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PECULIARITIES OF MERGERS AND ACQUISITIONS OF UKRAINIAN COMPANIES ABROAD

Introduction. Today mergers and acquisitions, as one of the business lines and their capitalization are highly popular in business. Earlier M&A transactions were mainly an instrument for a company expansion and one of the most desired kinds of investments in developed countries, including the USA, the UK, France, Germany and other counties. Now, even developing countries gradually get involved in the business of mergers and acquisitions. This was facilitated by the process of world globalization and expansion of the international companies over the past 30 years.

Since a merger leads to the dissolution of a particular company, such termination is supposed to be performed in accordance with special procedures.

In particular, a liquidation commission must be established, which, among other requirements, is obliged to notify all the creditors of the companies, as well as the state registrar on the dissolution and merger and draw up the act of the transfer. Dissolution procedures differ according to the organisational form of the particular company.

Ukrainian legislation does not provide a definition of "acquisition". However, in practice the term means one company has gained control over the shares or assets of another company.

There are three basic types of acquisition: - the acquisition of shares: the buyer acquires the company together with all its assets, liabilities and obligations; the acquisition of assets: only the identified assets (and liabilities) that the buyer agrees to obtain are acquired; the acquisition of debts: in accordance with the Law on Bankruptcy, an insolvency plan can include the option of exchanging a creditor's demands for shares and/or assets of the target company (the debtor).

Latest research papers and publications review. Influence of mergers and acquisitions in the Ukrainian companies is being investigated in the papers by Ukrainian and foreign scientists, conducting their research in the field, namely: I. Mantsurov [4], V. Nesterenko [4], I. Ianenkova [9], M. Solesvik [9], Y. Friedman [10] and many others. But despite the problem of influence of mergers and acquisitions in the companies actualization, an overview of recent scientific works and publications allows us to conclude that there is no systematic approach, the fragmentation of the theoretical and methodological foundations for the formation and attraction of M&A of Ukrainian companies abroad, in particular the study of their prerequisites for provision.

Problem statement. Ukraine has a large industrial base which it inherited from the Soviet era, and vast agricultural terrain which is also very attractive to foreign investors. In the last few years investors from different parts of the world have begun investing in quite new (for foreign capital in Ukraine)

branches of the economy, such as cable television and airports. Therefore, the mergers and acquisitions market of late has shown higher growth indicators on an annual basis. Ukrainian regulations for mergers and acquisitions are quite liberal in comparison with European countries or the United States of America. No sophisticated regulation for takeovers exists; there is also no tradition of nonbinding norms or codes of practice to serve as guidelines (almost imperative in some branches).

Under Ukrainian law, mergers may take place in two ways: as a consolidation and as a joining. Both types of merger entail termination of at least one merging company by transferring all its assets, rights and obligations to its legal successor. Consolidation occurs when two or more companies join together or merge, establishing a new entity. The merging companies are dissolved and all their assets, rights and obligations are transferred to a new company established as a result of the merger.

Results

All businesses strive to grow and expand. There are generally two ways a business can get bigger, either through internal growth or external expansion. Internal growth occurs through the regular growth trajectory of an entity, whether by the use of the new technology, an acquisition of assets, better supply chain management and (or) new lines of products. This path often takes time for the company to yield results. The other way companies look to grow is by exploring the option of corporate restructuring. This can be achieved through different types of corporate actions such as mergers, takeovers or acquisitions. The external pathway of growth is very popular among companies globally as it helps in crossing trade barriers and building capital across countries [1].

Merger or amalgamation may take two forms: merger through absorption or merger through consolidation. From the economic perspective, mergers can also be classified into three types depending on the business combinations, whether the businesses are in the same industry. For instance, horizontal merger

is the merging of two firms in the same industry. On the other hand, vertical merging involves the merging of two firms operating in different stages of production. From a legal perspective, there are different types of mergers such as short form mergers, statutory mergers, subsidiary mergers and mergers of equals.

The value of what is known as global merger and acquisition deals has grown rapidly within Ukraine over the last few years. As an emerging market Ukraine has become both a target of strategic interest for foreign investors looking to expand into new markets and an active area for internal M&A's as local companies merge to compete on the global market. It is expected that the number of deals in Ukraine will continue to grow significantly across all industries, following the current trend set by the financial sector. The integration phase of M&A is one of the most challenging and complex. Statistics show that 70% of attempted synergies are not achieved, and 47% of executives leave within one year of a merger. One of the root causes of this failure is poor post-merger management [2].

During 2018, the Ukrainian economy steadily recovered and showed a third consecutive year of moderate growth. The country's gross domestic product has grown by 3.3% in 2018 (against 2.5% in 2017 and 2.4% in 2016). The government's policies remained fiscally responsible. The IMF and the EU essentially contributed to the current stability and pushed further reforms by providing loans and financial assistance upon the government's meeting reform targets. Nevertheless, many international organizations seem to note a slow pace of reforms and a lack of substantial progress in reducing the level of corruption [3].

Given the existing country risks, fragile economy and ongoing conflict in Eastern Ukraine, foreign investors remain cautious in making significant long-term investments into Ukraine, and domestic deals still constitute a majority of all transactions. According to reports on major markets, domestic transactions

account for slightly more than 60% of both the number of deals and their values in 2018 [4].

The largest reported deals took place in industries that are traditional for Ukraine like metals and mining, technology, agriculture, energy and utilities, and real estate.

The largest deal by its value involved major domestic industrial groups in metals and mining business. Ukraine's largest steel and mining group Metinvest, which had earlier successfully restructured its finances, acting with other buyers, acquired the biggest coal mine in the territory controlled by Ukrainian authorities from Energo Group, apparently, to ensure stable supplies of coking coal. The reported value of the transaction is over USD 700 millions, which is significantly more than any other announced transaction in 2018 [2].

Another landmark transaction took place in agricultural. The Saudi Agricultural and Livestock Investment Company, an investment vehicle of the sovereign wealth fund of Saudi Arabia, took part in the successful restructuring of a major agricultural company, Mriya Agro Holding, which grows crops including wheat, barley, corn and potatoes in Western Ukraine. In so doing Salic acquired substantial farming assets, including infrastructure facilities, machinery, and leasehold rights to 165,000 ha of farmland. Other deals in the sector include cross-border expansion of some large Ukrainian agricultural companies.

Last year, Partners Group, a global private markets investment manager, announced its acquisition of a 48% ownership stake in GlobalLogic Inc. from private equity firm Apax Partners. The transaction values this software development company at more than USD 2 billion. With 12,000 employees globally, GlobalLogic creates digital products, including mobile and web applications for customers, and is one of the global leaders in digital product engineering services. GlobalLogic engages around 3,500 of its developers in Ukraine [5].

Domestic players contributed to a significant impact caused by investments in real estate and construction. Besides, there is continued sale of real estate belonging to insolvent banks. However, the situation in real estate is somewhat complicated. There was reasonable commercial expectation that 2018 was a favourable time to invest in real estate as assets were considered to be undervalued, including facilities like warehouses, shopping malls, and office centres. Nevertheless, there is an oversupply of residential buildings on the real estate market, which may lead to financial issues for construction companies.

In the energy and utilities sector, a number of deals took place in the field of renewable energy sources. Foreign investors still rushed in to take advantage of the lucrative green tariff, which will be replaced by a less favorable auction mechanism from begin 2020. In addition, some improvements occurred in this area, such as the introduction of positive changes to Power Purchasing Agreements. Foreign investors could also benefit from various tax incentives in this area. Although the number of deals in renewables was remarkable, the value of most transactions was less than USD 5 million. The only remarkable deal in this sector was the acquisition by Norwegian renewable energy company NBT AS of a project to build a wind plant with power capacity of 250-330 MW [6].

So, and now I want to make an investment analytics. Despite global economic headwinds and the inevitable uncertainty the elections will bring, KPMG remain optimistic that Ukrainian M&A will deliver a third consecutive year of growth in 2019.

From its low point in 2016, Ukrainian M&A has now recorded two consecutive years of double-digit growth, despite the country's political and economic challenges. During 2018, deal activity increased by 18 %, with 80 transactions announced. Notwithstanding this, and an impressive 78 % increase in the value of Ukrainian M&A to USD 1.8 billion, the total value and the number of deals was still less than at its 2013 peak [7].

This dynamic reflects both a decline in the transparency of Ukrainian M&A over the last five years, with deal values disclosed for only 46 per cent of transactions in 2018 compared to 59 per cent in 2013 (significantly lower than typically seen in more mature markets), and a reduction in the average size of transactions valued at below USD100 million. While the average value of significant deals (>USD100 million each), jumped by 82 per cent between 2013 and 2018 to USD291 million, only four such transactions were announced during the year, compared to 14 in 2013, when almost half were inbound deals. However, the average value of deals in the underlying core of M&A activity declined by nearly one-third, to USD20 million over this period, reflecting the impact of the economic downturn (including the devaluation of the Hryvnia) on financial performance, and hence the valuation of companies.

Nonetheless, Ukrainian M&A has demonstrated remarkable resilience over the last two years as domestic and international players have increasingly shown their willingness to invest further, fueling the economic recovery (Fig. 1) [8].

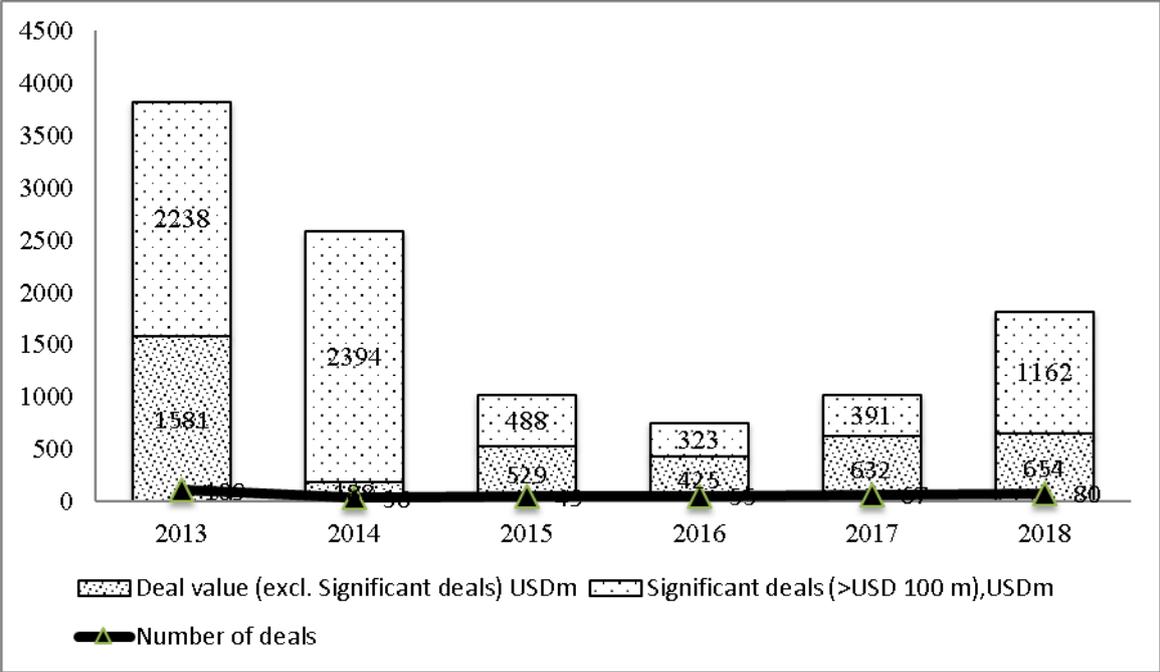


Fig. 1. M&A market volume in Ukraine (2013–2018) [8]

Despite an increase in the number of inbound deals, M&A has become an increasingly domestic play in recent years, with 62 % of total deal value (USD1.1 billion) and 63 % of total deal volume (50 transactions) involving a Ukrainian buyer and seller in 2018. The largest domestic and overall deal in 2018, was the USD 714 million acquisition of Donetsksteel by Industrial Coal Holding LLC, a company reportedly owned by Ukraine’s largest steelmaker, Metinvest, and other co-investors. This raised the average ticket size for domestic deals by 52 % to USD 49 million. Inbound M&A activity increased by 47 % in 2018, with 25 deals announced, of which encouragingly, 44 % were made by first-time investors into Ukraine.

However, although the acquisition of the restructured Mriya Agro Holding by SALIC, the Saudi investment company, boosted total spend to USD 508 million, average deal value fell by 16 % to USD 42 million. One reason for this is the more cautious approach displayed by first-time investors, who on average, spent less than half the amount of their more seasoned counterparts on each acquisition [7].

The ten largest deals of 2018 were worth a combined total of USD 1.5 billion in 2018, including two transactions in the metals and mining sector for USD 820 million (55%), and five transactions in the agriculture sector, including three inbound deals, for USD 488 million (33%) (Table 1) [8].

Table 1

Largest M&A deals in Ukraine in 2018 [8]

	Target	Sector	Acquirer	Vendor	% Acquired	Value USD m
1	Pokrovske Colliery and Svyato-Varvarynska coal enrichment factory	Metals and mining	Metinvest Holding; Altana Ltd; Misandyco Holddings Ltd and Treimur Investments Ltd	Finteas Trading Co Limited	100	714
2	Mriya Agro Holding	Agriculture	Saudi Agricultural and livestock Investment	BNP Paribaa SA; Credit Agrioolle SA	100	242

			Company			
3	Evraz DMZ	Metals and mining	Development Construction Holding LLC	EVRAZ plc	98	106
4	Perutnina Ptuj d.d.	Agriculture	MHP S.A.	Slovenian Steel Group, d.d	91	100
5	Burger King	Consumer markets	CIS Opportunities Fund SPC Ltd; ICU Group; Xomeric Holdings Ltd	Vtb Bank	17	82
6	Kernel Holding SA	Agriculture	Julius Baer Group Ltd	Not disclosed	6	73
7	Agrocentre Euro-Chem-Ukraine LLC	Chemicals	Undisclosed bidder	EuroChem Group AG	100	53
8	OOO Ukrroleasing	Transport and infrastructure	ODELUSS-construkt Kft	Cypriot Vrakas Stilianov	100	50
9	Spectr-Agro LLC and Spectr-Agrotechnika	Agriculture	Sumitomo Corporation	Not disclosed	51	45
10	Agrofirma Tripole, Radivolov Agro	Agriculture	Vitagro	Agrogroup Pan Kurohan	100	28

Despite concerns regarding the global economy and the uncertainty that the presidential and parliamentary elections will inevitably bring, the economic outlook for Ukraine looks more assured on the back of the USD 3.9 billion of IMF funding secured under the Stand-by Agreement and forecast GDP growth of circa 3 % for 2019. The encouraging increase that we have seen in inbound deals, particularly from investors new to the Ukrainian market, is based on those sound economic and structural indicators, as well as the comparatively low price of assets [6].

We expect to see inbound investment continue to grow over the years ahead, with more foreign entrants to the market. The resurgence of confidence amongst domestic deal-makers is also a positive indicator. Reinforcing this message, in January 2019, Horizon Capital, the private equity firm, saw its ‘Emerging Europe Growth Fund III’, which will invest in fast-growing, export-

oriented companies that leverage Ukraine's cost competitive platform to generate global revenues, primarily in IT, light manufacturing, food and agriculture, hit its hard cap of USD 200 million, far surpassing its USD 150 million target. While there maybe some softening in deal-activity ahead of the forthcoming elections, provided government policy remains consistent and fiscally responsible, we believe a strong pipeline will exist for Q4 of 2019 and beyond. On this basis, our outlook is for a modest increase in the value and volume of Ukrainian M&A for the full-year [6].

In addition, M&A transactions have not only internal differences, they also differ by the external signs, and have their own specific features, i.e. differences depending on the social, economic, legal and cultural characteristics of the country where such transactions take place. For instance, the countries of Anglo-Saxon corporate governance model, especially the USA and the UK, consider M&A transactions as an essential part of daily commercial practices and the most important part of the corporate control mechanism. This is facilitated by the developed stock market of these countries, dispersion of share capital, cultural traditions and customs, according to which a company is considered only as a shareholding for the owner [7].

The United States is not only a leader in mergers and acquisitions both in terms of a number of transactions and their volume, it is also the founder of the M&A market. After a long path length in a century, the American M&A market has experienced all types and forms of mergers and acquisitions, ranging from privatization and raiding to the present stage of the most civilized and professionally accompanied deals in the world. Moreover, the antitrust authorities play a considerable role during mergers and acquisitions in the United States and Europe.

They check carefully the legitimacy and correspondence of the M&A transactions to the antitrust policy of the country. The mass media plays a crucial role in the M&A information support, creating a particular society's

attitude to the agreement. In the UK, for example, non-state public organizations also play a significant role. Authorities review them for compliance with legislation and provide specific recommendations concerning detected shortcomings of the expected merger or acquisition before concluding the M&A transactions. And even if the appeal to such establishments is not mandated by law, the British companies, while concluding M&A deals, are committed to a positive resolution of such organizations, given the goodwill and the desire to minimize risks. Another feature of the M&A transactions abroad is the presence of mediators – specialists and experts in conflict resolution that arise during the process of merger or acquisition [9].

They are not financial brokers or legal advisers on M&A transactions, but namely the experts working with conflict situations which have already occurred, and the situations that might happen at any stage of M&A conduct. On the basis of practice, it can be argued that top managers or members of companies are often not able to assess the prevailing situation and take the necessary compromise solution. In such cases, the assistance of mediators is extremely important for the successful completion of such deals, and their task is to assist in the resolution of arising conflicts and receive an agreed solution between the parties. This mechanism has already been applied for 20 years. One more positive feature of the M&A market in the United States, Europe and other developed countries is the transparency and informational openness of the mergers and acquisitions. For example, public companies, prior to the agreement, declare the goals they seek to achieve due to a merger or acquisition.

Also, in the US and Europe, the majority of companies have the public status that increases the protection degree of such companies from hostile takeovers and corporate raiding [10].

In Japan, concluding the M&A transactions is based on the exclusive voluntariness of association. There are strict institutional and social barriers for the hostile takeovers in this country. Institutional barriers lie in the fact that

company management ensures itself with the permanent shareholders, usually of the same financial-industrial group (keiretsu), or finds the friendly banks. Social barriers mean that cultural traditions of Japanese business consider the company as a community of employees who work there for life. Acquisition of the company together with its employees is harshly condemned. As a rule, the employees, trade unions, management and major shareholders are in full solidarity regarding the proposed transaction. The resistance of employees is a major obstacle for Western companies in their attempts to acquire the Japanese firms [9].

Conclusion

The features of current M&A processes in the world are a significant increase in the transactions amounts; merge processes occur mainly in the highly monopolized industries; mergers and acquisitions are initiated by private and sovereign wealth funds or large corporations in the countries-suppliers of raw materials to the world market, and the owners of cheap labor force. There are a large number of firms for mergers and acquisitions whose market value have sharply decreased; frequent creation of the alliances for the international M&A implementation. Motives for conducting the mergers and acquisitions in developed and developing countries are different. The main motives of M&A transactions in the industrialized countries are markets liberalization, reduction of state intervention in the economy, and, as a result, appearance of new participants and increased competition in the market.

In the developing countries M&A transactions occur, as a rule, in the framework of privatization programs or market liberalization. In Ukraine, the process of mergers and acquisitions corresponds to the global trends. Thus, the volume of transactions with participation of Ukraine as a seller, buyer or a country of assets origin demonstrated a growth.

The directions for further researches in this area may be an analysis of the forecasted indicators of M&A dynamics in Ukraine and worldwide, exploration of relevant trends, and analysis of the factors impacting on M&As.

In summary, whilst political and economic headwinds are building both globally and domestically, we believe that the macroeconomic fundamentals in Ukraine will remain sufficiently resilient, such that investor confidence in the medium to long-term prospects for the country will be largely unchanged. As a result, although uncertainty caused by the election process may see restrained activity during the first half of the year, we remain cautiously optimistic that 2019 will see a fourth consecutive year of growth in Ukrainian M&A.

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Annotation

The article investigates the dynamics of merger and acquisition of Ukrainian companies abroad. The main consequences of merger and acquisitions for the Ukrainian companies are highlighted. Proposed measures to improve content and distribution of M&A of Ukrainian companies.

The result of the research is that the main problems are today inhibit the process of attracting M&A, are: political and legislative instability; the problem of providing reliable guarantees protection against changes in Ukrainian legislation; significant tax and administrative pressure; high level of corruption and bureaucracy; high inflation in the country and complicated registration process; licensing and customs procedures.

The main ways solving problems of mergers and acquisitions should be: improving the investment climate by improving the general and special legislation that regulates the relationship in the investment, respectively to European norms; execution of investment projects on the principle of "single window"; introduction of the economic mechanism of insurance of foreign investment risks; provide government guarantees to investors and consolidate them at the legislative level.

Further research should be conducted to form an effective investment, mergers policy that would contribute to attracting foreign investment in the country for extending Ukrainian market.

Keywords: mergers, acquisitions, Ukrainian companies, M&A, state regulation, investment climate, branch structure of direct foreign investment, economic development, trends.

ОСОБЛИВОСТІ ЗЛИТТЯ І ПОГЛИНАНЬ УКРАЇНСЬКИХ КОМПАНІЙ ЗАРУБІЖНИМИ

Анотація

У статті досліджено динаміку злиттів та поглинань (ЗіП) українських компаній за кордоном. Висвітлено основні наслідки ЗіП для українських компаній. Запропоновані заходи щодо вдосконалення контенту та розповсюдження ЗіП українських компаній.

Результатом дослідження є те, що основними проблемами, що сьогодні гальмують процес залучення іноземних інвестицій є: політична та законодавча нестабільність; проблема забезпечення надійного гарантованого захисту від змін в українському законодавстві; значний податковий та адміністративний тиск; високий рівень корупції та бюрократії; висока інфляція в країні та складний процес реєстрації, ліцензійні та митні процедури.

Основними шляхами вирішення проблем злиття та поглинання повинні бути: покращення інвестиційного клімату шляхом вдосконалення загального та спеціального законодавства, яке регулює взаємозв'язок в інвестиціях, відповідно до європейських норм; виконання інвестиційних проектів за принципом «єдиного вікна»; впровадження економічного механізму страхування іноземних інвестиційних ризиків; надавати державні гарантії інвесторам та консолідувати їх на законодавчому рівні.

Подальші дослідження повинні проводитись для формування ефективної інвестиційної політики, політики злиття, яка б сприяла залученню іноземних інвестицій у країну для розширення українського ринку.

Ключові слова: злиття, поглинання, українські компанії, ЗіП державне регулювання, інвестиційний клімат, галузева структура прямих іноземних інвестицій, економічний розвиток, тенденції.

ОСОБЕННОСТИ СЛИЯНИЯ И ПОГЛОЩЕНИЯ УКРАИНСКИХ КОМПАНИЙ ЗАРУБЕЖНЫМИ

Аннотация

В статье исследуется динамика слияний и поглощений (СиП) украинских компаний за рубежом. Выделены основные последствия

слияний и поглощений для украинских компаний. Предлагаемые меры по улучшению содержания и распространения СиП украинских компаний.

Результатом исследования является то, что основными проблемами, которые сегодня сдерживают процесс привлечения СиП, являются: политическая и законодательная нестабильность; проблема обеспечения надежных гарантий защиты от изменений в украинском законодательстве; значительное налоговое и административное давление; высокий уровень коррупции и бюрократии; высокая инфляция в стране и сложный процесс регистрации; лицензионные и таможенные процедуры.

Основными путями решения проблем слияний и поглощений должны быть: улучшение инвестиционного климата путем улучшения общего и специального законодательства, регулирующего отношения в инвестициях, соответственно европейским нормам; выполнение инвестиционных проектов по принципу «единого окна»; внедрение экономического механизма страхования иностранных инвестиционных рисков; предоставлять правительственные гарантии инвесторам и закреплять их на законодательном уровне.

Дальнейшие исследования должны быть проведены для формирования эффективной политики инвестиций, слияний, которая будет способствовать привлечению иностранных инвестиций в страну для расширения украинского рынка.

Ключевые слова: слияния, поглощения, украинские компании, слияния и поглощения, государственное регулирование, инвестиционный климат, отраслевая структура прямых иностранных инвестиций, экономическое развитие, тенденции.