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WHEN FAMILY FIRM CORPORATE GOVERNANCE FAILS: THE CASE OF EL CORTE INGLÉS

Abstract

Purpose: This paper aims to describe internal corporate governance mechanisms in family firms as well as conflicts that may arise among shareholders and family members in the absence of specific corporate governance mechanisms.

Design/Methodology/Approach: After presenting theoretical concepts, we study the case of Spanish family firm El Corte Inglés to understand some of the corporate governance difficulties the company has experienced over the past few years.

Findings: This case illustrates how corporate governance problems can arise because the right mechanisms have not been used, leading to conflicts among family members, valuation problems and power struggles.

Practical implication: There is a need for family firms to employ suitable corporate governance mechanisms as governance complexity increases.

Originality/Value: This study aims to contribute to the understanding of corporate governance problems among family members and their possible solutions.

Keywords: Family firms, Corporate governance, Shareholder conflicts, Valuation problems, Family corporate governance mechanisms.

JEL Codes: M14, M21.

1. Introduction

The family firm is one of the most widespread organisational forms in the world. In Spain, for example, this type of company represents more than 50% of the capital markets and is generally characterised by highly concentrated ownership. Despite the benefits of concentrated ownership, family firms suffer different structural problems. Over time, family structures become more complex and it is frequently necessary to bring in new investors who are motivated by economic factors, which leads to sharing control of the firm. This may give rise to conflicts of interest between family and non-family shareholders, leading to higher agency costs than when ownership and management are both within the family (Schulze et al., 2003). Family members may be motivated to obtain private benefits, and conflicting interests may dilute the agency benefits due to ownership concentration (Bertrand et al., 2008). Moreover, generational effects cause family firms to have different characteristics and governance needs as time goes by (Bamens et al., 2008), and consequently corporate governance mechanisms are especially important in these companies.

According to agency theory, the interests of shareholders and managers may diverge in large firms when there is separation of ownership and control (Jensen and Meckling, 1976). Thus, good corporate governance, through its various mechanisms, can help to minimise agency costs and ensure that firms are managed to the benefit of shareholders. Corporate governance refers to the ways in which those providing financial resources to a company can ensure that their investments generate appropriate returns (Shleifer and Vishny, 1997). It also helps in the development of capital markets and ensures that firms have the funds they need for profitable endeavours.

In this sense, family businesses are no exception because corporate governance helps them make strategic decisions, and also aids in solving family specific problems (for example, the succession process, the valuation of shares, or sorting out family matters). These problems can also be minimized by the use of the right family corporate governance mechanisms. Although the success of a family business depends on the family, the firm's structures and its processes (Suess, 2014), it also depends on having effective corporate governance mechanisms (a board of directors, family meetings, family councils, family constitutions, etc.). In this sense, Arteaga and Menéndez-Requejo (2007) highlight how family businesses that established a family constitution or protocol had significantly improved performance within two years of implementation, and continued to thrive as later generations took control. Additionally, there are often problems regarding the valuation of the company, especially if it is not listed. This may lead to another type of conflict, which may be of even greater relevance than in other ownership structures (Schulze et al., 2003). These problems illustrate why only about one-third of family firms are successfully handed down to the second generation and barely 10% continue into the third generation (Neubauer and Lank, 1998). In sum, effective family corporate governance heads off conflicts among family members, and between the family and the business.

When it comes to corporate governance mechanisms, most of the family literature outlines how boards should be composed and emphasizes that they are beneficial to firm value (Arteaga and Menéndez-Requejo, 2007) and decision-making, and that governance mechanisms can help solve financial problems (i.e. reducing the costs of debt, Duréndez et al., 2019). Secondarily, the literature explores the problems that arise when there is no corporate governance system. Family firms frequently have neither the tools nor the mechanisms, or do not know how to use them properly. Only a few researchers have studied governance systems as they actually exist in family companies, assessing their successes and failures (Gersick and Feliu, 2013; Gnan et al., 2015; Nordqvist et al., 2014).

Accordingly, we pose the following question: What are the problems in a family business when corporate governance mechanisms are not present or do not work properly? Applying a case-based methodology to the internationally known Spanish firm El Corte Inglés, we consider some of the main problems that have arisen during the recent history of the company. The fourth-generation firm has had a family ownership structure rife with conflicts of interest between the traditional family shareholders and new ones (family and non-family), and between the family shareholders who are involved in management and those who are not. Through this analysis we can identify the real difficulties family companies face – apart from operational or business problems that are doubtless of great relevance – when corporate governance mechanisms fail or are not well designed.

Consequently, and considering that there is still room for new points of view regarding corporate governance mechanisms in family business, our paper's main contribution is to show the importance of family corporate governance mechanisms in enhancing company performance and especially in smoothing relationships among the firm's members. Moreover, our study shows how family and ownership structures become more complex over time, exposing real problems in the firm. The case-based methodology enables us to describe an actual situation in which even a large and well-known family company does not use corporate governance correctly. Moreover, this study could serve not only managers and owners but could be interesting for family business educators, all of whom could learn from the errors made by our focus company.

This paper is structured as follows: First, we review family firms' most common corporate governance mechanisms. Next, we analyse recent corporate governance problems at El Corte Inglés. Finally, we discuss our conclusions, lessons learned and the implications of our research, which might help other companies avoid such problems.

2. Family firms' corporate governance mechanisms

Corporate governance can largely be understood as a set of mechanisms that allow outside investors to protect themselves against expropriation by managers or controlling shareholders (La Porta et al., 2000). The key question of corporate governance seems to be how to assure shareholders that they get a return on their financial investment (Shleifer and Vishny, 1997), within a context of agency conflict between them as principals, and managers as agents. These corporate governance mechanisms have been traditionally divided into internal – those controlled by the firm – and external, i.e. those that emerge from competitive markets and affect the company differently depending on the degree of the firm's exposure to those markets (capital markets, products and services market, corporate control market, managers market).

As in any other type of company, family firms use these differing corporate governance mechanisms (internal and external) (Shelifer and Visny, 1986; Lane et al., 2006; Miller and Le Breton-Miller, 2006). Corporate governance systems (in the Continental model and Anglo-American model) are typically hierarchical and are based on agency theory assumptions. The problems arising from the separation of ownership from control will thus have to be solved through different mechanisms. The two systems have three basic roles in common: the ownership role, the monitoring role and the leading role (Gnan et al., 2015). Corporate governance models vary greatly, mainly because of differences in the business context (also see Johnson et al., 2010). In Continental markets, the internal mechanisms of control are the most effective and address the potential divergence of interest between owners and managers, while in the Anglo-American model, the external mechanisms are supposed to work better. External governance systems are seen more frequently in the Anglo-Saxon institutional context; internal ones are more common in Japan and Continental Europe, including Spain (Gutiérrez and Surroca, 2014). Among internal corporate governance mechanisms, we can name managerial incentives, i.e. stock options, performance-based payment, shares; and control structure, i.e. board of directors, board committees, ownership concentration and banks and other creditors (García-Meca and Sánchez-Ballesta, 2010). In this paper, we focus on the internal corporate governance mechanisms that through different corporate governance bodies or organs may solve agency problems.

Moreover, governance mechanisms within the family system "*order and ease the family's business relations with the business in general and management in particular in a voluntary matter*" (Suess, 2014, p. 139). Although there is no "one size fits all" rule, it is clear that successful family businesses often create very unique sets of family corporate governance mechanisms (Suess, 2014). In this sense, the shareholders meeting and the board of directors are the key corporate governance mechanisms, and they take on the three basic governance roles mentioned above, each one having specific tasks (Gnan et al., 2015). Figure 1 shows the various internal family firm corporate governance organs or bodies. Thus, in addition to the traditional structures, such as the annual general meeting (representing the shareholders), the board (representing the shareholders and the management) or the management committees (management), the family or family system should have its own governance bodies – a family meeting or family council, family constitutions or protocols – to discuss family matters before they reach the firm.

[Figure 1]

However, not all these organs or bodies are in place at family firms from the beginning. As the company evolves, different stakeholder groups appear, and consequently the corporate governance bodies also evolve (Bammens et al., 2008). We can illustrate this evolution using the three-dimensional developmental model by Gersick et al. (1997) showing how the three-circle model increases in complexity over time as the circles separate the stakeholders progressively, with the generation evolution being a central component (Figure 2).

[Figure 2]

Nordqvist et al. (2014) describe the governance implications of different configurations of family involvement in ownership and in management. Moreover, they report that the fit between a particular combination of family involvement in management and the governance bodies has a positive effect on the prioritised financial and/or non-financial performance objectives. Thus, appropriate governance bodies must be established to overcome the potential disadvantages and seize the advantages of each configuration. The researchers derive a typology of family involvement configurations. A summary is presented in Table 1.

[Table 1]

Additionally, Gnan et al. (2015) study the substitution effects between family councils and corporate governance mechanisms. Based on an empirical study of Italian family SMEs, their research shows that the family council partially substitutes for the shareholders meeting and the board in playing their respective corporate governance roles of ownership and monitoring. Moreover, Van Aaken et al. (2017) examine how family companies substitute corporate governance (having a board of directors), family governance (having a family assembly and family council) and self-governance (partnership agreements) at different stages of the firm's development as agency problems evolve. Van Aaken's results demonstrate that in the early stages of a family company's life cycle, instruments of self-governance lessen the need for mechanisms of corporate governance (board of directors), whereas in the later stages, mechanisms of corporate governance are substituted for instruments of family governance.

2.1. Internal corporate governance mechanisms

Of all the internal mechanisms for corporate governance, the board of directors can be considered one of the most important in some European countries such as Spain. There, internal governance mechanisms are more developed than external ones (Suárez and Santana, 2004) as the board has the power to influence decisions and business strategies (Hillman et al., 2001) and, therefore, the firm's performance. The board has been seen as the ultimate governance authority in a corporation (Fama and Jensen, 1983). It has the last word on decisions, and shares leadership of the firm with the CEO to ensure that the latter fulfils his/her economic, legal and ethical responsibilities (Buckholz et al., 2008). The various roles or functions of boards exercising their corporate responsibility have traditionally been divided into two categories: control or supervision, and the provision of resources or advice.

The control function involves the responsibility of representing the shareholders' interests (Hillman et al., 2001). This task of supervision has been analysed above all from the agency theory point of view (Jensen and Meckling, 1976), linking board members to control of the management team that results from the separation of ownership and control, and demanding answerability for any strategic decisions made. In the monitoring role, the board chooses, controls and evaluates the CEO and his/her team, making strategic decisions and approving strategic plans (Gnan et al., 2015). Other approaches, such as stewardship theory, see the board helping the management team in the decision-making process and playing an important role in resolving conflicts among the different stakeholders (Donaldson and Preston, 1995).

The provision of resources has traditionally been analysed from the point of view of resources and capabilities theory (Pfeffer and Salancik, 1978) and stakeholder theory (Freeman, 1984). Board members offer experience and different viewpoints when advising the CEO and other managers in the process of making strategic decisions (Zahra and Pearce, 1989). It is argued that participation by the management team and the board in developing business strategy tends to result in a broader and longer-term perspective (Cossin and Metayer, 2014).

Board characteristics are not random but are determined by both endogenous and some exogenous organisational variables. Ownership structure, the composition of the management team, and firm complexity are some of the possible determinants. This may explain why the structure of family firm boards is different than in non-family companies (Anderson and Reeb, 2004). The dynamic of family and non-family firms also differs (Corbetta and Salvato, 2004), with family boards usually including representatives of the family, who are often involved in both ownership and control (Sciascia and Mazzola, 2008) even in publicly traded companies.

There is empirical evidence about the relationship between the generational phases of the company, the need for advice and control from the board, and board composition. There is also empirical evidence about the direct relationship between generation and the number of family directors (Bammens et al., 2008). Family firm boards tend to be passive and dominated by the family (Collin and Ahlberg, 2012), with the role of outsiders unclear. For this reason, a family firm board often ends up as a forum for discussing and sorting out family problems instead of being a governance body helping managers make decisions. Nevertheless, family presence on the board can also be positive. In this sense, Collin and Ahlberg (2012) show how familial relationships among the directors influence the extent to which the different functions are performed.

The board delegates the leading role to the CEO and the management committees by elaborating strategy and coordinating and controlling how the organisation executes it (Gnan et al., 2015). As for other traditional corporate governance mechanisms, the shareholder assembly or meeting is a body that deals with matters of law. A shareholders meeting is typically held once a year, although its formality and activities vary among family firms. This meeting has an ownership role pertaining to shareholders' power over the board (the choice of board members and the control and evaluation of the board and its performance). Additionally, a partnership or shareholders' agreement could be used as an arrangement between family owners to sell and buy or to vote as one single stakeholder as ownership becomes more dispersed over time (Thomas, 2002).

2.2. Family corporate governance mechanisms

Family corporate governance mechanisms vary considerably from family to family. However, the typical arrangements could be the family council and constitution or protocol. The family council is the board of directors for the family circle (Poza, 2009, see Figure 1), and it is the most studied "family" corporate governance mechanism. Gersick et al. (1997) define the family council as a group who periodically gather to discuss issues arising from their family's involvement with a business. It derives from the family meeting as an informal get-together whose frequency may depend on the firm's age, size, the generations involved and the related ownership structure. The family meeting is the simplest and most common form of governance that helps families stay connected and agile. The family council is a formal type of family meeting to discuss family issues pertaining to governance of the family and its relationship to the firm. It is a group of representatives of different branches of the broader family who periodically assemble to deliberate on issues related to the family's involvement in the firm (Van Aaken et al., 2017). It serves as a forum in which the family makes decisions on matters that affect their relationship with the company. The family council engages non-active family members in business issues, creating a nexus between the board of directors, the top management and the family (Suess, 2014), and facilitating social integration (Gnan et al., 2015). It is a multi-generational body that represents all branches of the family, and its powers include planning the succession and establishing a protocol for it (supervising how it works), defining the family culture, establishing the dividends policy and regulating the sale of shares and the inclusion of new generations (Gersick and Feliu, 2013). It is part of family governance, together with the family assembly, which is defined as a periodic (typically annual) gathering of the extended family.

The family council is usually established once the family and the firm reach a critical size, and could be seen as a sign that a family enterprise has been professionalised (Nordqvist et al., 2014). The council has two tasks: to design and manage the relationship between family and business in the controlling generation and to adapt the plan for the family-firm relationship in the next generation. It allows family members to express and discuss opinions, develop mutual trust, share values and visions, and translate them into collective plans and actions more effectively than might happen with formal corporate governance mechanisms, such as the board of directors (Gnan et al., 2015). This mechanism could evolve from its informal nature (family meetings) to the more formal investors vehicles (family offices).

Finally, the family constitution or protocol (Gallo and Ward, 1991) is the result of a process of communication and agreements among owners of family businesses, collated in a written document that sets out rules and procedures for governing family business relationships. The constitution addresses the firm's history and vision for the future, and includes norms and rules for family members regarding their participation in business-succession planning, shareholder agreements and power structures (Arteaga and Menéndez-Requejo, 2007). Family literature defines the family constitution's self-governance mechanisms as a set of self-imposed rules that restrict the doer's opportunities (Van Aaken et al., 2017). A family constitution addresses questions of elementary governance and differentiates the roles of the family council, board of directors, CEO and top managers (Suárez and Santana, 2004).

3. Cased-based analysis: El Corte Inglés

3.1. Research methodology

A case study is an intensive examination of "a single case of a particular phenomenon." It comprises qualitative (in-depth interviews) and quantitative elements. Our case study is based on the analysis of economic press information about the firm El Corte Inglés during the years 2003-2019 (a similar methodology is used by other academics – see Gordon and Nicholson, 2008 – who in some family firm cases employ newspapers articles as a primary source). We searched the two most important Spanish economic press sources (Diario Expansión and Diario El Economista) for all articles from that period about the company (web search term in title: El Corte Inglés). From that search we selected all news that exclusively pertained to corporate governance problems. Although there were many other articles reflecting the firm's quality and its development of many good strategies, we did not consider them for the study as they were not relevant to our objective.

3.2. El Corte Inglés: a brief history and figures

El Corte Inglés is a Spanish family-owned firm based in Spain and Portugal. As its website (www.grupoelcorteingles.com) shows, it took its name from a small tailor's shop founded in

1890 in Madrid. In 1935, Ramón Areces Rodríguez, helped by his uncle, César Rodríguez, bought the tailor's and started his business venture. In June of 1940, Ramón Areces constituted the company El Corte Inglés, with his uncle César as partner and chairman. Over time, successive expansions and modifications were made to modernise the company's image and better meet the needs and demands of society. The 1960s was a key decade for El Corte Inglés, as it began its expansion across Spain. The group underwent a growth phase until the mid-90s, marked by diversification into other business areas. As shown on the website, the 80s was an intense decade, which ended with the death of Ramón Areces on July 30, 1989. During the previous years, the chairman had been preparing his successor: Isidoro Álvarez, – Arece's nephew– who had been managing director since 1966 and had developed a thorough understanding of the group. The Isidoro Álvarez years in the chairmanship were marked by strong growth, business expansion and key milestones such as the acquisition of Galerías Preciados and Marks & Spencer in Spain, the opening of stores in Portugal and diversification. On Sept. 14, 2014, Isidoro Álvarez died. Two days later, on Sept. 16, the El Corte Inglés board of directors appointed Dimas Gimeno Álvarez as chairman (Isidoro Álvarez's nephew). On June 14, 2018, Nuño de la Rosa was appointed as the first non-family chairman. Aproximately, one year later, the daughter of Isidoro Álvarez returned the chairmanship to the family, with Marta Álvarez becoming the new chairman in July of 2019 (see Table 2) joined by two non-family CEOs: Nuño de la Rosa and Victor del Pozo. The company is now in its fourth generation.

[Table 2]

Nowadays, El Corte Inglés is one of the world's leading firms in the large retail store sector and a household name in Spain. With more than 70 years' experience, the group has always had a policy of good customer service and of adapting to the tastes and needs of Spanish society. This has led it to diversify and create new commercial formats. In addition to the El Corte Inglés department stores, the group comprises firms such as Hipercor, Supercor, Sfera, Bricor, Óptica 2000, Telecor, Viajes El Corte Inglés, and Seguros e Informática El Corte Inglés. As Table 3 shows, Grupo El Corte Inglés closed 2018 with consolidated sales of 15,783 million euros, with the department stores, hypermarkets and travel agency being the three formats that made the greatest contribution to the consolidated figures (Table 4). The gross operating profit was 1,075 million euros and the consolidated net profit was 258 million euros.

[Table 3] [Table 4]

3.3. Description of the firm's ownership and control

With regard to ownership, as shown in Table 5, the company's majority shareholder today is the Fundación Ramón Areces, which together with the daughters and nephew of Isidoro Álvarez (Marta Álvarez, Cristina Álvarez and Dimas Gimeno), controls about 60% of the capital. There are also minority shareholders such as the Corporación Ceslar S.L., which holds about 9%, bringing in the shares of a brother of Ramón Areces; and Cartera Mancor S.L. with 7% of shares owned by the descendants of company founder César Rodríguez (Figure 3). There is also a foreign shareholder with 10%, to be discussed later in this paper.

As a large non-listed company, El Corte Inglés has several corporate governance organs: a board of directors, a management committee and a shareholders assembly. From the start, the firm designed its own management style, converting some managers into shareholders while they were working for the company. However, although there are some managers and workers who hold shares, the amount is not significant. El Corte Inglés has been a family-managed firm since it was founded. Nevertheless, it is a family company without direct descendants in previous generations. César Rodríguez was the founder. After him, several nephews were in charge of succession. In 2013, Dimas Gimeno[1] was named general manager and chairman. This perpetuated the protocol, adopted when the company was created, for consolidating generational change, starting with the appointment of Ramón Areces, nephew of the first chairman and co-founder César Rodríguez, and decades later with Isidoro Álvarez himself. The family held the reins until the fourth generation. After serious problems and tensions inside the family, the first non-family chairman was appointed in 2018. One year later, in July of 2019, a member of the family, Marta Álvarez, recovered the chairmanship. The composition of the board is shown in Table 6, reflecting the ownership structure and power. Of the 13 directors, four are family directors (30.77%).

[Table 5] [Figure 3] [Table 6]

3.4. Recent corporate governance problems

El Corte Inglés has had several widely known corporate governance difficulties during the study period (2003-2019), which the Spanish economic press has outlined in numerous articles. We

[1] In 2000, he joined the Central Services of El Corte Inglés. From then on, he worked in different areas, acquiring knowledge about the general functioning of the group. In 2009 he was appointed a member of the Trust of the Fundación Ramón Arece, and in 2010 he became a board member. In August of 2013, he took up the position of managing director and chairman and on Sept. 16, 2014, was appointed chairman after the death a few days earlier of Isidoro Álvarez.

will focus here on two of the problems: valuation and conflicts of interest among family shareholders.

3.4.1. Valuation problems

The first valuation problem appeared when a descendant decided to sell his stake. In 2005, César Areces Fuentes (son of Celestino Areces, brother of company founder Ramón Areces) who had inherited his shares (0.67%) with his siblings and was a non-managing shareholder, decided to sell his stake. Traditionally, when other managing shareholders had sold shares (on retirement or death), it was done at a price verbally agreed upon with the firm. Thus, the company could do one of three things: offer the shares to the other partners; allow the partner to transfer them freely; or acquire them (exercising its pre-emptive rights). However, the Areces siblings (César, Ramón, María Jesús and María del Rosario) decided to break with tradition, even though two of them worked for the firm. Their rebellion required the courts to determine the value of their shares and to free them for individual sale, even though César's siblings had no intention of selling their stakes at the time. A judge resolved this problem in 2007.

How much was César's stake worth? Initially, El Corte Inglés estimated that the value was 35 million euros, but he did not agree. His experts valued the company using the discounted cash flow method, taking into account, among other factors, the value of the real estate property (based on the housing price index) and the value of the El Corte Inglés brand and other brands the group owned. The El Corte Inglés experts, however, used the book value method (which basically reflected the firm's background). The CEO stated in court that "the brand of Spain's leading retail chain is reported as zero because it is an intangible value." Finally, in 2007 the Commercial Court ordered the company to buy the stake from the heir for 98.52 million euros, several times more than it had planned to pay initially.

El Corte Inglés announced it would appeal this decision to the National High Court because it believed the price set "did not correspond to the reasonable share value." Madrid's Provincial Court upheld the appeal. Meanwhile, César Areces Fuentes pursued his intention to file a further appeal with the Supreme Court. His lawyers argued "the firm had been valued by a University Professor using bad practice." The decision stated that "the company cannot be ordered to purchase the shares from the shareholding plaintiff for the real value set by the report he provided," but also that "the court does not have the necessary elements for setting the value given in its decision."

Finally, neither César nor the firm appealed the ruling to the Supreme Court but reached an out-of-court settlement. The final price was more in line with what El Corte Inglés had originally offered (slightly more than 35 million euros), based only on the theoretical book value of 74.93 euros per share, according to the 2004 balance sheet. As we previously noted, César claimed that assets of an intangible nature, such as the value of the brand and the real estate, should be taken into account, but since his petition failed in the courts, he finally accepted the valuation by the company. His Areces siblings (Ramón, Rosario and María Jesús, who each had 2.1%) also dropped their pending lawsuits. In 2012, El Corte Inglés won the case when the Supreme Court rejected the possibility of valuing the shares. As a result of this valuation problem, the firm changed its articles of association. It allowed an auditor selected by the board, instead of an independent auditor, to make future share valuations.

The second valuation problem appeared in 2015, when a non-family shareholder came into the firm. An unprecedented event heightened the tension already existing in the family. That was the sale of 10% of the capital to a foreign investor who belonged to the royal family of Qatar and who thus became the largest non-family shareholder in the group. It was the first time a significant shareholder from outside the family had been brought in and it was done because the company needed funding. Through convertible debt (with a set of conditions[2]), in three years the new foreign investor was to have shareholdings worth 1 billion euros. The shares he was to receive would come from the group's treasury stock. Some of this treasury stock would come from the shares that El Corte Inglés had had to buy from the heirs of group founder Ramón Areces, as a result of the problem described in the previous section. The negotiations for the new investor, who was then prime minister of Qatar, were initiated by the late Isidoro Álvarez and closed by his nephew Dimas Gimeno (the fourth chairman). The firm wanted to allocate the funds received to paying off debt and to financing its strategic development. The group stressed that the sheikh planned to remain in the group and was interested in being active in its development projects, such as the new internationalisation plan.

Again conflicts arose among the family shareholders. Although the sale was approved with the support of the Fundación Ramón Areces (37.39%), represented on the board by its chairman

[2] Among the commitments and conditions for guaranteeing that the new shareholder's investment does not lose value – over 10 years – are the following: The loan has an annual coupon of 5.25% payable in shares in the company, which will give the Qatari investor an additional 2.25% of the share capital. The agreement covers two main cases for compensating him if the value of the shares depreciates: non-fulfillment of the business plan, which foresees 12% growth in EBITDA, and what are called "liquidity events," that is, movements of shares that lead to depreciation in their value. If such events take place and the value of the company drops below 8.333 billion euros, the Qatari investor will receive compensation in the form of 2% of additional capital. This commitment is maintained for 4½ years after his entry into the company, plus a further five years.

Florencia Lasaga and by Corporación Lasa (heirs to Isidoro with 22.5%), two main shareholders voted against it: Corporación Ceslar and Cartera Mancor. Corporación Ceslar, the company bringing together the stake belonging to the heirs of Luis Areces, a minority shareholder with 10%, stated that it did not accept the valuation of the shares or the entry of Qatar because it eliminated the pre-emptive rights of the longstanding shareholders to purchase those shares. It also argued that the price was well below the value of the group's latest estimations. Here, again, we have the valuation problem. The minority shareholders commissioned a valuation from Morgan Stanley, which placed it at between 6.5 and 8 billion euros, although the equity at the close of the year was worth 9 billion, the real estate assets 18 billion, and the valuation for private sales four years before was 14 billion. Additionally, the board was publicly accused of not informing the other members correctly, and of carrying out "a manoeuvre to corner the traditional shareholders and protect the current management team." The shareholders said the argument that the sale was necessary to obtain funding was not acceptable because the board could resort to the traditional fixed-income market at a lower cost. Also, they argued that because the new investor would be receiving a number of compensations, and that he came from a country with one of the world's most opaque-taxation systems, he was not accepting the same risk as the other investors, so they took legal measures because they wanted to buy the treasury stock. As a result, El Corte Inglés had to change its articles of association one more time to allow the entry of foreign partners. Cartera Manacor, which also held 10%, based its opposition on the fact that other investors had not been sought, that the deal had been rushed through and that it gave the impression El Corte Inglés urgently needed financing.

Subsequently, on Aug. 31, 2015, approval was given to exclude Corporación Ceslar, the critical shareholder, from the board for breach of its legal duties, and for the entry of Cristina Álvarez. El Corte Inglés argued that the shareholders' duties of loyalty and secrecy had not been fulfilled, that they had leaked data and had opposed the management's decisions. Again, the case was taken to the courts. Corporación Ceslar stated that it would dispute the El Corte Inglés shareholders meeting and its ouster from the board. It has since been reseated on the board.

3.4.2. Family shareholder war or family shareholder conflicts

Problems never come singly. Since 2013 (when former chairman descendant Dimas Gimeno was appointed to firm management following company tradition and previous informal norms), different conflict of interests among family members have broken out. The family war grew more bitter, with great repercussions in the economic press each year. In 2018, family members reached an accord. Would it be the last time they were to agree, or would it be the end of the war? The family members with greater ownership wanted to control the firm, and the different battles produced the expected result. Now, control of the company – through the board of directors – remains in the hands of those family descendants with larger ownership power.

When in 2014, Dimas Gimeno inherited control of the corporation, he was not the largest family owner. The main company owners were Fundación Ramón Areces and Corporación IASA (former Isidoro Álvarez ownership). After his death, Isidoro Álvarez's daughters inherited 69% of the corporation and the rest of the family – Dimas Gimeno included – held 31%. As we have shown, after the entrance in 2015 of a new foreign investor and several independent directors, the family status quo changed. But other family members, the Álvarez sisters, wanted to control the company, and they could because of their ownership. The Alvarez sisters started winning small battles. First, they exercised their rights to control the Fundación Ramón Areces (they proposed a president, Florencio Lasaga) and joined the foundation's board. As the foundation was the main El Corte Inglés shareholder, since the appointment the sisters had a white knight on the company's board. Then, in 2017, the firm recomposed its managerial committee with a new status quo: Dimas Gimenez, Marta Álvarez, Carlos Martinez Echevarria and Florencio Lasaga. After several family disputes, the sisters Marta and Cristina obtained board support in 2017 to delist the managerial power of the chairman, Dimas Gimeno, and appoint two new CEOs: Victor del Pozo and Jesús Nuño de la Rosa. Once they controlled the board (five directors), the consequence was clear. In 2018, the sisters did not approve Dimas Gimeno's proposals at the board. Had he run the company badly? Had the management team weakened the company's results? The answer is no. However, they wanted to delist him from the board. After several legal battles, a final agreement was reached on Aug. 26, 2018. The firm agreed to a huge golden parachute of 8.5 millions euros for Dimas Gimeno and he was to go without making demands. Now the main owners controlled the company. After the appointment of Nuño de la Rosa as CEO, new steps were taken, including the development of mechanisms to make the corporate governance structure more similar to that of a quoted firm; creation of a nomination and remuneration committee and a CSR committee; and regulation of the managerial committee. Additionally, a new set of rules pertaining to potential conflicts of interest was created for employees, managers and directors. Finally, with the ascension of Marta Álvarez to the chairmanship in July of 2019, it became clear that the Álvarez sisters had won the war.

3.4.3. The El Corte Inglés cased examined through the lens of corporate governance

As we showed in the brief El Corte Inglés history, the firm has experienced several corporate governance problems. What caused them? In general, most of the recent trouble developed because certain family corporate governance mechanisms were lacking or the established ones were misused.

The ownership and the family structure of El Corte Inglés has been growing more complex. It is worth mentioning that any chairman has had direct descendants. The firm is actually in its fourth generation, a sibling consortium. The family-ownership group is large and diverse and family members view the company as a financial investment rather than a means of employment or a career path provider (Nordqvist et al., 2014). This formal diversity among shareholders increases the risk of principal-principal conflicts. As some owners are on the board but others are not, greater disclosure of information is necessary. Moreover, the entry of a new non-family partner presents an important, positive challenge and opportunity for El Corte Inglés: to adopt the management and board processes of a non-family firm. This fact is consistent with accepted family business governance thinking (Neubauer and Lank, 1998)[3].

Among the various corporate governance mechanisms available, El Corte Inglés mainly uses the board of directors. The board is now composed of internal and external directors (family and non-family proprietary directors, and independent directors). Therefore, the mix of family and non-family members, some of them with very good professional backgrounds, can improve decision-making. We must point out that the entry of a non-family shareholder is an important event in family firm ownership because it is carefully regulated by governance mechanisms. This presents a good opportunity for the board to exercise its role properly, instead of simply discussing family problems or challenging the company's power structure.

We have observed various problems caused by family members' desire to control the board. Although family presence on the board and family control of it could be positive for a family firm, we have observed how formal hierarchical control – as Dimas Gimeno had as CEO and chairman – can be easily destroyed and how shareholder wars in the boardroom negatively affect a company's image. As the problems we have shown are recurrent, it is time to make the

[3] More specifically, the shareholders meeting of El Corte Inglés has approved several changes in the company's articles of association, which date from 1935, in relation to good corporate governance. One of them will make it possible to sit on the board without being a shareholder, and directors will be able to operate freely with treasury stock without there being any pre-emptive right for other shareholders. It was decided that the board should have a minimum of 10 and a maximum of 15 members, and that all shares should be grouped within a single class and series, with a split for those with a nominal value of 60 euros (the share capital will be made up of shares of a single type with a nominal value of six euros).

right decisions. Instead of reaching partial shareholder agreements to end each conflict (after it gets to the courts), the family could play a valuable role by using corporate governance mechanisms, i.e. a family council and a family protocol. However, adopting these family mechanisms do not guarantee that all potential problems will be avoided if the family does not have the collective will to avoid a repetition of past disputes, to head off future problems and to correctly employ the instruments that already exist. In other words, the council and protocol would work on the basis of unity and consensus among family members.

The literature describes how in the later stages of a family firm's evolution, instruments of family governance substitute for mechanisms of corporate governance (Van Aaker et al., 2017). That is the time to have a family council and a family constitution or protocol in place. A family council becomes more formal at this stage with the development of a family constitution in which the family specifies a method of company valuation (for example, through shareholder redemption/buyout provisions) in case a family member wants to sell. The design of a family constitution also helps head off future corporate governance problems. Moreover, the owner-investor approach ensures that the shareholders assembly becomes an important event at which participants can voice and listen to different perspectives and make key decisions (Nordqvist et al., 2014). Our results show that as firm complexity increases along the three axes that define a family company (family, ownership and business, according to Gersick et al., 1997) corporate governance mechanisms should change and adapt. In this sense, apart from the family council and family protocol, other instruments might be also necessary for preventing disputes: a good board composition with the presence of independent directors; and legally binding comprehensive shareholder agreements incorporating buy-sell arrangements, valuation mechanisms and dispute resolution procedures.

As for El Corte Inglés management, the family had stopped being at the top – the last family chairman was Dimas Gimeno – but family control was recovered when Marta Álvarez became the chairman (July of 2019). A new era arrived with the appointment of two non-family CEOs. In this context, there must be a clear incentive system for top managers and disclosure of information to a wider and more diverse set of owners, which means the board needs to diversify with a balance of family and non-family members from within and outside the firm.

Finally, we considered valuation difficulties caused by different family interests as families evolved. Those problems also seem to be recurrent, as does trouble among family shareholders, only some of whom are in management. Although El Corte Inglés is one of Spain's largest companies, it is not listed on the stock exchange. One of the advantages of listing is that valuation is facilitated and shares have liquidity, which is especially important when one of the shareholders decides to sell. The problems that ensued with regard to valuing the shares held by non-conformist family members would have been mitigated had the firm listed some of its capital on the stock exchange. The conflict that arose over valuation when the new investor came in brought transparency to the group's value as it was the first time that shares had been sold publicly. In this sense, an IPO on the stock market would help the company resolve these types of issues.

On the whole, it is clear that under no circumstances should the board of directors be used to resolve conflicts among family members, especially when there are also non-family shareholders. Family firms should use specific governance bodies to deal with family matters (a family committee or council) and should create and sign a protocol for action. In the case of El Corte Inglés, these measures have been adopted too late or have not been implemented. Without adequate governance tools adapted for each family business circumstance, problems are likely to arise again.

4. Conclusions and discussion

Our purpose was to study, using a case-based analysis, certain corporate governance problems in order to learn from failures and link them to family corporate governance mechanisms. Family firms specifically need to use family corporate governance mechanisms to address the various problems that appear over the years.

Although there are no standard rules for family firms' corporate governance, some of the El Corte Inglés problems could have been solved if family corporate governance mechanisms had existed. The problems we have discussed are grounded in the family corporate governance literature. As Bammens et al. (2018, p. 163) report, "the exit or failure of a significant number of these family ventures could be avoided by implementing good functioning governance mechanisms."

First, we have observed the firm's complexity stemming from the involvement of several generations. Not only is there diversity among family owners, who have varied interests and represent different generations and family branches, but new non-family owners have appeared in the arena. Thus, as Nordqvist et al. (2014) point out, diversity of owners leads to increased conflict. As the generation evolves, the governance design should change accordingly

(Bammens et al., 2008). The number of generations involved in the firm increases the risk of conflicts among family members and between family and non-family members (Duller, 2013) and the level of task conflict among the relatives increases over generations (Bammens et al., 2008). The board of directors is crucial to addressing this complexity by being a channel of communication and improving the processes of decision-making. As the divergence of preferences increases over generations, the need for control by the board can also be expected to grow in order to ensure that the management team considers the preferences and interests of all family owners (Bammens et al., 2008). Family relationships influence the functions of the board (Collins and Ahlberg, 2012). Again, if El Corte Inglés had had the right family corporate governance mechanism, i.e. a family council, such discussions could have taken place there without spreading to the general public. A recommendation for families is to have a conscious strategy for managing nepotism (Collin and Ahlberg, 2012).

Second, the family shareholder wars could have been avoided if a formal constitution or agreement existed. Though it might seem surprising, family members do not act as a block, but are subject to the tensions that arise from the varying information they possess and their different interests. Under no circumstances should the board be used to resolve conflicts among family members, especially when there are also non-family shareholders.

Third, we have considered the problems that have arisen in determining firm value. One of the advantages of listing is that valuation is facilitated and shares have liquidity, which is especially important when one of the shareholders decides to sell. A company's articles of association determine the procedure for sale and valuation. The problems that ensued with regard to valuing the shares held by non-conformist family members would have been mitigated had the firm listed some of its capital on the stock exchange. The conflict that arose over valuation brought transparency to the group's value as it was the first time that shares had been sold publicly. Problems of this nature could be solved using the right family corporate governance mechanism: specifically, a family constitution, which contains an agreement among family members about how to value shares and what to do if a family member wants to sell shares.

Over all, this case allows us to learn from failures and problems. Not only are traditional corporate governance mechanisms (like board of directors) are important but also family firms should set up their own corporate governance mechanisms: the family corporate governance mechanisms. Not only are governance bodies important for meeting economic and financial objectives, they give stakeholders a voice. Family firms should use specific governance bodies to deal with family matters (a family committee or council) and should create and sign a family protocol. It is therefore urgent for families to set up a forum (family council) and a procedure (protocol) to resolve their current and potential problems. Our evidence is also in line with the corporate governance literature about substitution of corporate governance mechanisms. As Van Aaken et al. (2017) point out, in the early stages of a family firm's development, self-governance tends to substitute for corporate governance, whereas in the later stages, family governance tends to substitute for corporate governance.

With regard to implications for practitioners, our paper may help families to learn from other companies' failures and to design and properly use corporate governance and family corporate governance mechanisms. For academics, the El Corte Inglés case study can be an interesting one to analyse in family business education as a means of learning about the family problems that can arise.

This study has some limitations that should be acknowledged and addressed in future research. First is the research methodology we used. Because it was difficult to find out about the secretive firm's problems, this study is based on an analysis of articles in the economic press. Future research should include firm interviews, which would make results more robust. In addition, as we analysed only one Spanish company, case-based studies for family firms in other institutional settings may indicate whether their corporate governance solutions are linked, to a point, by context. Additionally, comparing family corporate governance problems and the solutions adopted with those of a listed company could be useful.

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