Research and Analysis of M&A Issues of Multinational Enterprises Based on International Business Law

Habo Hu(✉)

Henan Institute of Science and Technology, Xinxiang, China
1932359666@qq.com

Abstract. With the accelerated internationalization of global trade, international cross-border M&A has entered a rapid development stage. With China as the middle pillar of the world economy, a wave of cross-border mergers and acquisitions has crept in. After the accession to WTO, there is no special law to regulate the M&A of foreign enterprises in China, and multinational companies are allowed to enter China in a large number of ways through various M&As, thus forming a new round of foreign M&A boom. Then came the monopoly problem, which seriously damaged our state-owned economy and dealt a serious blow to our national industrial system. However, the corresponding Chinese legal regulation of M&A of multinational enterprises is not perfect, and the recently introduced anti-monopoly law is also subject to revision.

Keywords: Multinational enterprises · Mergers and Acquisitions · Monopoly · Legal regulation

1 Introduction

Unrestricted cross-border mergers and acquisitions inevitably lead to the loss of a monopoly position or market dominance in the market. Under such circumstances, how to regulate cross-border mergers of giant enterprises and maintain market freedom and fair competition has become a hot issue in the field of international economy and international economic law today [1]. Today, with the implementation of China's economic system reform and opening policy to the outside world gradually, the impact of economic globalization on China's economy and China's enterprises is becoming more and more enormous, how to protect themselves and strengthen themselves in the introduction of foreign investment which has become a major issue facing China [2]. Therefore, studying the legal aspects of the merger of multinational enterprises not only helps us to understand the latest developments in the field of international economic law today, but also helps to promote and improve China's anti-monopoly legislation, accelerate the modernization and scientificization of China's economic legislation, and build a socialism with Chinese characteristics [3].

M. F. b. Sedon et al. (Eds.): SSHA 2023, ASSEHR 752, pp. 582–587, 2023.
https://doi.org/10.2991/978-2-38476-062-6_74

2 Basic Issues of Legal Regulation of Antitrust Law

2.1 The Purpose of M&A Control for Multinational Companies

2.1.1 Theoretical Foundations of Control of Corporate Mergers and Acquisitions in Western Developed Countries

The theoretical basis for the general control of business mergers in Western developed countries is relatively well developed, but the question of whether and to what extent antitrust control of business mergers should be exercised has always been a subject of debate in economics and has thus influenced the regulation of antitrust law in Western developed countries where economists use economic analysis to study and decide on the legislative model of antitrust law [4]. The changes in the method of economic analysis have a decisive role in the legislative model of its antitrust law in terms of the principles of illegal recognition and the form of rules [5].

2.1.2 The Purpose of Antitrust Law to Control M&A of Multinational Enterprises

Regardless of the outcome of the debate between economics and jurisprudence on the control or non-control of business mergers, antitrust law must always adhere to its purpose, which is to control business mergers in order to maintain effective competition in the market and to promote economic democratization in the interest of small and medium-sized enterprises and to protect the interests of consumers [6].

(1) Maintain effective competition in the market. In a market economy, the market, as a way of resource allocation, plays a dominant role in economic life, and the normal operation of the market mechanism should be maintained to optimize the allocation of resources and reduce the transaction costs of society [7].
(2) Promote economic democratization. Democratization of the economy means providing as many producers and operators as possible in economic life to be able to enter the market and compete. Instead of fostering an oligarchy centered on big business, this is actually the penetration of political-democratic ideas in the economic sphere [8].
(3) Defending the interests of small and medium-sized enterprises. SMEs in this context refer to SME competitors other than the merging business parties, which are generally disadvantaged in the competition due to their outdated equipment and outdated technology compared to large enterprises [9].
(4) Protection of consumers' rights and interests. Unlike the SMEs mentioned above, the consumers here are not competitors of the merging firms and therefore do not feel the same pressure to merge as the latter, but are undoubtedly welcomed by the consumers when the merger creates economies of scale and reduces production costs until the price of the product drops [10].

3 Antimonopoly Law Regulates M&A of Multinational Enterprises

3.1 Procedures for Prohibiting M&A of Multinational Enterprises

(1) Reporting system for cross-border business combinations

The use of antitrust law to examine whether a merger of multinational enterprises is beneficial to the economy as a whole or should be prohibited requires that certain measures be taken to bring mergers of a certain size into the view of the antitrust authorities [11].

(2) Substantive criteria for prohibiting cross-border business combinations

From the antitrust laws of the United States and Germany, the prerequisite for prohibiting a merger is neither the requirement that the merged enterprise become the exclusive monopoly in the market nor the requirement that the enterprise has in fact abused the dominant position in the market that it has acquired, as long as the merger is inferred from the market position acquired by the merged enterprise and may have the effect of restricting competition, the merger may be prohibited [12].

(3) Define the relevant market

Where the annual sales of an enterprise are determined, if the enterprise is placed in a smaller market it holds a larger market share if it is placed in a larger market, it holds a smaller market share.

(4) Product Market

The basic principle for determining the product market is that only similar products belong to the relevant market. Similarity in this context refers to the crossover and substitutability of the product for the consumer.

(5) Geographical markets

The division of the geographic market depends on the geographic area where the products of the merging enterprise and the products with which it competes are sold where transportation costs, as well as the distance between the products and the consumers, have their importance.

(6) Time Market

Temporal market i.e. the temporal nature of the relevant market. Refers to certain products that are only temporarily present or continuously available for a long period of time due to seasonal fashion or mostly due to technological developments that sway

their relevant markets. The cross-elasticity with other similar products is high before consumers choose them.

(7) Determine the market share and market concentration of enterprises

In practice, the larger the market share a firm holds in the market, the more they have the ability to freely determine their own trading behavior in the market.

(8) Exemptions from the prohibition on cross-border business combinations

Economies are very dynamic and therefore competition rules should also be flexible. A cross-border merger creates or strengthens a dominant market position in the market of the merged country, such as:

1. Insolvency consolidation;
2. Overall economic interest and social public interest;
3. Improve international competitiveness international competitiveness.

The above-mentioned three exemptions from the prohibition of cross-border mergers are too lenient in the view of some experts and scholars who advocate strict merger control, which is not conducive to preventing mergers that may cause serious restrictions on competition and ultimately lead to the destruction of the competitive order in the market.

3.2 Procedures for Controlling the Behavior of Companies After Cross-Border Mergers and Acquisition

(1) Post-merger review system

After a multinational enterprise merger is approved by the local authorities, the merged enterprise can easily control the market and form a dominant market position due to its increased size and strength, and usually those enterprises that have achieved a dominant market position can easily abuse their market advantage, thus harming effective competition and threatening national industries. Therefore, many countries adopt a strict control attitude towards the merger of multinational enterprises, and the antitrust laws of each country generally make the monitoring of the abuse of dominant market position after the merger of multinational enterprises an important element.

(2) Elements of control over the conduct of a post-merger enterprise

This is because those companies that have achieved a dominant market position are highly susceptible to abusing their market dominance, thus making abuse monitoring an important element of the control business combination system.

1. Obtaining a dominant market position;
2. Abuse of dominant market position;
3. Discriminatory behavior.

4 Conclusion

This article discusses some basic issues of antitrust legal regulation of M&A of multinational enterprises. Firstly, the purpose of MNE mergers is explained, including the theoretical basis for controlling MNEs in western developed countries and the purpose of antitrust law to control MNEs, and secondly, the procedure of MNEs is focused on. Antitrust legal regulation of M&A of multinational enterprises is part of the legal regime controlling M&A of enterprises. The regulation of monopolies is the primary task in the control of cross-border M&A, and it is one of the basic principles of cross-border M&A legislation. Therefore, the antitrust legal regulation of cross-border M&A is very important in controlling the legal regime of corporate M&A.

References

1. Yixin, Zheng Xiaomei. A preliminary study on teaching graduate courses incorporating emotional education: an example of international business law class for international business majors[J]. China Adult Education,2022(15):42–45.
2. Zhou Ling Ke. The design of International Business Law based on the standard of "one degree of gender" of the Golden Course[J]. Logistics Science and Technology, 2022, 45(09):168-170. https://doi.org/10.13714/j.cnki.1002-3100.2022.09.040.
3. Sun Shuang. The application and research of "three classrooms" innovative teaching mode in international business law course[J]. Anhui Education Research, 2022(15):18-19.
4. Xie, Haibo. The use of case teaching method in international business law course and its improvement [J]. Modern Business Industry,2022,43(11):180-182. https://doi.org/10.19311/j.cnki.1672-3198.2022.11.082.
5. Yang Song. An innovative exploration of the basic theory of international commercial law: A review of Dr. Song Yang's new book "Theoretical and practical study of international commercial practices"[J]. Journal of International Law, 2021(04):146–154.
6. Li Jinyu. The application of case teaching in the teaching of international business law course [J]. Scienceand Education Wenhui (Zhongjian), 2021(11): 143145. https://doi.org/10.16871/j.cnki.kjwhb.2021.11.045.
7. Cai Chi. Research on international business law teaching reform based on BOPPPS teaching model [J]. Science and Technology Perspectives,2021(29):25-26. https://doi.org/10.19694/j.cnki.issn2095-2457.2021.29.10.
8. Wang Ming. Exploration and Practice of Integrating Curriculum Civics into International Business Law Teaching: A Comparison of Chinese and Foreign Legal Norms Related to Product Liability[J]. Chinese and foreign enterprise culture,2021(09):117-118.
9. Wang Wenxia. Chinese sentiment and international vision: integrating Chinese business law elements into the teaching of "Introduction to International Business Law" for business English majors[J]. Journal of Lanzhou Vocational Technology College,2021,37(04):82–84+91.
10. WANG Chen, YANG Nian, LIU Fang. The development and teaching practice of interactive teaching method in higher education: the reform of "international business law" course as an example [J]. Journal of Hebei Agricultural University (Social Science Edition), 2021, 23(01): 123128. https://doi.org/10.13320/j.cnki.jauhe.2021.0018.
11. Lu oran, Kong Yi. Research on the teaching of International Business Law based on output-oriented method[J]. English Abroad,2021(01):17–19.

12. Wang Lili. Promoting “123” Civic Education Model to Create a Nourishing Professional Classroom--Taking the Teaching of “International Business Law” Course as an Example[J]. Shandong Education (Higher Education), 2020(12):36-37.