

Pressed to sell and a fairness issue: Penta case

Controversial political donations and tax practices that are now part of a judicial process have forced Penta, an important domestic economic group, to divest from ongoing banking and insurance units and a greenfield mining development. Public regulatory concerns from financial authorities or the real possibility of governmental authorities holding up environmental permits for the mine development, all elements expected to prevail as long as the shadow from the Courts remained, determined the divestment course of action almost by themselves. There were no liquidity or insolvency issues but the cumulative damaging effect that would have come out of a weakened economic operation associated with this particular and legally questioned business group for a lengthy period.

What we are witnessing now is an asset sale process that has already started without a thoughtful, informed and final judicial sentence from higher courts where all sides involved could have made their cases. Furthermore, even if this legal procedure were to end with a guilty sentence against its defendants, it remains to be proven if those acts conflicting with the Law would have sufficed to initiate and justify such a core divestment process.

Notwithstanding the above and for which there is no clear answer, a way to minimize economic losses out of this sale process exists: asset prices could be determined over a long period, so as to better capture their inherent value while trying to dissociate them from opportunistic behavior out of potential buyers.

In the case of financial institutions, the parameterized structure could be based on selling at book value prices plus a fraction - to be negotiated with buyers, along with its sharing clause time length - over the difference between effective cash flows and those consistent with the book value they would initially be paying for these assets. The parameterized difference might also be arranged under an escrow account so as to guarantee for a certain period unknown liabilities that could make its appearance during it and for which the seller could be held responsible.

In the case of the greenfield mining project, Dominga, the sale process would be defined under a royalty – US\$ per ton or percentage of operational profits - to be paid for iron and copper concentrates to be extracted from the mine. Dominga is a 12 million iron ton and 150.000 copper concentrate ton per year mine associated with a 2.5 billion investment. As of now, Dominga is administratively working on obtaining its environmental permits, besides the engineering of the mine and its water, energy and logistical infrastructure. To make the transaction easier to potential buyers, the agreed upon royalty could be duly recognized period by period but its payment might also be delayed conditional on financing debt needs that would be born out of the 2.5 billion equity and debt financial package. Given that 20% of Dominga belongs to third parties, they should also be sellers and work to maximize the mine value for all shareholders, so as to avoid a scenario where they could acquiesce to a lower entry value for a third party that would potentially improve their own conditions in a new equity structure, against the interest of the majority shareholder now pressed to sell. The sale might also be structured under a junior mining company publicly traded in the US or Canada where the initial public offering would

complete the financing of this first stage of development and prepare itself for the eventual participation of a strategic partner with whom to make the mine operation a reality.

The solution is far from perfect and the timing, particularly in the mining area, suboptimal. But what it can accomplish is a reduction in the risk as perceived from potential buyers that should be captured in better sale price conditions.

What is also true is that, depending on the judicial process development, a financial liability might be raised against a state that could be using its regulatory arms to unbalance a judicial process. There should be a price to be paid for unfairness, particularly coming from an unbounded Leviathan. Even if guilty under today's known charges, the ongoing central liquidation of this group as facts point to seems unwarranted. Let us hope this case does not finally turn out to be a singled out scapegoat for across the board political and financial scandals.

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April 20th, 2015

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