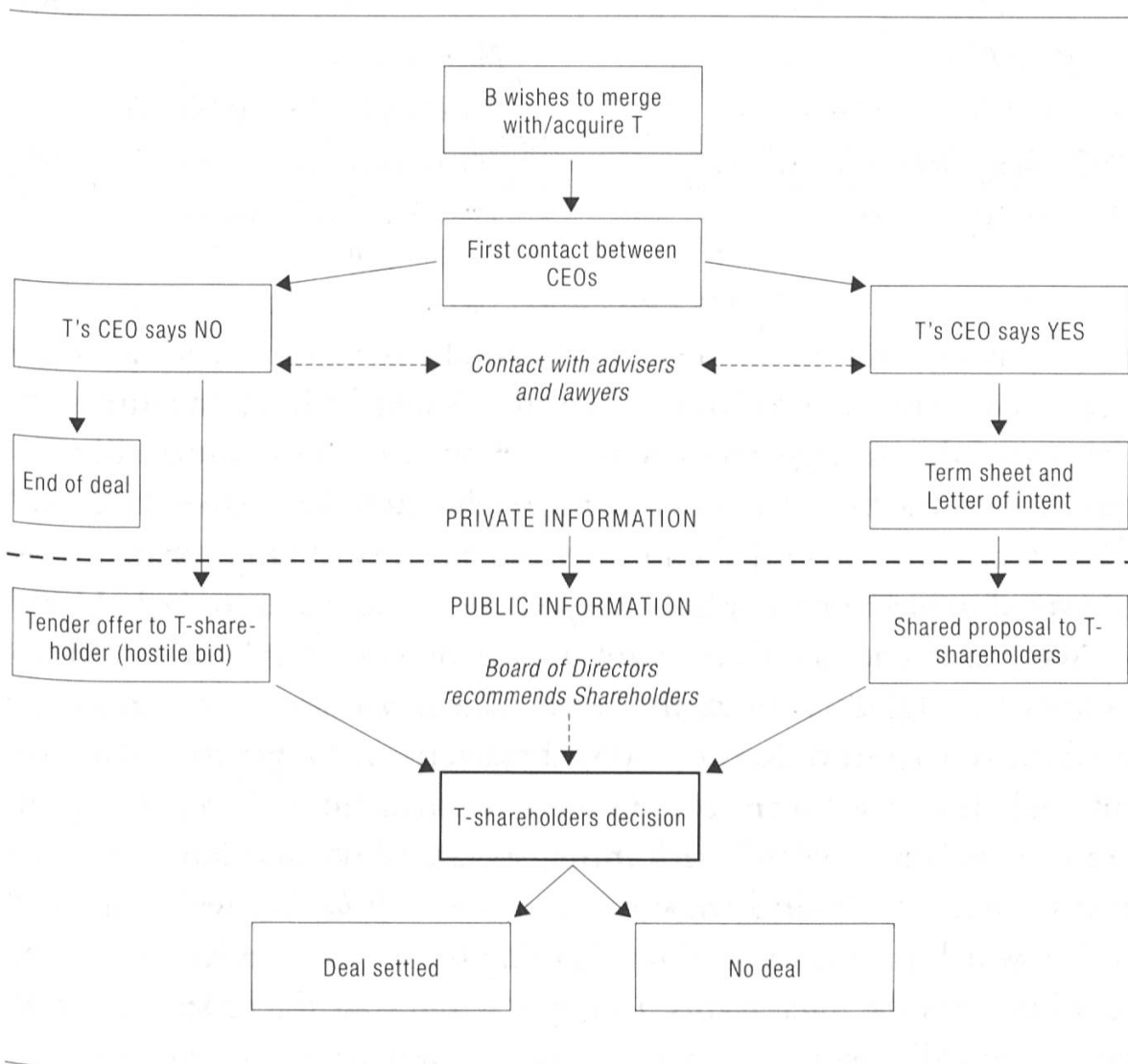
This paper will show that M&As involve intense communicative and argumentative interactions that are performed through and mirrored by numerous different texts, addressed to the several audiences constituting the wide public of stakeholders that the company should consider in order to realize the desired transaction.

## 2. Argumentation in the M&A Process

In M&A deals<sup>2</sup> two companies, a bidder and a target, are involved. Figure 1 shows the description of an ideal M&A process (adapted from Bruner 2004), taking the perspective of the bidder management. Initially, bidder managers approach target managers for discussing a possible deal. If the target management welcomes the proposal, a joint offer (friendly offer) is made to target shareholders.

<sup>2</sup> From a juridical point of view – at least if we consider many regulatory systems such as those of US, EU countries, and Switzerland – there is a clear distinction between statutory *merger* and stock or asset *acquisition* (see Gilson & Black 1995). In a statutory merger one company is completely absorbed into the other company ceasing to exist as a separate legal entity. In an acquisition one company obtains control over another by purchasing some or all its stock or assets (cf. Arzac 2005: 143) so that both firms could survive. Indeed, what is common in (almost) all these financial operations is that a transfer of control takes place from one company (or a group of investors) to the other. For this reason, the term *takeover* is often adopted as well. Ideally, any merger – except the extreme and rare case of *Merger of Equals* – could be considered as an acquisition or a takeover, to the extent that a “winner” could be identified, i. e. between the two merged companies, the one obtaining the larger stake of the new company could be considered the acquirer, while the other would be the acquired firm. As Bruner suggests “the [merger/acquisition] distinction is important to lawyers, accountants, and tax specialists, but less so in terms of its economic impact. Businesspeople use the terms interchangeably. The acronym ‘M&A’ stands for it all” (2005: 1).

Figure 1: The M&amp;A Process



On the opposite, a refusal by the target management can bring either to the end of the negotiations or to the launch of a hostile offer, where the bidder management directly addresses target shareholders proposing them to accept the bid, while the target management may recommend doing the opposite. That is the reason why it is called hostile: not because it damages target shareholders but because it goes against the will of target managers or the Board of directors<sup>3</sup>. The offer is hostile for managers and

<sup>3</sup> There is not a legal and clear definition of hostile bid. Scholars, business people and media usually use the term hostile when either the management or the Board of directors refuses the offer. Actually, it is very difficult to keep totally distinct the opinion of the management and the opinion of the Board as executives usually have a seat in the Board and Board members often become managers.

*Table 1: Deal Phases and Interaction Fields*

	<i>Deal Phase</i>	<i>Interaction Field</i>
1	Deal design and discussion	Concerned industrial market
2	Public offer to shareholders	Financial markets
3	Post-deal integration	The after-deal corporate

not, or at least not necessarily, for shareholders. A more neutral adjective usually preferred to “hostile” is “unsolicited,” which underlines the absence of the management’s consent. In any case, in both friendly and hostile bids, the final decision is at the sole discretion of shareholders: a deal, in fact, can be settled only after the majority of target shareholders has voted in favour of it or has accepted to sell the shares to the bidder<sup>4</sup>.

We can single out three main argumentative phases in the M&A process (see Table 1). In each of these phases specific *activity types*<sup>5</sup> are performed. Rigotti & Rocci (2006) characterize *activity type* as the institutional dimension<sup>6</sup> of any communicative interaction, where inter-agents are seen as “role-holders” performing specific skills and jobs – *interaction schemes* – embodied within an *interaction field*, i. e. within a social reality which is fundamental for defining the argumentative interaction as it indicates the inter-agents’ *joint goal* – and thus the reason why they enter into a discussion – and their *mutual commitments* – what they are

<sup>4</sup> If the target company will disappear after the merger, a formal vote by target shareholders is required. Otherwise, shareholders have to decide whether to sell their shares or not.

<sup>5</sup> The notion of activity type has been developed by Levinson (1979, 1992), who used it for referring to “a fuzzy category whose focal-members are goal-defined, socially constituted, bounded, events with constraint on participants, setting and so on, but above all on the kinds of allowable contributions.”

<sup>6</sup> The other dimension is the interpersonal one (cf. Muller & Perret-Clermont 1999), where it is acknowledged that inter-agents are individuals, belonging to a community and with personal goals that might go far beyond the institutional goal they have within the interaction. Thus, a conflict might arise between individual and institutional goals: it is the typical principal-agent problem (Ross 1972; Jensen 1976; Eisenhardt 1989), where the agent is tempted to pursue his/her own interests instead of those of the principal, imposed by the contract defining their relationship.

expected to do within the discussion. Table 1 specifies the interaction field involved in each phase of the M&A process, as described in figure 1.

The first phase corresponds to the stage where the two companies' managers discuss the possible deal proposed by the bidder. This interaction takes place in private (as indicated, in figure 1, above the dashed line). In the third phase, which occurs only if the deal is settled, the management of the new company (NewCo) has the task of implementing the deal by integrating the two old companies and their different identities and cultures into a new single corporation.

The second phase – the one which the present paper deals with – starts when the would-be deal is disclosed to the public. Here, the interaction field corresponds to financial markets. In this phase, the main goal of managers is to persuade shareholders to accept their offer. The *interaction scheme* performed is a kind of negotiation dialogue (cf. Walton & Krabbe 1995), in which the joint goal is to find an agreement which satisfies both parties: managers communicate with shareholders for settling the deal. Beside the need to convince their counterparty in the negotiation, managers also have to “legitimate” their proposal in front of the investment community and in front of specific members of the social community, involved in – or affected by – the would-be deal (see next section). Indeed, managers' central goal appears here to be the same: to successfully finalise the transaction.

This strong differentiation of publics corresponding to the different stakeholders involved in the deal induce companies to produce many different documents – press releases, merger prospectuses, circulars and letters, advertisements – and to organize communicative events – analysts/investors conference calls, press conferences, public presentations. The form and content of all these communication activities is subject to precise requirements imposed by the supervising authorities (SEC in US, SFBC in Switzerland). In the context of financial markets, in fact, public companies have to comply with many disclosure rules for the sake of investors and savers<sup>7</sup> and, more in general, for guaranteeing a transparent, reliable and efficient market.

<sup>7</sup> Barone-Adesi (2002) rightly observes that public companies face a conflict between the need to inform investors for raising capital and the need to keep information private for being competitive and create value.



Furthermore, these documents and events represent the activity itself of negotiating and conducting the transaction. These documents and events constitute that set of data to which my argumentative analysis is devoted.

### 3. Defining Argumentative Interactions in Different Scenarios of M&A Offers

#### 3.1. *The Pragma-dialectical Model of Critical Discussion*

I wish now to synthetically outline the model of critical discussion I adopt in my analysis. The Pragma-dialectical theory, founded by Frans van Eemeren & Rob Grootendorst (1984), aims at reconciling *descriptive* and *critical* approaches to argumentation<sup>8</sup> by critically analyzing real argumentative discourses that take place in the various social contexts (law, media, business, politics, health care and so on) through a normative standard, represented by the ideal model of *critical discussion*. In a critical discussion (CD), two parties – a *protagonist* and an *antagonist* – try to resolve a difference of opinion along four ideal stages: *confrontation stage*, where the difference of opinions (*standpoints*) is made explicit; *opening stage*, where the common ground is established: the parties agree on the rules for discussion and, above all, the shared information on which the arguments are constructed is defined<sup>9</sup>; *argumentation stage*, where reasons

<sup>8</sup> The difference between descriptive and critical approaches is defined by Van Eemeren, Grootendorst, Jackson & Jacobs (1993: vii) as follows: “In contemporary argumentation research, there is an unfortunate division between descriptive and critical work. Those approaching argumentation theory from a social scientific perspective tend to think their work as ‘descriptive,’ and those approaching argumentation theory from humanistic perspectives such as logic and rhetoric tend to think of their work as ‘normative’ or ‘critical.’ Social scientific approaches generally claim to be value-free. They generally portray themselves as avoiding questions of how individuals in principles should and should not argue. In contrast, critical approaches are often more concerned with the properties of models on ideal argumentation than with features of actual argumentative practice. They tend to emphasize questions of how, ideally, individuals should and should not argue, seeming to be generally uninterested in questions of how individuals in fact do and do not argue.”

<sup>9</sup> Argumentation can work only if a certain common ground exists between the co-arguers. Argumentation, in fact, consists in bringing the other to recognize something he/she initially doubts or opposes starting from what he/she already accepts and showing a connection between the already accepted premises (*endoxa*) and the deriving conclusion, which is the standpoint (cf. Rigotti 2006).

are given for supporting the one's own standpoint and attacking the other's standpoint; *concluding stage*, where parties draw conclusions about the result of their discussion.

Since its foundation, this model has been applied in many social contexts and practices, in particular: legal argumentation (Feteris 1999), problem-solving (Van Rees 2001, 2003), health care (Rubinelli & Schulz 2006, 2007), mediation (Greco-Morasso 2008).

In the confrontation stage parties can advance three kinds of standpoint about a problematic proposition (issue): a positive standpoint affirming the proposition; a negative standpoint negating the proposition; a neutral standpoint expressing a doubt about the proposition. For example, if the problematic proposition is whether insider trading should be punished, a positive standpoint would sound as "insider trading should be punished," a negative standpoint "insider trading should not be punished," a neutral standpoint "I do not know (or I am not sure, I frankly doubt, etc.) whether insider trading should be punished or not." Starting from this scenario, the analyst can establish the type of dispute and assign the role that parties take within the discussion. When the difference of opinion concerns only one proposition we have a *single* dispute. When two or more propositions are at stake the dispute is called *multiple*. Another basic distinction is between *non-mixed* and *mixed* dispute. The former consists of one party, being the protagonist, who advances a positive or negative standpoint, and the other party, being the antagonist, who reacts by simply expressing a doubt, i. e. with a neutral standpoint. In a mixed dispute one party is protagonist of a positive standpoint, while the other party is protagonist of a negative standpoint. It is very important to clearly establish whether a party is protagonist or antagonist as to be protagonist entails carrying the burden of proof: according to Pragmatic-Dialectics, whoever advances a positive or negative standpoint is committed to justify it with proper arguments<sup>10</sup>. The same does not hold for the antagonist, who, by expressing a doubt, is simply inviting the protagonist to justify his/her opinion.

<sup>10</sup> Cf. Rule 2 of CD (burden-of-proof rule): "a party that advances a standpoint is obliged to defend it if the other party asks him to do so" (van Eemeren & Grootendorst 1992: 208).

Table 2: Types of Dispute

	<i>Non-mixed</i>	<i>Mixed</i>
<i>Single</i>	X: Insider trading should (not) be punished.  Y: why (not)?	X: Insider trading should be punished.  Y: Insider trading should not be punished.
<i>Multiple</i>	X: Insider trading should (not) be forbidden, and insider traders should (not) be put in jail.  Y: why (not)?	X: Insider trading should be forbidden, and insider traders should be put in jail.  Y: Insider trading should not be forbidden, and insider traders should not be put in jail.

As a result, four fundamental types of dispute, summarized in table 2, can arise: single non-mixed, single mixed, multiple non-mixed, multiple mixed.

Let us apply this theoretical framework on the subject of the present paper, i. e. M&A proposals. When a M&A offer is launched, a difference of opinion arises between managers and shareholders that can be reconstructed within the model of CD in terms of *confrontation stage*. By proposing to accept the offer, the bidder “invites” shareholders to tender their shares and, at the same time, takes the commitment of paying shareholders if they would tender.

In this perspective, it is very important to take into account the means of payment, i. e. whether the offer is in cash or it consists of an exchange of stock, because of the different entailments for target shareholders. On the one side, a cash deal entails target shareholders to cease to be shareholders: ownership is exchanged for liquidity. On the other side, in a stock-for-stock deal target shareholders hold stakes in the NewCo, thus directly participating to future gains (or losses). Therefore, in a stock offer managers are committed to show to target shareholders that the after-deal company will perform well, that the value of target shares will be higher with the deal than if the target firm would remain alone; in a cash offer there is no point in showing this. Target shareholders would receive neither benefits nor losses from the NewCo. What matters for target shareholders

is that the value of the offer (the Euro/franc/dollar price) is higher than the value of the target shares if the target firm remains alone.

In the following two sub-sections it is shown how the confrontation stage that arises from M&A proposals can be reconstructed, distinguishing in particular between friendly offers (3.1.1.) and hostile offers (3.1.2.).

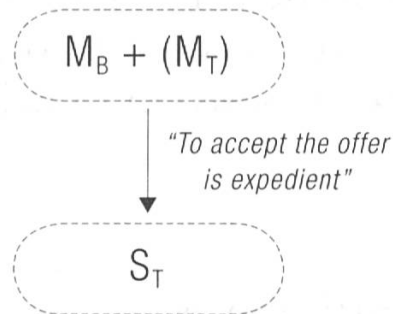
### 3.1.1. *Friendly Offers*

Friendly offers occur when the two companies' managements find an agreement after private negotiations (See figure 1, right side). The deal is jointly proposed to target shareholders and recommended by target executives and Board of directors. Various documents are deployed here. Shareholders should receive a merger prospectus including all the necessary information about the transaction. Also, companies issue press releases in order to announce the agreement and send letters to shareholders, in which they recommend to accept the deal, as the following example shows:

It was announced today that Cornwall Bidco and the Independent Directors [of Civica plc] had reached agreement on the terms of a recommended cash offer to be made by Cornwall Bidco to acquire the entire issued and to be issued ordinary share capital of Civica. [...] The Offer represents an opportunity for Shareholders to realize their entire investment in Civica at an attractive cash price at a time of economic and stock market uncertainty [...] The Independent Directors consider that the Offer is in the best interests of Shareholders as a whole. Accordingly, the Independent Directors unanimously recommend that Shareholders accept the Offer [...]. (Civica plc, *Letter of recommendation from the Chairman of Civica*, 28 March 2008)

We can assign to the two companies' managements the role of co-protagonist defending the positive standpoint that the deal would be expedient for ("in the best interests of") shareholders; and to target shareholders the role of antagonist assuming that they only express a doubt, in the sense that they request reasons justifying the positive recommendation towards the proposal. We can remark, in the reported passage, the presence of a precise argument supporting the proposal: "The Offer represents an opportunity for Shareholders to realize their entire investment in Civica at an attractive cash price at a time of economic and stock market uncertainty."

*Figure 2: Friendly Offer to Target Shareholders: Confrontation Stage*



This difference of opinion results in a non-mixed CD, as indicated in figure 2 by the single arrow<sup>11</sup>. (It may also be the case that target shareholders expressively oppose the would-be merger. I will consider this eventuality later when the role of bidder shareholders is also discussed).

There might be cases where the target management neither expresses a positive nor a negative standpoint, especially when more than one offer is made to target shareholders:

The ABN AMRO Managing Board and the ABN AMRO Supervisory Board remain committed to ensuring that shareholders have the option to accept either the Consortium Offer or the Barclays Offer. The combination with Barclays remains consistent with the strategic intent of ABN AMRO as an institution. Furthermore, the ABN AMRO Boards are not in a position to support the break-up of ABN AMRO but acknowledge that the Consortium Offer, with its high cash component and significant implied premium to the Barclays Offer, is clearly superior for the ABN AMRO shareholders from a financial point of view based on current valuation levels.

Therefore, the ABN AMRO Managing Board and the ABN AMRO Supervisory Board refrain from recommending either Offer for acceptance to ABN AMRO shareholders. (ABN AMRO, *Shareholders' circular*, 16 Sept. 2007: 30)

We can see that, even though a precise opinion is not put forward, there is a commitment by ABN AMRO managers in argumentatively justifying their position. They confirm the expediency of Barclay's offer as:

<sup>11</sup>  $M_B$  = bidder management;  $M_T$  = target management;  $S_B$  = bidder shareholders;  $S_T$  = target shareholders.

- it “remains consistent with the strategic intent of ABN AMRO as an institution,”
  - “they are not in the position to support the break-up of ABN AMRO” implied by the alternative offer;
- while they acknowledge the superiority of the Consortium’s offer because of:
- “its high cash component,”
  - its “significant implied premium to the Barclays offer.”

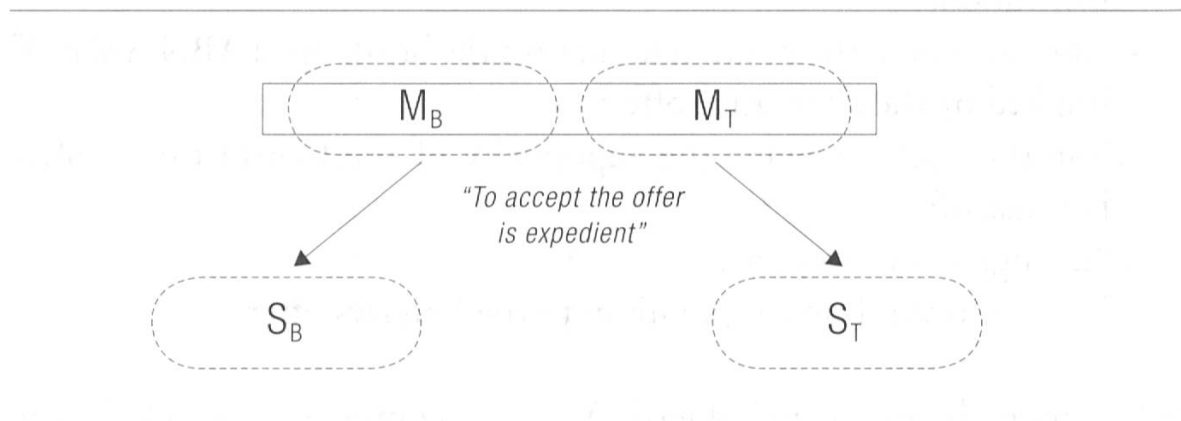
What about bidder shareholders? Are they completely excluded from the final decision even though the value of their stock could be highly affected by the transaction? Indeed, only in statutory mergers a vote by them is needed, as it was the case with Banca Intesa and San Paolo IMI. The two Italian banks merged and formed *Intesa SanPaolo* in 2006, after both Intesa shareholders and San Paolo shareholders had separately voted in favour of the combination. Figure 3 below reproduces the confrontation stage. A similar situation took place in the case of ABN AMRO, quoted in the previous example. Before considering the offer launched by the RBS-led Consortium (which finally won) an agreement with Barclays was settled and disclosed:

The Managing Board and Supervisory Board of ABN AMRO Holding N.V. (“ABN AMRO”) and the Board of Directors of Barclays PLC (“Barclays”) jointly announce that agreement has been reached on the combination of ABN AMRO and Barclays. Each of the Boards has unanimously resolved to recommend the transaction to its respective shareholders. The holding company of the combined group will be called Barclays PLC. (ABN AMRO and Barclays, *ABN AMRO and Barclays announce agreement on terms of merger*, joint press release, 23 April 2007: 1)

As a matter of fact bidder managers often exploit the mechanism of triangular merger<sup>12</sup> to avoid the shareholders’ vote. Alternatively, Treasury

<sup>12</sup> In triangular mergers, the bidder creates a wholly owned subsidiary (SubCo) that will merge with the target company. When the target merges into the SubCo we properly speak of a forward triangular merger; while when the SubCo merges into the target, the transaction is called reverse triangular merger. In both cases, the final result is that the bidder company takes control over the target.

*Figure 3: Statutory Merger (Friendly): Confrontation Stage*



stock<sup>13</sup> can also be used, at least for small acquisitions. In any case a vote by shareholders is required when the bidder needs to issue new shares for financing the deal (unless the management previously obtained a proxy for increasing capital). Not by chance, as Myers & Majluf (1984) suggest, managers deciding how to finance an investment follow a *pecking order*: first they use internal funds (cash or Treasury stock); then, if they need to raise new funds, debt is preferred to stock. Obviously, the absence of a shareholders' vote does not mean their opinion is not influential: bidder managers are always expected to act in shareholders' best interests. In this perspective, M&As are nothing but investments made by the firm and, as such, they can be accepted, from an economic viewpoint, only if they maximise shareholders wealth. The risk for the bidder management in not adequately taking into account their own shareholders is that a group of "dissidents" might strongly oppose the deal and make an attempt to convince the other shareholders not to approve the deal, even engaging in a proxy fight<sup>14</sup>. In general, such initiatives are taken by

<sup>13</sup>Treasury stock are shares bought back by the issuing company but not cancelled from the balance sheet, and as such available for resale.

<sup>14</sup>Dissident shareholders openly express their opposition to the deal and try to convince the other shareholders to reject it. Usually, when this occurs, the dissident group either makes a tender offer to the remaining shareholders, becoming so a competitive bidder, or starts a proxy contest (or proxy fights), which take place when the dissident group asks to the other shareholders a proxy for representing them (i.e. voting on behalf of them) at the extraordinary assembly, where shareholders have to vote on the proposed deal.

activist shareholders, i. e. institutional investors like hedge, mutual and pension funds having the financial and informational strength for challenging the management. Activists in M&As can be shareholders in the bidder firm, in the target or in both of them. A significant real example is the Deutsche Börse (DB) – London Stock Exchange (LSE) case. In 2005 DB was in talk with LSE for a merger after a previous attempt in 2001 failed. The Children Investment Fund (TCI), a DB institutional shareholder, strongly opposed the proposal and finally succeeded in preventing the settlement of the deal:

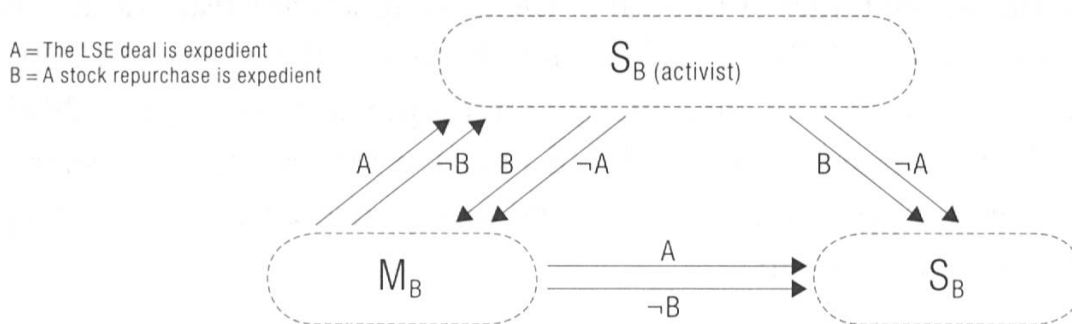
Deutsche Börse AG announced on Saturday that it has received a request from TCI Fund Management (UK) LLP (TCI) to call an extraordinary general meeting (EGM).[...]. TCI alleges that the price of 530 pence per share proposed by Deutsche Börse for the acquisition of the London Stock Exchange plc (London Stock Exchange) exceeds the potential benefits of this acquisition. TCI wishes that the shareholders meeting instead discusses a purchase by Deutsche Börse of its own shares. Deutsche Börse is convinced that its contemplated cash acquisition of the London Stock Exchange is in the best interests of its shareholders and the company. (DB, *Deutsche Börse has received a request for an extraordinary general meeting*, ad hoc announcement, 15 Jan. 2005)

We can observe from this announcement that TCI is not simply antagonist of the standpoint that the deal with LSE is in the best interests of DB shareholders. They believe that the deal is not expedient and propose rather a share repurchase. The resulting dispute is thus mixed (with TCI being the protagonist of a negative standpoint) and multiple as two different propositions are under discussion (the expediency of the LSE deal and the expediency of the share repurchase). Multiple non-mixed discussions take place also between bidder managers and (non dissident) bidder shareholders on the one side, and between dissident and non dissident bidder shareholders on the other side (see figure 4 above). In the reported announcement we recognize the presence of an argument advanced by TCI against the deal stating that the price offered by DB for LSE: “Exceeds the potential benefits of this acquisition.”

For *par condicio* I also wish to report an argument given by DB board in support of the expediency of the acquisition:



Figure 4: Dissident Shareholders in the Bidder Company: Confrontation Stage (DB Example)



The Executive Board estimates that a combination with the London Stock Exchange would lead to an additional contribution to profit before tax from revenue and cost synergies of at least EUR 100 million per annum which is expected to be achieved in the third financial year (2008) following completion of the transaction. (DB, *Proposed Pre-Conditional Cash Offer by Deutsche Börse for the LSE*, ad hoc announcement, 27 Jan. 2005)

### 3.1.2. Hostile Offers

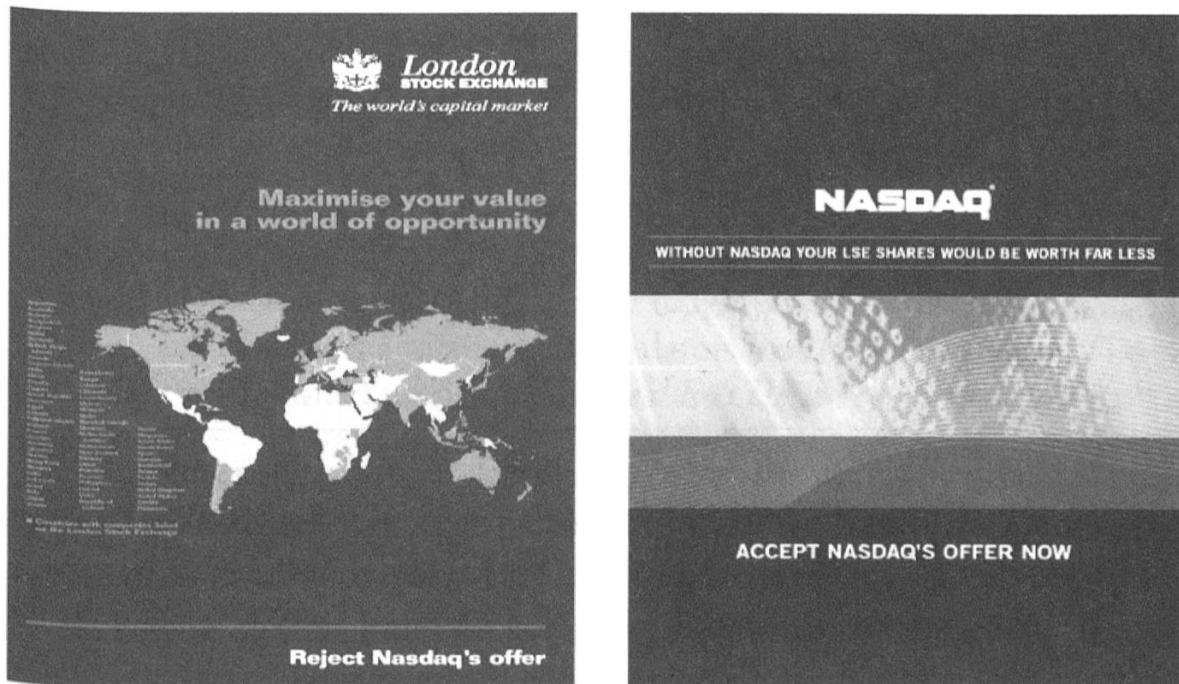
Hostile bids are launched against target management's approval. While the bidder management invites target shareholders to accept the offer, the target management recommends them to reject it. In 2006 NASDAQ made a hostile offer to LSE. As it is often the case in analogous situations, both companies released circulars to target shareholders. The cover page of two circulars are reported in Figure 5 below.

The first one was posted by LSE, the other by NASDAQ. Two opposite standpoints are clearly stated: "Accept NASDAQ's offer now" is the positive standpoint advanced by NASDAQ, while "Reject – i. e. "do not accept" – NASDAQ's offer" is the negative standpoint advanced by LSE.

The two standpoints are supported by numerous arguments developed in the two circulars. Among the numerous reasons, LSE recommended to reject NASDAQ's proposal as it:

- "does not give LSE shareholders standalone value
- does not reflect the Exchange's unique strategic position

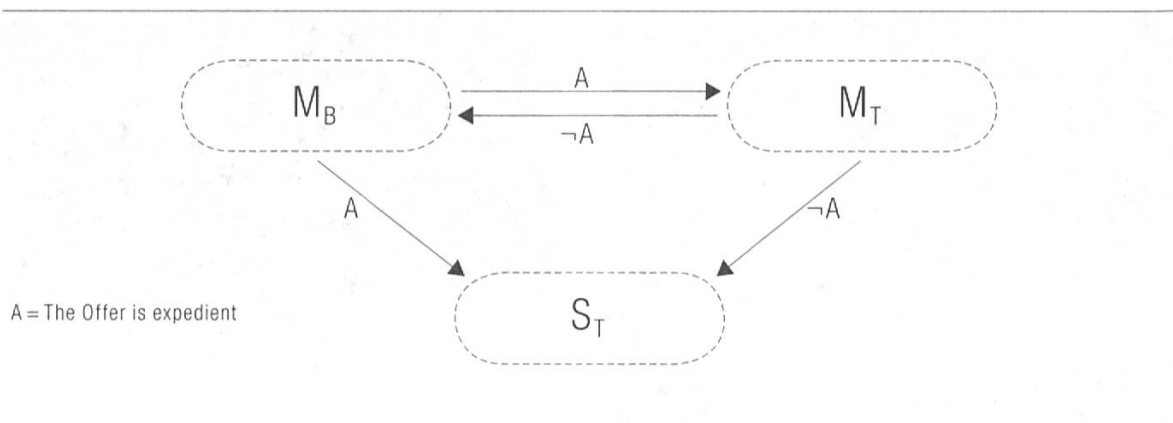
Figure 5: NASDAQ vs. LSE



- does not pay a premium for control” (LSE, *Reject Nasdaq's offer*, released document, 19 Dec. 2006);
- while NASDAQ defended its opinion with arguments like:
- “Standalone value is recognized by the offer
  - LSE fails to acknowledge new competitive threats
  - The combination will reinforce the competitive position of London.”
- (NASDAQ, *Accept NASDAQ's offer now*, released document, 9 Jan. 2007)

As in the previous case, two non-mixed discussions take place: the bidder management invites target shareholders to accept the offer, while target management aims at convincing shareholders not to accept the offer. At the same time, a mixed dispute can be identified between the two companies' managements. We could ask whether such dispute also involves a real discussion. In other words: are the managements attempting to persuade each other or, more simply, they have two opposite standpoints in front of the same decision-maker? Usually the latter is the case. It is a situation very similar to what Aristotle used to call *deliberative rhetoric*, in which each party (bidder management and target management in our case) aims at convincing an audience (target shareholders) on the

*Figure 6: Hostile Offers: Confrontation Stage*



expediency of an action to be taken in the future (selling or keeping shares) by justifying their own position and destroying the counterparty's arguments in front of the decision maker.

Sometimes, however, a proper mixed discussion takes place between managers, in particular when it seems that there could still be a space for a friendly agreement, as between Yahoo! Board and Microsoft CEO Steve Balmer<sup>15</sup>:

Dear Steve,

[...] Our Board carefully considered your unsolicited proposal, unanimously concluded that it was not in the best interests of Yahoo! and our stockholders, and rejected it publicly on February 11, 2008. [...] At the same time, we have continued to make clear that we are not opposed to a transaction with Microsoft if it is in the best interests of our stockholders. [...] Contrary to statements in your letter, stockholders representing a significant portion of our outstanding shares have indicated to us that your proposal substantially undervalues Yahoo! [...] In conclusion, please allow us to restate our position, so there can be no confusion. We are open to all alternatives that maximize stockholder value. To be clear, this in-

<sup>15</sup> It is noteworthy to observe the genre to which this communication belongs. On the one hand, it is a letter addressed to an individual person, Steve Balmer, and as such it presents the characteristics typically belonging to interpersonal communication. On the other hand, this letter is publicly disclosed as a press release, the latter being a typical means of mass communication. This fact affects the interpretation of the communicative intention of the text, which does not only correspond to persuading the bidder's manager on the inexpediency of the offer but indirectly aims also to join other audiences (Yahoo! shareholders in particular).

cludes a transaction with Microsoft [...]. (Yahoo! *Yahoo!'s Board of Directors Responds to Latest Microsoft Letter*, Press Release, 7 April 2008).

### 3.2. Stakeholders, Media and Analysts

It took months for Delta Air Lines Inc. and Northwest Airlines Corp. to agree on a merger plan to create the world's largest airline in terms of traffic. Now the two carriers face the tough task of convincing politicians, pilots' unions and antitrust regulators that it's a good idea. (The Wall Street Journal Europe, *Airline Deal Isn't Done Yet*, 16 April 2008)

The prologue of this WSJ article clearly shows the necessity for companies not to consider managers and shareholders only but also other stakeholders involved. As previously said, M&As have a "social" relevance beside a purely financial one, that includes a series of stakeholders, others than shareholders, being in the position of (more or less strongly) influencing the outcome of a public offer or the long-term performance of the post-merger firm.

Beside regulators, which may forbid an already agreed deal because potentially dangerous for the market competitiveness, there are some classes of stakeholders which cannot directly decide on the deal but can strongly influence its successfulness or failure. Employees (and unions) are concerned with the possible negative consequences a deal could have on them (job losses or worsening of job conditions); very often politicians intervene by supporting or hindering a deal because of social or national concerns. The current case of Alitalia and Airfrance is only one of the numerous examples showing the relevance of politics in M&A, especially in cross-border takeovers.

Furthermore, in M&As a relevant and influential role is played by financial analysts who express opinions and evaluations that may serve as a starting point for the shareholders' final decision. Such expert opinions are often reported and re-elaborated by media (cf. Rocci & Palmieri 2007). Not by chance, when M&A proposals are disclosed, press conferences and analysts conference calls are organized in order to present and justify the benefits of the deal to journalists and analysts respectively. The main goal of these dialogic interactions is to obtain positive evaluations on the deal. Unless they are also shareholders (as sometimes is the case), reporters and analysts play the mere role of assessors.

*Table 3: The Bidder Management's Argumentation with Actual and Potential Addressees*

Addressee	Argumentation for ...	Argumentation through ...
Target shareholders	Settling the deal	Press releases, merger prospectus, circular, ads, investor presentations
Target management	Facilitating the settlement of the deal	Private meetings, letters, press releases
Bidder shareholders	Settling the deal or being supported in the business	Press releases, merger prospectus, circulars, ads, investor presentations
Workers and unions	Creating a favorable impression in the target community and preventing future internal conflicts	Press releases, letters, circulars, ads, formal meetings
Supervisory authorities	Obtaining clearance Ensuring transparency	Merger prospectus and other official documents
Analysts and media	Obtaining positive evaluations	Conference calls, press conferences

Table 3 sums up the above considerations by assuming the perspective of the bidder managers which, in order to successfully settle the deal, should consider the various types of addressee listed in the first column. For any addressee, argumentation is needed in order to pursue specific goals, indicated in the second column. The third column lists the most important communicative activities and documents through which these argumentative discussions are performed.

#### 4. Conclusive Remarks and Further Steps of Research

This paper presents a first investigation on the proper role of argumentation in financial activities. M&As represent indeed a good example showing the relevance of argumentative processes for the negotiation of financial transactions. Argumentation intervenes throughout the several corporate communication events that are performed in specific textual documents. Actually, these documents are the tools for conducting and realizing the

transaction through which managers attempt to show the financial and also the social expediency of a M&A deal to a very heterogeneous audience. Of course, the main goal of managers is to convince shareholders to accept the merger offer, but the public of stakeholders (employees, unions, politicians, analysts and investors), who might influence the shareholders' final decisions or the future business of the company, should be considered too. The role played by all these stakeholders must be studied more in depth in further research, especially because it certainly has strong implications on the construction of the argumentative strategies by corporate managers.

This article has mainly focused on the reconstruction of the confrontation stage of the critical discussion and has only given a taste of the arguments advanced in the discussion. Thus, the next step of this research project consists of identifying, analyzing and evaluating all the arguments supporting the different standpoints put forward. The analysis will consider arguments in their dialectical and rhetorical components (cf. Van Eemeren & Houtlosser 2002; Rigotti 2006) and intends to answer some important research questions, like:

- Are there typical recurrent argumentative strategies deployed by managers?
- Is the choice of arguments affected by the type of deal involved (hostile or friendly; national or cross-border; horizontal or vertical; strategic or financial)?
- How and to what extent does argumentation contribute to the realization of the financial transaction?
- Does the settlement of the deal always correspond to a reasonable resolution of the difference of opinion?
- Is there a relation between the quality of argumentation and the successfulness of a transaction (both in terms of deal settlement and financial performance)?

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