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Mergers & Acquisitions

LECTURE 2: REGULATORY ENVIRONMENT

CASE STUDY: CROSS-BORDER ACQUISITION

Understanding Federal Securities Laws

- Securities Act of 1933 - governing **Primary Market**
 - Protection of Investors (disclosure, registration)
- Securities Act of 1934 - governing Secondary Market
 - Protection of Investors (trading practices, manipulation, Inside Trading)
 - On-going reporting (10k, 10q, 8k)
 - Proxy Solicitations

Understanding Federal Securities Laws

- The Williams Act: Regulation of Tender Offers (1968) – Regulation TO
 - Regulation 13(D) and 13(G)
 - Regulation 14 D) – Acquisition and tender offer rules



Understanding Federal Securities Laws

- The Sarbanes-Oxley Act of 2002 (“SOX”)
 - Financial Disclosure, auditing practices, corporate governance
 - Responsibility

ENRON CASE:

Enron scandal, series of events that resulted in the bankruptcy of the U.S. energy, commodities, and services company Enron

- Mark-to-Market accounting
- Transfer trouble assets to Special purpose entities



Understanding Federal Securities Laws

- Fair Disclosure (Regulation FD)
- Manipulation

ELON MUSK/TESLA CASE:

Social Media announcement

- Taking Tesla private at \$420 per share



Understanding Antitrust Legislation

➤ The Sherman Act (1890)

- Prohibits new business combination resulting in monopolies (Primary Market)
- Existing firms growing to a dominance position

➤ The Clayton Act (1914)

- Price discrimination
- Tying of Contracts
- Prohibits one company from buying the stock of another company if their combination results to reduced competition.

Understanding Antitrust Legislation

➤ The Hart-Scott-Rodino Act (1976)

- Acquisitions involving companies of specific size cannot be completed until certain information is supplied to federal government and specified waiting period has elapsed.
 - Based on Size of transaction (Assets)
 - Based on Size of parties' test (Sales)
 - Based on Size of the acquisition
 - Waiting Period (30 days and 15 days for cash tender)

Understanding Antitrust Legislation

HORIZONTAL MERGERS

Market Share

Testing HH Index Formula

i.e. – 5 firms:

30%, 25%, 20%, 15%, 10%

$(30^2 + 25^2 + \dots) = 2250$

70%, 10%, 5%..

$(70^2 + 10^2 + \dots) = 5075$

Based on 10,000 (100%)

VERTICAL MERGERS

Supply Chain Control

M&A USE CASE:

- DRIVERS
- NATURAL PROGRESSION
- BENEFITS
- CHALLENGES



Drivers of Cross Border M&A

Globalization and openness of financial markets

Geographical diversification

Deregulation of markets

Company efficiency

Hedging on Trade and Tariffs

Increase production

Technology and Innovation boom across cultures

Natural progression for a growth company

- 1 • Companies started a domestic production
- 2 • Companies started to export to the foreign markets
- 3 • Companies established a subsidiary in overseas market
- 4 • Companies started strategic alliances – customer acquisition
- 5 • Companies started a Greenfield project – build manufacturing facility
- 6 • Companies started to acquire other companies in foreign markets

Benefits of cross boarder M&A

Acceleration of business

Accessing capital

Synergies

Technology

Tax planning

Mitigation of trade and foreign exchange costs

Challenges of cross boarder M&A

Legal – Stricter laws than local mergers/acquisitions

Accounting

Strategic

Technology

Integration

Human Resources

Cultural



Challenges of cross boarder M&A

Legal Issues

- Acquirer need to understand all the legal provisions of the foreign country
- After understanding the local laws, the acquirer many find that these provisions are incompatible, resulting to lengthy process and company policy changes
- Ex-pat and HR laws / Visa issues
- Labor laws
- Sarbanes & Oxley – Laws on publicly traded companies

Challenges of cross boarder M&A

Accounting Issues

- Merging entities have different internal controls
- Absence of uniformity of internal controls could lead to mismanagement
- Accounting Standards (International Vs US GAAP)
- Merger accounting – adjustments to the Balance Sheet could result to overvalue or undervalue

Challenges of cross boarder M&A

Technological Differences

- Integration challenges due to different technology platforms

Strategic Issues

- Achieving synergies can be challenging including
 - cost savings
 - plant rationalization
 - Labor issues
 - IT integration
 - marketing integration
 - management changes

Challenges of cross boarder M&A

Cultural Differences

- Corporate Governance
- Job Security
- Regular and external environments
- Customer Expectations
- Operating styles due to different backgrounds
- Country culture and different values

Challenges of cross boarder M&A

Human Resources Issues

- Motivation & Morale
- Layoffs and voluntary leave
- Employee stress due to uncertainty
- Career paths of each employee could be altered
- Organizational changes