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**Takeovers in the Argentinean Capital Markets:
the YPF Case**

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By Analía E. Cuervo¹

As Mike pointed out, the takeover of a listed company through a take-over bid never took place in the argentinean market, until last year.

On May 24, 1999, REPSOL announced a tender offer in order to acquire the 100 % of YPF's shares and securities convertible into YPF' shares. The approximate number of YPF's shares at that time was equal to 353.000.000 and the approximate number of ADSs was equal to 221.000.000.

Two offers were presented: one called "Argentinean" and addressed to all the shareholders of shares classes A, B, C and D and another one called "American" and addressed to all the ADSs' (American Depositary Securities) holders, representing one class D share each, which were listed on the New York Stock Exchange. Terms and conditions of both offers were identical for both offerees.

The offered price per share was of US \$ 44,78 net and without interests, payable in cash. All transfer costs and expenses were paid by REPSOL.

The tender offer purpose was to obtain, as minimum, a major representation of REPSOL in the YPF's Board of Directors and it was subject to two conditions: the approval of the tender offer by class A shareholders – the Argentinean Government- and that the number of offered securities was equal to, as a minimum, the majority of YPF's shares. Both conditions were fulfilled and the tender offer successfully concluded on June 23, 1999. REPSOL acquired the 83,24 % of the shares of YPF. This holding plus the 14,99% of the shares purchased by REPSOL to the Argentinean Government during the beginning of that year, confers REPSOL the ownership of the 98,23% of the oil company.

This case presented several and particular characteristics:

1. The fact that the shares corresponded to a corporation having as a shareholder the Argentinean Government.

The participation of the Argentinean Government as a class A shareholder, with the special right, among others, to previously approve any tender offer to acquire the control

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of YPF, is an exceptional circumstance which benefited the protection of minority shareholders among which the company's shares were disseminated.

YPF S.A. was a state owned enterprise until 1992. During that year, YPF was privatized in the framework of the economy's deregulation and privatization of the Argentinean state owned companies.

During July, 1993, YPF completed the first global public offering of class D shares and ADSs, which were listed on the New York Stock Exchange. In July, 1997, the second global public offering of class C shares –which were destined to the company's employees- was completed. As a result, approximately a 75% of the YPF's shares was disseminated among the public and the Argentinean Government maintained the ownership of the remaining shares.

On January 28, 1999 –as a result of the international bidding called by the Argentinean Government on September, 1998, of which several oil companies with a qualified investment capacity participated-, REPSOL and YPF S.A. celebrated the “Agreement for the Acquisition and Selling of Shares” and known also as the “YPF Agreement”. REPSOL bought a holding of 14,99% of YPF's shares for a total price of approximately US \$ 2.011 millions, cash, paying US\$ 38 for each class A share.

After the celebration of the “YPF Agreement”, both companies studied the possibility of a merger as well as the celebration of a joint venture agreement with the purpose of reducing costs and mutually upgrading the potentialities of both companies. As they did not reach an agreement, REPSOL decided to launch a tender offer for the 100% of YPF shares.

2. The role of the securities regulators of three different jurisdictions, which were in charge of the control of legality and the supervision of the tender offer.

Those regulators were the Securities and Exchange Commission of Argentina, the US Securities and Exchange Commission and, with respect to the offeror, the Securities and Exchange Commission of Spain.

3. The rules applicable to the REPSOL tender offer's proceedings, provided by the General Resolution N° 330/99 issued by the Securities and Exchange Commission of Argentina and the YPF by-laws.

The set of the above mentioned provisions determined the applicable proceedings and basic conditions of the tender offer, which ensured the transparency of the transaction and the protection of the involved minority shareholders.

- The Securities and Exchange Commission was in charge of the control of legality of the REPSOL tender offer's terms and conditions.
- The equitable treatment of all the shareholders regarding the tender offer was ensured by the requirement that the offer should be addressed to all the shareholders of the different classes of shares (classes A, B, C and D) as well as to the ADSs holders.
- The equitable treatment of all the shareholders regarding the right to have access to the information required for the decision-making process regarding the acceptance or refusal of the offer was ensured through two different mechanisms: 1) the publication of this information in the Buenos Aires Stock Exchange Dairy Bulletin and in major newspapers of Argentina and New York. The advertisement contained the offer's essential terms and conditions and the domiciles where the complete version of the offer and other relevant information corresponding to the issuing company and the offeror was available. Those domiciles were the main offices of the Buenos Aires Stock Exchange and of the New York Stock Exchange, SRO where the YPF ADSs were listed; and 2) the offeror sent by mail to each of the YPF shareholders –to the addresses indicated in the YPF Shareholders Register-, the complete version of the offer and the additional relevant information.
- Also, the transaction transparency and the protection of the interests of minority shareholders which accepted the offer were ensured by the provisions contained in the General Resolution N° 330 and the articles of the YPF by-laws referred to the contents of the tender offer –such as terms, mechanism applicable to the extension of the expiration term, minimum and maximum number of shares to be purchased, mechanisms for conflict resolution in the event of bids below or above the minimum and priorities among the bids received, mechanisms for the transfer of shares and for shareholders' acceptance withdrawal, bid's conditions, financial and non-financial information corresponding to the offeror and the issuing company, etc.-.
- The members of the Board of Directors of YPF, in accordance to the diligence duty due to the shareholders, after the study and analysis of the offer, rendered their opinion regarding the fairness of the offered price and made a technical recommendation on the acceptance of the offer addressed to the shareholders, after requiring the advise of the Credit Suisse First Boston as an independent financial advisor. Both, the board's opinion and recommendation were disclosed to the shareholders through its publication.
- The fairness of the price per share offered by REPSOL was ensured through the application of an YPF's by-law provision which provided different criteria for

determining the minimum price per share to be offered by any individual or entity interested in acquiring the control of YPF S.A., known as “minimum price clause”.

4. The offeror was a serious company. REPSOL is one of the most successful european oil companies, with a qualified international investment and credit capacity. REPSOL paid the price of the shares sold by the YPF shareholders in cash and, in order to perform this transaction, REPSOL obtained a credit of US \$ 16.000 millions, approximately, from a group of prestigious international financial entities.

¿Which were the key-elements that, in my opinion, ensured the protection of the interest of minority shareholders among which the YPF’s shares were disseminated?

- The existence of transparent “rules of the game” provided by the regulations issued by the securities regulator and the provisions of the YPF’s by-laws.
- A high level of information necessary for the decision-making process regarding the tender offer’s acceptance or refusal, which was timely available to all shareholders.
- The active role of the board of directors as best vehicle to ensure the right of the shareholders to be properly informed and to give advise to the shareholders through its technical opinion regarding the terms and conditions of the offer and the fairness of the price.
- The seriousness of the tender offer’s participants, both the issuing company and the offeror, who observed the applicable rules of the game.