

ANALYSIS OF CROSS-BORDER MERGERS & ACQUISITIONS: A COMPARATIVE STUDY OF INDIA AND USA

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Abstract

This paper delves into the complex dynamics of cross-border mergers and acquisitions (M&As) between India and the United States. By comparing the regulatory frameworks, economic landscapes, and strategic motivations underpinning these transactions, the study offers a nuanced understanding of their trends and patterns. India's rapid economic growth, cost efficiencies, and skilled workforce attract U.S. firms seeking operational advantages and market access, while Indian firms pursue U.S. acquisitions to gain advanced technologies, brand equity, and global market presence. Case studies, such as Tata Motors' acquisition of Jaguar Land Rover and Walmart's purchase of Flipkart, highlight the transformative potential of these transactions. However, challenges such as cultural integration, regulatory compliance, and market competition highlight the complexity of cross-border M&As. The findings provide valuable insights for policymakers and corporate leaders aiming to navigate and capitalise on these high-stakes business opportunities.

I. Introduction

Cross-border mergers and acquisition transactions have seen an insurmountable growth in popularity across the globe. Owing to the various companies innovating on ways to expand and grow into foreign markets- India and the United States have been regarded as one of the biggest competitors with an emerging and developing market, bearing to be a fruitful opportunity for growth by these companies. This research paper aims to provide a comparative analysis of cross-border amalgamating transactions between India and USA, focusing on the regulatory frameworks, economic implications, synergies and strategic motivations driving these deals. These mergers, involving companies from different jurisdictions, facilitate access to new markets, technologies, and resources. They are vital for corporations looking to enhance their competitive edge, achieve economies of scale, and diversify risks.

India and the United States represent two distinct economic environments with varying degrees of market maturity, regulatory landscapes, and cultural dynamics. While the U.S. is characterized by its advanced capital markets, robust regulatory mechanisms, and a culture of entrepreneurialism, India is known for its rapid economic growth, evolving legal frameworks, and diverse market conditions. By examining the trends, challenges, and opportunities in cross-border M&As between these two nations, this study seeks to shed light on the factors influencing the success and failure of such transactions and provide insights for policymakers and business leaders.

The complexity of cross-border mergers arises from the intersection of diverse legal systems, economic conditions, and cultural factors, making them significantly more challenging than mergers confined within a single country. In India, such transactions are primarily regulated by the Companies Act, 2013, which,

through Section 234 and associated rules, authorizes mergers between Indian and foreign entities, provided certain conditions are met. Additionally, the Foreign Exchange Management (Cross Border Merger) Regulations, 2018, established by the Reserve Bank of India, set out the procedures and requirements for these cross-border mergers, ensuring compliance with foreign exchange laws and other regulatory standards

II. Historical Context

“Cross-border mergers, though not a novel phenomenon, have undergone significant evolution in the past few decades. Historically, international trade and commerce acted as the primary vehicles for globalisation. Companies expanded across borders using traditional methods, such as setting up subsidiaries or forming joint ventures. However, with advancements in technology, globalisation of markets, and liberalisation of trade policies, cross-border mergers have become a preferred mechanism for corporate expansion and consolidation.”

In India, the economic reforms of 1991 acted as a catalyst for cross-border mergers. These reforms liberalised the Indian economy, attracting foreign investors and enabling Indian companies to expand globally. Transactions such as Tata Motors’ acquisition of Jaguar Land Rover in 2008 demonstrated the ability of Indian firms to compete on a global scale.¹²⁴⁴

In the U.S., cross-border mergers have been a significant feature of its corporate landscape since the mid-20th century. The country’s robust financial markets, regulatory frameworks, and favourable business environment have made it an attractive destination for foreign investors. Iconic deals such as the acquisition of U.S.-based Heinz by Brazil’s 3G Capital in 2013 highlight the global

interconnectedness facilitated by cross-border mergers.¹²⁴⁵

III. Trends and Patterns

Cross-border mergers between Indian and U.S. firms exhibit distinctive patterns shaped by the economic environments, regulatory frameworks, and strategic motivations of the participating entities. These patterns are influenced by historical contexts, sectoral priorities, and the evolving dynamics of globalisation. While the underlying objectives of these mergers—market expansion, cost synergies, and technological acquisition—are often similar, the execution and outcomes differ significantly between the two nations.

A. Inbound Cross-Border Mergers: U.S. Firms Acquiring Indian Targets

Mergers and acquisitions can be of two forms: inbound and outbound. An inbound merger or acquisition refers to the act of a foreign business entity merging or acquiring a domestic entity. In this context, the growing importance of India as a global economic player has attracted significant interest from U.S. firms seeking to capitalise on its expansive market and cost advantages. The trend of inbound cross-border mergers—where U.S. firms acquire Indian targets—accelerated in the post-liberalisation era, following India’s economic reforms in the 1990s.¹²⁴⁶ These reforms, which included deregulation, relaxation of foreign direct investment norms, and the privatisation of key sectors, made India an attractive destination for global investors.

There are broadly three factors that U.S. firms are targeting and looking for while attempting to target Indian entities during inbound cross-border mergers:

1. *Access to a Rapidly Expanding Consumer Market:* India’s demographic

¹²⁴⁴ Debasis Ray, *Tata Motors Completes Acquisition of Jaguar Land Rover*, MEDIA CENTRE- JAGUAR LAND ROVER (June 2, 2008), [Tata Motors Completes Acquisition Of Jaguar Land Rover | IJLR Media Newsroom](#) (Last Accessed Jan. 05 2025)

¹²⁴⁵ Michael Mullen, *Berkshire Hathaway and 3G Capital Complete Acquisition of H.J. Heinz Company*, KRAFT HEINZ, (June 7, 2013), [The Kraft Heinz Company - Berkshire Hathaway and 3G Capital Complete Acquisition of H.J. Heinz Company](#) (Last Accessed Jan. 05, 2025)

¹²⁴⁶ Rahul Et al., *Me&A Evolution in India: Cross Border Mergers – A Perspective*, ROEDL & PARTNER, (August 1, 2022), <https://www.roedl.com/insights/india-ma-cross-border-mergers-evolution>

dividend, with a large and youthful population, has positioned it as a lucrative market for consumer-driven industries. This is primarily because of a favourable population composition and increase in disposable income.¹²⁴⁷ U.S. companies in sectors such as retail, technology, and pharmaceuticals have leveraged acquisitions in India to establish a foothold in this dynamic market. Walmart's acquisition of Flipkart in 2018 is a prime example of this trend. Through this deal, Walmart entered India's burgeoning e-commerce space, gaining access to a rapidly growing consumer base without the need to build an ecosystem from scratch.

2. *Cost Arbitrage and Operational Efficiency:* India's relatively lower costs of labour and production have also driven inbound mergers. U.S. firms seeking to optimise costs while maintaining quality have acquired Indian companies to tap into their manufacturing and service capabilities.¹²⁴⁸ This is particularly evident in the IT and pharmaceutical sectors, where U.S. firms benefit from India's skilled workforce and cost-efficient production infrastructure. Deloitte's Partner, Rohan Lobo, had recently opened up about the growth of Indian market. In comparison to the United States, the cost of full-time equivalent (FTE) employees in India is significantly lower, averaging around \$20,000 compared to \$80,000 in the US. This substantial cost difference offers a fourfold financial advantage when roles are moved from the US to India. This cost advantage is expected to persist for the next 25 years due to India's low-cost

base. Despite potential annual increases of 15% in India's cost rates compared to 3-5% in the US, the inflation disparity ensures that India will maintain its cost advantage.¹²⁴⁹

3. *Strategic Diversification:* U.S. companies often pursue acquisitions of Indian firms as a means of strategic risk diversification. By expanding into new geographic territories, these firms reduce their exposure to economic fluctuations in their domestic market. Entering the Indian market not only provides access to a large and growing consumer base but also serves as a gateway to broader Asian markets, leveraging India's expanding trade relationships within the region. This approach allows U.S. acquirers to diversify their revenue streams and capitalize on growth opportunities outside their home country, thereby enhancing resilience against localized economic downturns

4. *Regulatory Environment:* After the shift in regulatory paradigm moving away from the close and restrictive Foreign Exchange Regulations Act, 1973 to the more liberal and in line with modern India's vision of compliance with globalization, Foreign Exchange Management Act, 1999, there has been a major shift in how foreign entities interacted with domestic investments. Foreign entities no longer required the approval of the National Company Law Tribunal for merging with domestic subsidiaries and the timeline for such transactions has reduced as well which has allowed for a swifter market access. Following a cross-border merger, the resultant company is permitted to open and operate a bank account denominated in foreign currency within the overseas jurisdiction. This account can be maintained for up to two years

¹²⁴⁷ INDIAN BRAND EQUITY FOUNDATION, <https://www.ibef.org/industry/indian-consumer-market>, (Last Accessed Jan. 06, 2025)

¹²⁴⁸ Sanjana B., *India's Shared Values with the West and Cost Arbitrage Attract GCC Investments*, BUSINESS LINE, (June 23, 2024), <https://www.thehindubusinessline.com/news/indias-shared-values-with-the-west-and-cost-arbitrage-attracts-gcc-investments/article68324402.ece> (Last Accessed Jan. 07, 2025)

¹²⁴⁹ *Ibid*, 6.

from the date the merger scheme is sanctioned by the National Company Law Tribunal (NCLT), and is intended exclusively for conducting transactions related to the merger process.

B. Outbound Cross-Border Mergers: Indian Firms Acquiring U.S. Targets

Cross Border Mergers and Acquisitions can also be outbound when it has the characteristics of an Indian company merging with a foreign company. These foreign companies, by law, are required to issue its own securities presumably to a resident shareholder of the Indian Company¹²⁵⁰

1. *Acquisition of Advanced Technologies and R&D Capabilities:* A significant driver for Indian firms acquiring U.S. companies is the opportunity to gain access to advanced technologies and research capabilities. This is particularly evident in sectors such as pharmaceuticals, IT, and automotive manufacturing. The acquisition of Corus by Tata Steel in 2007, for instance, allowed Tata to integrate Corus's advanced production technologies into its operations, enhancing its global competitiveness. Similarly, Indian pharmaceutical firms like Sun Pharma and Lupin have pursued acquisitions of U.S.-based companies to gain access to proprietary drug technologies, FDA-approved manufacturing facilities, and established distribution networks. These deals enable Indian firms to overcome regulatory hurdles and compete more effectively in the global market. We will delve deeper into these cases at a later stage in this research paper to analyse them individually.

2. *Brand Equity and Market Penetration:* Indian companies often target U.S. firms with strong brand recognition and market presence,

leveraging these attributes to establish credibility in international markets. Tata Motors' purchase of Jaguar Land Rover in 2008 is a notable illustration of this strategy. By acquiring these iconic brands, Tata Motors not only entered the luxury automotive segment but also gained global brand equity and access to a sophisticated consumer base which has only been growing ever since, particularly by reviving the company from a total net loss of £400 Million in 2008, to reporting profit of £2.6 Billion in 2015.¹²⁵¹

3. *Access to Resource Acquisition:* For Indian firms, U.S. acquisitions are also a means to acquire valuable intellectual property, patents, and other intangible assets. These assets are instrumental in enhancing product offerings and gaining a competitive edge in global markets. Indian companies have pursued U.S. Acquisitions to gain access to advanced technologies, established brands, and extensive distribution networks. As per reports, about \$294 Billion of investment from private sector, by 2025.¹²⁵²

IV. Regulatory Framework Governing Cross-Border Mergers in India

The legal frameworks governing CBMAs in India and the United States differ significantly in their structure and application. While India operates under a centralised regulatory system, the United States employs a dual governance system comprising federal and state laws. These frameworks influence not only the ease of executing mergers but also the strategic decisions of firms operating across borders.

A. The Companies Act, 2013: Foundational Legislation

¹²⁵¹ Ujal Nair, *10 Years of Tata- JLR: A Journey from 5 Billion Pounds to 25 Billion Pounds*, AUTOCAR PROFESSIONAL, (June 02, 2018), <https://www.autocarpro.in/news-international/tata-jlr-journey-billion-pounds-billion-pounds-29749> (Last Accessed Jan. 07, 2025)

¹²⁵² INVEST INDIA, Amrit Kaal Vision- India Opportunity, <https://www.investindia.gov.in/india-opportunity> (Last Accessed Jan. 07, 2025)

The Companies Act, 2013, serves as the primary legal framework for corporate matters in India, including cross-border mergers. Section 234, added by the Companies (Amendment) Act, 2017, allows for both inbound and outbound mergers—an expansion from the previous Companies Act, 1956, which only permitted inbound mergers.

Specifically:

- **Inbound mergers** involve a foreign company merging into an Indian company, with the new entity based in India.
- **Outbound mergers** occur when an Indian company merges with a foreign entity, resulting in a company registered outside India.

For outbound mergers:

- Prior approval from the Reserve Bank of India (RBI) is mandatory.
- Compliance with Sections 230 to 232, which detail the procedural aspects of mergers and amalgamations, such as shareholder and creditor meetings, scheme approvals, and disclosures.

B. The Foreign Exchange Management (Cross Border Merger) Regulations, 2018

These regulations, issued under the Foreign Exchange Management Act, 1999 (FEMA), govern the financial and exchange-related aspects of cross-border mergers. They classify mergers as:

- **Inbound Mergers:** Governed by Indian laws and the FEMA regulations, requiring all transactions involving foreign exchange to comply with applicable RBI guidelines.¹²⁵³
- **Outbound Mergers:** More stringent, with restrictions on the transfer of Indian assets or liabilities to the resulting foreign entity unless the foreign

jurisdiction is included in India's list of permissible countries.¹²⁵⁴

Important provisions include:

- a. Reporting requirements to the RBI within 30 days of the merger.
- b. Adherence to valuation norms specified under FEMA to ensure fair pricing and avoid transfer pricing abuses.
- c. Restrictions on outbound mergers involving jurisdictions considered tax havens or non-compliant with anti-money laundering and terrorism financing standards

C. Role of Regulatory Authorities

In the context of cross-border mergers in India, regulatory authorities play distinct and crucial roles to ensure that such transactions are conducted smoothly and in accordance with established legal and economic frameworks.

1. The **Reserve Bank of India (RBI)** holds a central position in the oversight of cross-border mergers, primarily by regulating all foreign exchange transactions involved in these deals. Its responsibilities include ensuring that mergers comply with the Foreign Exchange Management Act (FEMA) and associated regulations.¹²⁵⁵ When an Indian company seeks to merge with a foreign entity, or vice versa, prior approval from the RBI is generally required, especially for outbound mergers where funds are remitted abroad. The RBI's involvement is designed to maintain financial stability and transparency in international transactions. Recent amendments have further streamlined the approval process, with certain mergers now benefiting from a deemed approval

¹²⁵³ Foreign Exchange Management (Cross-Border Merger) Regulations, 2018, PwC INDIA, (March 26, 2018), https://www.pwc.in/assets/pdfs/news-alert/2018/pwc_news_alert_26_march_2018_fema_cross_border_merger.pdf (Last Accessed Jan. 07, 2025)

¹²⁵⁴ *Id.*

¹²⁵⁵ Archana Rao, *Cross-Border M&A in India: 2024 Market Developments and Regulatory Changes*, INDIA BRIEFING (2024), <https://www.india-briefing.com/news/cross-border-ma-in-india-2024-market-and-regulatory-updates-34873.html/> (Last Accessed Jan 08, 2025)

mechanism if they fully comply with the prescribed regulations, thereby reducing procedural delays and regulatory burdens.¹²⁵⁶

2. Another key player in the regulatory landscape is the **Competition Commission of India** (CCI). The CCI is tasked with safeguarding market competition and preventing the formation of monopolies or anti-competitive practices resulting from mergers and acquisitions. Any merger that crosses specified financial thresholds must be reviewed and cleared by the CCI before proceeding.¹²⁵⁷ The Commission evaluates a range of factors, including the combined market share of the merging entities, the potential impact on small businesses and consumers, and the likelihood of monopolistic behavior. High-profile transactions, such as the Walmart-Flipkart merger, have undergone rigorous scrutiny by the CCI to ensure that market competition remains fair and that consumer interests are not compromised.¹²⁵⁸

3. For mergers involving publicly listed companies, the **Securities and Exchange Board of India** (SEBI) serves as the primary regulator. SEBI enforces strict disclosure requirements and mandates adherence to the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.¹²⁵⁹ These regulations are designed to ensure transparency throughout the merger process and to protect the interests of minority shareholders. SEBI also requires that all relevant information regarding the merger be promptly disclosed to the stock exchanges where the companies

are listed, further promoting transparency and market integrity.¹²⁶⁰

Together, these regulatory bodies form a comprehensive framework that governs cross-border mergers in India. Their coordinated oversight ensures that such transactions are executed within the bounds of the law, promote fair competition, and protect the interests of all stakeholders involved.¹²⁶¹

D. Taxation Framework

India's tax regime is structured to both secure government revenue and encourage investment, particularly in the context of cross-border mergers. The Income Tax Act, 1961, lays out specific provisions to facilitate mergers while ensuring tax compliance.

One of the key features of the Indian tax framework is the allowance for tax-neutral amalgamations. This means that if the merger meets certain criteria—such as the *ongoing continuity of shareholding and the preservation of business operations after the merger*—the transaction may not attract immediate tax liability.¹²⁶² These provisions are intended to make domestic and inbound mergers more attractive by removing potential tax barriers, thereby fostering a more conducive environment for corporate restructuring and consolidation.

However, the situation becomes more complex in the case of outbound mergers, where an Indian company merges into a foreign entity. In such scenarios, the transfer of Indian assets to an overseas company can give rise to capital gains tax liabilities. The tax implications depend on the specific circumstances of the transaction, and relief may be available if a bilateral tax treaty between India and the foreign jurisdiction provides for such exemptions. These treaties are designed to

¹²⁵⁶ Notification No. FEMA.389/2018-RB, RESERVE BANK OF INDIA, <https://www.rbi.org.in/scripts/NotificationUser.aspx?Id=11235&Mode=0> (Last Accessed Jan. 08, 2025)

¹²⁵⁷ The Competition Act, 2002, §5, No. 12, Acts of Parliament, 2003 (India) [For brevity "Competition Act"]

¹²⁵⁸ *Supra*, at n. 13

¹²⁵⁹ *Id.*

¹²⁶⁰ *Id.*

¹²⁶¹ Sidharth Pathak et. al., *Role of SEBI: Cross Border Merger, Takeover Code, 2*, IND. J. INTEGRATED RESEARCH L. (2022), <https://ijlr.com/wp-content/uploads/2022/03/ROLE-OF-SEBI-CROSS-BORDER-MERGER-TAKEOVER-CODE.pdf> (Last Accessed Jan. 08, 2025)

¹²⁶² The Income Tax Act, 1961, §2(1)(b), No. 43, Acts of Parliament, 1961 (India) [For brevity "Income Tax Act"]

prevent double taxation and can significantly influence the overall tax burden of cross-border mergers.

Additionally, India offers targeted tax incentives to further attract inbound investment. Companies operating in special economic zones (SEZs), for example, benefit from various tax exemptions and concessions on specified transactions. These incentives are a strategic tool to draw foreign investors and multinational corporations, making India a more appealing destination for cross-border mergers and acquisitions. Through this balanced approach, the Indian taxation framework seeks to promote economic growth while safeguarding fiscal interests.¹²⁶³

“E. Procedural and Compliance Requirements

The process of executing a cross-border merger in India is governed by a series of detailed procedural and compliance requirements designed to ensure transparency, fairness, and legal certainty. The first major step involves preparing and submitting the proposed scheme of merger to the National Company Law Tribunal (NCLT). The NCLT is responsible for scrutinizing the scheme to confirm that it aligns with statutory requirements and serves the interests of all stakeholders involved.

A crucial aspect of the merger process is *the independent valuation of the assets and liabilities of the entities involved*. This valuation must be conducted by a registered valuer, whose role is to provide an objective assessment and ensure that the terms of the merger are fair to all parties, including shareholders and creditors.

Stakeholder engagement is another key component of the compliance framework. Once the scheme and valuation are prepared, public notices must be issued to inform interested parties about the proposed merger.

Additionally, meetings are convened for shareholders and creditors, where their approval is sought. These steps are vital for maintaining transparency and securing the consensus necessary for the merger to proceed.

In situations where the merging company is facing financial distress or is subject to ongoing insolvency proceedings, compliance with the Insolvency and Bankruptcy Code, 2016, becomes mandatory. This ensures that the rights of creditors are protected and that the merger process does not undermine the integrity of insolvency resolutions. Collectively, these procedural safeguards help create a robust and reliable framework for cross-border mergers in India.

F. Sector-Specific Regulations

Certain sectors in India, such as banking, insurance, and telecommunications, are subject to additional regulatory scrutiny when it comes to cross-border mergers, reflecting the need to safeguard industry stability and consumer interests. In the banking and financial services sector, cross-border mergers are governed by both the RBI guidelines and the Banking Regulation Act, 1949. Any merger involving a banking entity must secure explicit approval from the RBI, which closely examines the transaction to ensure compliance with prudential norms and the broader regulatory framework. This extra layer of oversight is intended to maintain the integrity of the financial system and protect depositors.¹²⁶⁴

The insurance industry is regulated by the **Insurance Regulatory and Development Authority of India (IRDAI)**. The IRDAI imposes specific restrictions on foreign ownership and requires that any cross-border merger involving an insurance company complies with sectoral caps and licensing requirements. This ensures that control and management of insurance

¹²⁶³ Girish Vanvari et. al., *Taxation of Cross-Border Mergers and Acquisitions India*, KPMG IN INDIA, (2017), <https://assets.kpmg.com/content/dam/kpmg/xx/pdf/2017/01/mergers-and-acquisitions-country-report-india.pdf> (Last Accessed Jan. 08, 2025)

¹²⁶⁴ King Stubb & Kasiva, *Legal Aspects of Cross-Border Mergers and Acquisitions (M&As) in India*, KING STUBB & KASIVA (2024), <https://ksandk.com/mergers-acquisition/legal-cross-mergers-and-acquisitions/> (Last Accessed Jan. 09 2025)

businesses remain within the bounds set by Indian regulations, thereby protecting policyholders and maintaining market stability.

Telecommunications is another sector where cross-border mergers face heightened regulatory requirements. Any such transaction must adhere to the licensing conditions set by the **Department of Telecommunications** (DoT). The DoT reviews mergers to ensure continued compliance with foreign investment limits, security protocols, and operational guidelines that are critical to the sector's functioning.

These sector-specific regulations operate alongside the general legal framework for cross-border mergers, such as the Companies Act, 2013, and the Foreign Exchange Management Act (FEMA). As a result, companies operating in these regulated industries must navigate a more complex approval process, which involves not only the general corporate and foreign exchange authorities but also the relevant sectoral regulators. This comprehensive approach is designed to balance the goals of encouraging international investment and protecting the interests of the Indian economy and its consumers

G. Recent Reforms and Trends

India has undertaken several reforms to facilitate cross-border mergers:

1. Streamlining the approval process under NCLT to reduce delays.¹²⁶⁵
2. Liberalising FDI policies in sectors such as defence, retail, and telecommunications.¹²⁶⁶
3. Introducing electronic filing systems for regulatory submissions,

enhancing transparency and efficiency.¹²⁶⁷

These reforms have significantly improved India's ranking in the World Bank's Ease of Doing Business index, making it a more attractive destination for cross-border mergers.

V. The Regulatory Landscape for Cross-Border Mergers in the United States

The United States boasts one of the most complex and nuanced regulatory frameworks for cross-border mergers, reflecting its federal structure and economic prominence. The system comprises federal laws, state-specific corporate regulations, and the oversight of multiple agencies. These layers collectively govern the procedural, antitrust, tax, and securities aspects of cross-border mergers.

A. Federal and State Dual Governance Structure

In the United States, corporations are primarily regulated at the state level, with additional oversight by federal authorities for transactions involving interstate commerce or national economic implications. This dual governance structure makes U.S. regulations distinct and complex:

1. **State Laws:** The incorporation of companies and governance of corporate actions, including mergers, are largely governed by state-specific laws. For example, Delaware's General Corporation Law (DGCL) is widely used due to its business-friendly provisions, such as expedited dispute resolution and flexible corporate governance standards.
2. **Federal Laws:** Federal oversight focuses on antitrust, securities regulation, and taxation. Federal agencies ensure that mergers comply with national economic policies and do not harm market competition.¹²⁶⁸

¹²⁶⁵ Archana Rao, *Cross-Border Mergers in India: 2024 Market Developments and Regulatory Changes*, INDIA BRIEFING, (Oct. 21, 2024), <https://www.india-briefing.com/news/cross-border-mergers-in-india-2024-market-and-regulatory-updates?text=Recent%20trends%20in%20M%26A%20activity%20opportunities%2C%20and%20spread%20R%26D%20costs>. (Last Accessed Jan. 09, 2025)

¹²⁶⁶ *Id.*

¹²⁶⁷ *Id.*

¹²⁶⁸ Klaus J. Hopt et. al., *The Structure of the Board of Directors*, HARVARD L. S. FORUM, (Apr. 12, 2021), <https://corpgov.law.harvard.edu/2021/04/12/the->

B. Antitrust Oversight and Competition Law

Antitrust regulations form the backbone of merger reviews in the U.S., aiming to prevent market dominance and protect consumer welfare. The **Sherman Antitrust Act (1890)** prohibits mergers that stifle competition or create monopolies, particularly in sectors like technology and healthcare. For instance, the DOJ’s 2023 challenge to the Microsoft-Activision Blizzard merger highlighted concerns about reduced competition in the gaming industry.¹²⁶⁹

The **Clayton Act (1914)** specifically targets mergers that could “substantially lessen competition,” with Section 7 serving as the primary tool for blocking anti-competitive transactions. Complementing this, the **Hart-Scott-Rodino Antitrust Improvements Act** (HSR Act, 1976) mandates pre-merger notifications for deals exceeding \$111.4 million (2025 thresholds),¹²⁷⁰ triggering a 30-day review period. Recent updates to the FTC-DOJ Merger Guidelines (2023) have expanded scrutiny to include vertical mergers and industries undergoing consolidation, reflecting a more aggressive stance against perceived market distortions.¹²⁷¹

C. Role of Regulatory Agencies

Three federal agencies play pivotal roles in merger oversight:

1. Federal Trade Commission (FTC):

- Reviews proposed mergers to ensure they do not harm competition or consumer interests.
- Often focuses on technology, healthcare, and retail sectors where market concentration poses significant risks.

2. Department of Justice (DOJ):

- Primarily responsible for prosecuting antitrust violations under the Sherman and Clayton Acts.
- Works closely with the FTC to scrutinise mergers and acquisitions for competitive harm.

3. Securities and Exchange Commission (SEC):

- Regulates mergers involving publicly traded companies to ensure compliance with the Securities Act of 1933 and the Securities Exchange Act of 1934.
- Focuses on transparency, disclosure of financial information, and protection of minority shareholders.

D. Tax Implications

Taxation is a critical consideration in structuring cross-border mergers in the U.S., with implications under both federal and state laws:

1. Federal Taxation:

- Governed by the Internal Revenue Code (IRC), particularly Sections 368 and 367, which provide tax-neutrality rules for certain types of corporate reorganisations.¹²⁷²
- Cross-border mergers often involve careful structuring to avoid triggering capital gains tax or double taxation.

2. State Taxation:

- States may impose additional taxes on transactions, including transfer taxes, franchise taxes, or specific levies based on the type of assets being transferred.¹²⁷³

3. International Tax Considerations:

[structure-of-the-board-of-directors-boards-and-governance-strategies-in-the-us-the-uk-and-germany/](#) (Last Accessed Jan. 09, 2025)

¹²⁶⁹ Filing the Hart-Scott-Rodino Antitrust Act, THOMSON REUTERS (May 31, 2024), <https://legal.thomsonreuters.com/en/insights/articles/navigating-the-hart-scott-rodino-act> (Last Accessed Jan. 09, 2025)

¹²⁷⁰ *Id.*

¹²⁷¹ D. Melamed, *Antitrust Enforcement in a Global Economy*, FORDHAM CORPORATE. L. INSTITUTE (Oct. 1998), https://www.ftc.gov/system/files/attachments/key-speeches-presentations/tritell_intaspectsmergereview.pdf (Last Accessed Jan. 09, 2025)

¹²⁷² *Taxation through Federal and State System*, PWC UNITED STATES, (Aug. 13, 2024), <https://taxsummaries.pwc.com/united-states/individual/taxes-on-personal-income> (Last Accessed Jan. 10, 2025)

¹²⁷³ *Id.*

- The U.S. adheres to global tax treaties that mitigate double taxation and provide clarity on tax jurisdiction for cross-border transactions.
- The Base Erosion and Anti-Abuse Tax (BEAT), introduced as part of the Tax Cuts and Jobs Act of 2017, affects foreign firms operating in the U.S. by imposing minimum taxes on cross-border payments to related entities.

E. Securities Regulation

The U.S. securities regulatory framework for cross-border mergers prioritizes transparency, investor protection, and market integrity through stringent disclosure and compliance mandates. The Securities and Exchange Commission (SEC) enforces these rules, which apply to transactions involving publicly traded companies.

Under the **Securities Act of 1933**, companies must register securities issued during a merger by filing a detailed prospectus. This document outlines the transaction's terms, risks, and financial implications, ensuring shareholders and regulators can assess its fairness. For cross-border deals involving stock consideration, the SEC often requires Form S-4 or Form F-4 filings, which consolidate merger-related disclosures with financial statements and pro forma data.

The **Securities Exchange Act of 1934** governs ongoing reporting and proxy solicitation. Mergers requiring shareholder approval must adhere to Regulation 14A, which mandates the distribution of proxy statements containing comprehensive details about the transaction.¹²⁷⁴ These statements undergo SEC review to verify accuracy, and any revisions requested by regulators can delay timelines. Hostile takeovers face additional scrutiny under the **Williams Act**, which amended the Exchange Act to require prompt disclosure of tender offers and material

ownership changes. For example, bidders must disclose their intentions within 10 days of acquiring a 5% stake, preventing covert accumulation of shares.¹²⁷⁵

Proxy rules also play a critical role in cross-border mergers. Target companies must convene shareholder meetings and secure majority approval, often through mailed proxy cards that outline voting options. In contested transactions, such as Elon Musk's bid for Twitter, these rules ensure minority shareholders receive equal access to information and voting rights. Recent SEC guidance has expanded disclosure requirements to include environmental, social, and governance (ESG) risks, reflecting evolving investor priorities in cross-border deals.

For international transactions, the SEC's **Cross-Border Rules** provide exemptions when U.S. shareholders own less than 10% of the target. This simplifies compliance with foreign regulations while maintaining safeguards against market abuse. However, deals involving U.S. public companies remain subject to anti-fraud provisions under Rule 10b-5, which penalize misleading statements or omissions in merger communications.

This regulatory ecosystem balances investor protection with market efficiency, requiring meticulous coordination between legal advisors, auditors, and regulatory bodies to navigate compliance hurdles.

F. Procedural Steps for Cross-Border Mergers

The procedural landscape in the U.S. is shaped by federal and state requirements:

1. **Pre-Merger Notification:** Filing under the HSR Act for transactions exceeding the threshold value.
2. **Regulatory Review:** The FTC or DOJ conducts a competitive analysis to identify potential antitrust concerns.
3. **Shareholder Approvals:** Transactions require approval by

¹²⁷⁴ *Investment Company Mergers*, U.S. SECURITIES AND EXCHANGE COMMISSION, (July 18, 2002), <https://www.sec.gov/rules-regulations/2002/07/investment-company-mergers> (Last Accessed Jan. 10, 2025)

¹²⁷⁵ *Id.*

shareholders of the merging entities, often through a special resolution.

4. **State Approvals:** Compliance with state-specific merger laws, particularly in Delaware, which handles a significant volume of corporate transactions.

G. Sector-Specific Regulations

Certain industries in the U.S. are subject to additional regulatory oversight:

1. **Banking:** Governed by the Federal Reserve and the Office of the Comptroller of the Currency (OCC), requiring approval for mergers involving financial institutions.

2. **Telecommunications:** Overseen by the Federal Communications Commission (FCC), which evaluates mergers for compliance with communication laws and public interest standards.¹²⁷⁶

3. **Healthcare:** Heavily regulated by the DOJ and FTC due to concerns about market concentration and consumer impact.¹²⁷⁷

VI. Analysing Recent CBMAs Trends

High-profile mergers and acquisitions (M&As) between Indian and U.S. firms serve as illustrative case studies of cross-border corporate strategies. These transactions highlight the motivations, outcomes, and challenges faced by firms operating across these jurisdictions. This section of the paper will focus on analysing select few top deals, spanning various industries, which reflects the evolving dynamics of cross-border M&As.

A. Tata Motors and Jaguar Land Rover (2008)¹²⁷⁸

¹²⁷⁶ *Antitrust Reform and Big Tech Firms*, CONGRESSIONAL RESEARCH SERVICE, (NOV. 21, 2023) <https://crsreports.congress.gov/product/pdf/R/R46875> (Last Accessed Jan. 10, 2025)

¹²⁷⁷ *Id.*

¹²⁷⁸ Debasis Ray, *Tata Motors Completes Acquisition of Jaguar Land Rover*, MEDIA CENTRE- JAGUAR LAND ROVER (June 2, 2008), [Tata Motors Completes Acquisition of Jaguar Land Rover | JLR Media Newsroom](https://www.jlr.com/press-releases/tata-motors-completes-acquisition-of-jaguar-land-rover) (Last Accessed Jan. 10 2025)

Tata Motors' acquisition of Jaguar and Land Rover (JLR) from Ford Motors for \$2.3 billion remains a landmark deal that epitomises the ambitions of Indian firms on the global stage. At the time, JLR was struggling with declining sales and high operating costs, making it an unviable asset for Ford. For Tata Motors, however, the acquisition represented an opportunity to diversify its offerings and enter the premium automobile segment, a market entirely untapped by Indian manufacturers. By acquiring JLR, Tata gained access to advanced automotive technology, a global distribution network, and iconic brands with significant heritage value. Despite facing immediate financial strain due to the global recession and a downturn in luxury car sales, Tata successfully turned JLR around within a few years. This success was achieved by leveraging JLR's technological expertise to enhance product offerings and expanding its reach into emerging markets like China. Cultural and operational integration posed challenges initially, but Tata's decentralised management approach allowed JLR to operate autonomously, fostering innovation and agility. This acquisition not only transformed Tata Motors into a global automotive powerhouse but also demonstrated the ability of Indian firms to revitalise struggling Western brands through strategic vision and effective leadership.

B. Walmart and Flipkart (2018)¹²⁷⁹

Walmart's \$16 billion acquisition of a 77% stake in Flipkart marked the largest e-commerce deal in history and showcased India's significance as a burgeoning digital marketplace. For Walmart, this acquisition was a strategic countermeasure to Amazon's dominance in global e-commerce and an entry point into India's rapidly growing online retail sector. Flipkart, a leader in India's e-commerce market, offered Walmart access to an extensive customer base, robust logistics infrastructure, and invaluable local expertise. This transaction was a high-stakes gamble,

¹²⁷⁹ Beena Saraswathy, *The Flipkart-Walmart Deal*, INSTITUTE FOR STUDIES IN IND. DEV. (Aug. 08, 2025) <https://isid.org/wp-content/uploads/2022/08/DN1807.pdf> (Last Accessed Jan. 10, 2025)

given India's complex FDI regulations, which prohibit direct foreign ownership in multi-brand retail. Walmart navigated these challenges by allowing Flipkart to operate as an independent entity while providing the necessary financial resources for growth. However, the deal faced scrutiny from the Competition Commission of India (CCI), which raised concerns about its impact on market competition and small-scale retailers. Despite these challenges, Walmart's acquisition strengthened Flipkart's ability to compete with Amazon India and expand its market share. The deal not only positioned Walmart as a major player in India's e-commerce landscape but also highlighted the strategic value of aligning with local market leaders in emerging economies.

C. Sun Pharmaceuticals and Ranbaxy Laboratories (2014)¹²⁸⁰

The \$4 billion acquisition of Ranbaxy Laboratories by Sun Pharmaceuticals created India's largest pharmaceutical company and the world's fifth-largest specialty generics manufacturer. This merger was strategically driven by Sun Pharma's goal to expand its global footprint, strengthen its presence in the U.S. market, and diversify its product portfolio. Ranbaxy's extensive global operations and FDA-approved facilities offered significant strategic value. However, the acquisition came with substantial risks, as Ranbaxy was embroiled in regulatory issues with the U.S. Food and Drug Administration (FDA) over quality control violations. These compliance challenges posed reputational and operational risks for Sun Pharma, making the integration process particularly challenging. Despite initial setbacks, including the cost of resolving regulatory issues and streamlining operations, Sun Pharma successfully leveraged Ranbaxy's assets to enhance its market presence and revenue streams. This deal highlights the complexities of acquiring a distressed asset, where thorough

due diligence and a robust post-merger strategy are critical for achieving long-term success.

D. Vodafone and Idea (2020)¹²⁸¹

"In 2020, one of the most noteworthy mergers in the Indian telecommunications sector was the union of Vodafone and Idea. This significant deal brought together two companies, with Vodafone being a well-established British telecom entity, and Idea an Indian company. Both companies found themselves grappling with declining market shares and concluded that merging was a strategic move to ensure their survival. Instead of facing potential extinction on their own, they sought strength in unity. At the time this merger took place, Airtel was the dominant player, holding the largest market share in the industry. The landscape of the telecom sector had been dramatically altered with the advent of Jio. Jio's entry into the market had an unprecedented impact, swiftly capturing a substantial share of the market and consequently leading to a decline in the market shares of both Vodafone and Idea. This new competitor's presence proved to be significantly disruptive for other established players within the telecom sector. Despite the upheaval, Airtel managed to retain its market share and maintained its stronghold in the industry. However, Vodafone and Idea were not as fortunate. The merger allowed Vodafone to sustain its presence within the Indian market, which might have otherwise been jeopardized. Idea, on the other hand, was in a more precarious position compared to Vodafone, struggling more intensely with the competitive pressures. Both Vodafone and Idea approached the merger with due diligence, adhering strictly to the legal requirements of both the United Kingdom and India. This careful compliance ensured that all regulatory aspects were managed, facilitating a smoother merger process. Through this strategic alliance, Vodafone reinforced its foothold in the Indian

¹²⁸⁰ Arpita Mehrotra et. al., *Sun Pharma acquires Ranbaxy: The Post-merger Blues*.2016 ICMC, https://www.researchgate.net/publication/311544172_Sun_Pharma_acquires_Ranbaxy_The_Postmerger_Blues (Last Accessed Jan. 10, 2025)

¹²⁸¹ Chhavi Mehta et. al., *The Curious Case of Vodafone Idea Merger: Is It a Saga of Turbulence or a Move Towards Potence?* SAGE J., 49(1), 67-78. <https://doi.org/10.1177/02560909241236548> (Last Accessed Jan. 10, 2025)

telecommunications landscape, while Idea benefited from the association with a more globally experienced partner.”

Conclusion

Cross-border mergers and acquisitions between India and the United States reflect the dynamic interplay of globalisation, regulatory environments, and corporate ambitions. These transactions serve as powerful tools for firms to expand into new markets, access advanced technologies, and diversify risks. India, with its growing consumer base and cost-efficient resources, has become an attractive destination for U.S. companies, while Indian firms seek U.S. acquisitions to strengthen their global footprint and leverage technological advancements. The analysis of landmark deals such as Tata Motors’ acquisition of Jaguar Land Rover, Walmart’s entry into India through Flipkart, Sun Pharmaceuticals’ purchase of Ranbaxy, and the Vodafone-Idea merger highlights the diverse motivations and outcomes of cross-border M&As. While these deals reflect the potential for transformative growth, they also reveal the challenges posed by regulatory complexities, cultural differences, and market disruptions. For instance, while the Tata-JLR and Walmart-Flipkart transactions showcased strategic alignment and success, the Vodafone-Idea merger faced stiff competition from new entrants like Jio, and Microsoft’s acquisition of Nokia exemplified the risks of inadequate market foresight.

This study highlights the importance of planning, robust due diligence, and effective post-merger integration in ensuring the success of cross-border M&As. Policymakers must also strike a balance between fostering a conducive regulatory environment and safeguarding domestic economic interests. As global economic integration deepens, cross-border mergers will continue to shape the future of business, offering immense opportunities and challenges for corporations worldwide.

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