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CROSS-BORDER MERGERS AND ACQUISITIONS: COMPLEXITIES IN NAVIGATING THROUGH INTERNATIONAL CORPORATE LAW

AUTHOR - MANISH DINKAR BHANE, STUDENT AT NAVALMAL FORODIA LAW COLLEGE

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Abstract

Legal Odyssey of Cross-Border M&A: Global Divergence and Corporate Convergence. The liberalization of global trade and investments in the late 20th century marked a turning point, leading to an upsurge in cross-border M&A activity. Historic transactions such as Vodafone's acquisition of Mannesmann in 2000 exemplify milestones in this journey. In the contemporary era, cross-border M&A remains a dominant force, characterized by an increasing complexity in deal structures. The post-pandemic landscape has added a layer of adaptation as businesses address issues like supply chain disruptions and remote workforces. This research dissects the multifaceted legal complexities that envelop cross-border M&A. It surveys historical developments, evaluates the current landscape, and anticipates evolving trends. There is a necessity to unravel the intricate legal challenges faced by corporations engaged in cross-border M&A transactions. This research aims to comprehensively explore these challenges, offer insights into legal strategies for success, and spotlight the growing relevance of cross-border M&A in the global business arena. To address the legal complexities entwined with cross-border M&A, this research adopts a comprehensive approach. It encompasses a thorough examination of international and national legal frameworks, scrutiny of due diligence processes, and a deep dive into best practices. In the current scenario is the establishment of a standardized international regulatory framework for cross-border M&A. This framework could streamline and harmonize legal requirements, making it easier for corporations to navigate the complexities of cross-border transactions while promoting fairness and transparency in the global marketplace. This research serves as a holistic investigation into the legal intricacies of cross-border M&A, offering a roadmap for corporations to deftly navigate the challenges and attain success in their global expansion endeavours.

Keywords: Corporations, Legal Challenges, Mergers and Acquisition, Regulation,

1. Introduction

One of the most consequential events in any firm's lifetime is a major acquisition. For the target, being acquired means the end of its existence as a separate entity, and for the acquirer, combining with a different firm usually requires a substantial change in the way that firm operates. Acquisitions redraw the boundaries of firms, change the merging firms' cultures, create (or destroy) synergies, and affect the ability of both the former acquirer and target to access capital markets.[910] They affect every aspect of the management of a business. Because of their importance, acquisitions have been an enormous area of research. However, the vast majority of this research has focused on domestic deals.

Many cross-border deals occur for the same reasons as domestic ones, there are some factors that motivate cross border

[910] Overview of Merger & Acquisition, Bizadvisors, available at https://www.bizadvisors.io/merger-and-acquisition#Types, last seen on 24/11/2023

acquisitions but not domestic ones. A new strand of research has been developed to understand the role of these factors leading to cross-border acquisitions. This paper surveys the literature on cross-border mergers and acquisitions. Here we discuss the literature studying international factors that affect cross-border deals but not domestic ones. As cross-border mergers and acquisitions become more common, these factors are likely to be increasingly important in the future.[911]

Cross-country differences in corporate governance are not the only international factors that can lead to acquisitions. Differences in regulation also lead firms to merge with other firms in different countries and transfer their regulatory environment to the more favourable one. Papers studying the regulatory arbitrage motive with regard to banking, labour and climate regulations.

2. Understanding Cross-Border Mergers and Acquisitions

A. <u>Definition and Meaning of Cross-Border M&A</u>

A cross border merger explained in simplistic terms is a merger of two companies which are located in different countries resulting in a third company. A cross border merger could involve an Indian company merging with a foreign company or vice versa. A company in one country can be acquired by an entity (another company) from other countries. The local company can be private, public, or state-owned company. In the event of the merger or acquisition by foreign investors referred to as cross-border merger and acquisitions.

a) Cross -Border Merger

It will result in the transfer of control and authority in operating the merged or acquired company. Assets and liabilities of the two companies from two different countries are combined into a new legal entity in terms of the merger,[912]

b) Cross-border Acquisition

It is a transformation process of assets and liabilities of local company to foreign company (foreign investor), and automatically, the local company will be affiliated.[913]

B. <u>The Driving Forces Behind Cross-Border M&As</u>

Cross-border mergers and acquisitions (M&As) have become a prevalent strategy for firms seeking to enhance their market positions, expand businesses, and harness valuable resources. This trend is driven by various factors at macroeconomic, industry, firm, technological, and government-related levels. Examining the landscape of cross-border M&As reveals a complex interplay of economic growth, industry dynamics, firm-specific advantages, technological changes, and government policies.

a) Macro-Level Factors

Economic growth plays a pivotal role in shaping the landscape of cross-border M&As. Robust economic expansion in home countries increases capital availability for foreign investments, while economic booms in host countries enhance the short-term profitability of potential targets. Conversely, economic slowdowns can impede cross-border M&As. The prolonged economic expansion in the United States and the United Kingdom in the 1990s led to a surge in both inward and outward cross-border M&As.[914] Presently, Japan and several Asian countries are experiencing an

[911] Laws Regulating Mergers and Acquisition in India, Legal Service India, available at https://www.legalserviceindia.com/article/l463-Laws-Regulating-Mergers-&-Acquisition-In-India.html, last seen on 25/11/2023

[912] Laws regulating mergers and acquisitions in India, BlogIpleaders, available at https://blog.ipleaders.in/laws-regulating-mergers-and-acquisitions-in-india/, last seen on 24/11/2023

[913] Ibid

[914] Mergers and Acquisitions process in India, Advocates and Attorneys, available at https://ksandk.com/mergers-acquisition/mergers-and-acquisitions-process/, last seen on 24/11/2023

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uptick in inward M&As due to falling asset prices and changes in business practices.[915]

b) Industry-Level Factors

While cross-border M&As span various industries, recent large-scale unions have been concentrated in sectors facing intensified global competition. Industries such as petroleum, automobiles, finance, and telecommunications have witnessed significant mergers driven by factors like falling commodity prices, excess capacity, deregulation, and rapid technological change. Unlike the M&As of the 1980s, which focused on capturing new markets, many 1990s mega-mergers occur within the same industry for the purpose of restructuring and improving international efficiency.

c) Firm-Level Factors

Firm-specific competitive advantages, often rooted in intangible assets like production knowledge, marketing capabilities, and brand names, drive foreign direct investment (FDI) through M&As. Organizational and managerial skills influence the preference for takeovers, while technological skills Favor greenfield operations. International experience, a firm's presence in the host country, and strategies vis-à-vis competitors further shape entry modes. Risk spreading, technology acquisition, and competition avoidance are identified as motivations for cross-border M&As at the firm level.[916]

d) Technology-Related Factors

Technological change exerts dual effects on cross-border M&As. Falling communication and transport costs facilitate international expansion, allowing firms to exploit and consolidate competitive advantages. Simultaneously, the soaring costs of research and development (R&D) and the uncertainties of technological change led firms to engage in strategic alliances and unions to fund R&D expenditures. The pharmaceutical sector exemplifies how R&D costs drive M&As, highlighting the need for collaboration to innovate in response to technological advancements.[917]

e) Government-Related Factors

Liberalization of international capital movements and regulatory reforms play a pivotal role in the proliferation of cross-border M&As. For instance, Korea's removal of restrictions on foreign acquisitions in 1998 led to a significant increase in M&A investments. Privatization, regional integration, and the introduction of common currencies, as seen in Europe, contribute to cross-border merger activity. The euro's impact on reducing exchange rate risk and transaction costs is evident, but fundamental location decisions for foreign investment remain influenced by economic geography.[918]

In conclusion, the dynamics of cross-border M&As are multifaceted, shaped by macroeconomic, industry-specific, firm-level, technological, and government-related factors. corporates strategically navigate these elements to strengthen their global presence, exploit synergies, and adapt to evolving market conditions. As the landscape continues to evolve, understanding the interconnected nature of these factors is essential for businesses, policymakers, and investors alike.

C. Benefit of Cross Border Mergers and Acquisitions

In the dynamic landscape of global business, companies seek strategic advantages through cross-border mergers and acquisitions (M&As). We will explore key benefits

[915] Mergers and Acquisitions process in India, Advocates and Attorneys, available at https://ksandk.com/mergers-acquisition/mergers-and-acquisitions-process/, last seen on 24/11/2023

[916] Overview of Merger & Acquisition, Bizadvisors, available at https://www.bizadvisors.io/merger-and-acquisition#Types, last seen on 24/11/2023

[917] Laws Regulating Mergers and Acquisition in India, Legal Service India, available at https://www.legalserviceindia.com/article/l463-Laws-Regulating-Mergers-&-Acquisition-In-India.html, last seen on 25/11/2023

[918] Merger & Acquisition, Ministry of Corporate Affairs, available at https://www.mca.gov.in/content/mca/global/en/data-and-reports/reports/other-reports/report-company-law/mergers-and-acquisitions.html, last seen on 25/11/2023

driving such endeavours. These benefits underscore the multifaceted nature of cross-border M&As, reflecting a strategic pursuit of global competitiveness, efficiency, and sustained growth in an interconnected business landscape.[919]

a) Faster Entry into Foreign Market

The input discusses the advantages of acquisitions over internally generated product developments and new business for rapid entry into foreign markets. Acquisitions are seen as a quicker and more efficient means of establishing a global presence due to the challenges of building a competitive organization. Cross-border mergers and acquisitions (CBM&As) provide immediate access to local networks, suppliers, marketing channels, and clients.

b) Increase Control Over Market

Market power, defined as the ability to sell products above competitive market prices or maintain lower costs than rivals, is influenced by factors such as firm size, sustainability of competitive advantages, and strategic decision-making.[920] Cross-border acquisitions serve as a strategic tool to enhance market power, particularly through acquiring companies in the same industry or segment, suppliers or distributors, and businesses in related industries. Horizontal integration, especially in concentrated markets with fewer competitors, is identified as a means to bolster market power.

Cross-border M&As are driven by the need to acquire new capabilities and knowledge due to the complexity of modern products relying on diverse technologies (Ohmae, 1989). External sources of know-how become crucial, and acquiring foreign businesses allows access to resources like patent-protected technology, superior managerial skills, and regulatory advantages, creating access to entry. Acquiring a foreign competitor enables control over diverse assets, enhancing the ability to seize opportunities.

c) Diversification of Products and Markets

Cross-border mergers and acquisitions (M&As) are often motivated by the strategy of diversification, defined as expanding a company's offerings into new products and markets.[921] This involves acquiring a target company operating in a business unrelated to the buyer firm. International acquisitions not only provide access to crucial resources but also offer opportunities to reduce the costs and risks associated with entering new foreign markets. Geographical diversification, as reported by Seth (1990), is seen as a value source in cross-border acquisitions, leveraging factors like exchange rate differences, international market power, and the ability to arbitrage tax regimes.[922]

d) Improved Management

Managers aim to maximize shareholder value in mergers and acquisitions (M&As) by either replacing inefficient target firm management or seeking synergies. M&A are driven by the belief that the acquiring firm's management can enhance the target's value. This is particularly relevant when large companies acquire smaller ones led by entrepreneurs. The smaller firms may excel with a unique product, but as they grow, they need different management skills. Larger firms, with extensive managerial expertise, can provide valuable resources to address these challenges and improve the target's competitiveness[923]

[919] Mergers and Acquisitions in Indian Law, Social Laws Today, available at https://sociallawstoday.com/mergers-and-acquisitions-in-indian-law/, last seen on 26/11/2023

[920] Mergers and Acquisitions process in India, Advocates and Attorneys, available at https://ksandk.com/mergers-acquisition/mergers-and-acquisitions-process/, last seen on 24/11/2023

[921] Overview of Merger & Acquisition, Bizadvisors, available at https://www.bizadvisors.io/merger-and-acquisition#Types, last seen on 24/11/2023

[922] Laws Regulating Mergers and Acquisition in India, Legal Service India, available at https://www.legalserviceindia.com/article/l463-Laws-Regulating-Mergers-&-Acquisition-In-India.html, last seen on 25/11/2023

[923] Mergers and Acquisitions in Indian Law, Social Laws Today, available at https://sociallawstoday.com/mergers-and-acquisitions-in-indian-law/, last seen on 26/11/2023

e) Synergy

Firms pursue mergers and acquisitions (M&As) to achieve synergies by combining operations and activities, leading to increased capacity, cost reduction, and long-term profitability highlights synergy as a common motivation, where the combined entity's profitability surpasses the sum of individual firms' profits. Operating synergies arise from efficiency gains in horizontal or vertical mergers, while financial synergies involve lowered capital costs through M&A. Synergy comes from transferring valuable intangible assets between firms, addressing the inefficiencies of international transactions. Financial synergy involves reducing internal financing costs, often achieved by acquiring cash-rich target firms, lowering the cost of capital for the acquiring firm.[924]

3. Laws Governing Cross-Border Mergers and Acquisitions in India

In order to encourage cross-border mergers and acquisitions, India has put certain rules and regulations into place. Cross-border mergers and acquisitions are primarily regulated under Corporate Laws, Tax Laws, Foreign Exchange laws and any other laws that apply to merger structures:

A. Corporate Laws

a) Companies Act, 2013

Sections 230 to 232 of the Companies Act, 2013 include the requirements for domestic mergers, while Section 234 of the Act, along with Rule 25A of the Companies (Compromises, Arrangements and Amalgamations) Rules of 2016, covers cross-border mergers and acquisitions.[925]

Section 234 of the Companies Act states that domestic mergers shall apply mutatis mutandis to cross-border mergers and acquisitions between Indian companies and Foreign Companies as notified by the Central Government. According to this provision, a foreign company can merge with an Indian Company registered under this Act with the prior approval of RBI and the companies are obligated to provide the terms and considerations of the merger or acquisition.

Rule 25A of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 states that an Indian Company may merge with a foreign company subject to compliance under Sections 230 to 232 along with the prior approval of RBI provided that such foreign companies must be incorporated under the jurisdictions specified in Annexure B.

b) SEBI (SAST) Regulations, 2011

The SEBI (SAST) Regulations on cross-border mergers and acquisitions aim to provide a level playing field for Indian companies and protect the interests of Indian shareholders. The regulations also provide clarity and transparency in the process of cross-border mergers and acquisitions in India.[926]

The regulations apply to all acquisitions of shares, control or voting rights in a listed Indian company by a foreign company, including a merger or amalgamation with a foreign company.

The regulations prescribe different thresholds for open offers for different categories of companies. The acquirer is required to make an open offer for 26% of the share capital but can increase its shareholding up to 75% without making any further open offers. Additionally, when the acquirer buys more than 5%, compulsory disclosure of the total ownership is required.[927]

[924] Overview of Merger & Acquisition, CorpBiz, available at https://corpbiz.io/mergers-and-acquisitions, last seen on 25/11/2023
[925] Laws regulating mergers and acquisitions in India, BlogIpleaders, available at https://blog.ipleaders.in/laws-regulating-mergers-and-acquisitions-in-india/, last seen on 24/11/2023
[926] Merger & Acquisition, Ministry of Corporate Affairs, available at https://www.mca.gov.in/content/mca/global/en/data-and-reports/reports/other-reports/report-company-law/mergers-and-acquisitions.html, last seen on 25/11/2023
[927] Laws regulating mergers and acquisitions in India, BlogIpleaders, available at https://blog.ipleaders.in/laws-regulating-mergers-and-acquisitions-in-india/, last seen on 24/11/2023

The regulations require prior approval from SEBI for any acquisition of shares or control in a listed Indian company by a foreign company.

The regulations also require the acquirer to make certain disclosures, such as the details of the acquisition, the acquirer's shareholding, and the purpose of the acquisition, among others.

c) Competition Act, 2002

The regulatory body responsible for outlawing anti-competitive agreements, abusing dominant positions, and fostering market competition is the Competition Commission of India (CCI). The CCI has the power to regulate combinations and prescribe necessary changes in their proposed combinations.

Section 2(a) defines the term acquisition as an agreement to buy shares, voting rights or other assets of the target company.[928]

Section 5 empowers the CCI to make an investigation on whether the combination has any appreciable adverse effect on competition and section 20 of the Act deals with the mode of inquiry.[929]

The restriction on combinations that have or are expected to have an appreciable adverse effect on competition is covered under Section 6(1).

Section 6(2) mandates the companies to provide prior notice along with relevant information to the CCI regarding the combination within 30 days[930]

Section 31 empowers the CCI to provide necessary orders on combinations either to approve the combinations or reject the proposed combination or may suggest modifications to prevent the combination from the adverse effect on competition in the market.

B. Foreign Exchange Laws

a) Foreign Exchange Management Act (FEMA), 1999:

Using the powers granted under Section 234(1) of the Companies Act, 2013, the Central Government has issued the FEMA Cross-border Merger Regulation, 2018, to regulate the process of cross-border mergers. The regulations that are involved are as follows:

- FEM (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2017,
- FEM (Transfer or issue of any foreign security) Regulations, 2004,
- FEMA (Establishment in India of a branch office or a liaison office or a project office or any other place of business) Regulations, 2016 etc.[931]

b) RBI Regulations

The RBI on 21st April, 2017 released draft regulations titled Foreign Exchange Management (Cross Border Merger) Regulations, 2017. They define a cross border merger as follows:[932]

"Any merger, demerger, amalgamation or arrangement between Indian company(ies) and foreign company(ies) in accordance with Companies (Compromises, Arrangements and Amalgamation) Rules, 2016 notified under the Companies Act, 2013".

C. Tax Laws

a) Income Tax Act, 196

Income Tax Act, 1961 deals with the concept of amalgamation and demerger. The Income Tax Act's Section 2(1B) defines amalgamation as the joining of two or more companies to create a single company.

[928] Mergers and Acquisitions in Indian Law, Social Laws Today, available at https://sociallawstoday.com/mergers-and-acquisitions-in-indian-law/, last seen on 26/11/2023
[929] Overview of Merger & Acquisition, CorpBiz, available at https://corpbiz.io/mergers-and-acquisitions, last seen on 25/11/2023
[930] Ibid
[931] Laws Regulating Mergers and Acquisition in India, Legal Service India, available at https://www.legalserviceindia.com/article/l463-Laws-Regulating-Mergers-&-Acquisition-In-India.html, last seen on 25/11/2023
[932] Foreign Exchange Management (Cross Border Merger) Regulations, 2017, Reserve Bank of India, available at https://rbidocs.rbi.org.in/rdocs/Content/PDFs/CBMD08484A86A9AE4780A2D825C5D85184B3.PDF. Last seen on 22/11/2023

Mergers and acquisitions have been provided exemption under the head of Income from Capital Gains under section 47 of the Act, arising under indirect transfer of shares due to the merger or demerger of foreign companies. However, this benefit is applying only to an inbound merger.[933]

Subject to the requirements of Section 72A (4) of the IT Act, cross-border demerger occurs when one or more undertakings of a company are transferred to a different entity overseas as a going concern, either to establish a new business or to merge with the current entity.

4. Procedure of Mergers & Acquisitions in India

The Companies Act of 2013 defines the entire mergers and acquisitions process in India.[934] The study of the firms is done throughout the mergers and acquisitions process, which includes accessing the company's information, reading over its insights, and coming to a decision on how to conduct the mergers and acquisitions process.

A. Dig into Memorandum to Examine the Object Clause

The primary and paramount thing to do while going for M&A in India is to scrutinize the memorandum of association of the company with the purpose of carrying a search and check whether the power of the merger is endowed in the company or not.[935]

B. Valuation Analysis & Negotiations

Assuming that the initial contact and negotiations go well, the acquirer requests comprehensive information from the target organization to help it evaluate the target as a potential acquisition target and as a stand-alone business. After developing many valuation models for the target company, the acquirer should have enough information to make an appropriate offer; once the initial offer is made, the parties can engage in a more in-depth negotiation of terms to kickstart the process of Mergers and acquisitions in India. The financial strategy of the transaction is also discussed and agreed upon mutually.[936]

C. Letter of Intent

The letter of intent is used before the transaction is finalized to ensure that both parties have mutually agreed on the price and other terms. This is required before the target company agrees to offer the acquirer exclusive purchasing rights.

D. Due Diligence and Final Agreement

After the offer is accepted and approved, a lengthy process known as the due diligence of the target company begins. The goal is to confirm or change the acquirer's valuation of the target company by investigating and analysing every aspect of the target company's operations, including financial measurements, assets and liabilities, customers, and human resources. After due diligence is completed, the parties sign a formal contract for sale and decide whether to enter into an asset acquisition agreement or a share purchase agreement.[937]

E. Draft a Merger Proposal

The merger proposal must be approved by the boards of directors of both companies. Furthermore, they must pass a special resolution authorizing their Key Management Personnel to carry out the process.[938]

F. Application to The High Courts

In the wake of getting the affirmation on a proposal by the Board of the Director, the merger organizations should

933 Overview of Merger & Acquisition, Bizadvisors, available at https://www.bizadvisors.io/merger-and-acquisition#Types, last seen on 24/11/2023
934 Overview of Merger & Acquisition, CorpBiz, available at https://corpbiz.io/mergers-and-acquisitions, last seen on 25/11/2023
935 Overview of Merger & Acquisition, CorpBiz, available at https://corpbiz.io/mergers-and-acquisitions, last seen on 25/11/2023
936 Ibid
937 Laws Regulating Mergers and Acquisition in India, Legal Service India, available at https://www.legalserviceindia.com/article/l463-Laws-Regulating-Mergers-&-Acquisition-In-India.html, last seen on 25/11/2023
938 Supra 21

record an application to the Hon'ble High court of the individual state where the organizations headquarter is situated.

G. Notifying Stakeholders

After obtaining the HC's approval, a notification within the prescribed period should be sent to all of the organizations' investors and creditors about the upcoming gathering. This is very essential for a merger and acquisition in India, as it provides a legal forum for verification.[939]

H. Filing Orders with the ROC

The true confirmed copy of the request for the state's HC must be documented with the Registrar of Companies within the time frame specified by the HC.

I. Merging of Assets & Liabilities

The concerned companies can then combine their assets and liabilities following the terms of the merger proposal to complete the merger process. In the event of a merger or purchase between a listed and unlisted firm, sections 391-394 of the 2013 Companies Act may be used. This would offer the publicly traded company's public stockholders with a safety net or a clear exit option. If major assets are stripped from a publicly traded firm, similar to a de-merger, public shareholders will be given a safety net or exit option, and the remaining business will be delisted. [940]

J. Issue of Shares and Debentures for Subscription

After being listed on a stock exchange, the unified enterprises can issue shares and debentures as a new legal entity.

5. Case Study: Merger & Acquisition of Flipkart by Walmart

A. Background of the Companies

M&A of the Flipkart by the Walmart is one of the largest M&A in the e-commerce world. Let's look at the background of each company.

a) Walmart

Walmart is an American multinational retail corporation that operates a chain of hypermarkets, discount department stores, and grocery stores in the United States, headquartered in Bentonville, Arkansas. The company was founded by brothers Sam and James "Bud" Walton in nearby Rogers, Arkansas in 1962[941]

b) Flipkart

Flipkart Private Limited is an Indian e-commerce company, headquartered in Bangalore, and incorporated in Singapore as a private limited company. The company initially focused on online book sales before expanding into other product categories such as consumer electronics, fashion, home essentials, groceries, and lifestyle products.[942]

B. The Highlights of Deal Between Walmart and Flipkart

On 9th May 2018, Walmart, the largest brick-and-mortar retailer in the world acquired Flipkart, marking the beginning of its first real battle with Amazon in an emerging market. Some of the key points in this M&A are as follows;[943]

1. Walmart acquire **77%** stake in Flipkart.
2. Investment: $16 billion by Walmart.

939 Laws regulating mergers and acquisitions in India, BlogIpleaders, available at https://blog.ipleaders.in/laws-regulating-mergers-and-acquisitions-in-india/, last seen on 24/11/2023

940 Mergers and Acquisitions process in India, Advocates and Attorneys, available at https://ksandk.com/mergers-acquisition/mergers-and-acquisitions-process/, last seen on 24/11/2023

941 Ritu Wadhwa, Walmart-Flipkart Acquisition: a case study, 9 (2), International Research Journal of Social Sciences, 21, 21 (2020), available at https://isca.me/IJSS/Archive/v9/i2/5.ISCA-IRJSS-2019-087.pdf, last seen on 25/11/2023

942 Ibid

943 P. Bala Bhaskaran and Nasheman Bandookwala, Walmart's Acquisition of Flipkart: Emerging Paradigm of the Digital Era, 9 (1), South Asian Journal of Business and Management Cases, 25, 25 (2020) available at https://journals.sagepub.com/doi/pdf/10.1177/2277977919881404, last seen on 25/11/2023

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3. This is single largest transaction in the history of e-commerce sector.
4. Flipkart was valued $12 billion, but now after this agreement its valuation has become $20 billion
5. Out of total investment, $2 billion will be new equity, while the other is to acquire stakes from existing investors like SoftBank, Naspers and co-founder Sachin Bansal.
6. Walmart is said to be finalizing $15 billion controlling investment in e-commerce startup Flipkart there.
7. Neither company has converted into other or changed name in the acquisition[944]

C. Reasons for the Deal

Walmart operates 5295 retail stores in the U.S. and 11718 stores worldwide, and is still the world's largest retailer. Walmart sales increased have been in the 25% range. in 2018, Walmart recorded sales worth $500 billion and earned a profit of $15 billion, according to Forbes.

Since 2006 to 2018 Walmart's Net sales are reaching to Saturation or Maturity level. Walmart want to expand its online business worldwide now and it choose Flipkart in India[945]

a) Population Attraction of Indian Market

India a is largest populated country after China, and demographics of this population is having maximum number or people between age of (18-45). India's online retail is set to grow by 1.200% to $200 billion (30% CAGR) by 2026 from $15 billion in 2016. Average wages are rising by 2% annually and internet penetration is also growing as data costs are becoming more competitive. This makes Indian e-commerce space lucrative. Flipkart has the largest market share in e-commerce, so with this acquisition Walmart can achieve next leg of growth in India with Flipkart's 175 million registered user base.[946]

b) Walmart's Amazon Problem

Walmart's total revenue for the last fiscal was over $500 billion, while Amazon's net sales were $177.9 billion. Walmart showed net income of over $20 billion, while Amazon's net income was $3 billion. Yet, Amazon today is among the top five companies in the world in terms of market capitalization at over $680 billion market cap. Walmart's market cap on the other hand is at just over $250 billion, not small change at all, but smaller than Amazon's. The reason for the stock markets in the US putting greater value in Amazon than Walmart is because the former is seen as the company with a more robust future and growth potential.

c) Walmart India Problem

Walmart is an iconic brand, have the cash and the market cap, but have let others to dominate the market especially markets other than the us they have been trying to enter the Indian market for 10 years now and have realized that it is difficult for any government to allow Walmart in India. Their experience with offline partners in India wasn't great. That's why they are looking at a controlling stake in Flipkart. Their experience as minority partner hasn't been good. Despite the potential for growth in online retail within US, Amazon has already made big strides in international markets. This is because the expectation is that emerging markets of today will become growth drivers of the future. China's Alibaba, for instance, is valued at over $520 billion, and most US tech and ecommerce companies either missed the China bus or were kicked out. India is the only big ecommerce market still up for grabs. India's online retail

[944] P. Bala Bhaskaran and Nasheman Bandookwala, Walmart's Acquisition of Flipkart: Emerging Paradigm of the Digital Era, 9 (1), South Asian Journal of Business and Management Cases, 25, 25 (2020) available at https://journals.sagepub.com/doi/pdf/10.1177/2277977919881404, last seen on 25/11/2023

[945] Ritu Wadhwa, Walmart-Flipkart Acquisition: a case study, 9 (2), International Research Journal of Social Sciences, 21, 21 (2020), available at https://isca.me/IJSS/Archive/v9/i2/5.ISCA-IRJSS-2019-087.pdf, last seen on 25/11/2023

[946] Beena Saraswathy, The Flipkart-Walmart Deal in India: A Look into Competition and Other Related Issues, 64 (1), The Antitrust Bulletin 2019, 135, 143 (2019)

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market grew at 23 percent in 2017. While India's overall retail market is over $670 billion in size, online sales is just at $20 billion. The headroom for growth is immense, with 60 percent growth expected this year.[947]

Amazon is already in a strong position in India with a market share of around 35 percent, compared to Flipkart Group's 45 percent. If Amazon extends this lead in India or builds an unassailable position, the company will be able to extend its overall lead over Walmart dramatically.

d) Going Offline:

There is a clear need for Flipkart to start having an offline presence. For Walmart too, while a strong online presence in India would be a good start it will want to start building up an offline retail play. Primarily, Walmart operates in the offline market. More or less the transportation network, storage facility of the Flipkart will help the Walmart to expand its business in the offline market in India.[948]

D. <u>Working of Flipkart After Acquisition:</u>

Flipkart's existing management team will continue to lead the business as before. Existing stakeholders Tencent Holdings Limited and Tiger Global Management LLC will remain represented on the Flipkart board, in addition to independent board members, and will be joined by new members from Walmart.

The board will work to maintain the company's core values and entrepreneurial spirit while ensuring it has strategic and competitive advantages. Also, going forward, Flipkart's financials will be reported as part of Walmart's international business' segment.[949]

Walmart has also invested $2 Bn as equity funding to help accelerate the growth of the Flipkart business. Both companies will retain their unique brands and operating structures in India. Future investments by Walmart in India will support national initiatives and will bring sustainable benefits in jobs creation, supporting small businesses, supporting farmers, and supply chain development and reducing food waste.[950]

6. Conclusion

In conclusion, cross-border mergers and acquisitions (M&A) represent a dynamic and strategic approach for businesses seeking growth, diversification, and global competitiveness. The globalized nature of the modern economy has propelled companies to explore opportunities beyond their national borders, leading to an increase in cross-border M&A activities. These transactions offer several advantages, including market access, synergies, economies of scale, and the potential for innovation and technology transfer.

However, the landscape of cross-border M&A is complex and multifaceted, with challenges ranging from cultural differences and regulatory hurdles to integration complexities. Success in these endeavours requires careful planning, due diligence, and adaptability to navigate the diverse business environments and regulatory frameworks of different countries.

The impact of cross-border M&A extends beyond the involved companies, influencing global economic interconnectedness and fostering international collaboration. It also reflects a broader trend of companies strategically positioning themselves

[947] P. Bala Bhaskaran and Nasheman Bandookwala, Walmart's Acquisition of Flipkart: Emerging Paradigm of the Digital Era, 9 (1), South Asian Journal of Business and Management Cases, 25, 25 (2020) available at https://journals.sagepub.com/doi/pdf/10.1177/2277977919881404, last seen on 25/11/2023

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to thrive in an ever-evolving, competitive global marketplace.

As companies continue to pursue cross-border M&A as a growth strategy, it remains crucial for them to consider not only the financial aspects but also the cultural, legal, and operational dimensions of the target market. With the right approach and execution, cross-border M&A can serve as a catalyst for sustained growth, innovation, and the creation of value for stakeholders on a global scale.

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