AMERICAN UNIVERSITY OF ARMENIA
ՀԱՅԱՍՏԱՆԻ ԱՄԵՐԻԿՅԱՆ ՀԱՄԱԼՍԱՐԱՆ
LL.M. Program
ԻՐԱՎԱԳԻՏՈՒԹՅԱՆ ՄԱԳԻՍՏՐՈՍԻ ԾՐԱԳԻՐ

TITLE

The importance of M&A, legal and procedural issues in different types of M&A transactions under Armenian legislation

STUDENT'S NAME

MIKAEL MELIKYAN

SUPERVISOR'S NAME

PROF. MESROP MANUKYAN

NUMBER OF WORDS

9087

TABLE OF CONTENTS

INTRODUCTION

M&A and takeovers are one of the most important instruments used worldwide to secure the growth of the companies. Professional literature and legal practice consider the M&As of legal entities as a form of corporate strategy, with the help of which the companies concentrate their resources to reach a competitive edge. The M&A deals started making their appearance beginning from late 1800 and since then M&A has been extremely popular and high demanded field. Starting from mid-20th century till now the regulators all over the world have been occupied with regularization and harmonization of the field.

The reasons for M&As are different for each specific case. M&A are primarily implemented to increase the competitive ability of the companies. The separation or division of a legal person in its turn may be an anti-crisis measure which can promote the financial position of an economically weak entity.

Considering its significance and the fact that it can be implemented in all kind of economic sectors, scholars have been examining the M&A field worldwide for the past few decades. As a result, the total topic of M&A is too broad and it is impossible to address all the aspects of the field. Therefore, the purpose of this paper is to discuss the legal instruments and regulations available in the international market, the way they work and what possible development can be seen if implemented in the Armenian realities. The intention is to discuss the main gaps in the Armenian legislation concerning different types of M&A, the possibility of its future development by implementation of M&A standards and its potential influence on the growth of the Armenian companies (including the possibilities of cross-border M&As).

The paper will provide a clear and broad review on the currently available mechanisms and regulations in the Armenian legislation and its functionality in the practice. It will try to present answers on questions like “Which are the main regulatory & legislative mechanism of different types of M&As in Republic of Armenia?”, “Whether the existing mechanisms satisfy the needs of the Armenian and international business markets?” and “What possible internationally used mechanisms can be implemented in the RA legislation that can foster the growth of the M&A field”. The reasons behind the inquiries are the issues of the existing

mechanism and legislation in the light of the changing economic and political realities of RA and the rapidly developing business market of the 21st century.

For the purpose of answering the given questions this paper will be divided in three main interrelated chapters. The first chapter will present a general outline on the main concept of M&As and its different types, how are the latters used in practice and what impact do they have in the international business environment. The chapter defines the core principles of M&A and provides a broad discourse on the topic. Besides, it provides the historical background on the origins and further development of the M&A, its evolution in six stages or so called "waves", by looking into those waves alternately. The last part of this chapter presents how significant M&A and cross-border M&A activities had their impact on the globalizing world and the Republic of Armenia. This chapter is an introduction for a global understanding of the M&A concept and related general matters, before focusing on specific issues.

The second chapter will provide a study/doctrinal analysis on legislative regulations of M&A and its different types in developed countries, types of contracts and important clauses. The recent trends of M&A deals will be rendered. It will present the most relevant legislation of United States and European Union, in the framework of M&As, most important provisions, their development through the years, how the legislations in those countries were affected by different significant events. How governments, legislative bodies and regulatory authorities have scrutinized the supervision of the M&A regulation area and introduced new pieces of legislation, as well as amended the ineffective legal norms, with the aim to have more control over the field. Some case studies will be presented to show the risky outcomes of M&A deals, and how they could have been prevented.

The third chapter introduces an answer to the last given question above. It culminates the study brought up in the previous chapters and with the pertinent discussions, evaluating the role of M&A and its different types, in the future of the business environment and in the Republic of Armenia. Possible implementations of international best practices will be provided with suggestions and relevant justifications. All the brought arguments will be supported with relevant findings. This chapter will also present the possible impact the offered changes will have on the

overall Armenian Business culture and on the growth of the economy. Also comparative analysis will be drawn with the Armenian legislation to show the existing gaps, and why the M&A concept works better abroad, particularly in the countries like United States (US) and the European Union (EU) member states, where the existing regulatory framework seems to perform most successfully.

The research will be based on the study of US, EU and RA legislations, as well as on the works of different lawyers and scholars in the field of M&A. Also different articles, relevant studies and statistical data will be used.

CHAPTER 1
INTRODUCTION TO THE CONCEPT OF M&A, HISTORICAL BACKGROUND AND ITS FURTHER DEVELOPMENT THROUGH YEARS.

For the purpose of addressing certain issues in the field it might be useful to provide the general understanding of the concept of M&A and its different types, the main principles and the rules, as well as understanding the routes of the M&A culture, its origins and its global development in the business environment. Thus this chapter will try to give a general perception on the concept and its background.

The concept

The "Mergers & Acquisitions" (M&A) concept is predominantly used as a business/ financial term rather than legal. It mostly refers to combining of two or more firms in a one business, while from the legal point of view it refers to a set of several transactions.[1] The purpose of M&A is mostly to have an economical and business gain rather than pursuing social or political objectives. The two or more companies that are involved in the transaction must have a higher value when combined, than they have separately. The advantages of the transactions include combining economical resources, tax load optimization, elimination of competitors, accessing new markets, gaining access to resources and capabilities (know-hows), synergies (by combining business activities), integration of assets of separate legal entities for implementation of large projects, etc.[2]

Different types of M&A transactions

Because of the wide-ranging meaning of the term M&A, some details will be drawn to understand what specifically we will be discussing further in the paper. That does not mean that all possible types of deals will be brought up and precisely explained in this chapter, therefore it must not be considered as a full outline of all M&A options.

---

[1] J.C. Coates IV, "Mergers, Acquisitions and Restructuring: Types, Regulation, and Patterns of Practice", Discussion Paper No. 781, July 2014, Oxford Handbook on Corporate Law and Governance, p. 2; definition on Investopedia: http://www.investopedia.com/terms/m/mergersandacquisitions.asp

[2] Concept of Mergers and Acquisitions, in (ed.) Evaluating Companies for Mergers and Acquisitions (International Business and Management, Volume 30) Emerald Group Publishing Limited, pp.19 - 30

The "mergers" and "acquisitions": The separate view.

The meaning of mergers and acquisitions must be outlined separately to fully understand the difference between the types of transactions. The separating line between the terms is often very blurred and people use them as synonyms which is a wrong thing to do, because regardless of the similarities those are two different things.

The term acquisition is also often referred as to takeover, which means that the buyer company "takes over" the target company by acquiring all of its assets and gaining overall control of its management. The acquisition is mostly understood as dominating and controlling another firm and has more aggressive undertone than mergers.[3] The main difference that is often brought while speaking about takeovers and acquisitions is that, in case of takeovers the control over the target company is being taken without the permission of the latter's board, while in case of acquisitions the control is taken with the agreement of the target company.[4] Here comes the notion of "friendly" and "hostile" takeovers, where in the first case the management welcomes the acquisition and in the second one the management does not have the desire to be acquired.[5]

In its general meaning "mergers" is understood as combining of two or more companies into one. After the transaction only a one jointly owned company remains.[6] From the legal point of view, the "mergers" have a specific definition, meanwhile every type of mergers when defined depends on the mechanisms used during the process. Generally, there are four types: merger by absorption, merger of subsidiary into the parent company, merger by acquisition and merger by formation of a new company. Because of the translation difficulties these types of transactions are referred to differently in different countries legislations.

---

[3] E. Gomez, *Mergers, Acquisitions, and Strategic Alliances: Understanding the Process*. Houndmills, Basingstoke, Hampshire: Palgrave Macmillan, 2011, p.5-6

[4] Rose Johnson, *"Takeover Vs. Acquisition." Small Business - Chron.com*, http://smallbusiness.chron.com/takeover-vs-acquisition-32510.html. Accessed 07 April 2019.

[5] A. Kouloridas, *The Law and Economics of Takeovers: An Acquirer's Perspective*, Oxford: Hart, 2008, p 128; p, 163; M. Ventoruzzo, et al., Comparative Corporate Law, St. Paul, MN: West Academic Publishing, 2015, p. 519; http://people.stern.nyu.edu/adamodar/pdfiles/papers/acquisitions.pdf, p.3

[6] https://www.investopedia.com/terms/m/merger.asp

For example, from the EU[7] and RA law perspective merger by absorption will mean the transfer of assets and liabilities of one company to another in exchange for the shares in the capital of that acquiring company (sometimes maybe accompanied by cash payments).[8] The same transaction in the US would be clearly called an acquisition, and this shows the complications that emerge because of different usage of terminologies in the world. Also it is often called a merger instead of acquisition in the US, because acquisition carries a negative connotation, while a merger suggests mutuality.[9] From the definitions brought above it is understandable that this kind of transactions generally involve buyer and a seller, when the seller is often referred to as "target" company.

Further the M&As can take a form of cross-border or domestic transactions. The domestic transactions take place between the companies under the same domestic legislation and in case of cross-border deals two or more companies from different countries engage in a transaction.[10]

Also mergers can be divided in two groups: horizontal and vertical. The horizontal mergers take place when companies from the same field of activity, with the same customers, etc. engage into mergers transaction. Vertical mergers take place when companies who operate in different stages of production enter into a merger transaction (e.g. customer-supplier).[11]

The M&A process is considered to be more evolved in the US, than in other developed countries like the countries of European Union, and obviously far more developed than in RA. Regardless of fascinating nature of many mechanisms used in US (proxy fights, tender offer,

---

[7] Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies; Third Council Directive 78/855/EEC of 9 October 1978 based on Article 54 (3) (g) of the Treaty concerning mergers of public limited liability companies.

[8] C. Phillips, "Cross Border Mergers by operation of law - EU Directive 2005/56", 10 November 2016, http://www.fieldfisher.com/publications/2015/11/cross-border-mergers-by-operationof-law-eu-directive-200556#sthash.Rr3NiqOn.dpbs

[9] *Mergers and Acquisitions Law and Legal Definition,* https://definitions.uslegal.com/m/mergers-and-acquisitions/

[10] K.S. Reddy, "Determinants of Cross-border Mergers and Acquisitions: A Comprehensive Review and Future Direction", 2015,p. 2

[11] Ian Linton, "*What Is a Horizontal Merger and a Vertical Merger?",* Updated November 14, 2018, https://smallbusiness.chron.com/horizontal-merger-vertical-merger-60981.html

down raid, etc.), this paper will not focus on them, but rather on the mechanisms which in the nearest future can have their fruitful effects if implemented in the RA.

M&A historical background

The M&As have been around for a very long time. They started to make their appearances in the latter part of 1800s, when there was a big need of investments in the US markets. The evolution of M&As consists of six stages, or so called "waves". This shows that M&A activities changed depending on the environment of the markets. Those 6 waves of Mergers & Acquisitions took place in 1900s, 1920s, 1960s, 1980s, 1990s and 2000s accordingly. (1) During the first wave, mostly horizontal M&As took place, when companies in US which were operating in the same field were combining together, and M&As were often used to establish monopolies (An example of horizontal mergers and acquisitions of this wave can be: Standard Oil Company of New Jersey (1899). This American oil and gas company was founded in 1870 but officially became a trust as the "New Jersey Holding Company" in 1899). (2) The second wave was somewhat bringing in light the vertical M&As, as the monopolies that were established through horizontal M&As during the first wave, were referred to as "anticompetitive behavior" and the governments started enacting laws against them. Thus for example the Standard Oil company was ruled as an illegal monopoly by the US supreme Court in the 1911.[12] While vertical M&As as described above are more efficiency oriented, by combining companies from different fields of activity. This wave ended with the start of the Great Depression in the 1929. (3) The third wave brought up the idea of conglomerates, when vertical and horizontal mergers could not provide the solutions the companies wanted. Conglomerates involve corporations which are from different fields of activities and they do not even have to be interrelated in any manner.[13] This was driven by the desire of big US corporations to expand their capacities and enter new markets. However, the third wave ended with the start of the oil crisis in first part of 1970s when the prices of shares dropped drastically. (4) Fourth wave was accompanied with the arrival of "corporate raiders" and hostile takeovers. The investment banks played immense role during this wave, as they were willing to lend as much money as possible to

[12] Standard Oil Co. of New Jersey v. United States, 221 U.S. 1 (1911)
[13] James Chen, "Conglomerate", Apr 17, 2019, https://www.investopedia.com/terms/c/conglomerate.asp

the “corporate raiders” so they could accomplish their hostile takeovers. The inescapable end of this wave came in the 1987, when the banks were not able to lend more money, because of the unavailability to sustain their capital markets. Of course the crash of the stock market in 1989 played its role too. (5) The Fifth wave welcomed the so called “mega deals”. It resulted in creation of multinational companies which had the belief that the bigger they are the stronger they are in the market. In this era foreign investors were entering the domestic markets, gaining control over local companies through merging or acquiring, and this brought up the notion of “cross-border mergers”. Examples of big M&A transactions of this wave are: UK’s Vodafone AirTouch purchase of Germany’s telephone and internet giant Mannesman in 1999; Ford’s acquisition of Volvo, etc. This wave did not last long as, besides of fostering of the corporations who entered into transactions, by helping them to appear on the top, it also brought up some scandal cases like Enron’s and WorldCom’s which have filed for bankruptcy. (6) The Sixth wave can be described by the word “Globalization”, when more companies, even the ones which had their established systems, were intended to expand their activities by reaching global markets at a multinational level. Of course the Fifth wave’s tendencies of cross-border acquisitions were still visible during the Sixth wave, but in this case it was more beneficial and the governments’ support was more visible and available. One of the most significant deals of the wave was the American Online’s (AOL) purchase of Time Warner for US$164 billion. This wave ended with the mortgage crisis of 2008 in US, which was accompanied with the downfall of the US economy.[14]

This all logically led to the situation were the business is mostly internationalized which led to the creation of the multinational corporations that shape the world as we know it today. [15]

The above mentioned deal of AOL and Warner brought to the situation when they reported losses of almost US$100 billion, just one year after the merger. This was called the “biggest mistake of corporate merger history”. The things did not go well for M&A activity after the end of the Sixth wave, but it seems that currently, starting from 2011 we are in the Seventh

[14] Anastasia, “*A Historical Analysis of M&A Waves”,* January 1, 2016
[15] J. Sedlacek, and P. Valouch,*”Motifs of M&A in the US, European and Asian Markets*”, ERMM 2015, p. 363.

wave of the M&As.[16] One of the biggest recent deals was the acquisition of 21st Century Fox by The Walt Disney Company for US$71.3 billion on March 20 of 2019. This enormous transaction will help Disney to position itself as the number one player in the filmmaking and TV media market, as it has various directions of development including having its own streaming service.[17]

The waves stipulated above, however, have gone unnoticed for the Republic of Armenia, as the demand of M&A transactions was and is mainly driven by technical reasons. It also should be noted that most of the Armenian companies are owned by families, thus the majority of M&A transactions have an artificial nature or just serve the purpose of distribution of capital inside of the family. Nevertheless, some significant M&A deals have taken place in the near past, but they were mostly driven by domestic reasons rather than somehow affected by the global waves. Such deals were the mergers of four different banks, driven by the change of prudential requirements concerning share capital of banks. Another significant deal was the merge of the Orange Armenia in Ucom LLC (telecom companies), which was mainly caused by the bankruptcy of the first one. Despite of all the factors these M&As had their impact on the formulation and growth in the practice of real M&A in the RA market.[18]

The Impact of M&A

As the M&A mechanism were not mainly and often used for their main purposes described above in the Republic of Armenia, it is not possible to bring what impact they had on the Armenian market, however it can be stipulated that as the result of the mergers between the banks driven by domestic legislative measures, the banking sector had shown a significant growth in 2017 compared to the previous years (which also has made the job of the regulatory bodies more efficient).[19] Thus this section will mostly focus on the international market.

---

[16] Howard Ma, CFA; *"Another Merger Wave Unwinds",* October 11, 2016
[17] "Disney and 21st Century Fox Announce per Share Value in Connection with $71 Billion Acquisition" (2019), https://www.thewaltdisneycompany.com/disney-and-21st-century-fox-announce-per-share-value-in-connection-with-71-billion-acquisition/
[18] Aram Orbelyan, Narine Beglaryan and Lilit Karapetyan ; *"Law and Practice",* Last Updated February 15, 2019
[19] KPMG, "Armenian Banking Sector Overview", 2017 4th quarter results, February 2018 https://home.kpmg/content/dam/kpmg/am/pdf/2017/Armenian%20Banking%20Sector%20Overview_2017%20Q4_Eng.pdf

The main aim of the M&A according to the literature is considered to be the formation of synergies. Another motive can be the taking over a competitor who can pose a threat in a nearest future, or the fact that the merging would be more efficient for both parties, rather than competing.[20] No matter what is the aim behind the M&A deals, they have their notable place in the market economy, as they are one of the most important corporate procedures in the financial and business world. When speaking about cross-border M&As, they are considered one of the main breaks in the development of the globalizing market of the 21st century, and the Sixth wave of the cross-border M&A is a clear evidence of that.[21]

According to the JP Morgan's "2019 Global M&A Outlook" in 2018 the M&A market remained strong and had a total value of US$4.1 trillion, with cross-border transactions representing the 30% of the total M&A market.[22] In the literature the M&A is referred to as "one of the fastest ways to enter a foreign market", and if carried out properly it can have various positive effects on the company, such as efficiency of the operational structure, technological growth and implication of new know-hows.[23]

---

[20] F. Aytac and C.T Kaya, "Contemporary look on the historical evolution of mergers and acquisitions", 2016, *International Journal of Economics, Commerce and Management*, vol. IV (2), p.
[21] J. Sedlacek and P. Valouch, *supra* note at 15, p. 363.
[22] J.P.Morgan, "2019 M&A Global Outlook; Unlocking value in a dynamic market", p. 3 https://www.jpmorgan.com/jpmpdf/1320746694177.pdf
[23] A. Golubov, D. Petmezas, & N.G Travlos, "Empirical mergers and acquisitions research: a review of methods, evidence and managerial implications", 2013, p. 2.

CHAPTER 2
IMPORTANCE OF M&A REGULATIONS, CURRENT INTERNATIONAL PRACTICES

In the international literature many concerns have been brought up, considering the fact that the financial development of the country is dependent on the law of that state, and M&As are of no exception.[24] M&As play huge role in the economy of any country, thus throughout the years the governments and regulators have developed the M&A laws, for the purpose of expanding the state's economy and development of the business environment.[25] This chapter will try to show how different M&A regulations have their impact on the development of the M&A market and the main mechanics used in the countries who seem to have the best performance in that field. A comparative analysis with the current available regulations of RA will be drawn in the next chapter.

Importance of the legal system: General overview

Currently more and more studies are emerging which show that there is a direct connection between the financial development of the state and its legal system.[26] The authors of those studies believe that the states with civil law system have more important role in the regulatory process than the countries with common law system[27] (RA is a Civil law country). However, in the same studies it is concluded that compared to common law, in the civil law countries the outside investors are protected less than the domestic investors. Those aspects define why in some countries cross-border acquisitions are a more common thing, and in the others the value of M&As is mostly generated through domestic transactions. Those studies highlight that the regulations can influence the M&A market and the average value of the transaction. Also they show that the value of those transactions is not affected by the legal system in general, but by the various regulations governing the activities of the companies, and that the investors are more likely to engage into M&A transactions in a well regulated market,

---

[24] Radu Ciobanu, "Mergers and acquisitions: does the legal origin matter?", 2015
[25] R. La Porta, F. Lopez-de-Silanes, A. Shleifer, R. Vishny *"The economic consequences of legal origins"* Journal of Economic Literature, 46 (2008), pp. 285-322
[26] Radu Ciobanu*, supra* note at 24.
[27] R. La Porta, F. Lopez-de-Silanes, A. Shleifer, R. Vishny *"The quality of government"* Journal of Law Economics and Organization, 15 (1999), pp. 222-279

even if it has differences with their domestic ones (this can be also said about domestic persons, who would be more likely to act and develop the field if the market is more secure).[28]

US law perspective:

In US the Mergers and Acquisitions deals are highly regulated by Antitrust, Securities and M&A laws (especially: Section 7 of the Clayton Act, The Hart-Scott-Rodino Antitrust Improvements Act of 1976 and The Exon-Florio Amendment to the Defense Production Act of 1950). The public companies are both regulated by federal and securities law. The two most important securities laws are the Securities act of 1933 and the Securities Exchange act of 1934. [29]

In US the Tender offers comprise a big part of M&A deals and they are regulated by the Williams Act of 1968 (15 U.S.C.A. § 78a et seq.). For example, the section 13 (d) of this act provides that, "*if a partnership, corporation, entity, or individuals acquire 5% or more of a company's outstanding shares, it must file a Schedule 13D within 10 days of reaching the 5% threshold*". In addition the Section 14(d) gives benefits to the target company shareholders, by providing them more information that they can use to evaluate the offer.[30] Also Insider trading rules are in force to prevent persons from insider trading as one of the aspects of M&A deals. One of such important rules is the rule 10-5 of Insider Trading Sanctions Act of 1984, that prohibits the use of fraud and deceit in the trading of securities.[31]

An essential amendment to the Clayton act, the Hart-Scott-Rodino Act was passed in 1976, which for the first time made the corporations of certain size to report the proposed mergers transactions to the Securities and Exchange Commission (SEC) and the Department of Justice (DOJ) before proceeding with the deal.[32] The Section 7A of the Clayton Act, 15 U.S.C. 18a, Which was added by the Hart-Scott-Rodino Act, requires persons considering certain

---

[28] Radu Ciobanu*, supra* note at 24.
[29] ICLG, *"USA: Mergers & Acquisitions 2019"*
[30] Evenett, Simon J., *"Do All Networks Facilitate International Commerce? The Case of US Law Firms and the Mergers and Acquisitions Wave of the Late 1990s"* (2001). CIES Discussion Paper No. 0146. Available at SSRN: http://ssrn.com/abstract=293804 or doi:10.2139/ssrn.293804
[31] Rose, Amanda M., *"Reforming Securities Litigation Reform: Restructuring the Relationship between Public and Private Enforcement of Rule 10b-5."* Col. Law Rev.,1301(2008). Available at SSRN: http://ssrn.com/abstract=1096864
[32] Hart-Scott-Rodino Antitrust Improvements Act of 1976

mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General an advance notice and to wait certain periods before consummation of such plans. Section 7A(b)(2) of the Act, in individual cases, grants the agencies permission to abort the waiting period before its expiration and a notice about such action should be published in the Federal Register.[33]

The procedural requirements for the M&A transactions are well prescribed in the state statutes. In US, unless it is otherwise stipulated in the charters of the companies (which is not often the case), the management of the companies, or even often the board has the authoritative power to engage into transactions, which helps to avoid triggering substantial disclosure requirements that cause significant delays and costs, and may open the door to opposition by institutional investors and litigious shareholders.[34]

What is also noteworthy is that in the US competition law, there is

- no voluntary notification (filling) procedure unlike EU;
- regulatory bodies are entitled to solicit input from a variety of market participants (third parties) during the course of a transaction investigation;
- The FTC and DOJ do not consider factors other than the competitive effects of a proposed transaction. Public interest issues have no role in the assessment of merger; and
- the antitrust agencies examine joint ventures similarly to mergers, as they also can damage economy through creation of antitrust effect.

Though, not everything is fully regulated in the market. For example, one of the most important clauses in the M&A agreements are considered the Representations, Warranties and Covenants clauses. Apart from different guidelines and case law, there is no specific hard piece of legislation or regulation concerning the above mentioned clauses of the deals, and the parties must be very careful with the wording and bare the risk all by themselves.

---

[33] Kumar Pallav, “On the execution of a strategic acquisition: a comparison of U.S. and Indian laws”, 2010
[34] Securities Exchange Act of 1934, 15 U.S.C. § 78n (2001) and regulations thereunder, especially Schedule 14a, Item 14, *"Mergers, Consolidations, Acquisitions and Similar Matters."*

According to Michael Hutchings, there should be paid a special attention to the public disclosure of material agreement in Securities and Exchange Commission filings, with respect to whether information contained in disclosure schedules and disclosure letters is omitted from SEC filings.[35] Particularly, this information should explain when applicable, that Representations and warranties contained in the agreement were made with the purpose of contractual risk allocation, rather than as a way to establish certain facts.

To present what risks can emerge during M&A transactions when the specific information is not properly disclosed, two case studies will be brought below.

Case Study of Bank of America's acquisition of Merrill Lynch[36]

On September 15 of 2008 Bank of America announced about the deal with Merrill Lynch to acquire the latter. The newly appointed CEO of Merrill Lynch, after acknowledging the extent and depth of the financial condition of Merrill Lynch which just have had an approximate 10 billion losses, turned to the CEO of Bank of America Ken Lewis to purchase Merrill Lynch, though only two weeks prior he had turned down an offer from Lewis. After very quick negotiations Merrill Lynch was sold for USD 50 billion.

In the M&A agreement there was covenant stating that Merrill Lynch had the right to pay 3.6 billion dollars in bonuses to its employees during the interim period according to the disclosure schedule. Also, there was a representation made about the absence of change which can lead to a Material Adverse Effect (MAC) in the interim period.

Merrill's operating losses at the end of the fourth quarter were devastating (21 billion dollars). Lewis had to make the decision, as according to the MAC clause he could have triggered that provision of the agreement and walked away. As it was in the mid of worldwide panic considering the biggest crisis since the great depression, Lewis later claimed that he was persuaded and threatened by the regulatory authorities, including Treasure of United States of America, not to alter the deal, who believed that the change could adversely affect the situation

---

[35] American Bar Association, *"Potential fraud liability for merger agreement representations and warranties"*
[36] Subramanian, Guhan, and Nithyasri Sharma. *"Bank of America-Merrill Lynch."* Harvard Business School Case 910-026, March 2010. (Revised January 2012.)

in the market, bringing a financial panic. Indeed, should the MAC clause been triggered based on the representation given before, it could have brought a domino effect, leading to the termination of alike agreements in the midst of financial crisis.

Lewis have not told the shareholders of this information prior to the vote, later claiming that he thought that they were acting in a way which was better for the country. On December 5 the shareholders of Bank of America have voted to approve the merger. In fact, the conduct of business of Merrill Lynch before the signing the agreement led to Material Adverse Effect, with the issue of not disclosing the proper information in pre-signing and pre-closing period, but conducting business during interim period.

The representation of Material Adverse Change in M&A agreements and the problems related to it, has been also discussed in academic papers. As mentioned, by Andrew Herman and Bernardo Piereck, virtually all merger agreements include materially adverse change or effect clauses that allocate the interim risk of adverse changes affecting the target, where the MAC clause is used to qualify representations and warranties, in a form to qualify covenants, and also as a condition to the buyer's obligation to consummate the deal.[37] MAC clause is highly disputed and very uncertain, because it is very hard to understand and say which factor makes the situation materially adverse.

As mentioned by the report of American Bar Association on "Merger and Acquisition (M&A) Litigation: Current Issues and Trends", it is often quite difficult for the buyers to prove that a material adverse change has occurred. Among the factors that are usually considered for determining the occurrence of Material Adverse Change clauses are:

- the impact of the event on the business of the company,

- duration of the adverse period imp acting the business,

- the adverse impact of the change on general market participants,

- whether the seller knew about the material adverse event before entering into the specific

[37] American Bar Association *"Business Law Today"*, https://www.americanbar.org/publications/blt/2009/03/keeping_current_hutchings.html

transaction.

Case study of Interim Healthcare v Spherion Corp., Superior Court of Delaware[38]

The court considered a suit arising from a stock purchase agreement, where the plaintiffs claimed that the seller breached representations and warranties in the parties' agreement by failing to adequately disclose certain liabilities and by misrepresentation of its financial condition.

The plaintiffs sought damages under the indemnification provisions of the agreement and also sought expectancy/benefit-of-the-bargain damages for the difference between what they paid for the acquired company and the actual value of the company at the time of the sale.

The court found that plaintiff had a good opportunity to negotiate for a specific representation and warranty regarding the value of the company when they were acquiring it, however, no such warranty was given then. The analysis of the court was based on the fact that under such circumstances, plaintiff's reasonable expectancy must be tied and limited to the express promised made to them in the agreement. Consequently, the court rules that the representations and warranties in the agreement reflected that the parties were fully aware about certain facts that would make the liable party bear the risk of that loss only in certain circumstances, and that the expectations of both parties, therefore, were shaped by the risks of which they were aware.

In US this field is highly regulated especially after the financial crisis of 2008 when the whole market has been triggered. They have a rather developed regulatory system with sophisticated pieces of legislation and bodies like SEC (Securities and Exchange Commission) who are constantly looking after the situation and are implementing new regulations for emerging problems.

---

[38] Interim Healthcare v Spherion Corp., Superior Court of Delaware (July 20, 2004)

EU law perspective:

The value of M&A deals in Europe has grown drastically in the recent decades, as for example in 2018 had an increase of 12.5% in total value of M&A deals compared to previous year, reaching the total amount of EUR 80.5 billion.[39]

The primary purpose of EU merger control is to ensure that competition in its internal market is not distorted.[40] The regulations on M&A deals in EU are mainly formed by national legislations of the member countries, which in turn have to be in conformity with the EU rules. The EU regulatory policy was implemented through EU Directives and Regulations, for the purpose of controlling the corporation's behavior, fostering the efficiency of the deals and bringing the companies to a single harmonized market.[41]

In EU exists a "one-stop-shop" principle, which applies to M&A transactions. According to the mentioned principle, such concentrations should be notified to the responsible body, [42] which is here the Competition Directorate General of the European Commission. Pursuant to the Article 21(2) EUMR the European Commission "shall have sole jurisdiction" to review and control the compatibility of transactions of EU dimension. Moreover, Art. 21(3) EUMR provides that "[n]o Member State shall apply its national legislation on competition" (emphasis added) to any such concentration. Similarly, with US competition law, public interest issues other than antitrust policy are not considered in the review and assessment by the European Commission of a notified transaction.[43]

One of the characteristics in EU merger regulations is that there is no possibility of a legal recourse after the closing of the notified transaction unlike in the US, where the government can require that a merger be reversed. In addition to this, other differences also exist, such as the difference in the notification requirement threshold – compared to the US, in EU

[39] CMS, "Emerging Europe M&A Report 2018/19" (2019), p. 4
[40] Council Regulation N139/2004 of 20 January 2004 on the control of concentrations between undertakings. Official Journal L 24, 2004
[41] E. Gomez, *supra* note 3, p.38
[42] Refers to those transactions, which constitutes a «concentration» for the purposes of the EUMR (cf. Article 3) and meeting the relevant turnover thresholds provided therein cf. Article 1(2) and (3).
[43] OECD – PUBLIC INTEREST CONSIDERATION IN MERGER CONTROL, note by the European Commission, June 2016

thresholds are much higher.[44] What is also important to highlight is that the final decision of compatibility of the transaction is handled by the EU Commission, while in the US the ultimate authority, rests with its Federal courts.

What is absorbing about the EU market is that in a one framework there are different countries and for facilitating the process of cross-border M&As on October 26 of 2005 the European Directive 2005/56/EC1 (hereinafter Cross-Border Merger Directive or CBMD) was adopted. The purpose of this directive was to harmonize the legal basis for M&As within EU and keep them competitive against such players as US and Japan.[45] This directive increased the mobility of the companies and provided them the possibility to reorganize and cooperate at the EU level.[46]

The CBMD stipulates 3 types of mergers: (1) merger by absorption, (2) merger by creation of a new company, (3) merger of a subsidiary into its parent. In cases of 1 and 2 CBMD regulates the transactions where the assets and liabilities are transferred to the surviving company in exchange of the shares of the latter. Though in cases where the cash payment for the deal exceeds 10% of the nominal value of the shares, the merger cannot benefit from the CBMD. [47] Also one of the great characteristics of this directive is that it separates the deals between parent and subsidiary companies and provides a simplified procedure for those.

The existence of CBMD means that each of the party's activities are regulated by the domestic laws covering the mergers process, while the directive only contains final, special regulations for specific points.[48] Also the CBMD suggests so called Mergers Plan which must be jointly prepared and submitted by the managements of the both parties. While outlining the

[44] Karel Cool - Merger Control and Practice in the BRIC Countries vs. the EU and the US: Review Thresholds, 2012
[45] S. Grundmann and F. Glasow. European Company Law: Organization, Finance and Capital Markets. 2nd ed. In Ius Communitatis. Cambridge etc.: Interia, 2012, p. 698
[46] F. Dobbelaere and E. Pottier, "A Practical Guide to Cross-Border Mergers in Belgium", European Company Law, 10(6), 2013, p. 187
[47] D. Van Gerven, Cross-Border Mergers in Europe. Vol. 1, Cambridge etc.: Cambridge University Press, 2010, p. 9
[48] "Mobility in Europe: Directive on Cross-Border Mergers", Linklater Report, Oct 2005

required contents of the plan the CBMD does not suggest any existing form for the plan and it remains with the national regulations of the parties.

US and EU parallels

US M&A history is more than one century ahead of its European successors. It came up in US and developed very quickly, thus the regulation policy is more developed there. For the purpose of maximizing the shareholder value the two systems chose two different paths.[49] In comparison we can see that the US legislation is giving more freedom to the both parties of the transaction. This can be explained by the structures of ownerships in companies, in EU and US. When in US it is more governed by the board or the management of the companies, the European companies are mainly governed by the controlling shareholders. The EU regime is more favorable for the shareholders who want to be in charge of the companies, and on the other hand the US framework gives the management more power and freedom.[50]

Additionally, an example of how far the corporate freedom has advanced in US when compared with EU, is the corporate mobility, which is considered to be an exceptional phenomenon in US. The corporations can choose their jurisdiction when the management or the board decides so. In Europe, on the contrary, corporate mobility is a more complex concept that makes a fundamental distinction between reincorporation of existing firms and incorporation of start-up firms. It is also generally believed that despite all the initiatives on the intra-European level, the EU legislation had opened only a narrow door for reincorporation of existing firms.[51]

To conclude, currently under the European laws and the general practices the incentives similar to those that drive US charter competition are not involved.[52] First, for the purpose to reach the level of US regulatory structures for takeovers, EU has to establish higher level of harmonization among its Member States. Thus, despite the increased number of cross-border

---

[49] D. LI, *"Takeover Regulation in Europe and the United States: Will There Be Convergence within Europe and between Europe and the U.S.?"*, 28 Feb 2017, Columbia Journal of European Law
[50] *Id*.
[51] W.W Bratton, J.A. Mccahery & E.P.M. Vermeulen,"How does corporate mobility affect lawmaking: A comparative analysis",2009, The American Journal of Comparative Law, vol. 57(2), 503
[52] *Id*.

deals and the phenomena of globalization, the core difference in the base of the regulatory frameworks of EU and US show that it is not of much possibility of convergence to appear in the nearest future.[53]

[53] D. LI, *supra* note at 49

CHAPTER 3
ROLE OF M&A IN THE FUTURE OF RA, LEGAL ISSUES IN COMPARISON WITH INTERNATIONAL BEST PRACTICE

As already was presented in this paper, a properly operating M&A market has a big influence on the overall development of the business environment.[54] This chapter will present the current regulations of M&A market in the Republic of Armenia, as well as the available mechanism used in practice. A comparison will be drawn between the RA and international best regulations to highlight the existing gaps and to understand what possible tools remain untouched by the practitioners, that can benefit if used properly.

Armenian Law Perspective:

In Armenia the regulation of the M&A market is still in its development process. The only pieces of Armenian legislation regulating this area are the Articles 63-66 from the RA Civil Code, RA Law "On Protection of Economic Competition", and RA Law "On Joint-Stock Companies" (Articles 18-26).

M&A legal definition

The RA law distinguishes in the Article 63 (Reorganization of a legal person) of the Civil Code[55] two types of M&A – mergers and amalgamation. In the first case 2 or more companies merge with each other forming a new company by transferring to it all of their assets and liabilities, and the process is completed from the moment of state registration of the newly established legal person.[56] In case of amalgamation one or more companies merge into another existing company transferring to the latter all their assets and liabilities and the process is completed from the moment of state registration of the termination of the activities of the amalgamated legal person/s.[57]

It can be seen that the law does not provide a separate definition for different types of M&As, but ranks the latters among the other types of reorganization of the companies. A

---

[54] Cristina Ferrer, Robert Uhlaner, and Andy West: *"M&A as competitive advantage"*, August 2013
[55] CIVIL CODE OF THE REPUBLIC OF ARMENIA
[56] *Id*. Article 63 § 3.
[57] *Id*. Article 63 § 4.

separate definition for the acquisitions in the law is not given either and it can be assumed that all such deals will be treated as just acquisition of stock and would be governed by the RA law on Securities Market or by the laws of Armenian Stock Exchange also, if the company is listed. Though, there are few companies whose shares are listed on the local stock exchange and the market is not an active one. It is not customary for a bidder to build a stake in the target prior to launching an offer. And all of this applies only in the cases if the company is a joint-stock company, in cases of limited liability companies these regulations would not apply either.

M&A agreement

When it comes to the mergers or amalgamation agreement the second part of the Article 24 of RA Law on JSC states the following:

The merger (acquisition) agreement shall contain:[58]

a) The business names of the parties involved, their places of location, and information on their state registration;

b) The timeframe, procedure, and terms of merger (acquisition);

c) The procedure (formula or other standard) used to convert the shares and other securities of the merging (acquired) company;

d) The terms and conditions of receipt of dividends for shares of the merging (acquired) companies;

e) The procedure of voting in the Joint General Meeting of Shareholders;

f) The dates and procedure of preparation and implementation of the Joint General Meeting of Shareholders of the companies involved in merger (acquisition); and

g) Other information, as the parties involved in the merger (acquisition) find necessary.

As we can see, there is no specific format of M&A agreement suggested by the Armenian legislator. Also Armenia does not have a separate Contractual law to which we can refer to and various types of contracts are regulated by the specific Articles in the RA Civil code, but there is

[58] RA Law "On Joint-Stock Companies" Article 24 § 2.

nothing regarding M&A agreements. This can lead to an uncertainty for an average market player who does not have a legal background and is unfamiliar with the overall processes of M&A.

While speaking about representations, warranties and covenants sections in the agreement after a little research we can see that not only they are not mentioned in the law, but no detailed regulation has been provided so far. These kind of clauses secure both the buyer and the seller from certain frauds that can be done by the other party. The system of using these sections in the agreement is fruitful for the government too, because in case of a big deal an inaccuracy or fraud can bring to very big losses of one party which can trigger the situation in a certain field of the market and it can bring to downfall of the economy by a domino effect.

Merger control

The main source of law regulating the competition assessment of economic entities in Armenia is the Law of RA "On protection of economic competition." (hereinafter in this section "the Law"). The adoption of this law in 2000 is considered as one of the main achievements in the sphere of economic reforms in Armenia. State body which is responsible for the implementation of antitrust policy in the sphere of economic competition, is the State Commission for the Protection of Economic Competition of the RA (from now on "Commission"), which is created in accordance with the Article 17 of the above-mentioned law. The Commission is not included in the structure of the Government of the RA, that is why it is considered as an independent body in the framework of its authorities.

As the international merger control rules define, in Armenia also we distinguish the main three types of anti-competitive mergers – horizontal mergers, vertical mergers and mixed mergers. Moreover, similarly with the large majority of jurisdiction, Armenia also sets obligatory notification requirements and requires that the filling process be done prior to completion of merger (pre-merger).

The Chapter 4 of the Law regulates the relations on notification requirements. Namely, pursuant to Article 8 of the Law the following shall be deemed as a concentration of economic entities.

1) affiliation of economic entities;

2) merger of economic entities;

3) acquisition of assets of one economic entity by another if their value per se or together with the value of assets already possessed by the acquirer constitutes 20% or more of assets of such economic entity;

4) acquisition of a share of one economic entity by another if its value per se or together with the value of the share already possessed by the acquirer constitutes 20% or more of the charter capital of such economic entity;

5) any incorporation of economic entities due to which one economic entity may, directly or indirectly, influence the decision-making or competitiveness of another economic entity.

The definitions given under point 3 and 4 are quite unclear and vague, because it is difficult to understand that percentage defined (20%) concerns the assets/charter capital of which party of the transaction. It would be good to reformulate the provided definitions to avoid misunderstanding that it may somehow create among economic entities or other third parties.

The above-mentioned types of concentration are required to be declared only if: (i) the total value (amount) of assets or income of the concentration participants or the value (amount) of assets or income of at least one of the participants in the preceding financial year has exceeded the value (amount) of assets or income established by the decision of the Commission or (ii) at least one participant of concentration has a dominant position in any product market.[59] It is important to highlight that according to Armenian legislation, having a dominant position is not per se anticompetitive; only a transaction, which result to it, should be reviewed and prohibited, if it violates competition policy.

Another point worth discussing for the notification process is the situation when merging parties do not declare about a concentration even if it satisfies the defined threshold. In this case it becomes difficult for the Commission to be aware of the concluded merger, because the only

[59] RA law "On protection of economic competition", Article 17 § 1

sources of information are either the claims from third parties or mass media reports. However, Commission has the authority to start an investigation at its own initiative.[60]

Under Article 10 of the Law it is prohibited to close the transaction without the appropriate decision of the Commission. The decision of the Commission is valid from the date of its promulgation and may be appealed in administrative order within a ten-day period and in a court within a month. Nevertheless, appeal of the decision does not suspend its effectiveness (execution).[61] Prohibited concentration, put into effect, shall be subject to liquidation (rescission, termination) as prescribed by legislation.[62] However, it is nearly impossible or too costly to require the economic entities to return to their pre-merger position.

Other regulative issues concerning the domestic regulation are the followings:

- Foreign investments

The issues concerning FDI are regulated by the 1994 RA Law on Foreign Direct Investments and 43 bilateral investment treaties signed with other states, from which 8 are not in force. Since 1994 the business and investment environment has significantly expanded and has undergone substantial changes, whereas the above-mentioned law has not been amended since its adoption. The existing Law does not provide any regulation on the acquisition of the local economic entity by a foreign company. At the same time, we don't have any restriction or limitation set by the Law. However, there exist some limitations concerning the television and radio companies, i.e. it is not allowed for the foreign companies to own 50% or more of voting shares of the mentioned companies.[63] Lack of legislation in this sphere may arise some legal and/or technical issues, which, however, can be avoided through provision of appropriate regulative clauses in domestic legislation. It would be even better to have a separate directive on cross-border M&A which will regulate only the cases when at least one of the parties is not an RA company. This will facilitate the foreign company's job in understanding what to expect in case of entering an M&A transaction with an RA company.

---

[60] *Id*. Article 19
[61] *Id*. Article 35, §3
[62] *Id*. Article 10, §4
[63] RA Law "On television and radio", Article 55.1 § 1

- Specific field regulations

Armenian legislation stipulates specific regulative regime for mergers in banking sphere. Here the regulatory body having the authority of giving a merger approval is the Central bank of Armenia. Insurance companies, in their turn, also cannot conclude a merger without the prior approval of the Central bank of Armenia.[64]

Last point to present about the merger control rules of Armenia is that it, similarly with US and EU, public interest considerations or welfare-based test is not taken into account during the assessment of a concentration. In means that in Armenia mergers are assessed only with a view of protecting fair competition.

Insider trading

The prevention of concluding insider trading in the M&A deals is also of high importance. In RA there is no such separated body as SEC in US, which will pay that much attention to the Insider trading issue, as at the moment if speaking frankly there is no need of such body either, as like was mentioned before the Armenian securities market is not that much developed and active.

Insider information's definition and prohibition of the use of inside information in bad faith is stipulated in articles 160-163 of RA law on Securities market. The article 162 is about the prohibition of use of Inside information, where the use of inside information is stipulated as follows:

Use of inside information in bad faith takes place, where an insider:

(1) directly or indirectly purchases or sells or attempts to purchase or sell a security or a derivative financial instrument connected with it on the basis of inside information at its or another person's expense;

(2) discloses inside information to third persons, except for the cases when such disclosure is connected with performing routine functions or performance of official duties;

[64] CBA Resolution N 3/12

(3) recommends or otherwise prompts third persons on the basis of inside information to purchase or sell securities or derivative financial instruments connected with them.[65]

As we can see there is not such broad definition of what can be considered insider trading compared to US, there is even not such term as "insider trading" in the law. But the main issue that it is very hard to define the enforcement in case of violation. There is only one article 190.1 of RA Criminal code which stipulates penalties and even prison sentences for the unfaithful use of inside information.[66] But with the given legislation and current market situation it is merely impossible to prove that Insider trading has taken place, or that the person can be criminally charged.

The possible developments:

As the Armenian market is currently in its development stage and of course is not as attractive and complex as for example the US one, it would be wrong to implement all the various regulations based on international practice, as it can have the reverse effect and deter the market players from engaging into transactions. However, there is a need to take steps in the direction of developing the regulation by amendments and implementation of standards which are suitable and will have a positive effect, as the RA regulatory text are in strong need of revision and improvement.

First of all, for promotion of the concept of M&A and its possible benefits in Armenia the proper definitions of its different types and the differences between them should be outlined in the law. It is very important to differ acquisitions from mergers, as well as the different types of the latters. Then, all the requirements which must be kept during the process of such different types of deals also should be outlined. It would be even more fruitful to provide separate simplified procedure for deals between parent and subsidiary companies as those in most of cases do not imply disclosure risks for the participating parties.

It would be useful to have broader Articles in the Civil Code and the rules of State Register of the Legal Entities on the requirements for the M&A agreement and on the

[65] RA law on "Securities market", Article 162
[66] RA Criminal Code, Article 190.1

enforceability of the clauses in case of one of the parties has breached them. Also a specific type of M&A agreements can be suggested by the governments, which can be constructed based on the US and EU samples which are shaped by their corporate and financial laws.

A separate act on the control of M&A transactions, with the powers of the specific regulatory body and the rights and obligations of the parties can be implemented in order to minimize the risk of frauds and inferior effect on the economy through domino effect. This act must also provide the time periods for revision of documents, disclosure of information, etc.

What considers the cross-border transactions a separate peace of legislation on cross-border M&As is a must, as it will help the foreign investors to have a proper perception about all the nuances when engaging in such deals. This in its turn will make them more willing to cooperate with Armenian companies as the regulatory field will be more comprehensive for them. Of course it shall not contradict the RA law on Foreign Investments and the Bilateral Investment treaties signed with other countries.

CONCLUSION

M&A transactions and their regulations always have been in the epicenter of attention of various scholars and regulators. Given the research and analysis outlined above, it can be seen that these type of activities play huge role in the development of the business environment as well as in the economies of countries and that the regulatory field of the country has a direct impact on the development of a certain field.

The current situation under the RA legislation regulating the field of M&A transactions shows that a proper attention is not paid to the regulation of the deals. This can be and is most possibly driven by the fact that there was not much need for the proper regulations, as the aim of the majority of the deals was the allocation of capital inside the families or the pursue of correspondence to certain legal standards, thus the deals were mostly of an artificial nature.

Despite the fact that current market players have not shown a demand for a better and more sophisticated regulatory field, it does not mean that the need does not exist. If the companies have the feeling that they are secured, the desire to seek different ways of development and expanding of their businesses through engaging in different types of M&A transactions will rise. M&A can be a vital tool in the future development of the Armenian business environment, as the most Armenian companies are family owned and conduct their business activities in a "closed-door" manner. This can in many cases be an obstacle for the possible development about which they do not even know because of those "closed doors". If implemented properly such deals can help the companies – first, to grow in the domestic market and as a second instance, expand to the international market, as we already know that the purpose of such deals is to have a higher value when the companies are combined, than what they have separately (the notion of 2+2=5).

The formation of new companies with different shareholders will also foster the development of the culture of having boards of directors in Armenia, as in this cases the shareholders will be more eager to appoint their trusted professionals to manage the business and cooperate with other such board members. In this scenario, as we could already see from the international practice, the companies would most probably have a brighter future (as they are

operated by the professionals of the field which in most of cases are more keen to take risks, and without taking risks there can be no development).

Thus, one of the first steps for the development of the field must be the introduction of new measures regulating the field, through implementation of new broader articles on the regulation of different types of M&A transactions and amendment of the existing ones. Such changes must serve the aim of facilitating the understanding of the process from the legal point of view and making the companies feel secured throughout the whole process. Also these regulations must point out the issue of the enforceability in cases when a dispute may arise out of an M&A agreement between the parties. The separate peace of legislation on cross-border M&As in its turn will make Armenia more competitive in the field and will help to bring in new technologies and know-hows for the domestic market.

In the era of globalization and the fast development of the economy in the 21st century Armenia must take fast measures to not fall behind. The promotion and development of the M&A and formation of synergies through those activities can play a key role in the future of development of RA business environment. Rather than waiting the market players, the government shall itself undertake measures and encourage them to act and for this purpose a properly working legal framework should be established.

As a conclusion I would like to say that of course the suggested solutions will not solve all the problems and bring the RA M&A market on the same level with the most developed countries, but it would be a step towards keeping Armenian market competitive and encourage the domestic and international players to engage into such transactions on the territory of RA.

BIBLIOGRAPHY

- "Mobility in Europe: Directive on Cross-Border Mergers", Linklater Report, Oct 2005
- A. Golubov & D. Petmezas & N. G. Travlos, "Empirical mergers and acquisitions research: a review of methods, evidence and managerial implications", 2013, p. 2.
- A. Kouloridas, The Law and Economics of Takeovers: An Acquirer's Perspective, Oxford: Hart, 2008, p 128; p, 163; M. Ventoruzzo et al., Comparative Corporate Law, St. Paul, MN: West Academic Publishing, 2015; http://people.stern.nyu.edu/adamodar/pdfiles/papers/acquisitions.pdf,
- American Bar Association "Business Law Today", https://www.americanbar.org/publications/blt/2009/03/keeping_current_hutchings.html
- American Bar Association, "Potential fraud liability for merger agreement representations and warranties"
- Anastasia, "A Historical Analysis of M&A Waves", January 1, 2016
- Aram Orbelyan, Narine Beglaryan and Lilit Karapetyan ; "Law and Practice", Last Updated February 15, 2019
- C. Phillips, "Cross Border Mergers by operation of law - EU Directive 2005/56", 10 November 2016, http://www.fieldfisher.com/publications/2015/11/cross-border-mergers-by-operationof-law-eu-directive-200556#sthash.Rr3NiqOn.dpbs
- CBA Regulations
- Concept of Mergers and Acquisitions, in (ed.) Evaluating Companies for Mergers and Acquisitions (International Business and Management, Volume 30) Emerald Group Publishing Limited
- Council Regulation N139/2004 of 20 January 2004 on the control of concentrations between undertakings. Official Journal L 24, 2004
- Cristina Ferrer, Robert Uhlaner, and Andy West: "M&A as competitive advantage", August 2013
- D. Li, "Takeover Regulation in Europe and the United States: Will There Be Convergence within Europe and between Europe and the U.S.?", 28 Feb 2017, Columbia Journal of European Law
- D. Van gerven, Cross-Border Mergers in Europe. Vol. 1, Cambridge etc.: Cambridge University Press, 2010

- E. Gomez, Mergers, Acquisitions, and Strategic Alliances: Understanding the Process. Houndmills, Basingstoke, Hampshire: Palgrave Macmillan, 2011

- E. Gomez, Mergers, Acquisitions, and Strategic Alliances: Understanding the Process. Houndmills, Basingstoke, Hampshire: Palgrave Macmillan, 2011

- Evenett, Simon J., "Do All Networks Facilitate International Commerce? The Case of US Law Firms and the Mergers and Acquisitions Wave of the Late 1990s" (2001). CIES Discussion Paper No. 0146. Available at SSRN: http://ssrn.com/abstract=293804 or doi:10.2139/ssrn.293804

- F. Aytac and C. T. Kaya, "Contemporary look on the historical evolution of mergers and acquisitions", 2016, International Journal of Economics, Commerce and Management, vol. IV

- F. Dobbelaere AND E. Pottier, "A Practical Guide to Cross-Border Mergers in Belgium", European Company Law, 2013

- Hart-Scott-Rodino Antitrust Improvements Act of 1976

- Howard Ma, CFA; "Another Merger Wave Unwinds", October 11, 2016
    - https://home.kpmg/content/dam/kpmg/am/pdf/2017/Armenian%20Banking%20Sector%20Overview_2017%20Q4_Eng.pdf
    - https://www.jpmorgan.com/jpmpdf/1320746694177.pdf

- Ian Linton, "What Is a Horizontal Merger and a Vertical Merger?", Updated November 14, 2018, https://smallbusiness.chron.com/horizontal-merger-vertical-merger-60981.html

- ICLG, "USA: Mergers & Acquisitions 2019"

- Interim Healthcare v Spherion Corp., Superior Court of Delaware (July 20, 2004)

- J. C. Coates IV, "Mergers, Acquisitions and Restructuring: Types, Regulation, and Patterns of Practice", Discussion Paper No. 781, July 2014, Oxford Handbook on Corporate Law and Governance; definition on Investopedia: http://www.investopedia.com/terms/m/mergersandacquisitions.asp

- J. Sedlacek and P. Valouch, "Motifs of M&A in the US, European and Asian Markets", ERMM 2015
- James Chen, "Conglomerate", Apr 17, 2019, https://www.investopedia.com/terms/c/conglomerate.asp

- K.S. Reddy, "Determinants of Cross-border Mergers and Acquisitions: A Comprehensive Review and Future Direction", 2015

- Karel Cool - Merger Control and Practice in the BRIC Countries vs. the EU and the US: Review Thresholds, 2012

- Kumar Pallav, “On the execution of a strategic acquisition: a comparison of U.S. and Indian laws”, 2010
- OECD – PUBLIC INTEREST CONSIDERATION IN MERGER CONTROL, note by the European Commission, June 2016
- R. La Porta, F. Lopez-de-Silanes, A. Shleifer, R. Vishny “The economic consequences of legal origins” Journal of Economic Literature, 46 (2008)
- R. La Porta, F. Lopez-de-Silanes, A. Shleifer, R. Vishny “The quality of government” Journal of Law Economics and Organization, 15 (1999)
- RA Civil Code
- RA Criminal Code
- RA law “On Joint-Stock Companies”
- RA law “On Limited Liability Companies”
- RA law “On protection of economic competition”
- RA law “On Securities Market”
- RA Law “On television and radio”
- Radu Ciobanu, “Mergers and acquisitions: does the legal origin matter?”, 2015
- Rose Johnson. "Takeover Vs. Acquisition." Small Business - Chron.com, http://smallbusiness.chron.com/takeover-vs-acquisition-32510.html. Accessed 07 April 2019 .
- Rose, Amanda M., “Reforming Securities Litigation Reform: Restructuring the Relationship between Public and Private Enforcement of Rule 10b-5.” Col. Law Rev.,1301(2008). Available at SSRN: http://ssrn.com/abstract=1096864
- S. Grundmann and F. Glasow. European Company Law: Organization, Finance and Capital Markets. 2nd ed. In Ius Communitatis. Cambridge etc.: Interia, 2012
- Securities Exchange Act of 1934, 15 U.S.C. § 78n (2001) and regulations thereunder, especially Schedule 14a, Item 14, "Mergers, Consolidations, Acquisitions and Similar Matters."
- Standard Oil Co. of New Jersey v. United States, 221 U.S. 1 (1911)

- Subramanian, Guhan, and Nithyasri Sharma. "Bank of America-Merrill Lynch." Harvard Business School Case 910-026, March 2010. (Revised January 2012.)

- W.W Bratton, J.A. McCahery & E.P.M. Vermeulen,“How does corporate mobility affect lawmaking: A comparative analysis”,2009, The American Journal of Comparative Law, vol. 57(2), 503