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CHALLENGES AND ITS MEASURES IN CORPORATE TAKEOVER AND ACQUISITIONS

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ABSTRACT

This review attempts to investigate the obstacles associated with corporate takeover and acquisitions. With the increase in number of corporate takeover & acquisitions deals in India, the legal environment is increasingly becoming more and more refined. Corporate takeover & acquisitions forms a major part of the economic transactions that take place in the Indian economy. The study found that a business faces many problems during integration with another firm but the extent of these is dependent of the management styles, research undertaken by the business and the willingness of employees to compromise familiar business cultures for another. A number of issues can prove to be obstacles in the way of cross-border takeover including language barriers, employee and management relationships, currency differences etc.

KEYWORDS

corporate takeover & acquisition, challenges, business style, ERISA.

INTRODUCTION

Acquisitions or takeovers, includes a number of different transactions. These transactions can range from one firm merging with another firm to create a new firm to managers of a firm acquiring the firm from its stockholders and creating a private firm.

Some firms are not managed optimally and others often believe they can run them better than the current managers. Acquiring poorly managed firms and removing incumbent management, or at least changing existing management policy or practices, should make these firms more valuable, allowing the acquirer to claim the increase in value.

REASONS FOR FAILURE OF CORPORATE TAKEOVER AND ACQUISITIONS

- **Over payment**: This is very common cause of failure of acquisition & mergers. DePamphilis D.M. (2005) found that overpayment often has destroys consequences. Overpayment leads to expectation of higher profitability which is not possible. Excessive goodwill as a result of overpaying needs to be written off which reduces the profitability of the firm.
- **Integration issues**: Straub. (2007) studied that business cultures, work ethics, etc. needs to be flexible and adaptable. Inefficiencies or administrative problems are a very common occurrence in a merger which often nullifies the advantages of the mergers.
- **Faulty Strategic Planning and unskilled execution**: Faulty Strategic Planning and unskilled execution often leads to problems over expectation of strategic benefits is another area of concern surrounding mergers. These issues lead to failures of takeovers. However, many merging organizations do not have adequate or complete integration and implementation plans in place. Only one out of five companies that have acquired another has developed a clear and satisfactory implementation plan.
- **Corporate Culture differences**: Irene Rodgers. (1999). Business International states that poor communications and inability to manage cultural differences are the two main causes of failed mergers.
- **Loss of Customers**: All companies need to remember: it's the people who produce profits, represent the company, establish rapport with the customers, and, ultimately, are the ones that will make the combined company succeed."
- **Power Politics***:* Randall S. Schuler, Susan E. Jackson (2001) observed there is a tendency to assume that power disputes are more common in the case of acquisitions than mergers, there is no such thing as "a merger of equals". Further, it was clear that the distribution of power was not equally spread out. "We felt like we were marrying up, and it was clear that they thought they were marrying down."

The challenges associated with mergers and acquisitions in India which have been discussed below;

- **Regulatory Ambiguity**: Takeover laws and regulations are still developing and trying to catch up with the global takeover scenario. However because of these reasons the interpretation of these laws sometimes goes for a toss since there is ambiguity in understanding them.
  Several regulators interpreting the same concept differently increase confusion in the minds of foreign investors. This adversely affects the deal certainty which needs to be resolved if the Indian system wants to attract investments from foreign economies.
- **Legal Developments**: There have been consistently new legal developments such as the Competition Act, 2002, the restored SEBI Takeover Regulations in 2011 and also the notification of limited sections of the new Companies Act, 2013, has led to issues in India relating to their interpretations and effect on the deals valuations and process.
- **Shareholder Involvement**: Institutional investors in the minority position have become active in observing the investee companies. Proxy advisory companies are closely scrutinizing the related party transactions, appointment of several executives and their remuneration. There are cases where the approval of minority shareholders is required. The powers to the minority shareholders have been revamped, one of them includes to sue company against oppression and mismanagement.

These are some of the issues that pose a challenge towards the growth of corporate takeover and acquisitions in India which need considerate attention from the government to make our market attractive for foreign investment.

On a positive note Confederation of Indian Industry (CII), the Reserve Bank of India (RBI) and the Securities and Exchange Board of India (SEBI) – the three main regulators of the mergers and acquisition activities – have been striving hard to further liberalize the norms that have been one of the biggest contributors to the country's industrial expansion.
Businesses are likely to engage in a takeover or merger based on the belief that the company will be better off merged with another or in an agreed partnership enjoying benefits such as higher profits, improved reputation, larger customer base, and so on. In the process of instigating a takeover or merger, a business will have to consider the effect the move will have on the market in terms of competition and how this will be dealt with. In addition, to prevent a reluctance or opposition to the takeover, the businesses will have to take into account the shareholder's values and how they will be affected post- merger.
However, in every takeover or merger there is likely to be some other problems as stated below.

PROBLEMS IN TAKEOVER OR MERGER

Firstly, by initiating a takeover or merger, a business may find itself experiencing problems in the assessment of the performance of the targeted business. Before any agreements or decisions are made, a business should undertake a due diligence investigation of the target business. This ensures that any 'deal-killers' are identified and the acquiring business knows all the facts, figures and transactions of the business before going ahead with anything. However, a business must be cautious when conducting this investigation as too much due diligence could offend the business and cause it to walk away from the deal.
Due diligence also needs to be carefully conducted as it can be very time-consuming and there could be other suitors to the deal who may beat them to the acquisition of the company. In terms of evaluating the success of the merger, the performance of the merged businesses could then be compared with figures pre-takeover to assess whether it was necessary to pay substantially more than the value of the business and go ahead with the deal. Lastly, it could be suggested that a business should not go ahead with a business takeover if the full due diligence has not been carried out, despite who they are competing with. This could greatly affect a business in the long-term as stakeholders or other business owners could sue the company for negligence of due diligence if they are negatively affected by the deal afterwards.
Secondly, as a result of a merger or a takeover, a business could experience corporate clashes**.** This is where the acquiring business proves to be dominating than the acquired business and they do not share full equality.
This occurs because of a variance of corporate culture, this can be described as the collective 'way we do things' consisting of processes within the business, organizational structure, control systems and rituals and routines. This determines communication between staff, managers, stakeholders, customers and other businesses. Problems can occur due to resistance from a business towards the change of their culture. This may be because they do not support the decision to takeover or merge with another business or simply because they have an overall reluctance to change. The impact of clashes between individual cultures could include lowered productivity as a result a dwindling motivation of staff and a lack of synergies due to unwillingness to 'join together'.
An example of intercultural failure is that of DaimlerChrysler. Both sides in the partnership set out to show that cultural problems could be overcome in their acquisition. In the period leading up to the Daimler-Chrysler merger, both firms were performing quite well and there was widespread expectation that the take-over or acquisition would be successful. People in both organizations expected that their "merger of equals" would allow each unit to benefit from the other's strengths and capabilities. Stockholders in both companies overwhelmingly approved the merger and the stock prices and analyst predictions reflected this optimism.
Performance after the takeover, however, was entirely different, particularly with Chrysler. In the months it was found that the high rate of turnover among management at acquired firms was not related to poor prior performance, indicating that the turnover was not due to the underperforming management at the acquired firm. The business also admitted that renewed and deep cost-cutting efforts had to be undertaken to boost the group's operating results. This takeover proves that not all agreements are equal, for instance, problems occurred due to the differing ways of the German and American manufacturing and operation.
The study observed that the success of a merger or takeover greatly depends on the skill of the managers and whether they have the ability to manage an enlarged business and the scale of research they have undertaken prior to the deal. Also, it is important that businesses are able to combine their cultures in order to gain success and work cooperatively. If this is not possible, it may lead to a domination of one business over another, undermining the initial takeover altogether.
Two specific cases of 'corporate marriages' that failed have been analyzed in this research. In order to discuss in specificity, the cultural issues involved with cross-border takeover & acquisition, this research capitalizes on German and American working relationships. The first case is of Wal-Mart's acquisition of Wertkauf and Interspar while the second involves the merger between Daimler-Benz and Chrysler. Both the cases highlighted how cultural impediments have affected alliances that would have been without doubt very notable.
The price to pay for acquiring another business is also an issue in corporate takeover as the target companies often expect a payout that is exceeds the company's market value. This is a problem for the acquirer because business consultants make predictions for profitability nonetheless; business does not always align with the predictions. Apart from the owners of the business, corporate takeover and acquisitions also affect other stakeholders such as employees. Employees are often apprehensive of corporate takeover as regards how it affects their job security. Decisions of corporate takeover also affect senior management and force them to retire. The company may have to spend huge amounts as redundancy payments or early retirement benefits.

MEASURES TO MITIGATE THESE CHALLENGES

When negotiating a corporate takeover transaction, there are many issues that should be addressed up front (preferably at the letter of intent stage or as soon as possible after the execution of a letter of intent). The target company and the acquiring company should consider the following issues when contemplating a transaction.
Deal Structure: Three alternatives exist for structuring a transaction: (i) stock purchase, (ii) asset sale, and (iii) merger. The acquirer and target have competing legal interests and considerations within each alternative. It is important to recognize and address material issues when negotiating a specific deal structure. Certain primary considerations relating to deal structure are: (i) transferability of liability, (ii) third party contractual consent requirements, (iii) stockholder approval, and (iv) tax consequences.
Transferability of Liability: Unless contractually negotiated to the contrary, upon the consummation of a stock sale, the target's liabilities are transferred to the acquirer by operation of law. Similarly, the surviving entity in a takeover will assume by operation of law all liabilities of the other entity. However, in an asset sale, only those liabilities that are designated as assumed liabilities are assigned to the acquirer while the non-designated liabilities remain obligations of the target.
Third party consents: To the extent that the target's existing contracts have a prohibition against assignment, a pre-closing consent to assignment must be obtained. No such consent requirement exists for a stock purchase or merger unless the relevant contracts contain specific prohibitions against assignment upon a change of control or by operation of law, respectively.
Stockholder approval: The target's board of directors can grant approval of an asset sale at the corporate level without obtaining individual stockholder approval. However, all selling stockholders are required to grant approval pursuant to a stock sale. When unanimity is otherwise unachievable in the stock sale context, a merger can be employed as an alternative whereby the acquirer and target negotiate a mutually acceptable stockholder approval threshold sufficient to consummate the deal.
Tax consequences: A transaction can be taxable or tax-free depending upon structure. Asset sales and stock purchases have immediate tax consequences for both parties. However, certain mergers and/or reorganizations/recapitalizations can be structured such that at least a portion of the sale proceeds (in the form of acquirer's stock a/k/a "boot") can receive tax deferred treatment. (1) From an acquirer's perspective, an asset sale is most desirable because a "step up" in basis occurs such that the acquirer's tax basis in the assets is equal to the purchase price, which is usually the fair market value (fmv). This enables the acquirer to significantly depreciate the assets and improve profitability post-closing. A target would be liable for the corporate tax for an asset sale and its shareholders would also pay a tax on any subsequent dividends. (2) Upon a stock purchase, the selling shareholders would pay long term capital gains provided they owned the stock for at least a year. However, the acquirer would only obtain a cost basis in the stock purchased and not the assets, which would remain unchanged and cause an unfavorable result if the fmv is higher. (3) A third possibility would be to defer at least some of the tax liability via a merger/recapitalization whereby the boot

remains tax free until its eventual future sale. (4) Compromises are possible including, by way of example, an "h(10) election" whereby the parties consummate a stock purchase with all of the aforementioned results being the same except, for tax purposes, the deal is deemed an asset deal and the acquirer obtains the desired basis step-up in the assets.

Cash versus Equity: The method of payment for a transaction may be a decisive factor for both parties. Deal financing centers on the following:

Cash: Cash is the most liquid and least risky method from the target's perspective as there is no doubt as to the true market value of the transaction and it removes contingency payments (excluding the possibility of an earn out) all of which may effectively pre-empt rival bids better than equity. From the acquirer's perspective, it can be sourced from working capital/excess cash or untapped credit lines but doing so may decrease the acquirer's debt rating and/or affect its capital structure and/or control going forward.

Equity: This involves the payment of the acquiring company's equity, issued to the stockholders of the target, at a determined ratio relative to the target's value. The issuance of equity may improve the acquirer's debt rating thereby reducing future cost of debt financings. There are transaction costs and risks in terms of a stockholders meeting (potential rejection of the deal), registration (if the acquirer is public), brokerage fees, etc. That said, the issuance of equity will generally provide more flexible deal structures.

The ultimate payment method may be determinative of what value the acquirer places on itself (e.g., acquirer's tend to offer equity when they believe their equity is overvalued and cash when the equity is perceived as undervalued).

Working Capital Adjustments: Corporate takeover transactions typically include a working capital adjustment as a component of the purchase price. The acquirer wants to insure that it acquires a target with adequate working capital to meet the requirements of the business post-closing, including obligations to customers and trade creditors. The target wants to receive consideration for the asset infrastructure that enabled the business to operate and generate the profits that triggered the acquirer's desire to buy the business in the first place. An effective working capital adjustment protects the acquirer against the target initiating (i) accelerated collection of debt, or (ii) delayed purchase of inventory/selling inventory for cash or payment of creditors. The typical working capital adjustment includes the delta between the sum of cash, inventory, accounts receivable, and prepaid items minus accounts payable and accrued expenses. In terms of measuring the working capital, the definitive agreement will include a mechanism that compares the actual working capital at the closing against a target level, which target level is viewed as the normal level for the operation of the business based on a historical review of the target's operations over a defined period of time. Certain unusual or atypical factors, "one-offs", add-backs, and cyclical items will also be considered as part of the W/C calculation. The true-up resulting from the post-closing working capital adjustment will usually occur within a few months of the closing and, to the extent that disputes between the parties arise concerning the calculation, dispute procedures are set forth in the definitive agreement.

Escrows and Earn-Outs: The letter of intent should clearly indicate any contingency to the payment of the purchase price in a transaction, including any escrow and any earn-out. The purpose of an escrow is to provide recourse for an acquirer in the event there are breaches of the representations and warranties made by the target (or upon the occurrence of certain other events). Although escrows are standard in corporate takeover transactions, the terms of an escrow can vary significantly. Typical terms include an escrow dollar amount in the range of 10% to 20% of the overall consideration with an escrow period ranging from 12 to 24 months from the date of the closing. Earn-out provisions are less common and are most often used to bridge the gap on valuation that may exist between the target and the acquirer. Earn-out provisions are typically tied to the future performance of the business, with the target and/or its stockholders only receiving the additional consideration to the extent certain milestones are met. When drafting earn-out terms, it is important to have the milestones be as objective as possible. Typical milestones include future revenue and other financial metrics. From the target's perspective, the concern with earn-outs is that post-closing the target loses control over the company and decisions made by the acquirer post-closing can dramatically impact the ability to achieve the milestones that were established.

Representations and Warranties: The acquirer will expect the definitive agreement to include detailed representations and warranties by the target with respect to such matters as authority, capitalization, intellectual property, tax, financial statements, compliance with law, employment, ERISA (The Employee Retirement Income Security Act) and material contracts. It is critical for the target and target's counsel to review these representations carefully because breaches can quickly result in indemnification claims from the acquirer. The disclosure schedules (which describe exceptions to the representations) should be considered the target's "insurance policy" and should be as detailed as possible. Targets are typically uncomfortable with such a broad statement, but without such a representation an acquirer often will question whether the target is withholding certain information. Acquirers and targets also struggle with the appropriateness of knowledge qualifiers throughout the representations. The target typically tries to insert knowledge qualifiers in many of the material representations, but the acquirer will want these types of risk to lie with the target.

Target Indemnification: Target indemnification provisions are always highly negotiated in any corporate takeover transaction. One of the initial issues to be determined is what types of indemnification claims will be capped at the escrow amount. In some instances all claims may be capped at the escrow. It is common to have a few exceptions to this cap – any claims resulting from fraud and/or intentional misrepresentation usually go beyond the escrow and often instead are capped at the overall purchase price. In addition, breaches of "fundamental reps" (such as intellectual property or tax) may go beyond the escrow as well. Another business term related to indemnification to negotiate relates to whether there will be a "basket" for indemnification purposes. In order to avoid the nuisance of disputes over small amounts, there is typically a minimum claim amount which must be reached before which the acquirer may seek indemnification – which could include a true "deductible" in which the acquirer is not permitted to go back to the first dollar once the threshold is achieved.

Joint and Several Liabilities: Related to the concept of indemnification is the issue of joint and several liabilities. As most transactions involve multiple target stockholders, one of the primary issues to consider regarding indemnification, from the acquirer's perspective, is to what extent each of the target's stockholders will participate in any indemnification obligations post-closing (i.e., whether joint and several, or several but not joint, liability will be appropriate). Under joint liability each target stockholder is individually liable to the acquirer for 100% of the future potential damages. However, if the liability is several, each target stockholder pays only for that target stockholder's relative contribution to the damages. It goes without saying that the acquirer will almost always desire to make each target stockholder responsible for the full amount of any future potential claims. However, target stockholders will generally resist this approach but, even more so, where there are controlling stockholders and/or financial investors (both of which traditionally resist joint and several liability in every situation).

Closing Conditions: A section of the definitive agreement will include a list of closing conditions which must be met in order for the parties to be required to close the transaction. These are often negotiated at the time of the definitive agreement (although sometimes a detailed list will be included in the letter of intent). These conditions may include such items as appropriate board approval, the absence of any material adverse change in the target's business or financial conditions, the absence of litigation, the delivery of a legal opinion from target's counsel and requisite stockholder approval. One of the more heavily negotiated closing conditions is the stockholder voting threshold which must be achieved for approval of the transaction. Although the target's operative documents and state law may require a lower threshold, acquirers typically request a very high threshold of approval (90% - 100%) out of concern that stockholders who have not approved the transaction might exercise appraisal rights. The target should review its stockholder structure carefully before committing to such a high threshold (although from a target perspective, the more stockholders approve the transaction the better, but the target just does not want the acquirer to have the ability to walk away from the transaction).

Non-competes & Non-solicits: Within the context of a corporate takeover transaction, a covenant not to compete or solicit is a promise by the selling shareholder(s) of the target to not, for a certain post-closing time frame or after termination of employment with the target/acquirer, (i) engage in a defined business activity that is competitive with the target's/acquirer's, or (ii) attempt to lure away customers or employees of the target/acquirer. Enforceability of such restrictions requires that the restrictions be (A) reasonable in time and scope, and (B) supported by consideration. Because the M&A context involves the sale of a business and payment to the selling shareholders of typically a material amount of consideration, courts generally have deemed such consideration adequate for purposes of enforceability both in terms of scope (i.e., any material business competitive with that of the target/acquirer) and multiple years of duration.

In the following case study, we will discover how companies have tried to manage corporate takeover in a cross-cultural situation.

CASE STUDY 1

BRIEF OVERVIEW OF WAL-MART

Wal-Mart first opened in 1962 alongside Target and K-mart; however, neither has been quite as successful as Wal-Mart. The 40-year history of Wal-Mart has experienced sporadic growth in the industry including through acquisitions of whole companies as in the case of Woolco in Canada or, part acquisition of Walmex in Mexico with 31% share of the company.

The company has become one of the biggest privately owned companies in the world. Wal-Mart has grown by acquiring companies in countries where it plans to expand. Moreover, the company has sought world dominance by other cross-border takeover in countries within America as well as in Asia including Japan and China. Although not its entire cross border takeover has been successful, the company still seeks to expand in many more countries in the world. Wal-Mart opens shop in India in 2009 albeit under a different brand name.

As part of its cross-border growth strategy, Wal-Mart in the late 1990s decided to compete in Germany by acquiring two smaller retail chains Wertkauf and Interspar. The 'corporate marriage' did not work out well for Wal-Mart and it eventually had to sell off its German subsidiaries.

WAL-MART ACQUIRES WERTKAUF AND INTERSPAR

Wal-Mart's acquisition of Wertkauf and Interspar was a strategic alliance to penetrate the European retail industry. Wal-Mart that started in the United States already had chains of stores in Canada and parts of South America including Mexico, Brazil and Argentina. It is possible for culture to have a negative effect on business if two cultures do not properly integrate especially at the beginning of cross-border takeover.

Wal-Mart that acquired two retail chains in Germany, Wertkauf in 1997 and Interspar in 1998 failed to sustain business and was eventually forced to liquidate at a loss of $1b. The company had around 85 stores around Germany yet did not gain the expected foothold. The company having been successful in America was facing imminent problems in Europe. The management of Wal-Mart underestimated the importance of the integration process in influencing performance of cross-border takeover. Ignorance of important internationalization strategies and cross-cultural management marked the failure of Wal-Mart in Germany.

Many critiques have argued that two of the reasons for the failure of Wal-Mart in Europe were (i) the managers, super-imposed American management technique on the Germans without consideration of their cultural differences and (ii) the entry of Wal-Mart into Germany by 'acquisition' was flawed.

AMERICAN MANAGEMENT TECHNIQUE ON GERMANS

Cross-border takeover is usually frustrated when careful consideration is not given to cultural differences in management and operation style. When companies do not fully appreciate specific differences in conditions in other countries, a 'clash of cultures' is often the result.

Firstly, Wal-Mart appointed an American CEO in Germany who was not willing to learn German and showed plenty of ignorance of the framework of the German retail market. This reflected a lack of respect of the German culture and was offensive to the employees. Another CEO who failed to integrate Interspar into Wal-Mart then replaced him. This created many upheavals between the two cultures.

Secondly, the business culture that forbade an employee from dating influential colleagues was introduced in Germany. Hitherto, this was an accepted culture in German business. Ideally, the HR managers at Wal-Mart should have analyzed the cross-cultural business differences of the German target companies. In situations where there are extreme differences in business culture, top management needs to find a middle ground for compromise. In order to create a flawless fusion, HR managers ought to understand their cultures first before trying to understand the cultures of target acquisition.

FLAWED ENTRY BY ACQUISITION

Wal-Mart's acquisition of Interspar is still widely criticized, as the supermarket was the weakest among leading supermarket chains in Germany. The company spent huge amounts in renovation of the dilapidated branches around Germany yet returns made from sales were not impressive and did not match the expenses. When companies decide to acquire targets, it is important, that the company's strategic purpose is clear and that stakeholders benefit from the corporate takeover. The risk of uncertainty is reduced in M&A by the initial strategic analysis. With Wal-Mart's acquisition of Interspar, the strategic purpose was not quite clear as the company was struggling and did not seem to have any potential.

Perhaps Wal-Mart did not quite understand the German market before they decided to enter. The main strategy of Wal-Mart that had previously been successful in its other acquisitions was 'constantly lowering prices'. In the German market however, the consumers already had a number of cost-leaders to choose from like Lidl and Aldi, so the 'Wal-Mart Effect' was not particularly special.

Again the company flawed by attempting some pricing policies that the German government considered illegal. Wal-Mart tried a policy of refunding customers that found the same items bought at lower prices elsewhere. This was an infringement of some important German laws. The company also never established good relationship with the labour unions in Germany.

The next case study shows how a partnership can go wrong if one group tries to dominate the other. The growth strategy is merger, which means both companies are supposedly of equal size.

CASE STUDY 2

DAIMLER-CHRYSLER MERGER

The merger between German automaker Daimler-Benz and American automaker Chrysler was one of the biggest transnational mergers ever. In 1998, the deal was signed in London and the combined net worth of both companies was $132b. The CEOs of both companies admitted in their press conference that both companies relied on the merger for an opportunity to compete on a global scale. The aim of the Daimler-Chrysler merger was to take advantage of a growth opportunity and expand geographically. The plan was use to create a situation whereby both companies could share capacities, infrastructure and facilities. Ideally, mergers should create better business condition where both companies mutually benefit from each other.

However, one of the major obstacles that stood in the way of the Daimler-Chrysler merger was more of cultural differences between the Germans and the Americans. In this case, it was not a 'merger of equals' as researchers like Farkas-DiNardo et al claimed. The merger witnessed a superiority of the Germans ensuring that the American top management employees were either sacked or forced to retire in the span of only two years.

Prior to the merger between German based Daimler-Benz and US based Chrysler, the automobile industry had not witnessed a merger of such magnitude. Part of the problem of this particular merger was that the Daimler merger team went into the agreement with the aim of being superior to the Americans thus, creating a struggle for leadership. On the other hand, the American team strived for equality between both companies rather than dominance of only one company. There was clearly a misunderstanding between the management of both companies concerning the terms of engagement.

CONFLICTS WITHIN DAIMLER-CHRYSLER

The management of both companies was probably not very thorough in their research before lunging into the merger and this reflected in all the conflicts that the company experienced. The location for the company was a problem for both companies as none of them was willing to compromise. The head of Daimler claimed he could never move the company out of Germany rather he would welcome the idea of integrating Chrysler into Germany. In addition, the naming of the new company was a cause of disagreement as the Germans refused to compromise. The Americans suggested "Chrysler Daimler-Benz" but their German counterpart refused, explaining that the name "Daimler-Benz" had a long history and as such could not be subject to such change.

The Germans clearly dominated most of the aspects of the new company with the Americans constantly forced to make compromise. The method of decision-making within the organization was another source of conflict as both companies had different backgrounds. Within the Americans, mid-level managers were empowered to make certain decisions whereas with the Germans, they were not. Even the work habits of both cultures were clearly very different. The Americans are generally more informal favoring dress-down style to work and meetings while their German colleagues were always formal adhering strictly to the suit-and-tie dress code of the company.

Another important source of disagreement between the two companies was the method of financial reporting which differed considerably in both countries. The styles of reporting financial information in the US was on an efficient quarterly basis while the Germans on the other hand reported based on full-year reports. It was very evident that the differences between the two cultures were a huge obstacle in the way of what would have been undoubtedly, the biggest merger in the automobile industry.

To worsen the already bad working relationship between the Germans and the Americans, Jurgen Schrempp the CEO of Daimler-Benz had an autocratic style of leadership towards the dominance of the automobile world. He constantly overrode the decisions of his American co-chairman Bob Eaton.

It is important to note that culture will always play an important role in cross-border takeovers however; companies need to find a way to compromise on certain issues. From the case studies of Wal-Mart's flawed entry into Germany and Daimler-Benz's dominance of a supposed 'equal merger', one may conclude that both the Americans as well as the Germans have very strong cultural values and they never seem to be able to compromise when engaging in corporate takeover.

Human resource managers need to consider issues concerning culture when it comes to corporate takeover as people are hardly ready for acculturation in a culture conscious society. The culture shock that takes place within organization perhaps hits the employees that hardest as they experience first-hand the changes that have resulted from integrating a new culture.

CONCLUSION

The chances for success are hampered if the corporate cultures of the companies are very different. It's a mistake to assume that personnel issues are easily overcome. These aspects of a working environment may not seem significant, but if new management removes them, the result can be resentment and shrinking productivity.

The study concludes that companies often focus too intently on cutting costs following takeovers, while revenues, and ultimately, profits, suffer. Merging companies can focus on integration and cost-cutting so much that they neglect day-to-day business, thereby prompting nervous customers to flee. This loss of revenue momentum is one reason so many mergers fail to create value for shareholders. Further the study found some disadvantage of corporate takeover and acquisition like excess payment for goodwill during acquisition, reduced competition and choice for consumers in oligopoly markets, likelihood of job cuts, cultural integration/conflict with new management, hidden liabilities of target entity, the monetary cost to the company, lack of motivation for employees in the company being bought up etc. Finally, the study observed that most of the takeovers & acquisitions are found successful. Size and Global reach can be advantageous, and strong managers can often squeeze greater efficiency out of badly run rivals. Nevertheless, the promises made by deal makers demand the careful scrutiny of investors. The success of mergers depends on how realistic the deal makers are and how well they can integrate two companies while maintaining day-to-day operations.

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