ABSTRACT

American legal system is standing as a beacon of the world, which established the first Antitrust Law successfully. In terms of cross-border merger and acquisition (M&A) legislation, what beyond doubt is that America possesses the most advanced regime which is worth learning. The stark fact is that China still has a long way to go even though a legislative breakthrough has just been achieved by the enactment of the first Antimonopoly Law. By a comparative study of both US regime and China regime, the purpose of this paper is to figure out the achievements and shortcomings of China’s legislation on cross-border M&A. The first section of this paper introduces cross-border M&A in definition and classification. Section two is an overview of American legislations on cross-border M&A. Relevant laws and regulations will be embodied here based upon their characteristics and achievements. Section three focuses on the new achievements and shortcomings in China’s legislation on cross-border M&A, as a part of Antimonopoly Law of China. Besides, the most significant case after the enactment of Antimonopoly Law will be discussed and analyzed in this section. The final section draws the conclusion that likely improvements should be made and positive measures should be taken by Chinese authority as to effectively enforce Chinese Antimonopoly Law to regulate cross-border M&A activities.

Keywords: Cross-border M&A, Antimonopoly, China.

I. Introduction to Cross-border M&A

A. Definition

M&A stands for mergers and acquisitions, which are different separate definitions but usually are combined jointly as a term for the reason that they vary and intertwine in certain ways. When one company takes over another and early established itself as the new owner, the purchase is called an acquisition. Acquiring company controls the target
company by purchasing in equity or assets as to dominate the target company. But the target company still exists. Merger happens among two or more companies. Usually, these companies aim to integrate into one new legal entity to be stronger by the way that an advantageous company purchases the equity or assets of the other ones. These two definitions are overlapped and similar in theory and in practice, so they are usually used as one term.

Cross-border M&A is defined as a transaction in equity and/or assets that takes place between two entities belonging to different economies. The key test of whether a transaction is cross-border M&A is therefore whether it involves the transfer of ownership of equity or ownership of assets from one party to another based in another economy. The acquisition of the equity of an existing domestic enterprise by a foreign-invested enterprise is clearly cross-border M&A. Purchase of equity may be by purchase of share on a stock market or by private purchase, whether paid for in cash or in shares. Similarly, the acquisition of the assets of a domestic enterprise by a foreign-invested enterprise is cross-border M&A. Another instance of cross-border M&A is the buying-out of the domestic partner’s share of a joint venture to produce a wholly-foreign-owned enterprise.

As the term suggests, M&A transaction which is conducted to cross the border of different nations, by purchase and transfer of equity or assets, shall be defined as cross-border M&A.

B. Classification of M&A

This is the common way to classify M&A transactions based on the competitive relationships between the involving parties:

Horizontal Merger; It is a kind of merger that occurs between two firms producing similar, replaceable and competitive products in the same industry. One strong firm acquires the other one so as to eliminate competition between the two firms and extend the business scale. For instance, a glass company acquires another glass company.

Vertical Merger; It is a kind of merger that takes places between two firms involving the different stages of the production cycle with an upstream-downstream relationship. Namely, one firm acquires either a customer or a supplier. It is largely motivated by a desire to minimize transaction costs. For instance, a motor company acquires a tire company.

Conglomerate Mergers; It may encompass all other acquisitions; i) Pure conglomerate transactions where the merging parties have no evident economic relationship; ii) Geographic extension mergers where the buyer makes the same product as the target firm, but does so in a different geographic market; iii) Product extension