

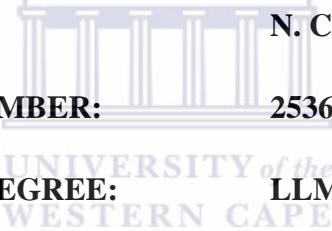
UNIVERSITY OF THE WESTERN CAPE

FACULTY OF LAW

MERGERS AND ACQUISITIONS AS A STRATEGY FOR BUSINESS

GROWTH: A COMPARATIVE OVERVIEW

**A Mini Thesis submitted in partial fulfilment of the requirement for the degree of Legum
Magister (LLM), Faculty of Law, University of the Western Cape, South Africa**



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Declaration

I, Coco Ngutjiua Kanguuehi declare that **Mergers and Acquisition as a strategy for Business Growth: A comparative overview** is my own work, that it has not been submitted before any degree or examination in any other University, and that all the sources I have used or quoted have been indicated and acknowledged as complete references.

Signature :

Date: 27th November 2015

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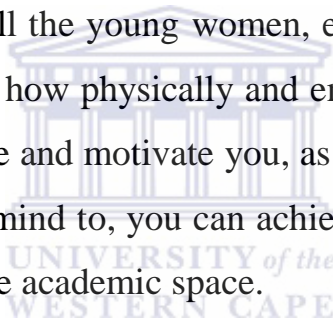
PROF R. WANDRAG



Dedication

I dedicate this thesis to my husband, Kuvée, the partner in the most important merger of my life and my children, Undjee and Uzuva, the products of that merger. Thank you for being my number one supporter and my pillar of strength. With you, this baby (my thesis), was conceived and in due course will come to light. Thank you always. To my children, thank you for the foot rub, the massages and understanding my absence. I trust that now you realize, my absence was not in vain. I further dedicate this paper to my late Grandmother, the values you instilled in me have made me the person I am today, thank you for being my guardian angel. To my parents, family and friends, my gratitude for your support knows no bounds.

I further dedicate this thesis to all the young women, especially working full time wives and mothers, knowing very well how physically and emotionally draining all those roles can be. I want my work to inspire and motivate you, as well as young people of Namibia, to realize that anything you put mind to, you can achieve. Work hard, grab opportunities and make your contribution to the academic space.



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To God be the glory because without his love, protection and mercy, none of this would have been possible, thank you Father for your kindness and the gift of learning.

I wish to express my sincere gratitude to my supervisor, **PROFESSOR RIEKIE M. WANDRAG** for her encouragement and willingness to offer time for discussing and critiquing my work. Her contribution to the completion of this Mini Thesis is priceless and highly valued.

I would also like to extend a word of thanks to my sponsor NSGTSP for the grand/bursary they awarded me. I trust that I will be able to contribute to the academic sphere of our country.

At the Faculty of Law where I studied, I thank all my colleagues of **LLM 2013/15 Cohort** for the team spirit that encouraged me to move forward to this level.

Finally and again, I acknowledge the outstanding role of my Husband and our children, as well as our house help, in my study life. Your patience, love and prayers throughout these years are invaluable.

N. C. KANGUEEHI

Windhoek, November 2015.

ACRONYMS AND ABBREVIATIONS

AOL	America Online Inc
Bil.	Billion
BRICS	Brazil, Russia, India, China and South Africa
CAPM	Capital asset pricing model
CEO	Chief Executive Officer
Co.	Company
CSCO	Computer Information System Company
EU	European Union
GDP	Gross Domestic Product
IBM	International Business Machines
INC.	Incorporated
JSE	Johannesburg securities exchange
M&A	Merger and Acquisition
NASDAQ	National Association of Securities Dealers Automated Quotations
NYSE	New York Stock Exchange
PLC	Public Limited Company
SA	South Africa
UK	United Kingdom
USA	United States of America



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ABSTRACT

This paper focuses on mergers and acquisitions as tools for business growth, how these have come into existence, their strengths, and mainly the reasons for their failure. Taking a closer look on how these have emerged in the United States, United Kingdom and South Africa.

Amongst the various ways that companies are able to get business financing, mergers and acquisitions have emerged as one of the most popular strategies for business diversity and growth. Mergers and acquisitions are agreed upon by companies to achieve certain strategic and financial goals. This is usually achieved by the bringing together of two companies with often contrasting corporate personalities, cultures and value systems.¹ The field of mergers and acquisitions has grown greatly over the past half century. At one point, mergers and acquisitions was mainly a US phenomenon but during the 1990's their volume in Europe started rivaling that of the USA. By 2000's mergers and acquisitions had become commonly used corporate strategies for companies' worldwide.²

Even though the number of mergers and acquisition seems to increase and decrease in waves, they have been studied frequently. A study revealed that in 2004 an acquisition was made every 18 minutes all year round. There was normally not a business day that would go by without the news of a merger or an acquisition in the media. The decision to merge, usually taken by the board and shareholders of a company is always preceded by extensive planning and implementation.³ Mergers and acquisitions are part of the continuing process of the growth of companies and as a result of the separation of ownership and management, it is management which will play the dominant part in the initiation of such mergers and acquisition and their motives could be primarily self-interest.⁴ It is expected that merging mostly results in the creation or formation of larger companies or units and if those large companies merge with others, even larger units will result therefrom. The result of that large unit can be a commercial or financial institution which is capable of exerting pressure on a country's economy.⁵ Despite their popularity, most mergers and acquisitions result in financial failures and may produce results that are undesirable for the stakeholders of the company. Some consequences that are usually detrimental to

¹ Sudarsanam PS *The Essence of Mergers and Acquisitions* (1995) 1

² Gaughan PA *Maximizing Corporate value through Mergers and Acquisition* (2013) 15

³ Anderson H, Havila V & Nilsson F *Mergers and Acquisition the Critical Role of stakeholders* (2013) 20

⁴ Macgregor IH *Mergers, Acquisitions and Shareholders* (1979) 2

⁵ Macgregor IH (1979) 2

investors are share underperformance, which usually takes place months after the acquisition.⁶ Success of mergers mostly depends on how well the organisations are integrated.

This paper will examine mergers and acquisitions in depth, its overview, the motivation of companies to undertake mergers and acquisitions and the reason for its failures. The paper will also examine the regulations and the success of mergers and acquisitions in the United States, United Kingdom and South Africa. Lastly, the last chapter will conclude with a finding of whether mergers and acquisitions can be said to be a strategy for business growth.



⁶ Marks M L & Philip H M “Merge Ahead: A research Agenda to increase merger and acquisition success” (2011) 162 *Springer Science and Business Media*

KEY WORDS

Mergers

Acquisition

Companies

Shareholders

Investors

Business strategy

Financial growth

Hostile Takeover

Friendly Takeover



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CHAPTER 1

INTRODUCTION

1.1 Background and rationale:

Companies have been formed and dissolved, managers have risen and fallen but one outstanding feature of the past decade is the rise of mergers and acquisitions and they continue to be the preferred option for business seeking to grow fast.⁷ Mergers and acquisitions are not phenomena of the second half of the twentieth century but consolidations between businesses are as very old as the businesses itself. However, looking at the number of mergers and acquisitions that have taken place in the latter half of the twentieth century, the number is so high that it can be accepted that these have become an important part of modern industrial development. The trend of amalgamations have been alive since the Industrial Revolution ages and at that time, commerce and industry consisted of companies where its owner owned all the assets and took all the risk involved in the business solely. As time emerged and revolution was taking place in transportation and roads, more funds were required to finance the increasing activities and benefits of economies of scales could only be achieved by merging of businesses, hence the birth of mergers and acquisitions.⁸

The terms mergers and acquisitions are used in a general sense. These are used to describe nearly any business combination involving new businesses. Mergers in a legal sense require one of the companies to sacrifice its corporate life.⁹ This will usually happen when two companies, who are about the same size, agree to go ahead with the business but as a single new larger company, as opposed to being owned and operated separately. A merger is usually a voluntary action and it requires cash payment to the other company and stock is also taken or swapped. An acquisition on the other hand which is also referred to as a takeover, buys a targeted company and this can either be friendly or hostile, depending on whether the targeted company wants to be bought. In the case of acquisition, is usually a larger company that wants to buy a smaller one.¹⁰ Mergers are classified into three different types. Horizontal mergers, which involves the merger of similar or related product lines, while vertical mergers occurs when firms, each working at different stages in the production of the same good combine. Conglomerates on the other hand, are mergers of unrelated lines of business which are done to reduce business risks. These

⁷ Devine M *Successful Mergers* (2002) 5

⁸ Macgregor IH (1979) 4

⁹ Green B M *Mergers and Acquisitions Geographical and Spatial Perspectives* (1990) 2

¹⁰ Giddy I *Mergers and Acquisitions: Definitions and Motivations* (unpublished theses, New York University, 2009)

usually occur when diversified companies engage in the production of goods in different industries among which the technology is constant.¹¹

The company which takes over another company establishes itself as the new owner of the Company it has taken over. The company which has been taken over, ceases to exist, the buyer of the new company swallows the stock of the bought company and continues to trade as a totally new company. There are usually two types of purchases that can take place, a stock purchase, whereby the acquirer provides cash or stock to the targeted company in exchange for the stock and an asset purchase where the acquirer buys assets of that company and pays them directly.¹²

In the USA, UK and SA, the countries that form the basis of this study, mergers and acquisitions have increased foreign direct investment activities in some way, leading to business growth. For example South Africa being the largest economy in Africa has become the most attractive country to do business within Africa attracting almost 40 per cent of the number of mergers and acquisitions targeting Africa. Indeed the last two decades have witnessed more than 1072 completed mergers and acquisitions targeting South Africa.¹³ In the USA, major companies like Cisco systems owe much of their success to skillful acquiring as a global provider of internet services. The economic intelligence unit reports that between 1994 and 2000, Cisco systems acquired some more than 50 companies at a cost of around US\$20 billion that helped the company's growth.¹⁴

However, despite the crucial role, mergers and acquisitions cannot fully guarantee the growth of business as is the case of Cisco systems which faced difficulties following the bursting of the technology bubble in the year 2000 and the ensuing economic downturn which affected the recent mergers of Cisco systems.¹⁵ It is upon such a background that this study was carried out to examine the effects of mergers and acquisitions as a strategy for business growth through a comparative case analysis of mergers in the USA, UK and South Africa.¹⁶

¹¹ Green B M (1990) 6

¹² Giddy I *Mergers and Acquisitions: Definitions and Motivations* (unpublished theses, New York University, 2009)

¹³ Economic Intelligence Unit *Into Africa: Emerging Opportunities for Business* (2012)

¹⁴ Economic Intelligence Unit *Into Africa: Emerging Opportunities for Business* (2012)

¹⁵ Economic Intelligence Unit *Into Africa: Emerging Opportunities for Business* (2012)

¹⁶ Pablo AL & Javidan M *Mergers and Acquisitions Creating Integrative Knowledge* (2004) 36

(a) Overview of mergers and acquisitions regulation in South Africa:

South Africa is one of the African countries which have the most comprehensive legislation on competitions and mergers in particular. In South Africa, mergers and acquisitions are regulated by the Companies Act 2008, Competition Act of 1998 and, if the companies involved are those that are listed on the Johannesburg Stock Exchange, then regulations of the JSE will apply as well. The Minister of Trade and Industry, the Competition Commission, the competition Tribunal and the Appellate body plays a vital role in the determination of the legality of mergers and acquisitions. The criterion used to determine whether a merger should be approved is to consider whether it would prevent or lead to a substantial lessening of competition, history of collusion in the market, nature and extent of vertical integration in the market and whether the merge will result in the removal of an effective competitor.¹⁷

Mergers and acquisitions in South Africa only started picking up in 2010 after the end of the financial crisis in 2008. The most recent mergers have been in the small to middle cap sectors and also between unlisted companies. Drivers of these activities in South Africa are the Black Economic Empowerment, private equity and cross-border transactions. Cross border mergers are also starting to become popular, as investment from South Africa into other African jurisdictions increases. However, there were relatively few black economic empowerment deals, which have been providing great impetus to the South African mergers and acquisitions market for a number of years.¹⁸ There are three cases of mergers that took place in the year 2013 that will be discussed in detail in chapter 3 of the thesis. The cases are the mergers between Nestle South Africa and Pfizer Inc, Stefanutti Stocks (Pty) Ltd and Energotec (Pty) Ltd and lastly Sekunjalo Independent Media (Pty) Ltd and Independent News & Media South Africa.¹⁹

(b) Overview of mergers and acquisition regulation in the United Kingdom:

In the UK, a code, called the City Code on Takeover and Mergers, was introduced in 1968 as a result of serious concerns over the way takeovers were conducted, but particularly, the practice of oppressing minority shareholders. The main objective of the City code was to regulate those

¹⁷ Botchway F N “Mergers and Acquisitions in resource industry: Implications for Africa” (2010) 26 *Connecticut Journal of International Law*

¹⁸ Robinson S *The Mergers and Acquisition Review* 5ed (2011) 496

¹⁹ Graff W Katz J & Van Rensburg S “South Africa: Mergers” (2014) *Global Competition Review*

transactions which involve a change of control of certain public entities in order to ensure that there is fair treatment of shareholders. The code applies to most UK companies which are listed on London's markets, and also some European companies, it however does not apply to non-EU companies or even UK companies if their central management and control is exercised outside the UK.²⁰ Other pieces of legislation which regulate mergers and acquisitions in the UK are the Financial Services Act 2012, the Enterprise Act 2002 and the Government regulation body called the Competition and markets Authority (the CMA).

In the UK companies mostly preferred the external means of growth through acquisitions to internal growth, therefore there were peaks of takeover activity in 1968, 1972 and 1989.²¹

(c) Overview of mergers and acquisitions regulation in the United States:

The most popular law on mergers is the US antitrust legislation. This law was named after two different authors, Sherman in 1890 and Clayton in 1914. This Act, called the Sherman act was motivated by the deliberate combination of businesses, using the trust mechanism as a holding agency to control the market of their products both in price and geography.²² When the American government put in place laws that combat anticompetitive behavior, acquisition oriented companies turned their attention to mergers, as a result or a means of growth.²³

(d) Motives for companies to undertake mergers and acquisitions:

- (i) Economies of scale: When a company is involved with second league companies, those type of deals allows the company to leapfrog and improve their revenues through advantages based on size and scale.
- (ii) Consolidation: This is simply a way of industries which group themselves into a smaller number of big companies.

²⁰ Smith D & Featherstone G "The UK Takeover panel and takeover code" (2011) 54 *Institute of Chartered Accountants in England & Wales*

²¹ Pablo AL & Javidan M (2004)

²² Botchway FN "Mergers and Acquisitions in Resource Industry: Implication for Africa" (2010) 26 *Connecticut Journal of International Law*

²³ Pettitt BS & Ferris KR *Valuation for Mergers and Acquisitions* 2 ed (2013) 3

- (iii) Globalisation: Companies use mergers and acquisitions to achieve a balance between global advantages and local responsiveness. Mergers and acquisitions also enable a company to rapidly achieve a global presence.
- (iv) Creation of or gaining of access to distribution channels: A lack of distribution has been constraining the growth of wine companies. According to Dealogic, a research agency, these companies, many of them family owned businesses are turning to large drinks groups such as Diageo and Allied Domecq as a way of solving the problem.²⁴
- (v) Gaining access to new products and technologies: Mergers between pharmaceutical companies are driven by the need to develop and launch blockbuster drugs that can individually generate \$1 billion or more in annual revenue.
- (vi) Enhancement or increasing of products and or services: Large mergers between banks specializing in different sectors and between regionally based banks have led to a much smaller number of players capable of providing a full range of services including investment banking, insurance, mortgage lending, retail banking and personal banking.
- (vii) Increasing market share or accessing new markets: Car manufacturers have turned to mergers and acquisitions in this way. For instance, by leveraging one Car Company's sales force or distribution network, or by selling one car company's products to the other car company's customers.
- (viii) Diversification: However a study of 8000 acquisitions by Mckinsey reveals a group of American and British corporate acquirers that are surprisingly successful at growing through diversified acquisitions. Although these unrelated deals offered few opportunities for synergy, the acquiring companies profited from them because they managed the acquisitions so well.²⁵

(e) Reasons for the failure of mergers and acquisitions:

Three out of four mergers and acquisitions fail to achieve their financial and strategic objectives. The factors that causes such failures range from unrealistic expectations, making the wrong deal at the wrong time, buying the wrong company, the inability to unify behind a single macro message, talent being mismanaged, unskilled execution, cultural clashes between the two entities

²⁴ Charles S Wine and Society: The Social and Cultural Context of a Drink (2006)

²⁵ Devine M *Successful Mergers* (2002) 5

and the underestimation of transition costs.²⁶ Each factor will be discussed in great depth and a recommendation will be made in the last chapter of the paper.

1.2 **Research Objectives:**

This research aims to investigate why firms undertake mergers and acquisitions, the effects that they have on certain stakeholders, reasons why they fail and also a closer look at mergers and acquisitions in three different jurisdictions, which will eventually answer the main question which is whether these constitute one of the best strategies to business growth.

The specific objectives of this research are:

- i. To examine the factors that influence mergers and acquisitions as a strategy for business growth
- ii. To determine the effect of mergers and acquisitions on business growth
- iii. To investigate the relationship between mergers-acquisitions and business growth



²⁶ Kitching J “Why do mergers miscarry” (2000) *Harvard Business Review*

1.3 Statement of the problem:

Mergers and acquisitions are important in the global economy.²⁷ For successful transformation of the economy however, it is essential that the mergers and acquisition deals strengthen the firms that do them. The existence of deals themselves may create value for the economy by increasing the velocity of spending in the economy. Deals may also increase efficiencies through synergies. However, when deal failure is researched, and cited, the study area is typically explored from the perspective of the stockholders of the buying firm. Too often, these firms destroy value for their stockholders in the long run as they seek to promote some transactions purely with a short term focus to realize fees and having little strategic purpose.²⁸ There is therefore evidence that not all mergers and acquisitions will lead to business growth based on the case study of Ceisco systems which faced difficulties following the bursting of technology bubble in the year 2000 and the ensuing economic downturn which affected the recent mergers of Cisco systems.²⁹ Weak business growth result from post-acquisition factors such as poor leadership, ineffective integration processes and the failure to gain the cooperation and commitment of employees. This summarily brings the post-acquisition problems to poor performance, resistance to change and cultural incompatibility. For poor performance for example, Sema an IT services group acquired LHS an American telecom software provider for £3 billion (US\$4.2 billion) in July 2000. By November management was forced to announce there had been a significant deterioration in LHS's performance. Following the profits warnings, Sema's market value plunged by 44% to £1.7 billion (US\$2.4 billion) causing its exit from the FTSE 100 index of the leading UK listed companies.³⁰ It is thus imperative from this back ground that evidence regarding the relationship between mergers-acquisitions and business growth for firms is provided, given the strategic nature of the mergers and acquisitions in promoting synergies and corporate growth in particular and generally in the case countries presented herein.

²⁷ Kevin K Boeh Paul & Beamish W *Mergers and Acquisitions: Text and cases* (2007)

²⁸ Gaughan PA *Mergers: What can go wrong and how to prevent it* (2005)

²⁹ Economic Intelligence Unit *Into Africa: Emerging Opportunities for Business* (2012)

³⁰ Devine M *Successful Mergers* (2002)

1.4 Significance of the study:

In today's global village where internationalization of business has taken its toll, the mergers and acquisitions as a strategy for promoting business growth and consequently leading to national developments in various countries cannot be overemphasized. For that reason, understanding the factors that influence mergers and acquisitions as strategies for business growth on one hand and the effect of these mergers and acquisitions on business growth on the other hand offers valuable information to realize that mergers and acquisitions are not a sure way to business growth for business corporations.

For business firms that want to gain from mergers and acquisitions in a sustainable way, they must pay close attention to the post-acquisition problems such as poor leadership, ineffective integration processes and the failure to gain the cooperation and commitment of employees. Thus, understanding the post-acquisition problem indicators that lead to the failure of mergers and acquisitions is crucial evidence for business owners and stockholders Government business brokers who are engaged in successfully promoting mergers and acquisitions practices.

Business owners and stockholders engage in mergers and acquisitions for diverse reasons including: Economies of scale, Consolidation, Globalisation, Creation of or gaining of access to distribution channels, Gaining access to new products and technologies, Enhancement or increasing of products and or services, increasing market share or accessing new markets and Diversification.³¹

For purposes of this study **Economies of scale** is defined as the cost advantage that arises with increased output of a product. Economies of scale arise because of the inverse relationship between the quantity produced and per-unit fixed costs; i.e. the greater the quantity of a good produced, the lower the per-unit fixed cost because these costs are shared over a larger number of goods. Economies of scale may also reduce variable costs per unit because of operational efficiencies and synergies. Economies of scale can be classified into two main types: Internal –

³¹ Devine M. *Successful Mergers* (2002)

arising from within the company; and External – arising from extraneous factors such as industry size.³²

Consolidation is expressed as the combining of separate companies, functional areas, or product lines, into a single one. Consolidation differs from a merger in that a new entity is created in the consolidation.³³

Globalisation is viewed as a term used to express the tendency for the world economy to integrate, not only with respect to markets, finance, technology, and cross-countries trade and investments, but also with regard to the globalisation of laws and regulations of everyday activity (political, economic, social, cultural and ideological). The core of the concept of globalisation is that the world displays a strong tendency to become one entity. To be more specific, the term globalisation describes the increase in international trade and financial flows that has taken place since 1960, but even more so in the post 1980 period.³⁴

Diversification according to Ansoff's idea is when a firm extends its activities into new products and new markets. The potentially positive benefits from diversification are mainly financial synergies, such as coinsurance effects, risk diversification or tax effects.³⁵

Mergers and acquisitions especially are said to trigger change on a huge scale often causing chain reactions within a business sector as companies combine in the race to gain competitive advantage.³⁶ Thus, it is important to examine whether or not when firms and or corporations engage in the act of merging and acquisitions it can trigger increased business growth as a business strategy.

Therefore, it is hoped that the study will provide some evidence to government business policy makers, business owners, business analysts, business managers, and chief executive officers, on possible ways for firms and acquisitions to be successful and to not merely sign deals believing that all mergers and acquisitions always lead to increased profitability, business growth, economic prosperity. Besides, the study is expected to contribute to the existing literature on mergers and acquisitions as well as provide pointers to areas of further research.

³² Investopedia. Definition Economies of scale. 2015, online source available at <http://www.investopedia.com/terms/e/economiesofscale.asp#ixzz3cSpofjM1> accessed on 30 May 2015

³³ Investopedia. Definition Economies of scale (2015)

³⁴ Aristidis B *Mergers and Acquisitions as the Pillar of Foreign Direct Investment* (2012)

³⁵ Aristidis B *Mergers and Acquisitions as the Pillar of Foreign Direct Investment* (2012)

³⁶ Florian F *The Social Side of Mergers and Acquisitions: Cooperation relationships after mergers and acquisitions* (2007)

³⁶ Devine M. *Successful Mergers* (2002) 5

1.5 **Scope of the Research:**

The study was based on case studies of mergers and acquisitions in USA, UK and SA over a period of 15 years. As such therefore the references period was January 2001 to April 2015

The study focused on mergers and acquisitions in USA, UK and South Africa and was concerned with the factors influence mergers and acquisitions in these countries, the effects of such activities on business growth and whether mergers and acquisitions straight away promoted business growth.

The terms 'merger' and 'acquisition' were defined and used interchangeably, although they have slightly different meanings: A merger happens: '... when two firms, often of about the same size, agree to go forward as a single new company rather than remain separately owned and operated. Both companies' stocks are surrendered and new company stock is issued in its place.' An acquisition happens: when one company takes over another and clearly establishes itself as the new owner, the purchase is called an acquisition. From a legal point of view, the target company (i.e. the acquired company) ceases to exist, the buyer 'swallows' the business and the buyer's stock continue to be traded'.³⁷

While business growth was defined to include process of improving some measure of an enterprise's success. Business growth can be achieved either by boosting the top line or revenue of the business with greater product sales or service income, or by increasing the bottom line or profitability of the operation by minimizing costs.

Qualitative approach was used to measure mergers and acquisitions as a strategy for business growth though a comparative qualitative analysis of the cases of mergers and acquisitions in USA, UK and South Africa.

³⁷ Jim Downey and Technical Information Service (2008) available at http://www.cimaglobal.com/Documents/ImportedDocuments/cid_tg_mergers_and_acquisitions_dec08.pdf accessed on 20 April 2015

1.6 **Research Methodology:**

Given the focus of this enquiry, qualitative methodology was adopted and the purpose of the research was exploratory in nature. Undeniably, to examine the effect of mergers and acquisitions as a strategy for business growth through a comparative case analysis of the literature of mergers in USA, UK and South Africa, the analysis provided a detailed examination of the mergers and acquisitions as strategies for business growth in the economic spheres of USA, UK and South Africa. Theoretically, the examination was informed by factors that influence mergers and acquisitions as a strategy for business growth in these three country case studies. The aim here was not specifically to examine the similarities and differences between the cases, but rather to provide a broad and overarching view of the complexities and processes that permit mergers and acquisitions to take place in these countries and to deduce whether such mergers and acquisitions permit business growth.

It should be advised, that while the trends and themes related to a broader historical overview, generalisations of the findings here would detract from the nuance and dynamism that shape and direct the relationship between the government and mergers and acquisitions in the processes of merging, acquisition and promotion of business growth.

Qualitative research methods were used here to extract a wealthier and deeper understanding of the nuanced and dynamic nature of mergers and acquisitions in USA, UK and South Africa. The research project utilized only secondary sources in the research design. To contextualize the findings, a range of secondary sources was analysed. This served a good purpose as it informed the broader historical and theoretical framework through which mergers and acquisitions as a strategy for business growth could be analysed. The secondary data that was analysed included the review of literature from journals, editorials, books, newspapers, newspapers and magazines. Through a comparative study of the selected cases in USA, UK and South Africa, the researcher was able to analyse and synthesize the similarities, differences and patterns across three cases studies of mergers and acquisitions. This involved a comparative analysis and synthesis of the controls, regulations and the legal framework governing mergers and acquisitions, which helped the researcher to arrive at the differences and similarities and patterns across mergers and acquisitions in the USA, UK and South Africa.

It is essential to acknowledge certain methodological limitations and boundaries at the outset. This study was limited in its focus by placing mergers and acquisitions as a strategy for business growth in its enquiry. It did not seek to provide an overarching consideration of other key factors deemed necessary for the business growth in the comparative overview of the three countries herein. Instead, the specific focus was on a single constituent of a much larger formation. As such, inferences to a general conclusion of the operation of business strategy are not deduced. A further qualification was necessary. While the term mergers and acquisitions is used through this thesis, the main focus of this research was on the main business centres in each country. The rationale for this relates to the historical perspective of corporate mergers and acquisitions centres in the economic sphere especially in USA, UK and South Africa. Practical considerations of funding, time and scope of the project also make a broader analysis of affiliates and other federations unfeasible. The examination here reflects empirical findings regarding the end of a definite period of time, the end-point of which is April 2015. Given the fluidity and flux of economic change, subsequent developments in the commercial economy of each country were not examined.



1.7 Chapters Outline:

Chapter one provides an introduction to the thesis. It specifically focuses on the background and overview of the study (including an overview to the study of mergers and acquisitions in South Africa, UK and USA as well as the motives for mergers and acquisitions, and reasons for failure of mergers and acquisitions), objectives of the study, the problem statement, research question, significance of the study, scope of the study as well as the research methodology and chapter outline.

Chapter two focuses on the conceptual framework of mergers and acquisition, particularly, this chapter provides details regarding historical trends and patterns of mergers, the definitions and descriptions of mergers and acquisitions, Classification of mergers and acquisitions, the process of merger and acquisition, why firms engage in merger and acquisition transaction and an understanding of merger and acquisition as a strategy for business growth.

Chapter three focuses on the empirical studies on the implications of mergers and acquisitions on managers, employees and shareholders. The chapter begins by exploring the overview of the empirical studies regarding mergers and acquisitions before embarking on an understanding of the impact of mergers and acquisitions on shareholders. It then looks into the impact of mergers and acquisition on managers and employees.

Chapter four examines mergers and acquisitions as a business strategy with emphasis on cases of USA, UK and South Africa. Specifically the chapter addresses the Historical and legal Framework of mergers and acquisitions in USA, the Historical and legal framework mergers and acquisitions in UK as well as mergers and acquisitions in South Africa and legal framework. In terms of cases, this chapter provides an analytical understanding of the cases of mergers and acquisitions (including: *The case of Microsoft v Yahoo in US*; *The case of Kraft v Cadbury in UK* and *the case of SAB Miller Plc. V Royal Grolsch NV in South Africa*).

1.8 **Conclusion:**

Chapter one provided an introduction to the thesis. It specifically provide the background and overview of the study (including an overview to the study of mergers and acquisitions in South Africa, UK and USA as well as the motives for mergers and acquisitions, and reasons for failure of mergers and acquisitions), objectives of the study, the problem statement, research question, significance of the study, scope of the study as well as the research methodology and chapter outline. The next chapter (chapter two) focuses on the conceptual framework of mergers and acquisition, particularly, this chapter provides details regarding historical trends and patterns of mergers, the definitions and descriptions of mergers and acquisitions, Classification of mergers & acquisitions, the process of merger and acquisition, why firms engage in merger and acquisition transaction and an understanding of merger and acquisition as a strategy for business growth.



CHAPTER 2

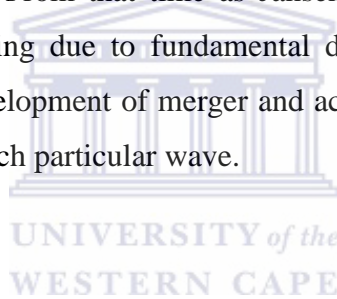
CONCEPTUAL FRAMEWORK

2.1 Introduction:

In this section the research focusses on the historical perspective of mergers and acquisitions as well as a detailed description of mergers and acquisitions as used by various authors.

2.2 Mergers and acquisitions Trends and patterns:

Merger and acquisition is not something that developed in the contemporary era. Its development started way back in the 18th century and up to date, merger and acquisition activity has been described as occurring in waves. The first advent of merger and acquisition in an extraordinary frequency changed at the culmination of the 19th century. From that time as Jansen observed, recurring waves have been witnessed with diverse waves evolving due to fundamental different deliberate stimuli.³⁸ The table below shows the timeline for the development of merger and acquisition progress and it also spells out the strategic inspirations governing each particular wave.



³⁸ Picot G *Handbook of international mergers and acquisitions* (2002)

Table 1.1 showing five waves of mergers from 1880 to the year 2000 and above

Wave Number	Period	Strategic Background
Wave 1	1880-1904	Realization of monopoly rents by horizontal takeovers
Wave 2	1916-1929	Vertical integration to gain control of the complete value chain
	1940s-1950s	the increase in the number of M&A deals was small and the value was not significant
Wave 3	1965-1969	Anti-cyclical portfolio building to harmonize different industry-driven economic downturns
	1970s	drastic downward trend in the number of M&A announcements
Wave 4	From 1981	'Back to core business' through divestures and carve-outs
	1985-1989	Speculative gains from financial acquirers (e.g. Leveraged buy-out)
Wave 5	From 1993	Increasing shareholder value and globalization
	2000 onwards	Talents technology and consolidation of the 'New Economy'

Source: Mergers, Acquisitions, and Corporate restructuring³⁹; Handbook of international mergers and acquisitions' Preparation, Implementation and Integration. ⁴⁰

In the UK for example, the first wave was in the 1920s, the second in the 1960s and the third in the early 1970s. Despite earlier predictions to the contrary and pleas for celibacy, the fourth biggest and most sustained wave occurred in the early 1980s.⁴¹ Although the level of activity began to fall in the 1990s, today it continues at a sufficiently high level that is perhaps no longer appropriate to award it in the temporary status of a 'wave', but rather recognize both merger and acquisition and strategic alliances as potentially permanent features of organisational evolution in an increasingly competitive global market economy.

³⁹ Gaughan PA *Mergers, Acquisitions, and Corporate restructuring* 3 ed (2002)

⁴⁰ Picot G *Handbook of international mergers and acquisitions* (2002)

⁴¹ Meeks G *Disappointing Marriage: A Study of the Gains From Merger* (1977)

At present, merger and acquisition is going through its fifth wave with one of the main characteristics being the rise of the mega merger with new corporate mergers being formed in many industry sectors.⁴² Thoughtful instances are Glaxo/SmithKline in pharmaceuticals, AOL/Time Warner in infotainment and Royal Dutch Petroleum/Shell Transport & Trading in oil and petroleum.⁴³



⁴² Angwin D 'Mergers and Acquisitions across European Borders: National Perspectives on Pre-acquisition Due Diligence and the Use of Professional Advisors' (2001) 36 *Journal of World Business* (1) 32-57

⁴³ Thuy VH & Kamolrat L 'Critical Success Factors in Merger & Acquisition Projects' (2007) A study from the perspectives of advisory firms

Table 1.2 showing the top 10 largest M&A Transactions worldwide since 2000

Rank	Year	Acquirer	Target	Transaction Value (bil. USD)	Transaction Value (bil. EUR)
1	2000	America Online Inc.	Time Warner	164.7	160.7
2	2007	Shareholders	Philip Morris Intl Inc.	107.6	68.1
3	2007	RFS Holdings BV	ABN-AMRO Holding NV	98.2	71.3
4	2000	Glaxo Wellcome PLC	SmithKline Beecham PLC	76.0	74.9
5	2004	Royal Dutch Petroleum Co	Shell Transport & Trading Co	74.6	58.5
6	2000	AT&T Inc	BellSouth Corp	72.7	60.2

Source: Institute of mergers, acquisitions and alliances (2004-2015)⁴⁴

In a bid to amplify the growth of merger and acquisition in general and of mega-deals in particular, Bao and Edmans reveal the substantial number of the total value of Merger and Acquisition declared by the U.S. acquirers in 2005 at US\$1,245 billion which is approximately 10% of the country's GDP.⁴⁵ Angwin and Firstbrook point out that cross border merger and acquisition activity is thriving and taking merger and acquisition to new record-breaking highs in capacities and scope of deals. For example in

⁴⁴ Institute of mergers, acquisitions and alliances. Statistics, 2004/2005 available at <http://www.imaainstitute.org/statistics-mergers-acquisitions.html> accessed on 30 April 2015

⁴⁵ Bao J & Edmans A "How Should Acquirers Select Advisors? Persistence in Investment Bank Performance" available at <http://ssrn.com/abstract=952935> EFA 2007 Ljubljana Meetings Paper Accessed 29 April 2015

the year 2005 a 58% rise in cross-border deals was observed in Europe while in neighbouring Asia, Japan alone scored as India secured a 68% growth in Transnational merger and acquisitions.⁴⁶



⁴⁶ Firstbrook C 'Transnational mergers and acquisitions: How to beat the odds of disaster' (2007) 28 *Journal of Business Strategy* (1) 53-56.

2.3 Description of Mergers & Acquisitions:

Mergers and acquisitions broadly refer to a number of different dealings ranging from the procurement and transactions of undertakings, deliberation amid undertakings, relations, collaboration and joint ventures to the creation of companies, corporate chain or guaranteeing the independence of businesses, management buy out and buy-in, alteration of legal form, preliminary public offerings as well as restructuring.⁴⁷ Nonetheless Nakamura enlightens that using a broad description of merger and acquisition may possibly lead to misunderstanding and confusion as it involves everything from pure mergers to strategic alliance.⁴⁸ As such therefore this thesis assumes the meaning of mergers and acquisitions in a slighter sense as expressed below.

- Merger according to the European central bank refers to the coming together of two or more companies in order to create a new entity or formation of a holding company.⁴⁹ A similar definition is adapted by Gaughan and Jagersma.⁵⁰
- Acquisition on the other hand according to the central bank refers to the purchase of shares and assets of another company in order to achieve a managerial influence.⁵¹ However Jagersma adds that it's not necessarily by mutual agreement.⁵²

In addition to the definitions provided above, the model developed by Nakamura is engaged to offer a much more clear and thoughtful understanding of the definition of mergers and acquisition in a narrower notion, as presented in the figure 1.1 below.

⁴⁷ Picot G *Handbook of international mergers and acquisitions* (2002)

⁴⁸ Nakamura HR *Motives, Partner Selection and Productivity Effects of M&As: The Pattern of Japanese Mergers and Acquisition* (Thesis Ph.D. Institute of International Business, Stockholm School of Economics 2005)

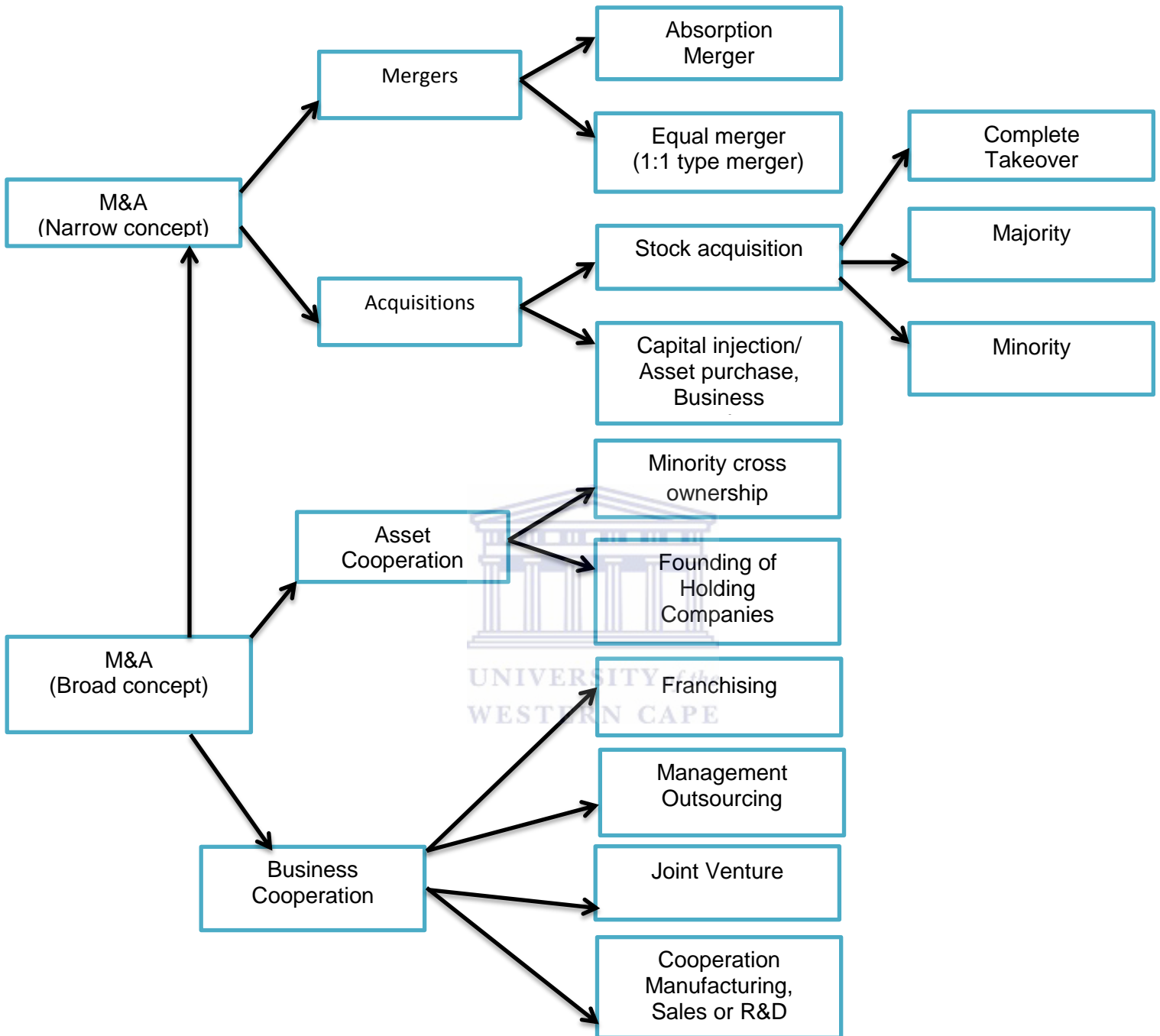
⁴⁹ European Central Bank, *Mergers and Acquisitions involving the EU Banking industry – Facts and Implications*, 2000. Available at <http://www.ecb.int/pub/pdf/other/eubkmergersen.pdf> Accessed on 1 October 2007

⁵⁰ Thuy VH & Kamolrat L 'Critical Success Factors in Merger & Acquisition Projects' (2007) A study from the perspectives of advisory firms

⁵¹ European Central Bank, *Mergers and Acquisitions involving the EU Banking industry – Facts and Implications*, 2000.

⁵² Jagersma PK 'Cross-border acquisitions of European multinationals' (2005) 30 *Journal of General Management* (3)

Figure 1.1 showing the description of mergers & acquisitions



Source: Adapted from Nakamura 2005, p.18⁵³

According to Chunlai, Chen and Findlay, mergers are normally referred to as either ‘merger by absorption’ or ‘merger by establishment’.⁵⁴ Merger by absorption is a bit different from merger by

⁵³ Nakamura HR *Motives, Partner Selection and Productivity Effects of M&As: The Pattern of Japanese Mergers and Acquisition* (Thesis Ph.D. Institute of International Business, Stockholm School of Economics 2005)

establishment in that it implies to a situation in which one company buys all shares of one or many companies also known as absorbing and thus making the absorbed companies to cease to exist. On the other hand merger by establishment refers to a situation in which two or more companies are merged in a newly formed company leading to the dissolving of the merged companies.⁵⁵ Merger absorption according to Nakamura may possibly be considered as a de facto acquisition.⁵⁶ In a related manner the term ‘consolidation’ could be used to refer to merger by establishment according to Gaughan.⁵⁷

Basically in acquisition what happens is that the acquiring company may want to seek to acquire a substantial amount of shares or assets of the targeted company. As a result, there will be two forms of acquisitions present (a) the asset acquisition and (b) the share acquisitions.⁵⁸ For an asset acquisition, it occurs when a company procures all or part of the target company’s assets and the target remains as a legal entity after the transaction has been done. On the other hand, a share acquisition occurs when a company buys a given amount of shares of stock in a target company so as to influence the management of the target company. Basing on the worth of the share of stocks acquired by the acquiring company, acquisitions may then be categorized in three types; (a) complete takeover which means 100% of the share targets issued; (b) Majority share targets issued meaning 50-99%; and (c) minority share targets issued meaning less than 50%.⁵⁹

To be precise, merger and acquisition are the two most distinct types of dealings with different connotations regarding legal obligations, acquisition procedures, and tax liabilities.⁶⁰ Nevertheless, taking the overall view of merger and acquisition transactions, the final result of which is two or more companies merging their business efforts, it is wise not to try to detach merger transactions from those of acquisitions. It’s rather important that merger and acquisition are treated as one type of corporate finance service that is provided by mergers and acquisition consultative firms.

⁵⁴ Chunlai CZ & Findlay C ‘A Review of Cross-border Mergers and Acquisitions in APEC’ (2003) 17 *Asian-Pacific Economic Literature* (21) 4-38

⁵⁵ Chunlai CZ & Findlay C ‘A Review of Cross-border Mergers and Acquisitions in APEC’ (2003)

⁵⁶ Nakamura HR *Motives, Partner Selection and Productivity Effects of M&As* (2003)

⁵⁷ Gaughan PA *Mergers, Acquisitions, and Corporate restructuring* 3 ed (2002)

⁵⁸ Chunlai CZ & Findlay C ‘A Review of Cross-border Mergers and Acquisitions in APEC’ (2003)

⁵⁹ Chunlai CZ & Findlay C ‘A Review of Cross-border Mergers and Acquisitions in APEC’ (2003)

⁶⁰ Marren H *Mergers and Acquisitions: a valuation handbook* (1993)

2.4 Classification of mergers & acquisitions:

From the perspective of the value chain, Merger and Acquisition can be classified into three forms: horizontal, vertical or conglomerate.⁶¹ Horizontal merger and acquisition refers to a situation where the firm that is acquiring and that which is being targeted to be acquired are competing in the same industry. As Chunlai, Chen and Findlay point out, the horizontal merger and acquisition has grown swiftly in the latest years especially due to the global restructuring of a number of industries in reaction to the global technological changes and the liberalization policy by most governments.⁶² This trend has been noticeable in industries such as the pharmaceuticals, the automobile industry as well as the Petroleum industry. A very good example of this type of merger and acquisition is that which involved the merger of US\$76 billion deal value between the two giant pharmaceutical companies; Glaxo and SmithKline Beecham in the year 2000.⁶³ As pointed out by Jan Leschly the former CEO of SmithKline Beecham, in the Harvard business review in the year 2001, the aim of the two parties was researched and they developed synergies so as to drive revenues since in this particular industry new technologies result in enormous opportunities for revenue creation.⁶⁴

On the other hand, Vertical merger and acquisition refers to the combinations of firms in client-supplier or buyer-seller relationships. The firms involved here tend to seek a reduction in the uncertainty business transaction costs through upstream and downstream linkages in the value chain and hence to benefit from economies of scale.⁶⁵ Lastly Conglomerate Merger is to do with the companies operating in unrelated business such as for example a shop selling beds and televisions. Companies do this in an attempt to diversify risks and attain economies of scale. In regards to this study, a very good example is the Philip Morris, a tobacco company, which acquired General Foods in 1985 for a clean US\$5.6 billion.⁶⁶

Apart from the three forms described above, mergers and acquisitions may also be described as either 'friendly' or 'hostile'.⁶⁷ A merger and acquisition is considered to be friendly when the board of the target company agrees to the transaction. However when the board of the target company refuses to

⁶¹ Chunlai CZ & Findlay C 'A Review of Cross-border Mergers and Acquisitions in APEC' (2003)

⁶² Chunlai CZ & Findlay C 'A Review of Cross-border Mergers and Acquisitions in APEC' (2003)

⁶³ Institute of mergers, acquisitions and alliances (IMAA) 2004. Available at <http://www.imaainstitute.org/publications/tp-track-2004-ma-report/>> accessed on 14 June 2015

⁶⁴ Harvard Business Press 'Harvard Business Review on Merger and Acquisition' (2001)

⁶⁵ Chunlai CZ & Findlay C 'A Review of Cross-border Mergers and Acquisitions in APEC' (2003)

⁶⁶ Gaughan PA *Mergers, Acquisitions, and Corporate restructuring* 3 ed (2002)

⁶⁷ Chunlai CZ & Findlay C 'A Review of Cross-border Mergers and Acquisitions in APEC' (2003)

agree to a deal, then such a merger and acquisition is considered hostile because the deal pits the offer against the wishes of the target.

Lastly, mergers and acquisitions dealings may also be either domestic or cross-border especially as regards to where the companies involved base and operate. A domestic merger is one which involves two or more firms coming together within the same country and belonging to the same country to carry out synergies. On the contrary, cross-border merger and acquisition transaction encompass two firms located in different economies, or two firms operating within one economy but belonging to two different countries.⁶⁸



⁶⁸ Chunlai CZ & Findlay C 'A Review of Cross-border Mergers and Acquisitions in APEC' (2003)

2.5 The process of Merger & Acquisition:

The process of mergers and acquisitions is presented differently by different Authors. For example Picot says that a typical merger and acquisition transaction goes through three phases which are: planning phase, implementation phase and integration phase.⁶⁹ Accordingly, in the planning phase the overall plan for the transaction is established “in the most interdisciplinary and comprehensive manner possible”.⁷⁰ Planning covers the operational, managerial and legal techniques and optimization with special regards to the two following phases. The implementation phase on the other hand covers a range of activities beginning from the issuance of confidentiality also known as the non-disclosure agreements; issuance of a letter of intent and ending with the conclusion of the merger and acquisition contract and deal closure. The final phase has to do with the post-deal integration. This is similar to the Watson Wyatt Deal Flow Model that was introduced by Galpin and Herndon who were the two practitioners at Watson Wyatt Worldwide.⁷¹ The difference is that their model breaks down the process into five reduced stages namely: Formulate; Locate; Investigate; Negotiate and Integrate. The most substantial landmark is when the two transacting firms sign the agreement, finishing the deal and entering the integration stage.

The first three stages then belong to the pre-deal phase while ‘Negotiate’ represents the deal phase which ends when the above milestone is achieved, and the post-deal phase only contains the last stage termed ‘Integrate’. The Watson Wyatt model includes in the first stage ‘Formulate’ for the setting of business strategy as well as growth strategy; however, this step is missing in the planning phase of Picot’s model. This addition could be considered as an attempt to give a more strategic insight into the merger and acquisition deal.

Moreover Aiello and Watkins propose another model describing the merger and acquisition process.⁷² Their model however summarizes only phases within the negotiation process of the deal, which in turn is covered by the activities under the pre-deal and deal stages in the Watson Wyatt Deal Flow Model.⁷³ In this case, out of the three representative models, it is the Watson Wyatt Deal Flow Model that is considered to capture the most inclusive picture of how the merger and acquisition process is organized. Besides, it is worth revealing that the Watson Wyatt model takes into account the pre-acquisition analysis of strategic fit and organizational fit, the significance of which to the merger and acquisition

⁶⁹ Picot G *Handbook of international mergers and acquisitions* (2002)

⁷⁰ Picot G *Handbook of international mergers and acquisitions* (2002)

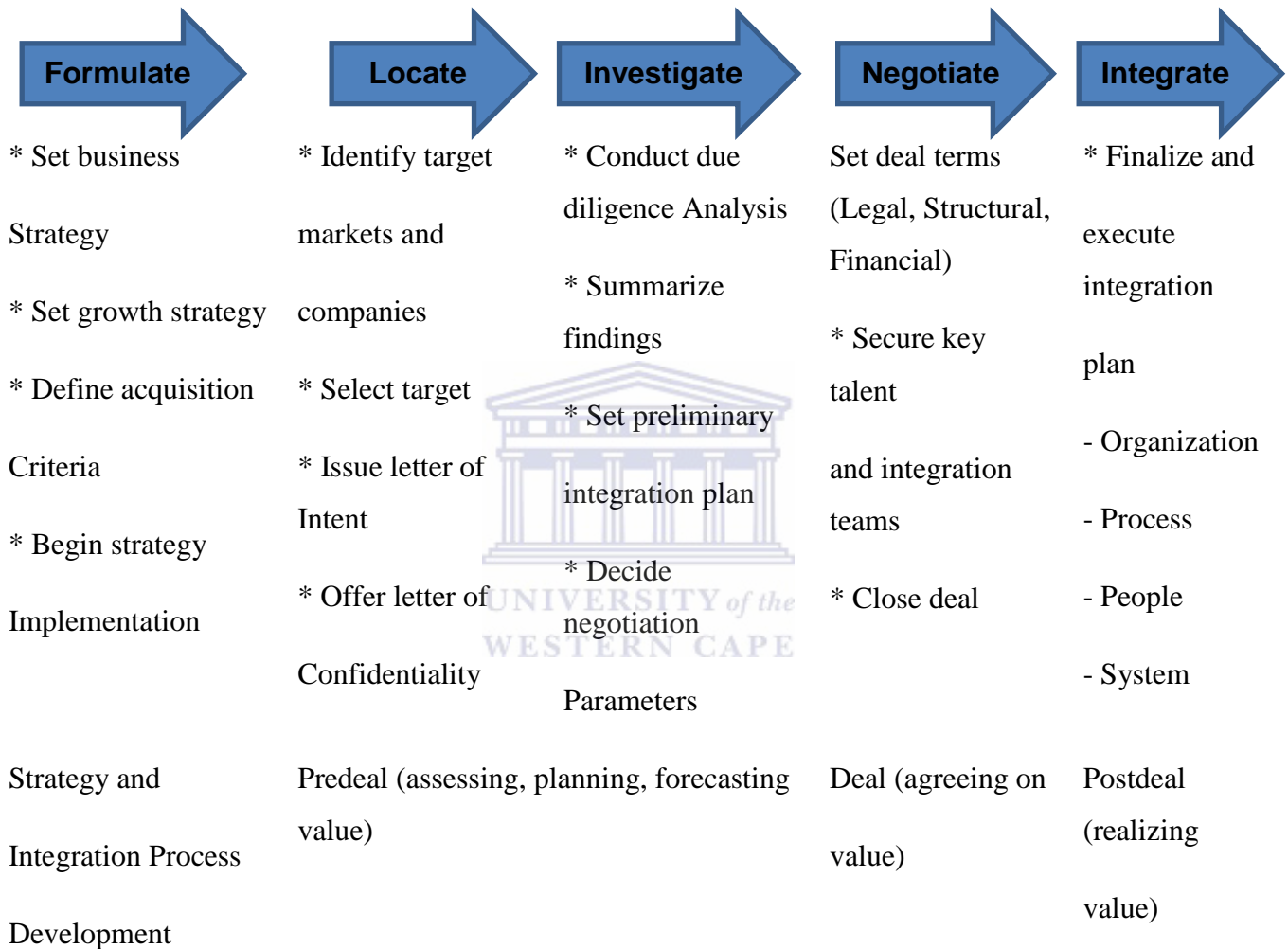
⁷¹ Galpin TJ & Herndon M *The complete guide to mergers and acquisitions* (2000)

⁷² Harvard Business Press ‘Harvard Business Review on Merger and Acquisition’ (2001)

⁷³ Harvard Business Press ‘Harvard Business Review on Merger and Acquisition’ (2001)

process itself and merger and acquisition result has been emphasized in literature as according to Jemison and Sitkin.⁷⁴ Therefore basing on the above discussion, the Watson Wyatt Deal Flow Model was selected to illustrate the mergers and acquisition process as shown below in figure 1.2

Figure 1.2 showing the Watson Wyatt Deal Flow Model in practice



Source: Adapted from Galpin and Herndon⁷⁵

Seeing the merger and acquisition process as a decision making one, Sudarsanam highlighted the need for firms to oversee carefully this multifaceted process as categorizing four potentially incapacitating inter related factors, vis-à-vis. a) “Fragmented perspective on the acquisition held by different manager”, (b) “Escalating momentum in decision making”, (c) “Ambiguous expectations of different managers

⁷⁴ Jemison DB & Sitkin SB ‘Corporate Acquisitions: A Process Perspective’ (1986) 11 *Academy of Management Review* (1) 145-163.

⁷⁵ Galpin, TJ & Herndon M *The complete guide to mergers and acquisitions* (2000)

about the benefits of the acquisition”, and (d) “Diversity of motive among managers in lending support to the acquisition”.⁷⁶ Accordingly, Sudarsanam’s viewpoint is deliberated to have further expounded on the previous research that was carried out by Jemison and Sitkin who saw mergers and acquisitions as a discontinuous and fragmented process.⁷⁷



⁷⁶ Sudarsanam PS *The Essence of Merger and Acquisitions* (1995) 45

⁷⁷ Sudarsanam PS *The Essence of Merger and Acquisitions* (1995)

2.6 Why firms engage in merger & acquisition transaction:

A lot of literature on mergers and acquisitions has put a significant effort on trying to explain the motives behind the firm's engagement in mergers and acquisition activities. According to Marion Devine the Economist who Authored a book on successful mergers, he points out that the strategic goals of mergers and acquisitions could include but not limited to economies of scale, consolidation, globalization, creation of or gaining of access to distribution channels, gaining access to new products and technologies, enhancement or increasing of products and or services, increasing market share or accessing new markets, and diversification.⁷⁸ These factors are elaborated below with examples.

- **Economies of scale**

In various sectors, size counts. Often involving second league players these types of deals enable companies to leapfrog their larger rivals and improve their revenues through various advantages based on size and scale. In the oil industry for example, the mergers between Exxon and Mobil and between BP and Amoco have turned them into what the industry calls "super majors".⁷⁹ Both merged companies are now competing head-on with Royal Dutch shell. Oil companies are facing intense pressure to improve their competitiveness because of pressure on oil prices and increasingly expensive oil exploration. As a result of their mergers, the two new companies have been able to broaden their activities while lowering their cost structures

- **Consolidation**

This often occurs rapidly as industries regroup into a smaller number of big companies. For example in the metal manufacturing sector, Canadian based Alcan Aluminum merged with the Alusuisse Group during 2000 to form Alcan Inc., a \$12.4 Billion Organisation employing 53000 people in 37 countries.⁸⁰ In the steel industry, Japanese companies NKK and Kawasaki have merged to create JFE Holdings, one of the world's largest steel makers. And another huge Merger has taken place between Luxemburg's Arbed, France's Usinor and Spains Aceralia.⁸¹ A wave of consolidations is occurring in services sectors as well. In advertising, the three market leaders together spent \$8.8 billion on major acquisitions during 2000 and 2001. Interpublic acquired True North, WPP acquired Young and Rubicam and Publicis acquired Snyder and Saatchi and Saatchi.⁸² Media buyers are now consolidating. This is to help them fight back against newly formed media giants such as Vivendi Universal and AOL Time Warner, which

⁷⁸ Devine M *Successful Mergers* (2002)

⁷⁹ Devine M *Successful Mergers* (2000)

⁸⁰ Devine M *Successful Mergers* (2002)

⁸¹ Devine M *Successful Mergers* (2002)

⁸² Devine M *Successful Mergers* (2002)

are using their size to increase advertising rates. For example, Publicis, a French agency has recently merged its media buying business with that of Cordiant a British rival.⁸³

- **Globalisation**

Companies use mergers and acquisitions to achieve a balance between global advantages and local responsiveness. Mergers and acquisitions also enable a company to rapidly achieve a global presence. For example, Kerry group, an Irish milk processor and dairy co-operative, has acquisitions to transform itself into a global player in the food and ingredients business. Its purchase of Beatreme, an American food ingredient company in 1988 was a pivotal deal opening up new markets around the world and setting the company on the acquisition trail.⁸⁴

- **Create or gain access to distribution channels**

A lack of distribution has been constraining the growth of wine companies. According to Dealogic, a research agency, these companies, many of them family owned businesses are turning to large drinks groups such as Diageo and Allied Domecq as a way of solving the problem. By June 2001, 71 bids had been made for wine companies with almost \$5 billion being offered. Foster's an Australian brewing company, has been one of the most active acquirers, buying over \$1.5 billion of wine assets in 2000 and 2001. In October 2000 for example, it bought Beringer wine and American wine maker.⁸⁵

- **Gain access to new products and technologies**

Mergers between pharmaceutical companies are driven by the need to develop and launch blockbuster drugs that can individually generate \$1 billion or more in annual revenue. According to Mckinsey, a consultancy firm, 23 pharmaceutical companies merged during the 1990's to form the top ten players. The biggest deals were between Glaxo wellcome and SmithKline beecham (2000), Pfizer and Warner-Lambert (2000) and Astra AB and Zeneca (April 1999).⁸⁶ Pharmaceutical companies are always on the lookout for ways to speed up their research and development process, which ranges from discovery, development and licensing to global launch and sales. Pooling resources also enables them to spread their risks and place a number of bets on emerging technologies such as genomics and biotechnology.

- **Enhance or increase products and or services**

Large mergers between banks specializing in different sectors and between regionally based banks has led to a much smaller number of players capable of providing a full range of services including investment banking, insurance, mortgage lending, retail banking and personal banking. For example in

⁸³ Devine M *Successful Mergers* (2002)

⁸⁴ Devine M *Successful Mergers* (2002)

⁸⁵ Devine M *Successful Mergers* (2002)

⁸⁶ Bleeke J & Isono JA 'Succeeding at cross-border mergers and acquisitions', *Mcknsey Quartely* 3 (1990)

July 2001, Allianz AG a German insurer acquired Dresdner bank, the third largest bank in Germany. According to Dealogic, this creates the world's fourth largest financial group, based on market capitalization.⁸⁷

- **Increase market share or access to new markets**

Car manufacturers have turned to mergers and acquisitions in this way. For example the ill-fated deal between Daimler-Benz and Chrysler was done to broaden its market range. Ford acquired Jaguar, Volvo and Land Rover to develop a presence in differentiated segments of the industry.⁸⁸

- **Diversification**

Diversification once all the rage, went out of fashion in the 1990s as opinion switched to the view that companies should focus on their core activities or stick to their knitting. However a study of 8000 acquisitions by Mckinsey reveals a group of American and British corporate acquirers that are surprisingly successful at growing through diversified acquisitions. Although these unrelated deals offered few opportunities for synergy, the acquiring companies profited from them because they managed the acquisitions so well. Firms such as Thermo Electron, Sara Lee and Clayton, Dubilier & Rice were identified by Mckinsey as having grown dramatically and captured sustained returns of 18-35% per year by making non-synergetic acquisitions. Much of their success lay in applying a core competency to the acquired business. For example Clayton, Dubilier & Rice was skilled at turnarounds. Sara Lee was used in branding and retail to improve the performance of over 60 different acquisitions.⁸⁹

⁸⁷ Devine M *Successful Mergers* (2000)

⁸⁸ Devine M *Successful Mergers* (2000)

⁸⁹ Bleeke J & Isono JA 'Succeeding at cross-border mergers and acquisitions', *Mcknsey Quartely* 3 (1990)

2.7 Merger and acquisition as a strategy for business growth:

In order to get a thorough understanding of the mergers and acquisitions as a strategy for business growth the researcher examines or investigates two key issues namely: a) the causes of mergers and acquisitions Failures and; b) Factors critical to the success of mergers and acquisitions and therefore growth.

Basing on the understanding of Galpin and Herndon and Nicholas, it is necessary to comprehend and try to eliminate the drawbacks or even avoid prompting failure reasons in order to try to increase the chance to succeed.⁹⁰ Nevertheless, this action in itself does not give full guarantee that the merger and acquisition will be a success. There is need to understand and closely adhere to the critical success factor of mergers and acquisitions in addition to avoiding prompting failure reasons for business growth to be attained.

To begin with, the research examines the possible reasons for the failure of mergers and acquisitions.

It has been noticeable that mergers and acquisitions projects have actually been growing at rapid rates in the recent past in many organisations as a response to the support of corporate strategies. However, despite the rapid growing rates of Merger and Acquisition project one must be reminded that success of mergers and acquisitions remains an uphill task as it has never been easy. For instance according to Gadiesh et al. after various calculation carried out in well-structured studies, they revealed that between 50-70% of the acquisitions actually do destroy the shareholder value instead of achieving cost and or revenue benefits.⁹¹

Indeed most mergers tend to fall apart or in other words fail to integrate. This can be exemplified by the firms that rush to find a quick fix through mergers and acquisitions which has indeed caused failures in many transactions which should have actually succeeded while paving way for some other deals to happen yet they should have not taken place.⁹²

Although the above failure involves firms and their shareholders, it is rather important to discover the actual causes of failure in that by understanding the causes, it becomes rather paramount for intending firms and or companies that want to merg or acquire other firms or companies to gain an understanding on what they could do to avoid activating these causes.

⁹⁰ Nicholas JM *Project Management for Business and Engineering: Principles and Practice* 2 ed (2004)

⁹¹ Gadiesh O Ormiston C Rovit S & Critchlow J 'The 'why' and 'how' of merger success' (2001) 13 *European Business Journal* (4) 187-193

⁹² Haransky SA 'Merger Mania and Misunderstandings: Why the Merger and Acquisition Process Sometimes Fails' (1999) 15 *Journal of management in engineering* (6) 13-14.

Thus the failure for mergers and acquisition to succeed can according to Haransky be attributed to 5 factors as listed below:⁹³

- i. Insufficient assessment of target
- ii. Too much focus on the financial aspect of the deal
- iii. Paid premiums too high to justify, pressures to make something happen
- iv. Mergers and Acquisition as part of an outdated strategic plan, and
- v. No experience in integration of the entities.

In the same manner, a well-known consultancy group comprising Gadiesh et al. also pin the failure of mergers and acquisitions succeed on 5 key issues or factors listed below.⁹⁴

- i. poor understanding of the strategic levers
- ii. Overpayment for the acquisition (based on overestimation of enterprise value)
- iii. Inadequate integration planning and execution
- iv. A void in executive leadership and strategic communication, and
- v. A severe cultural mismatch

In a separate exploration, DiGeorgio cites the failure of Mergers and acquisitions to succeed to the inadequate due diligence, the lack of compelling strategic rationale, the overpayment for the target company and the conflict between corporate cultures and failure to quickly meld the two companies.⁹⁵

While information garnered from Honore and Maheia relate the failure to succeed to the inability of the people, projected economies of scale, the failure to incorporate the people, the process and systems in merger and acquisition transactions.⁹⁶ This brings the authors presented above in agreement as regards the several causes of the failures of mergers and acquisitions transactions such as the lack of a right strategic rationale, the insufficient analysis or assessment during the early stages, the unjustifiable overpayment and the poor management in the integration phase as a result of lack of experience and early planning.

As regards the desirable factors for the success of merger and acquisition projects and their growth thereof, it's necessary to point at the critical success factors covering different stages in the merger and acquisition process. Studies by Rockwell point out the four must do things in the planning phase to achieve success. These include the identification of merger objectives, the specification of gains for

⁹³ Haransky SA 'Merger Mania and Misunderstandings: Why the Merger and Acquisition Process Sometimes Fails' (1999) 15 *Journal of management in engineering* (6)

⁹⁴ Gadiesh O Ormiston C Rovit S & Critchlow J 'The 'why' and 'how' of merger success' (2001) 13 *European Business Journal* (4) 187-193

⁹⁵ DiGeorgio RM 'Making mergers and acquisitions work: What we know and don't know – Part I' (2002) 3 *Journal of Change Management* (2) 134-8

⁹⁶ Thuy VH & Kamolrat L 'Critical Success Factors in Merger & Acquisition Projects' (2007) A study from the perspectives of advisory firms

owners, checking management ability and seeking a good fit while at the same time classifying the other six factors that is the continuous involvement of head management, defining the business area, analyzing performance factors, resolving problem early, moving merger and acquisition activities in the right advances at the right time, and absorbing human resource with care as critical factors for consideration.⁹⁷ In a similar manner, Jennings puts the importance in the planning stage, “Planning is in this case as an acquisition strategy is important in that it can help in avoiding a takeover that is marked by poorly matched partners and maximize the potential for success.”⁹⁸ Jennings however suggests that firms should focus more on comprehensive analysis and that they should consider more than financial and then invest later in a considerable manner in trying to manage the integration process. Further firms must always keep alert for any warnings signals of unsuccessful mergers and acquisitions.

Particularly, Jennings warns that in successful mergers and acquisitions projects, the mergers and acquisitions program in the acquiring company is well structured, has a good and comprehensive acquisition benchmarks and is supported by a broad analysis of various factors and proactive candidate identification and contact. Besides, the successful acquiring company also makes a successive and complete plan covering all functional areas and defined responsibilities and timing for the integration phase.

In a more recent research conducted, the critical success factors for mergers and acquisition projects include effective communication throughout the merger and acquisition process, very clear goals, a reasonable time frame work, commitment and support from top management, a competent project team, a very comprehensive and flexible integration plan, a continuous learning environment provided by the organization, and capable manager to run the merged and acquired firm as one organization.⁹⁹ Galpin and Herndon in their research pointed out ten key recommendations in creating a successful merger which they explain as a faster and smoother integration for the resulting firm. Nonetheless, many of these recommendations are those that companies have to organize or execute prior to the closure of the deal.¹⁰⁰

Meanwhile DiGeorgio specifically classifies the success of the mergers and acquisitions into two stages. The first being the front end success and the second being integration success. Accordingly, the basis of the front end success is to select the right target for merger and acquisition which comprises many components including but not limited to the characteristic of leadership, the facilitating climate within

⁹⁷ Rockwell WF ‘How to acquire a company’ (1968) 46 *Harvard Business Review* (5) 121-132

⁹⁸ Jennings OR ‘Preventing acquisition failures’ (1985) 74 *Management Review* (9) 37-39

⁹⁹ Gomes E Donnelly T Morris D & Collis C ‘Improving Merger Process Management Skills Over Time: A Comparison between the Acquisition Processes of Jaguar and of Land Rover by Ford’ (2007) 28 *The Irish Journal of Management* (1) 31-57.

¹⁰⁰ Galpin TJ & Herndon M *The complete guide to mergers and acquisitions* (2000)

the stakeholder team, the adequate time and resources and tools for merger and acquisition analysis, having learning mechanisms, and understanding the culture and organizational structure differences entailed in the analysis.¹⁰¹ The successful consequence of the second stage is to attain the objectives, which requires selecting the right leadership, structuring the integration team, and detailing a plan in terms of communication, integrating and addressing people issues.

Representatives of the practitioners advising on best practices, Gadiesh et al. from the consultancy firm Bain & Company, based on their experience, managed to set out six “golden rules” that can be used to guide managers of the acquiring or the targeted firms to Merger and acquisition success. These rules are presented below:¹⁰²

- i. Rule number one is setting rationale
- ii. Rule number two is letting the ‘why’ inform the ‘how’
- iii. Rule number three is fusing at full speed
- iv. Rule number four is keeping customers in the forefront
- v. Rule number five is communicating the vision, and
- vi. Rule number six is managing three phases of integration.

Of the six rules, the authors emphasize the right way to do this is not just to get the right and clear strategic levers but the fact is that the failure to do so could easily lead to failure in other rules

Meanwhile in the recent past in his research, Epstein was able to point out six determinants of mergers and acquisitions success.¹⁰³ These are presented below:

- i. There is need for a strategic vision and fit
- ii. A very clear deal structure
- iii. There is need for due diligence,
- iv. There is need for pre-merger planning
- v. There is need for post-merger integration
- vi. External factors must take into account.

From the literature reviewed on the necessary success factors for mergers and acquisition in particular, two things are observed:

- a) Most of the research conducted about the necessary conditions for the success of mergers and acquisitions for projects in general are made by researchers and practitioners in the Project

¹⁰¹ DiGeorgio RM ‘Making mergers and acquisitions work: What we know and don’t know – Part II’ (2003) 3 *Journal of Change Management*(3) 259-74.

¹⁰² Gadiesh O Ormiston C Rovit S & Critchlow J ‘The ‘why’ and ‘how’ of merger success’ (2001) 13 *European Business Journal* (4) 187-193

¹⁰³ Epstein MJ ‘The determinants and evaluation of merger success’ (2005) 48 *Business Horizons* (1) 37-46

Management field. This leads the discussion to the view point of observing the merger and or acquisition as a project where in the client is either from within or from outside. The project team is set up and consultancy team of the merger and acquisitions. The client herein now becomes the targeted firm or the firm that wants to acquire another. Either way it works in this thesis and as such the researcher regards the acquisition and merger activity as more of a project entity whose success should involve participation from team members, leaders and the entire management a great deal of consultation as widely necessary for the success of the mergers and acquisitions.

- b) More important finding here reveal that studies on mergers and acquisitions are mostly found in the field of economics and finance as well as accounting and more finance related areas. The study puts perspective on the two or more involving firms while putting strong emphasis on all factors as well as aligning them in view of the advisor and the client if there is going to be any success at all.

The two key findings expose the existence of a knowledge gap in the literature on the lack of systematic research on factors necessary for mergers and acquisition as strategy for business growth.

To close the gap, there is need for the researcher to identify common necessary success factors for mergers and acquisitions in the view of mergers and acquisitions as a strategy for business growth.

The researcher also needs to identify how mergers and acquisition advisors may get involved in the deals.

2.8 **Conclusion:**

Chapter two focused on the conceptual framework of mergers and acquisition, particularly, the chapter provided details regarding historical trends and patterns of mergers, the definitions and descriptions of mergers and acquisitions, classification of mergers & acquisitions, the process of merger and acquisition, why firms engage in merger and acquisition transaction and an understanding of merger and acquisition as a strategy for business growth. The next chapter (chapter three) focuses on the empirical studies on the implications of mergers and acquisitions on managers, employees and shareholders. The chapter begins by exploring the overview of the empirical studies regarding mergers and acquisitions before embarking on an understanding of the impact of mergers and acquisition on shareholders. It then examines the impact of these on managers and employees.



Chapter 3

EMPIRICAL STUDIES ON THE IMPLICATIONS OF MERGERS AND ACQUISITIONS ON MANAGERS, EMPLOYEES AND SHAREHOLDERS

3.1 An overview of the empirical studies:

Mergers and acquisitions have become a quick way for business corporations to boost the scale of their operations, expand their product portfolio, and join new markets. However, whether they enhance or destroy shareholder value, impact employees and management, it remains an issue that needs to be scrutinized. Some studies will reveal that whether mergers and acquisitions enhance or destroy shareholder value, it all varies with the way the mergers and acquisition is planned and executed. For instance merger and acquisition that originate with the right mission, vision and are executed at the right price such as Oracle's (NASDAQ and ORCL) and IBM's (NYSE and IBM) with a string of software acquisitions that have allowed the two companies to drive the rising demand for enterprise software, is a case in point that have enhanced shareholder value and thus have both generously rewarded their stockholders.¹⁰⁴ On the contrary, mergers and acquisitions that originate with the wrong mission, vision and are implemented at the mistaken price such as Cisco Systems (NASDAQ and CSCO) which carried out a wave of acquisitions in the late 1990s is a case in point that destroyed shareholder value. As Panos writes from Forbes, "the period 1993-2000, Cisco acquired seventy companies, including Cresendo Communications (1993), Newport Systems Solutions (1994), Network Translation (1995), Netsys Technologies (1996), Net Speed (1998), and Growth Networks (1999), etc".¹⁰⁵ However, the challenge with such a type of strategy on the side of Cisco is that it ended up paying leading prices for Net Swiftsness and Growth Networks acquired at the top of the high-tech bubble.

Meanwhile, another good example of a failed merger and acquisition on the side of stockholders is the Hewlett-Packard (NYSE:HPQ) chain of acquisitions in the early 2000s, including the acquisition of Compaq Computer and Palm Inc. that was meant to support the company to compete excellently alongside Dell Computer (NASDAQ:DELL) and Apple (NASDAQ:AAPL).¹⁰⁶ According to Panos, the acquisition of Compaq Computer by HP led to a declining trend of the computer market, but with

¹⁰⁴ Bleeker E 'The 5 Worst Telecom Stocks of 2010' (2010)

¹⁰⁵ Panos, M. 'What's Wrong With Facebook's Business Model And Innovation Strategy?' available at <http://www.forbes.com/sites/panosmourdukouta/2015/02/23/whats-wrong-with-facebook-business-model-and-innovation-strategy> accessed on 23 February 2015

¹⁰⁶ Panos M 'What's Wrong With Facebook's Business Model and Innovation Strategy?'

the acquisition of Palm Inc., it led to HP going against the market leader, Apple. However, the stock of both companies has been heading south ever since the merger.¹⁰⁷

Bank of America's (BAC:NYSE) acquisition of Countrywide Financial (CF) and Merrill Lynch (ML) is a third case in point, as the conservative culture of the bank does not blend well with the aggressive cultures of CF and ML, the stock has been heading south ever since the merger. Eastman Kodak's (NYSE:EK) acquisition of Sterling Chemicals is a fourth case in point, as EK paid too much for a company that didn't quite fit with its core business instead the stock of the two companies have been heading to the South Pole.¹⁰⁸

Therefore as Panos concludes and from the observations made by the researcher, mergers and acquisitions do not always deliver what they promise to stockholders, especially if they are pursued without a clear vision at a too high price.

Below the research examines the impact of mergers and acquisition on shareholder value of joint ventures; the Impact of mergers and acquisitions on shareholder wealth by type of Venture; the Impact of mergers and acquisition on Shareholder wealth of strategic alliances; the effects of mergers and acquisitions on Shareholder wealth by type of alliances and Empirical evidence on shareholder returns. The research also presents the impact of acquisitions on managers and employees.

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¹⁰⁷ Forbes "Do Mergers and Acquisitions Enhance or Destroy Shareholder Value?" available at <http://www.forbes.com/sites/panosmourdukoutas/2011/10/04/do-mergers-and-acquisitions-enhance-or-destroy-shareholder-value> Accessed on 28 April 2014

¹⁰⁸ Forbes "Do Mergers and Acquisitions Enhance or Destroy Shareholder Value?" (2014)

3.2 The impact of Mergers and Acquisitions on shareholders:

3.2.1 Impact of Mergers and Acquisitions on shareholder value of joint ventures:

Market responses to acquisition announcements are often not positive and target shareholders often do not do well.¹⁰⁹ When target shareholders receive their premium, assuming it is not in stock and they do not hold those shares for an extended period, they have measurable gains. Given that there are some similarities in mergers and acquisitions, it's imperative to examine how shareholders perform under joint ventures.

According to a study conducted by McConnell and Nantell on 136 joint ventures that involved 210 U.S companies over the period 1971 and 1971, the joint ventures were in a variety of industries, with the most common being real estate development (18/136) and television and motion pictures (14/136).¹¹⁰ The study was an announcement period, short term oriented study that compares with many of the event studies that have been conducted for mergers and acquisitions announcements. It is important to bear in mind, however, that short term oriented means the market is adjusting to the announcement in the short term such as enduring an event window of three days before and after a joint venture announcement, but this adjustment reflects the market anticipation of the long term effects of the benefits and costs of the venture. The reaction occurs in a short time period, but it is attempting to reflect or forecast long term effects. This is different from a long term study which examines the financial impact of an event after the fact, when there has been the benefit of the passage of a number of years.¹¹¹

The McConnell and Nantell study showed that shareholders in companies entering into joint ventures enjoyed announcement period returns. They found similar results when some of the industries such as real estate were removed from the sample. They also found that the gains were fairly evenly distributed across venture participants. When the authors tried to convert that seemingly small percentage return to a dollar amount, they found it corresponded to an average

¹⁰⁹ Patrick AG *MERGERS: what can go wrong and how to prevent it* (2005)

¹¹⁰ John JM & Timothy J N 'Corporate combinations and common stock returns: The case of joint ventures,' (1985) 2 *Journal of finance* 40 519-536

¹¹¹ David SL & Alexandre M 'Long-Run Impacts of Unions on Firms: New evidence from financial markets,' 1961–1999 (2012)

value of \$4.8 million.¹¹² Their results were also similar to the combined companies involved in acquisitions (these are referring to combined returns, which may include a negligible or even negative returns for an acquirer and a higher return for a target, which also may be smaller than the bidder).¹¹³ The McConnell and Nantell study supports the idea that, when considering the shareholder wealth effects, joint ventures are a viable alternative to a merger or an acquisition. Whether they may accomplish what a company wants to achieve with a merger and acquisition is going to be determined on a case by case basis.¹¹⁴ However, while it also varies depending on the circumstance, one cannot argue that joint ventures lack some of the aggregate positive shareholder wealth effects that mergers and acquisition provide. One thing that a joint venture will not provide, and for acquirers this is a good thing, is a large buyout premium for target shareholder. Without that premium, the opportunities for management to make bad decisions by overpaying may be more limited. They may still be able to negotiate poor terms for their own companies but the opportunities for large financial rewards may be more limited.

The McConnell and Nantell findings of positive shareholder wealth effects for joint ventures were supported by the research of Woolridge and snow, who analysed a sample of 767 announcements of strategic investment decisions involving 248 companies operating in 102 industries.¹¹⁵ These strategic investment decisions included joint ventures as well as R&D projects and major capital investments. Their methodology featured an examination of the stock market reaction to the announcement of these decisions. In general they found stock market responses to these various announcements. When the sample was divided into subsamples for the different types of announcements, they were able to determine that shareholders wealth effects were positive for joint venture announcement. These results are consistent with McConnell and Nantell findings.

¹¹² Gaughan PA 'Maximizing Corporate Value through Mergers and Acquisitions: A Strategic Growth Guide' (2013)

¹¹³ Gaughan PA (2013)

¹¹⁴ John JM & Timothy J N 'Corporate combinations and common stock returns: The case of joint ventures' (1985) 2 *Journal of finance* 40 519-536

¹¹⁵ Randall JW & Charles CS 'Stock Market reaction to strategic investment decisions' (1990) 11 *Strategic Management Journal* 5 353-363.

3.2.2 Impact of Mergers & Acquisitions on shareholder wealth by type of Venture:

While the McConnell and Nantell study looked at the shareholder wealth effects by type of industry, it did not differentiate these effects by type of venture. Johnson and Houston analysed a sample of 191 joint ventures over the period 1991 to 1995.¹¹⁶ They divided their sample into vertical joint ventures (55%) and horizontal joint ventures (45%). They defined vertical joint ventures as transactions between companies that are in the same general line of business and that may use the products from the ventures to sell to their own customers or to create an output that can be sold to the same group. The results showed average positive gains from joint ventures equal to 1.67%. For horizontal joint ventures, it appears that the gains are shared by the venture participants. The average returns for vertical joint ventures were somewhat higher –2.67%. However, what is particularly interesting when they looked at the vertical samples was that the gains did not accrue to both parties. Suppliers gained an average of 5%, with 70% of the returns being positive while buyers received an average return of only 0.32%, which was not statistically significant and of which only 53% of the returns were even positive. For vertical joint ventures, the biggest winners were suppliers who were able to capture the bulk of the gains, while the market did not see major benefits for buyers.¹¹⁷

Johnson and Houston recognised that when two companies entered into a joint venture, especially a vertical venture that showed the greater gains, the venture participants could have entered into a contract as opposed to a joint venture.¹¹⁸ Johnson and Houston analysed a sample of announcements of contracts and also found positive shareholder wealth effects with such announcements. However they found that companies enter into joint ventures as opposed to contracts, when transaction costs are high. They describe some of these transaction costs as “hold up hazards”.¹¹⁹ This could occur for example if a supplier had to make buyer specific investments, such as investments in certain machinery and capital goods needed to produce the buyer specific products. Although a contract may provide some temporary protection to the supplier over the contract period, once this period is over, the supplier may be vulnerable unless

¹¹⁶ Johnson S & Houston M ‘A reexamination of the motives and gains in Joint ventures’ (2000) 1 *Journal of financial and quantitative analysis* 35 67-85

¹¹⁷ Gaughan PA *Mergers, Acquisitions, and Corporate Restructurings* (2010)

¹¹⁸ Gaughan PA *Mergers, Acquisitions, and Corporate Restructurings* (2010)

¹¹⁹ Johnson S & Houston M ‘A reexamination of the motives and gains in Joint ventures’ (2000) 1 *Journal of financial and quantitative analysis* 35 67-85

this capital equipment could be redeployed to another buyer. For these types of transactions, Johnson and Houston saw benefits for joint ventures that contracts could not provide.¹²⁰

3.3 Shareholder wealth effects of strategic alliances:

Just as the research has examined at joint ventures, there is also a need to investigate the shareholder wealth effects of strategic alliances. Chan, Kensinger, Keown, and Martin examined the shareholder wealth effects of 345 strategic alliances over the period 1983 to 1992.¹²¹ Almost one half of their sample involved alliances for marketing and distribution purposes. For the overall group, they found positive abnormal returns equal to 0.6%. This is somewhat comparable to what was seen with the research of McConnell and Nantell for joint ventures. The Chan, Kensinger, Keown, and Martin study also found no evidence of significance transfer of wealth between alliance partners. This implies that there was no evidence that one partner was gaining at the expense of another. This result supports strategic alliances as an alternative to mergers and acquisitions—in the limited circumstances where it is appropriate.

3.4 Shareholder wealth effects by type of alliances:

Chan, Kensinger, Keown, and Martin examined questioned how the shareholder wealth effects varied by type of alliances. They separated their sample into horizontal and non-Horizontal alliances. They defined horizontal alliances as those involving partners with the same three digits SIC code. They found that horizontal alliances that involved the transfer of technology provided the highest cumulative abnormal return of 3.45%.¹²² This may help explain why strategic alliances occur so often between technologically oriented companies. Non horizontal alliances that were done to enter a new market provided a positive but lower return of 1.45%. Other non-horizontal alliances failed to show significant returns.¹²³ Another study conducted by Das, Sen, and Sengupta also examined the types of alliances that might be successful, as reflected by their initial announcement shareholder effects.¹²⁴ They were able to show the announcement effects by type of alliances as well as by firm profitability and relative

¹²⁰ Gaughan PA *Mergers, Acquisitions, and Corporate Restructurings* (2010)

¹²¹ Su han C Kensinger JW Keown A & Martin JD 'Do strategic alliances create Value?' (1997) 2 *Journal of Financial Economics* 46 199-221

¹²² Gaughan PA *Mergers, Acquisitions, and Corporate Restructurings* (2010)

¹²³ Gaughan PA *Mergers, Acquisitions, and Corporate Restructurings* (2010)

¹²⁴ Somnath D Pradyot KS & Sengupta S 'Impact of strategic alliances on firm valuation' (1988) 1 *Academy of management journal* 41 27-41.

size of the alliance participants. They discovered that technological alliances were associated with greater announcement returns than marketing alliances. These are two of the more common types of alliances. In his research of 4192 alliances, Hagedoorn has previously shown that, as expected, technological alliances were more common in high growth sectors; whereas marketing alliances were more common in mature industries.¹²⁵ Das Sen and Sengupta also showed that the abnormal returns were negatively correlated with both the size of the alliance partners and that their profitable partners will capture fewer of the gains from the alliance.¹²⁶ Stated alternatively, the market sees greater benefits for smaller and less profitable companies. The smaller and less profitable companies seem to have more to gain from strategic alliances. This does not imply that the partnerships are not also good for larger companies. Given that they are bigger and their profits are greater, it would be reasonable to expect that when such companies partner with smaller firms, they have less to gain because the impact of that alliance will have a smaller impact on the overall business of the larger company. That larger company may enter into several such alliances, and the aggregate effect of all of these alliances may make the difference less.

3.5 Empirical evidence on shareholder returns - the UK evidence:

The evidence here is presented in two steps: the short-term performance and the long term performance. Table 1.3 shows the abnormal returns to targets and bidder in completed take overs in four UK studies based on the market model.

¹²⁵ Hagedoorn J 'Understanding the rationale of strategic technology partnering: Interorganisational modes of cooperation and sectoral differences' (1993) 14 *Strategic management journal* 371-385.

¹²⁶ Gaughan PA *Mergers, Acquisitions, and Corporate Restructuring* (2010)

Table 1.3 Showing abnormal returns for target and bidder shareholders surrounding UK takeover announcements

Study period and Sample size	Window	Data	Target (%)	Bidder (%)
Firth (1980): 1969-75; 486 targets	Announcement Month	Monthly returns	28	-6.3
Franks and Harries (1989) 1955-85; 1445 Targets	Announcement month	Monthly returns	22	0.0
Limmack (1991); 1977-86; 462 462 Targets	Bid period	Monthly returns	31	-0.2
Sudarsanam et al. (1993); 1980-9; 171 share offers	-5to +5 Days around announcement Day 0	Daily	21	-2.0

Note: Target returns in all studies and bidder returns in Firth and Sudarsanam et al are significant at the 5% significance level or better.¹²⁷

According to Limmack¹²⁸ and Sudarsanam et al.¹²⁹ the results are thin trading adjusted. In Limmack, the bid period extends from the beginning of the announcement month to the end of the completion month. Franks and Harries also report using the market adjusted and CAPM models.¹³⁰ Results based on these alternative models are generally similar for the targets, but more variable for bidders.

It is thus clear that, in the short window surrounding a bid the target shareholders are overwhelming winners, whereas the bidder shareholders either lose or scrape through. The combined abnormal sterling gains to the target and bidder shareholders are reported as: -£36.6m (Firth); £2.63m (Franks and Harries)

¹²⁷ Sudarsanam PS *The Essence of Merger and Acquisitions* (1995) 217

¹²⁸ Limmack RJ 'Corporate Mergers and Shareholder Wealth Effect: 1977-1986' (1991) 21 *Accounting and Business Research* 83 239-251

¹²⁹ Sudarsanam PS *The Essence of Merger and Acquisitions* (1995)

¹³⁰ Franks JR & Harris RS 'Shareholder Wealth Effects of Corporate Takeovers - The UK Experience 1955-1985' (1989) 23 *Journal of Financial Economic* 225-249.

and £5.84m (Limmack).¹³¹ When set against the average bid size, the combined returns are very small indeed. Sudarsanam et al., (1995) reports a combined return of 3.09 percent significant at the 5 percent level.¹³²

The post-merger, long-term performance data are available only for the acquirer, since the target companies is shown in table 1.4.

Table 1.4 Showing post-merger performance of acquirers

Study period and Sample size	Window	Data	Return (%)
Firth (1980): 1969-75; 434 acquirers	+1 to +36 Months	Monthly	-0.0
Franks and Harries (1989) 1955-85; 1048 acquirers	+1 to +24 Months	Monthly	-12.6
Limmack (1991); 1977-86; 448 acquirers	+1 to +24 Months	Monthly	-4.5

Note: + refers to the month after the bid has been completed. Returns reported by Franks and Harries and Limmack are statistically significant at the 5% level¹³³

Benchmarks can lead to different conclusions about the impact of acquisitions on the shareholder wealth. With the market adjusted model and CAPM, they report 4.8 and 4.5 percent over the months +1

¹³¹ Limmack RJ 'Corporate Mergers and Shareholder Wealth Effect: 1977-1986' (1991) 21 *Accounting and Business Research* 83 239-251

¹³² Sudarsanam PS Holl P & Salami A 'Shareholder wealth gains in mergers: empirical test of the synergy and agency effects', paper presented to the Midwest finance association (1993)

¹³³ Sudarsanam PS Holl P & Salami A *Shareholder wealth gains in mergers: empirical test of the synergy and agency effects* (1993)

to +24, making acquisitions a more attractive proposition for acquiring company shareholders. The benchmark effect is specifically addressed by Franks et al. with their study of American takeovers.¹³⁴

3.5.1 The UK evidence summary:

- Takeovers are at best neutral in overall value creation for the shareholders together, and at worst modestly value destroying
- The target shareholders gain almost exclusively from takeovers.
- There is some evidence of wealth transfer from the acquirer to acquired shareholders. This follows from the negative returns to acquirer shareholders and the broad neutrality of the overall effect.¹³⁵

That only target shareholder gain does not by itself create the presumption that acquisitions do not rest on a sound value creation logic. An acquisition can increase the cash flows of the combined firm compared to the sum of the cash flows of the two pre-acquisition firms. But these cash flows may not accrue to the benefit of the acquiring company shareholders if their managers are overgenerous to the target shareholders. This explanation is consistent with Roll's hubris hypothesis that managers tend to overpay for their acquisitions because they overestimate their own capacity to create value from those acquisitions.¹³⁶

According to the models by Sudarsanam, a change in valuation of a company is in general a function of the change in cash flows and earnings.¹³⁷ If mergers do create value for shareholders, such added value should reflect the increase in earnings and cash flows of the merged entity compared to those of the pre-mergers lead to enhanced earnings and cash flows.

¹³⁴ Franks JR & Harris RS 'Shareholder Wealth Effects of Corporate Takeovers - The UK Experience 1955-1985' (1989) 23 *Journal of Financial Economics* 225-249.

¹³⁵ Sudarsanam PS *The Essence of Merger and Acquisitions* (1995) 217

¹³⁶ Roll R 'The hubris hypothesis of corporate takeovers' (1996) 59 *Journal of Business* 2 197-216

¹³⁷ Sudarsanam PS *The Essence of Merger and Acquisitions* (1995) 138-159

3.6 The impact of M&A on managers and employees:

3.6.1 The impact of Acquisition on managers:

Acquisitions affect the managers of the acquirer and acquired companies differently. For the managers of the acquirer companies, they offer new opportunities to enhance their companies' competitive advantage, operational efficiency and financial performance, thereby increasing shareholder value. They also allow managers scope for maximizing their own utility by increasing remuneration and job security. For acquired company managers, takeover causes uncertainty and stress because of the expected changes. They now have to adapt to the new bosses and their culture. For many, takeover may mean loss of power, status and freedom to innovate, or redundancy.¹³⁸

Whether or not all of these dire consequences will be visited upon acquired firm managers depends on upon the motivation and the strategic logic of the acquisition. For example a merger based on expected synergies may not lead to redundancies, whereas one driven by rationalisation in a mature industry is likely to. Similarly, a disciplinary takeover with its presumption of inefficient target management will, almost by definition result in high turnover of that management.

Franks and Mayer document that top management turnover is high after a hostile takeover compared to that in a friendly takeovers and in non-acquired companies. For a sample of 34 recommended and 31 hostile UK bids, they estimate that 90 percent of executive and non-executive directors of targets resigned after the takeover, whereas only 50 percent did so in friendly bids. Both these turnover rates are much higher than a smaller sample of 10 non-acquired firms.¹³⁹

The acquiring company's managers in contrast are sitting pretty. An immediate advantage of the acquisition is that the firm becomes larger. Acquisitions accelerate the growth of a firm compared to organic growth. Managerial remuneration is often positively linked to firm size. Indeed this may become one of the motivations behind the acquisition.

¹³⁸ Sudarsanam PS *The Essence of Merger and Acquisitions* (1995)

¹³⁹ Franks J & Mayer 'Post-merger management change and restructuring', working paper, *London business school* (1994)

Firth provides evidence consistent with this managerial self-interest. For a sample of 171 UK acquisitions in the period 1974 -80, Firth finds that acquisitions that are well received by the stock markets lead to significant increases in managerial rewards. Even acquisitions with negative abnormal returns at bid announcement appear to reward senior management. Firth concludes that the acquisition process leads invariably to an increase in managerial remuneration and this appears to be predicated on the increased size of the company.¹⁴⁰

Acquisitions are not always a one way ticket to great fortune for acquirer managers. Many of them do make hash of their acquisitions as the evidence from accounting based measures suggests.¹⁴¹ Acquisition failure can be horrendously costly to the managers. Some of the more spectacular and frequent acquirers of the go-go 1980's ended up in receivership, and some were subsequently taken over, as shown in table 1.5.¹⁴²



¹⁴⁰ Firth M 'Corporate takeovers, stockholder returns and executive rewards' (1991) 12 *Managerial and decision economics* 421-8

¹⁴¹ Lu Q 'Do mergers destroy value? Evidence from failed bids' Working Paper, Kellogg School of Management, North-western University (2004)

¹⁴² Andrade G Mark M & Erik S 'New Evidence and Perspectives on Mergers' (2001) 15 *Journal of Economic Perspectives* 103-120

Table 1.5 Showing aftermath of high-level acquisition activity

Acquisition company	Acquisitions since 1985		Fate (January 1991)
	Number	VALUE (£m)	
British and commonwealth	20	1442	Receivership
Coloroll	14	403	Receivership
Leisure investments	10	228	Receivership
Parkkfield	34	140	Administration
Ferranti	9	439	Heavily divested
Midsummer Leisure	13	55	Acquired in hostile bid
Parkway	23	68	
Saatchi & Saatchi	31	584	Taken over
Wpp	45	1292	Financial restructuring
			Financial restructuring

Source: A Blackman, Acquisitions monthly, January 1991.

Companies such as the advertising agencies Saatchi & Saatchi and WPP that made big acquisitions in the USA, subsequently went into financial restructuring, and are just emerging from intensive care.¹⁴³

¹⁴³ Devine M *Successful mergers* (200)

3.6.2 The impact of Acquisition on employees:

Acquisitions may have twofold effects on the level of employment in the acquired company and on the wages, pension and other rights of employees. In rationalizing acquisitions, the acquirer seeks to improve the efficiency and productivity of the operations of targets. One of the easiest targets for rationalisation is the head office of the target. With many of its functions taken over by the parent's head office, redundancy of target head office is likely to follow. For example during Tesco's bid for William Low in July 1994 it was reported that significant job losses were likely among the 300 staff at Wm Low's head office (financial times, 4.8.1994).¹⁴⁴ Hanson Trust's acquisition strategy seeks to make the targets assets work harder as exemplified in its acquisition of Berec in 1981.¹⁴⁵

In UK employment law gives some protection to employees in the context of takeovers in terms of for example unfair dismissal, redundancy terms, changes in terms and conditions of the employment, and pension benefits. The rights of employees also depend on whether shares or business of the target are purchased. In the latter case, employees may receive the protection of the transfer of undertaking (protection of employment) regulation 1981 (TUPE), which implements the European community's acquired rights.¹⁴⁶

¹⁴⁴ Sudarsanam PS *The Essence of Merger and Acquisition*. (1995)

¹⁴⁵ Sudarsanam PS *The Essence of Merger and Acquisition* (1995).

¹⁴⁶ Dawson W *Employment responsibilities and objectives*, in *company acquisitions Handbook* (1994)

3.7 Conclusion:

Chapter three focused on the empirical studies on the implications of mergers and acquisitions on managers, employees and shareholders. The chapter began by exploring the overview of the empirical studies regarding mergers and acquisitions before embarking on an understanding of the impact of mergers and acquisitions on shareholders. It then looked into the impact of mergers and acquisition on managers and employees. The next chapter (chapter four) examines mergers and acquisitions as a business strategy with emphasis on cases from the USA, UK and SA. Specifically the chapter addresses the Historical and legal Framework of mergers and acquisitions in USA, the Historical and legal framework mergers and acquisitions in UK as well as mergers and acquisitions in SA and legal framework. In terms of cases, this chapter provides an analytical understanding of the cases of mergers and acquisitions (including: *The case of Microsoft v Yahoo in US*; *The case of Kraft v Cadbury in UK* and *the case of SAB Miller Plc. v Royal Grolsch NV in South Africa*).

In summary the literature presented in this chapter shows that although the target shareholders gain wealth from mergers, evidence on wealth gains to acquiring company shareholders is not conclusive. However, acquisitions lead to significant top-level management changes as well as changes in employee rights and wage pensions.

CHAPTER 4
MERGERS AND ACQUISITIONS AS A BUSINESS STRATEGY:
CASE STUDIES OF THE USA, UK AND SA

4.1 Mergers and Acquisitions in the USA: A Historical and legal Framework:

The account of merger waves spans the twentieth century throughout which time there have been numerous merger waves in the US, each of which has been noticeably different from the others.

The end of the nineteenth century saw the first merger wave in the USA and this carried on until the year 1905. It is generally thought that it was impelled by a combination of the rising stock market and the introduction of the Sherman Antitrust Act of 1890.¹⁴⁷

The Sherman Antitrust Act of 1890 was in a way designed to forbid any agreement that would limit trade amongst different states and countries and not just specifically to deal with the rising phenomenon of merger and acquisition activity. The act was not also able to prohibit any merger or acquisition that was structured using a stock for stock exchange because of its capitalist tendency. What is again worse is that the Sherman Act made it promising for business corporations to form near monopolies without any regulatory meddling.¹⁴⁸

Certainly, many business corporations or companies wanted to take advantage of this circumstances and the first US merger wave began as an end result.¹⁴⁹

About this time some 1800 businesses vanished in this merger wave and just about 71 previously competitive industries were transformed into virtual monopolies. Indeed this saw a huge restructuring of the industrial landscape of the United States of America.¹⁵⁰

After a period of twenty years, there was another merger wave. However this time the merger wave reflected the fact that the regulatory framework was changing once again.

The United States courts at this time made it clear that they were ready to effectively take apart companies that had a monopolistic grip on their manufacturing sectors for example as the 1911 break-up of Standard Oil so evidently proved.¹⁵¹

¹⁴⁷ The Sherman Anti-Trust Act of 1890

¹⁴⁸ The Sherman Anti-Trust Act of 1890

¹⁴⁹ The Sherman Anti-Trust Act of 1890

¹⁵⁰ Sudarsanam S *Creating Value from Mergers and Acquisitions: The Challenges* (2003)

¹⁵¹ The Sherman Anti-Trust Act of 1890

A popular business statesman John, D. Rockefeller by 1868 had formed Standard Oil Pittsburgh in Pennsylvania and it managed to spread rapidly in most of the states of the United States acquiring more and more branches as it spread.

This particular company signified all the authority and wealth of the Rockefeller business empire. For example Standard Oil was famous for brutal business practices that forced many of its opponents out of business. However, in 1911, the US Supreme Court certainly decided to act and blamed Standard Oil for biased practices as well as abuse of authority and extreme control of its market. All of these had been tolerable under the Sherman Act, however, the regulatory charter of the US was shifting and monopolistic behaviour was not acceptable any longer. As a result, Standard Oil lost the subsequent court battle and was obligated to do away with thirty three (33) of its greatest branches/subsidiaries as well as to allocate the shares to its existing shareholders. Standard Oil was also not allowed to create a new trust to be the beneficiary of the shares and this was done to effectively make it difficult for Rockefeller to maintain control of the subsidiaries. The split-up of Standard Oil signified the first step towards the new merger regulation that was to be introduced in the year 1914 under the Clayton Act. This Act was introduced to specifically redress the flaws of the previous regulation or legislation and it vigorously encouraged companies to form oligopolies instead of monopolies. Once more companies were eager to take advantage of the change and the second US merger wave was the outcome. However, just like the previous wave, the stock market was increasing and companies were able to issue equity as a way of bankrolling mergers and acquisitions with relative simplicity. The second wave was brought to a very sudden end due to the world economic depression of 1929 which led to the collapse of the US stock market as it halted merger and acquisition activity nearly overnight.¹⁵²

The rate of merger and acquisition bustle fluctuated during the 1940s and 1950s without ever increasing to the extreme levels that characterize a wave.¹⁵³

In the year 1950 a new act called the Celler-Kefauver Act was introduced. This act extended the Clayton Act and forbid any merger or acquisition that was intended to give one firm a considerable degree of market power. As a consequence, the quantity of horizontal deals was reduced to the mere minimum. Accordingly, this Act marked the first step towards merger regulations as they exist worldwide today with the emphasis on upholding consumer choice in the market place.¹⁵⁴

¹⁵² Sudarsanam S *Creating Value from Mergers and Acquisitions: The Challenges* (2003)

¹⁵³ Sudarsanam S *Creating Value from Mergers and Acquisitions: The Challenges* (2003)

¹⁵⁴ Shleifer A & Vishny RW 'Takeovers in the 60's and the 80's: Evidence & Implications' (1991) 12 *Strategic Management Journal*

Towards the end of the 1960's until mid-1970, the US economy experienced a strong period of growth and once again the stock market rose remarkably. Business on Wall Street boomed during this time and this resulted in the third US merger wave of the last century as companies with lucrative profit found themselves with large amount of cash flows which they were not willing to pay out to stakeholders in the form of dividends. Instead they turned to the market for company control as a way of making use of these funds. All through this period, most of the deals were quite friendly engagements and stock was the principal medium of exchange.¹⁵⁵

The most distinguished tenet of this merger wave was the superiority of conglomerate deals as companies aggressively sought to expand into new markets and business areas. Accordingly, the power of this trend is demonstrated by the fact that the number of conglomerate firms rose from 8.3% of Fortune 500 firms in 1959 to 18.7% in 1969.¹⁵⁶ This change is certainly attributed to the provisions of the Celler-Kefauver Act which made horizontal mergers unpopular. However this wave came to an end as a result of the oil crisis of 1973 which resulted in a sharp increase in inflation and a world-wide economic downturn. As a result the fourth US merger wave took place in the 1980s and surpassed all of the proceeding waves in both the volume of transactions and in the size of the deals.¹⁵⁷

Also notable about this wave was the much higher degree of aggressiveness as companies that were formally considered untouchable especially as their sheer size would make them safe, became the targets of unwanted acquisition bids and fought enthusiastically to defend themselves.¹⁵⁸

Close to half of all major US companies were the beneficiaries of an unsolicited acquisition bid in the 1980's.¹⁵⁹ This is a clear indicator of the bulk of transactions taking place throughout this particular wave. It can be noted that this merger wave is also one that has produced the greatest bulk of academic analysis and a number of different reasons have been put forward to explain this situation. Among the reasons, one of the possible ones is that the government of the United States relaxed some of the

¹⁵⁵ Shleifer A & Vishny RW 'Takeovers in the '60s and the '80s: Evidence and Implications' (1991) 12 *Strategic Management Journal*

¹⁵⁶ Rumelt RP (Thesis: "Strategy, Structure and Economic Performance" Boston, MA.: Harvard Business School Press, 1974)

¹⁵⁷ Shleifer A & Vishny RW 'Takeovers in the '60s and the '80s: Evidence and Implications' (1991) 12 *Strategic Management Journal*

¹⁵⁸ Scott R *In Their Defense...* Arguments in the Debate over the Use of Corporate Takeover Defenses and their Policy Implication (2012)

¹⁵⁹ Mitchell ML & Mulherin JH 'The Impact of Industry Shocks on Takeover and Restructuring Activity' (1996) 41 *Journal of Financial Economics* 193-229.

restraints on takeover activity that existed in the earlier law.¹⁶⁰ In a different explanation is given as a return to specialisation especially after the extreme diversification and growth of the 1960s wave.¹⁶¹

Most of the companies that were so active during the earlier merger wave found that there were farfetched challenges so innate in managing a company that had many branches and with a widely spread and diverse markets and countries. The majority of the conglomerates failed entirely to prosper or some were forced to dissociate considerably in order to stay in the market after the 1960s merger wave while the 1980s wave saw the reoccurrence of horizontal takeovers as firms chose to concentrate on areas in which they were most profitable and effective.

It's also quite important to note that the 1980s was a period in which companies had to react to a chain of shocks that impacted on just about every single type of company. Such shocks included the advance of industrial deregulation; the rapid development of in the level of technology that occurred in this period and the severe changes in the costs of input like oil. This is in line with the economic disturbance theory put forward by Gort¹⁶² which denotes that the changes in external circumstances result in differences of opinion concerning the value of companies which in turn leads to increased levels of merger and acquisition activity. A different alternative arises from the fact that mergers and acquisitions, although expensive and risky for the firms involved, may nevertheless be the most operational way for an entire industry to re-organise in the wake of some form of economic blow.¹⁶³

A more old-fashioned approach to the 1980s merger wave takes the view that it was caused by the propagation of managerial ineffectiveness. Unproductive corporate governance instruments followed by poor managerial incentive schemes gave rise to corporate mismanagement to flourish during the 1970s and the 1980s. Assuming the stock markets were truly proficient, any company that had issues of poor and ineffective management teams would be recognized; the share price of which would drop and as result the firm would go bankrupt.¹⁶⁴

However, stock markets are not fully efficient and as such the market for corporate control comes into play to fill the gap. Corporations with incompetent managers will to some degree be undervalued hence making them an appealing target for acquisition. When the acquisition is complete, the incompetent managers will be removed and the overall effectiveness of the market is improved.¹⁶⁵

¹⁶⁰ Gort M 'An Economic Disturbance Theory of Mergers' (1969) 4 *Quarterly Journal of Economics* 83

¹⁶¹ Engin MA & John GM *The Waning of Corporate Diversification* (2005)

¹⁶² Gort, M 'An Economic Disturbance Theory of Mergers' (1969) 83 *Quarterly Journal of Economics* 4 624-642

¹⁶³ Scherer FM 'Corporate Takeovers: The Efficiency Arguments' (1988) 1 *Journal of Economic Perspectives* 2

¹⁶⁴ Scherer FM 'Corporate Takeovers: The Efficiency Arguments' (1988) 1 *Journal of Economic Perspectives* 2

¹⁶⁵ Scherer FM 'Corporate Takeovers: The Efficiency Arguments' (1988) 1 *Journal of Economic Perspectives* 2

The 1980s merger wave was also driven by the popularity of debt financed dealings throughout this period. The use of debt in mergers and acquisitions was not a new advance but rather it became significantly more extensive during this period as compared to any other time as leveraged buy-outs became widespread forms of takeover. Also the usage of junk bonds had the benefit of making it promising for very large corporations to be considered possible takeover targets which added to the aggression of many transactions at that time.¹⁶⁶

The most recent merger wave of the 1990's was the largest merger wave of all, massively surpassing all of the preceding waves in both number of transactions and value. Though the trend concerning horizontal deals continued, in every single respect, the 1990s merger wave was in a way very distinct from its predecessor. The 1990's merger wave was almost completely friendly with just about 4% of the deals being represented as hostile¹⁶⁷ and the reputation of stock as the medium of exchange enlarged by approximately 50% as equated to the preceding merger wave.

One possible justification for the change in nature of deals from the aggression of the 1980s to the more controlled activity of the 1990s is as a result of the improvements in corporate governance. With the rate and effectiveness of monitoring increasing significantly, it became much more problematic for managers to strike highly risky transactions and forced them to reflect more carefully on whether to join the market for corporate control at all and, in the result that they decided to go ahead, how they would actually join the market.¹⁶⁸ Faced with such kinds of restraints, most of the managers would think very wisely before attempting a merger or acquisition.

¹⁶⁶ Scherer FM 'Corporate Takeovers: The Efficiency Arguments' (1988) 1 *Journal of Economic Perspectives* 2

¹⁶⁷ Andrade G Mitchell M & Stafford E 'New Evidence and Perspectives on Mergers' (2001) 15 *Journal of Economic Perspectives*

¹⁶⁸ Holmstrom B & Kaplan SN 'Corporate Governance and Merger Activity in the U.S.A: Making Sense of the 1980s and 1990s' (2001) *NBER*

4.1.1 The Antitrust Regulation in the USA:

Among other countries, the USA has the longest tradition of antitrust regulation, starting with the Sherman Act of 1890. This Act declared contracts and combinations which restricted interstate trade or trade with other countries illegal, and any attempt at monopolising the trade a criminal offence. The Sherman Act was not particularly suitable for the prevention of prospective mergers and monopolies, especially in the form of acquisition of stock to gain control of companies.¹⁶⁹

The Clayton Act 1914 was passed to overcome the shortcomings of the Sherman Act, and was subject to the later amendments to make it a more effective mechanism for dealing with mergers. Section 7 of the Clayton Act prohibits full or partial acquisition by a commercial corporation of the stock or assets of another engaged in commerce in the country, if the effect of such an acquisition may be substantial to lessen competition or tend to create a monopoly. The prohibition applies to horizontal, related and conglomerate acquisitions.¹⁷⁰

The various statutory rules are enforced by the federal department of justice (DOJ) and the federal trade commission (FTC). Prospective mergers have to be notified to these agencies. Both agencies then investigate and if necessary, initiate proceedings in federal courts. The FTC also has various appeal procedures involving the administrative law courts and the independent FTC commissioners.¹⁷¹

In addition to the above federal regulation, individual states have their own antitrust laws applying to mergers that would not affect their interstate trade. The state Attorney general can bring a suit in the state courts. Affected parties can bring or join proceedings under both federal and state laws. This contrasts with the EU and the UK position, where affected parties cannot bring legal action to force the European commission or the OFT to investigate a merger. Antitrust enforcement in the USA has in the past fluctuated from great vigour to deep indifference, depending upon the political current of the times.¹⁷²

¹⁶⁹ Sudarsanam PS *The Essence of Merger and Acquisitions* (1995)

¹⁷⁰ Sudarsanam PS *The Essence of Merger and Acquisitions* (1995)

¹⁷¹ Sudarsanam PS *The Essence of Merger and Acquisitions* (1995)

¹⁷² Holmstrom B & Kaplan SN 'Corporate Governance and Merger Activity in the U.S.: Making Sense of the 1980s and 1990s' (2001) *NBER*

4.1.2 Merger Control in the USA:

Merger transactions in which the parties have significant assets or sales are regulated by the Hart-Scott-Rodino Act (HSR). HSR requires such parties to notify the DOJ and the FTC of the transactions, and observe a prescribed waiting period before completing them. Similar to the EU's merger regulation, HSR stipulates a threshold test of applicability based on the size of the parties, but HRS has an additional test based on the transaction size, similar to the UKs for a qualifying merger. Like the merger regulation, HRS is also a two-phase process, with an initial filing and second request for more elaborate information.¹⁷³

The USA has in the past attempted to investigate mergers or cartels among two or more non-US corporations which have significant operations in the USA. This claim for extraterritorial jurisdiction has been resisted by regulatory authorities in other countries, such as France, Canada and UK, which even prohibited their own national companies from supplying documents to the US antitrust authorities. More recently, the guidelines issued by the DOJ and the FTC say that the USA may act against a foreign cartel if the cartel members make substantial sales to the USA.¹⁷⁴

4.1.3 Takeover Regulations in the USA:

In the USA, tender offers are regulated under the Williams Act (WA) 1968 by the Securities and Exchange Commission.¹⁷⁵ WA imposes obligation on both offerors and targets, and prevents secret accumulation of larger stakes by requiring acquisitions of 5 percent or more of voting shares to be disclosed within ten days. WA declines when a tender offer commences, and sets out the information to be disclosed, including the source of funds for and the purpose of the offer. Tender offers must be open for twenty business days, and revised offers kept open for another ten business days.

The best price and all holders rule requires the bidder buys the tendered shares from all shareholders. During the offer, shares cannot be bought by the offeror except in pursuance of the offer itself. WA makes any fraudulent act including insider trading in connection offer, illegal.¹⁷⁶

¹⁷³ Holmstrom B & Kaplan SN 'Corporate Governance and Merger Activity in the U.S.: Making Sense of the 1980s and 1990s' (2001) *NBER*

¹⁷⁴ Sudarsanam PS *The Essence of Merger and Acquisitions* (1995)

¹⁷⁵ Sudarsanam PS *The Essence of Merger and Acquisitions* (1995)

¹⁷⁶ Sudarsanam PS *The Essence of Merger and Acquisitions* (1995)

WA imposes obligations on targets in their response to tender offers. It requires the target to inform its shareholders of its position on the tender offer within ten business days. Target management must disclose any conflict of interest and also refrain from materially misleading statements.¹⁷⁷

Since in the USA companies are incorporated under state laws, the structure of an acquisition is a matter partly of state law and partly of Federal law. Some state laws have recently made tender offers more difficult by allowing certain defensive devices by target companies, such as shark repellents and poison pills.

Shark repellents: *Assume that Precaution is the best form of reaction. Following this principle, companies, with shareholder approval, are increasingly incorporating antitakeover amendments, popularly known as shark repellents, in the firm's charter. Failure to pass might be taken as a vote of no confidence in incumbent management and may provide a platform for a proxy fight or takeover attempt where none had existed before. In general, shark repellents impose new conditions on the transfer of managerial control of the firm through a merger, tender offer, or by replacement of the board of directors. There are four major types of antitakeover amendments.*¹⁷⁸

Poison pills: *refer to the creation of securities by target companies that provide holders with special rights exercisable only after a certain period following the occurrence of a triggering event such as a tender offer for control or the accumulation of a specified percentage of target shares. These rights in essence make it very difficult or expensive for the bidder to acquire control of the target firm. These tactics economically "poison" the would-be acquirer if swallowed.*¹⁷⁹

¹⁷⁷ Sherman JA *Mergers & Acquisitions from A to Z* (2011)

¹⁷⁸ Shah CA *Review of Defensive Strategies Used in Hostile Takeover* (1996)

¹⁷⁹ Shah CA *Review of Defensive Strategies Used in Hostile Takeover* (1996)

4.2 Mergers and Acquisitions in UK: A Historical and legal framework:

As compared to merger waves in US, merger waves in the United Kingdom (UK) have a far shorter history. Nothing similar to a considerable merger wave emerged before the 1960s though there was a small wave in the 1920s which was motivated by the extensive introduction of bulk production machineries / technologies in the UK following the end of the World War 1.¹⁸⁰ The advent of new technologies gave rise to a severe increase in efficiency, and a corresponding rise in share prices. This unexpected burst of productivity and viability gave rise to a flood of mergers that led to a substantial increase in concentration in many industrial manufacturing activities. Around 1948 the first phase in the development of the UK merger dogma was taken with the passing of the Monopolies and Restraining Practices Act which resulted into the creation of a Commission to look into transactions that might be contrary to the public good. However, the terms of reference for the Commission were vague and the benchmarks to be used in influencing the public good were similarly indistinct.¹⁸¹

Unsurprisingly this had no clear effect on the level of the merger and acquisition activity which went on to fluctuate moderately over time but with no sign of a merger wave for over a decade. Actually the first real merger wave in the United Kingdom took place in the 1960s and it corresponded with the internationalization of the global economy. The Government of Britain decided that large companies were desired to compete effectively and efficiently on the international level and to realize this goal; the Industrial Reorganization Corporation (IRC) was formed with a summary to hearten the development of such businesses through horizontal mergers which made up most of the mergers in this wave. Of the top 200 manufacturing companies in the year 1964, 39 (19.5%) were tangled in merger or acquisition activity in the next five years.¹⁸² With the low levels of merger and acquisition activity before this time, this was seen to be a major increase in activity. Throughout this same period, the Monopolies and Mergers Act (1965) was passed which prevented any merger or acquisition that was in opposition to the public good, and instead created the Mergers and Monopolies Commission (MMC) to rule over the contentious cases. This law mainly focused on horizontal mergers as the public good was commonly associated with market share and consumer choice and, as a consequence, the attractiveness of this type of transaction should have been limited to a significant degree but any transaction backed by the Industrial Reorganization Corporation (IRC) was exempted from the legislation which permitted the

¹⁸⁰ Sudarsanam PS *The Essence of Merger and Acquisitions* (1995)

¹⁸¹ Sudarsanam PS *The Essence of Merger and Acquisitions* (1995)

¹⁸² Hughes A Bishop M & Kay J *Mergers and Economic Performance in the UK: A Survey of the Empirical Evidence,* in *European Mergers and Merger Policy* (1993)

merger wave to occur, regardless of its harmful impact on competition in most markets. This wave experienced a slight drop after 1968 but then developed to another elevation in the year 1972. All through this latter period, the percentage of horizontal deals plunged, although they were still by far the most widespread type of purchase, and conglomerate transactions grew consistently¹⁸³, reflecting the developing impact of the earlier legislation. The legal framework was additionally secured in 1973 with the Fair Trading Act which made formal the procedures for regulating merger and acquisition activity in the United Kingdom and created the Office of Fair Trading (OFT). The duty of the OFT is to examine each deal and decides whether it should be referred to the Mergers and Monopolies Commission (although now known as the Competition Commission) for a thorough examination of its possible impact.¹⁸⁴

The subsequent period of extreme merger and acquisition activity in the UK took place in the 1980s and marked a change in importance when compared to the preceding waves. Before this time the waves had been mainly about growing the size of corporations but in the 1980's the criteria changed to the control of corporate assets as a commodity.¹⁸⁵

Throughout this period the latest development in merger and acquisition guiding principle or policy took place with a remark written in an interior memo by the then Secretary of State for Trade and Industry, Norman Tebbit, who wrote to say that he deliberated the primary grounds for a referral to the Mergers and Monopolies Commission (MMC) would be an adverse influence on competition. Nevertheless, the actual benchmarks for making a referral are somewhat vague. As a consequence, Office of Fair Trading (OFT) has traditionally referred only a very small percentage of qualifying bids.¹⁸⁶

Amid the introduction of the Mergers and Monopolies Act in the 1965 and 1985 there were 3540 mergers and acquisitions that met the standards for a referral to the Mergers and Monopolies Commission (MMC). Out of these only 107 were essentially referred and among 31 of these cases the bidding corporation elected to withdraw the bid prior to any judgement handling.¹⁸⁷ This is reflected in more recent data which shows that of 915 transactions that qualified for investigation between the

¹⁸³ Sudarsanam S *Creating Value from Mergers and Acquisitions* (2003)

¹⁸⁴ OFT 1254. (2010) "A joint publication of the Competition Commission and the Office of Fair Trading" Revised Edition available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/28449/OFT1254.pdf accessed on 22 June 2015

¹⁸⁵ John BF Robert WM & Jamil RJ *Monopoly and Competition in Twenty-First Century Capitalism* (2011)

¹⁸⁶ OFT 1254. (2010) "A joint publication of the Competition Commission and the Office of Fair Trading" Revised Edition available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/28449/OFT1254.pdf accessed on 22 June 2015

¹⁸⁷ Hughes A Bishop M & Kay J *Mergers and Economic Performance in the UK: A Survey of the Empirical Evidence,* in *European Mergers and Merger Policy* (1993)

years 1998 and 2001, only 42 were referred for a full examination.¹⁸⁸ This offers a compelling reason as to why the statistics of horizontal mergers have not been restricted by the prevalent legal framework, regardless of the often quoted “Tebbit Guidelines”.

Throughout the early period of the 1980s the stock market was rising sharply reflecting growing profits and business confidence. The financial services sector had just been liberalized which in addition contributed to the development of the wave. This era of extreme transformation also integrated some characteristics of merger and acquisition activity recently not seen in the United Kingdom and brought in from the US, amplified aggression, the usage of leverage and a large number of buy-outs all of which took place in this wave but had not formerly been famous characteristics of the market for corporate regulation in the UK. The London Stock Exchange market suffered a major crash in the year 1987 but this wasn't sufficient to stop the wave, which however had the necessary drive to keep going until the year 1989.¹⁸⁹

Precisely, the most recent merger wave in the UK took place in the 1990s and was equally stimulated by deregulation of more British industries in addition to the privatization of policy by the government of state owned assets which took place through the last years of the 1980s and the early 1990s, as demonstrated by the sales of British Telecom in 1984, British Gas in 1986 and British Rail in 1993.¹⁹⁰ These variations lead to the need for widespread restructuring on many different levels of the British industry and encouraged the merger wave. As compared to the 1980s there was moderately little aggression during this era and most corporations altered their perspective on mergers and acquisitions to take a more balanced approach when compared to the extremes of the preceding decade.¹⁹¹ This alteration in perception was impelled by the findings of the Cadbury Report of 1992 which was appointed by the London Stock Exchange to investigate the state of corporate governance in the United Kingdom. The Report findings resulted in a number of recommendations that increased the rate of monitoring to which Boards of Directors were exposed and it also increased the level of transparency in company's decision making. These recommendations together with proposals lessening the power of individual Board members and increasing the independence of Non-executive directors made managers

¹⁸⁸ Sudarsanam S *Creating Value from Mergers and Acquisitions* (2003)

¹⁸⁹ Donald M 'The big, bad wolf and the rational market: Portfolio insurance, the 1987 crash and the performativity of economics' (2004) 33 *Economy Society* 303-334

¹⁹⁰ Fairburn J Bishop M & Kay J *The Evolution of Merger Policy in Britain,* in *European Mergers and Merger Policy* (1993)

¹⁹¹ Sudarsanam S *Creating Value from Mergers and Acquisitions* (2003)

become much more accountable for their actions and far less able to make the type of large and hostile as well as unwise acquisition attempts that actually were a basis of much of the 1980s.¹⁹²

4.2.1 The UK Anti-Trust Regime:

The regulation of mergers is part of the UK government's competition policy, aimed at maintaining effective competition in various product markets within the UK or a substantial part of it. Although restrictive trade practices have been subject to government scrutiny since 1948, mergers became the explicit focus of government competition policy only in 1965 with the enactment of the monopolies mergers Act.¹⁹³ This Act adopted an administrative means of merger control in the form of a monopolies and mergers commission (MMC) to investigate a merger when called upon to do so. The UK merger control regime is neutral in its attitude to mergers. There is no presumption that mergers are *per se* undesirable.

4.2.2 Take over regulations in the UK:

According to the regulations in the UK, a takeover is a means of achieving a controlling interest in the target company.¹⁹⁴ A public offer extended to all the target shareholders is only one way in which the controlling interest can be passed on from the existing to new shareholders. Other transactions which could also result in control transfers include: Private contract; issue of new shares by the target share; redemption of target shares; share capital reconstruction and schemes of arrangement.

Since shares in private companies are not widely held, the need for regulation of takeover bids is much less for them than for public and listed companies. In the UK, takeovers where the target company is a private company are regulated by the city panel on takeovers and mergers (the code) (also called the blue book because of the colour of its binders).

A scheme of arrangement is carried out under the section 425 of the UK companies Act 1985 (CA 1985). It is a scheme between the target company and its shareholders, and requires the co-operation of the target. A takeover proposal may be the subject of a scheme. Such a scheme, when agreed by three-quarters in value of shareholders, needs to be sanctioned by the court. Once sanctioned, the scheme is binding on all shareholders, thus obviating the problem of minority shareholders after acquisition. As a

¹⁹² Sudarsanam PS *The Essence of Merger and Acquisitions* (1995)

¹⁹³ Sudarsanam PS *The Essence of Merger and Acquisitions* (1995)

¹⁹⁴ Sudarsanam PS *The Essence of Merger and Acquisitions* (1995)

result of the involvement of the court, a scheme is tedious, time consuming and expensive. For this reason, mergers by schemes of arrangement are much less frequent than public offers under the code. For example, in their study of UK mergers during 1955-85, Franks and Harries (1989) find only 121 schemes of arrangement compared to 1693 public offer.¹⁹⁵



¹⁹⁵ Sudarsanam PS *The Essence of Merger and Acquisitions* (1995)

4.3 Mergers and Acquisitions in SA and legal framework:

In relation to studies of merges and acquisitions in the UK and USA, there are few studies which are by far descriptive in nature that have looked at direct foreign investments in South Africa.¹⁹⁶ History reveals that from the time of the attainment of independence in 1994 the South African economy opened up to the world and ever since then the country has seen rapid attraction of direct foreign investments. Not only has the growth been attributed generally to foreign direct investment, it has specifically been due to mergers and acquisition activity. Indeed by 1990 there were less than 10 mergers and acquisitions but the last two decades have seen a massive increase in mergers and acquisitions activities that have surpassed 1072 targets in South Africa.¹⁹⁷ Quarterly data from the year 1991 to 2011 merger and acquisition trends reveal that the biggest Acquirers of firms in South Africa are Europe, North America, and specifically the USA and the UK. Indeed it can be seen that mergers and acquisitions in South Africa became more pronounced in the year 2010 after the end of the financial crisis of 2008. It's observed that most mergers in recent times in South Africa have been in the small to medium level sectors as well as between unpublished companies. The merger and acquisition activities in South Africa are driven by the Black Economic Empowerment, private equity and cross-border transactions. According to recent data, a number of cross border transactions are beginning to get popular especially as South Africa itself is trying to penetrate other African economies massively. Nevertheless, there are relatively fewer black economic empowerment deals or transactions which have been providing great impetus to the South African mergers and acquisitions market for a number of years.¹⁹⁸

In terms of legal matters, the foundation of the South African mergers and acquisition legislative framework is the Companies Act, 2008. The Companies Act was propagated in 2008 but it was only effected from the 1st of May 2011. As a consequence, it has considerably changed the prevailing company law regime and the merger and & acquisition legislative framework in general.

Key amongst the developments brought by the Act is its ability to regulate essential transactions, which include inter alia; the schemes of arrangement also known as the statutory procedure which has for the past couple of years been the most frequently used system of effecting a commended takeover; the

¹⁹⁶ Akinboade OA Siebrits FK & Roussot EN 'Foreign Direct Investment in South Africa in Ajayi, I.S, Foreign Direct Investment in Sub-Saharan Africa: Origins, Targets, Impact and Potential' (2006) *African Economic Research Consortium (AERC)*

¹⁹⁷ Robinson S *The Mergers and Acquisition Review* 5 ed (2011)

¹⁹⁸ Robinson S *The Mergers and Acquisition Review* 5 ed (2011) 496

amalgamation and mergers seen to be new in the South African company law although its similar to the legislative merger and amalgamation procedure that is applicable in the United States; and the disposals of all or the greater assets of a company.¹⁹⁹

The individual fundamental transactions necessitate the consent of stockholders supported by a minimum of 75 per cent of the elective privileges that can be implemented on the resolve. The Act is also responsible for regulating tender offers, which involve the mandatory offers as well as the equivalent and part offers. The takeover regulations in the Republic have been published in terms of the Companies Act 2008 and are mainly based on the UK City Code on Takeovers and Mergers.

4.3.1 The takeover regulations in South Africa:

The takeover Regulations are such that a panel has been setup in terms of the Companies Act and it's the Authority that is responsible for overseeing any effected deals. This includes the fundamental transactions presented as the schemes of arrangement; the amalgamation and mergers; and the disposals of all or the greater assets of a company.²⁰⁰ In most cases the takeover regulations do apply to the public deals while in rare occasions on the private transactions too. Earlier the regulation had some other key sections which included the Securities Services Act which was responsible for regulating the South African insider trading and market manipulation legislation; as well as the Competition Act. However in 2013 the Securities Act was replaced by the Financial Markets Act. The new legislation was introduced to ensure greater regulation of transactions in unpublished securities and over the counter transactions. For those merger and acquisition transactions that do involve corporations that are listed on the Johannesburg Securities Exchange (JSE) in South Africa, they require to have the listing requirements as they are of paramount importance. It must be recalled that South Africa for a long time has had the system of exchange controls. This dates as far back as the 1960's. These controls have acted significantly in the way in which mergers and acquisitions in South Africa especially concerning the cross border transactions. In the recent years, there has been a relaxing on these exchange controls with a plan of abolishing them soon. As a result of such a plan, there are observable examples that have been systematic to include the reduction of the size of the lowest equity stake that South African companies are necessitated to hold in their overseas investments, and allowances being prepared for overseas corporations to use their non-South African shares as acquisition capital for merger and acquisition deals

¹⁹⁹ Companies Act 2008 (Companies Act, 71 of 2008)-SAIC

²⁰⁰ Companies Act 2008 (Companies Act, 71 of 2008)-SAIC

by means of a secondary listing on the Johannesburg Securities Exchange. The recent change in exchange controls that permits the listed shares of overseas corporations to be treated as South Africa assets is seen as a key development in recent times. This is also seen to have the effect of smoothing the cross broader share for share deals.²⁰¹ The South African law of contract derived primarily from the African common law is seen to play a significant role in regulating merger and acquisitions although not codified.²⁰² This is due to the absence of a proper threshold regime for COMESA mergers and the lack of legal precedent within COMESA on competition matters places merging parties in a difficult position.

In simple terms, in South Africa, Takeovers and mergers are governed by the Securities Regulation Panel under the Securities regulation code on Takeovers and Mergers (Code) and the Rules of the Panel. In addition to the Code, there are other regulations which apply to public takeovers, including:

- The Companies Act, which governs: the compulsory acquisition of minority shareholdings when the bidder acquires 90% of the shares in the target; and disposals by a company in a sale of business.
- The Securities Services Act No. 36 of 2004 (*Securities Services Act*) which, among other things, contains the South African insider trading and market manipulation legislation.
- The Listings Requirements of the JSE Limited (JSE) (Listings Requirements), which apply if: the bidder's or target's shares are listed on the JSE. Under the Listings Requirements, the bidder's shareholders must approve an acquisition if the offer consideration is larger than 25% of the market capitalisation of the bidder; or any new shares being offered as part of the bid consideration are to be listed on the JSE.²⁰³

²⁰¹ Du Plessis & Sukazi *Mergers and Acquisitions* (2011/2012)

²⁰² Simon Robinson 'The Mergers & Acquisitions Review' (2011) *Law Business Research*

²⁰³ Du Plessis & Sukazi *Mergers and Acquisitions* (2011/2012)

4.4 Case studies of mergers and acquisitions:

The next three examples of mergers and acquisition that have taken place or have been in progress for several years in the United States, United kingdom and South Africa are presented here as case studies. These examples suggest differences between the three countries in areas such as the development of the relevant laws and regulations.

4.4.1 The case of Microsoft v Yahoo (USA):

On the 1st of February 2008 with no notice, Microsoft offered a takeover proposal for Yahoo. However, the reactions of Yahoo and the analyses of this clash by the business world have been very fascinating. Yahoo straight away opposed this offer because Microsoft underrated Yahoo's assets. At this point, Yahoo began finding substitute partners to link up with, such as Google, News Corporation, and AT&T.²⁰⁴ It seemed like Yahoo wanted to retain independent management by collaborating with another corporation, rather than being taken over by Microsoft.

Yahoo's reaction is seen here as being reluctant about the buyout proposal although it can from another angle be seen as a play for time. By flaunting discussions with other companies in front of Microsoft, Yahoo seemed to have attempted to put pressure on Microsoft for better terms. Yahoo also has a corporate defense system although it's unlikely for it to use it. The Yahoo system is seen as a method of buying time.

In view of the likelihood that they would be taken over by Microsoft which would likely lead to management being fired or terminated, Yahoo introduced a new payment scheme that stated that all terminated employees would be compensated the equivalent of 4 to 24 months' salary depending on their position. This was a sign of deep rooted resistance that Microsoft bore on giant company Yahoo. Indeed, it's alleged Microsoft aimed to pursue the giant search engine Google which has constructed a special position in the internet service industry and as such they hoped to meet this objective through taking over of Yahoo. However, according to some sources in the internet industry it's confusing whether it could be contrary to the Antimonopoly law if the giant industries: Microsoft and Yahoo

²⁰⁴ Kevin JD Robert A Guth & Matthew K "Microsoft makes grab for Yahoo available at <http://www.wsj.com/articles/SB1201865873682347937> accessed on 25 July 2015

combined.²⁰⁵ Nevertheless, some sources believe that some of the barriers to the integration is deeply rooted in the differences in corporate culture while other sources believe it's better that yahoo liaises with Microsoft in order to achieve more profits rather than to merge with companies such as google.²⁰⁶ From the point of view of the Wall Street Journal out of 63% of hostile takeovers for the last couple of about five years many capable companies were able to raise their initial offers and there were rare proxy²⁰⁷ fights conducted as a part of hostile acquisitions which represented a small percentage of less than 5% of all since the year 2001.²⁰⁸ Out of the 27 entanglements only 5 produced board seats prompting some Yahoo shareholders to say that they would never sell their shares at \$31 considered to be the initial price by Microsoft. At the end it was convincing that Microsoft raise their offer price as a viable option.²⁰⁹ In view of the possibility that case that they would be taken over by Microsoft and new management would try to fire employees, Yahoo introduced a new special payment system stipulating that terminated employees could receive retirement compensation equivalent to from 4-24 months' salary depending on their position. This appears to be a symbol of the deeply rooted resistance that remains toward Microsoft.

4.4.2 *The case of Kraft v Cadbury (UK):*

In the year 2009 a US Food Company called Kraft Foods launched a hostile bid for Cadbury, a UK-listed chocolate maker. Two years down the road (August 2011) the acquisition was completed and this allowed Kraft Foods to be restructured as it got split into two companies by the end of the year 2012. One section of Kraft Foods Company provided the grocery services and was valued at \$16bn while the other section which is called the global snacks business was valued at \$32bn.²¹⁰

Kraft Foods actually wanted to provide a wide scale of snacks particularly in the emerging markets such as India and the only way to do that was through acquiring Cadbury. However, the challenge faced by Kraft Foods was buying Cadbury knowing very well it was not for sale.

²⁰⁵ Financial Times 2008 "Yahoo rejects \$ 42bn Microsoft approach available at [Http://www.ft.com](http://www.ft.com) accessed on 27 July 2015

²⁰⁶ ²⁰⁶ Financial Times 2008 "Yahoo rejects \$ 42bn Microsoft approach available at [Http://www.ft.com](http://www.ft.com) accessed on 27 July 2015

²⁰⁷ Koyano T 'Comparative analysis of financial mergers and acquisitions in the United States and japan' usjp occasional paper 08-06 (2008)

²⁰⁸ Kevin JD Robert A Guth & Matthew K "Microsoft makes grab for Yahoo available at <http://www.wsj.com/articles/SB1201865873682347937> accessed on 25 July 2015

²⁰⁹ Kevin JD Robert A Guth & Matthew K "Microsoft makes grab for Yahoo available at <http://www.wsj.com/articles/SB1201865873682347937> accessed on 25 July 2015

²¹⁰ Moeller S Case study: Kraft's takeover of Cadbury

As a quick reminder, Kraft Foods as a company was itself a product of acquisitions that began in 1916 with the procurement of a Canadian cheese company. At the time it launched a hostile bid for Cadbury, it was considered the second largest conglomerate with seven brands whereby each brand generated revenues more than 1 billion dollars per year.

On the other hand Cadbury a company founded by John Cadbury in the year 1824 in the city of Birmingham in England had also grown in the same way through the process of mergers and acquisitions. It had equally in the recent years resorted to a strategy that was just starting to show results. In terms of ownership, it was having 49 percent ownership from the US irrespective of its UK listing and also having its headquarters there. By the time of the Kraft's bid, only 5 percent of its shares were possessed by short term traders.²¹¹

The challenge was that not only was Cadbury not for sale but it aggressively rejected the Kraft acquisition. Accordingly, Cadbury had a very experienced chairperson by the names of Sir Roger Carr in the takeover defences and he straightaway put together a very strong defensive and advisory team. In its first act, the defence and advisory team moved to brand the 745 pence-per-share offer unattractive. The team said that Kraft Foods fundamentally undervalued the company. The company advisory team then said that even though the company was to come to unwanted takeover, it would prefer the takeover to come from any other company such as Nestle, Hershey, Ferrero and the like but not Kraft foods. This was also supported by then UK's business secretary by the names of Lord Mandelson who said publically that the Government would oppose any buyer who failed to respect the Historic Confectioner.²¹²

However the response from Cadbury's own defence documents indicated that shareholders must refuse Kraft Foods offer since the chocolate company would be "incorporated into Kraft's low growth conglomerate business model an unappealing prospect that sharply contrasts with the Cadbury strategy of a pure play confectionery company". But with no idea, Cadbury's management didn't sense that Kraft Foods plan was after acquiring Cadbury Kraft's would split itself into two and create two distinct more business focused business and create more value for its shareholders.²¹³

²¹¹ Moeller S Case Study: Kraft's takeover of Cadbury

²¹² Moeller S Case Study: Kraft's takeover of Cadbury

²¹³ Moeller S Case Study: Kraft's takeover of Cadbury

The result was that the Cadbury team strongly supported the sale of majority of shareholders only at a price that was roughly 830 pence a share. At the end a deal was sealed between the two chairmen in January on the 18, 2010 at which each share was going for 840 pence per share in addition to a special 10 pence per share dividend. Two weeks later, the deal was approved by 72 per cent of Cadbury shareholders.

It can be found out from this takeover that for any acquisition especially as regards the cross border deal in which the two companies are well known for example the case of Cadbury in the UK, the news will always make the headlines. Thus the lead story in the UK tabloids for a period of four months was the Kraft foods continuation in pursuing Cadbury. What is fortunate is that this deal did not have any monopoly issues of competition which could have acted as regulators in in hindering the takeover and which could have prolonged the deal further.²¹⁴

However even without any regulators, many other commentators may be seen to be detractors. Thus it is of utmost importance that the acquiring company's management and advisers remain focused on the deal itself and the real decision makers who are the shareholders of the target company. As the transaction shows, it's important to note that the shareholders may not and in most cases are not the long term owners of the target company shares but they may be the hedge funds and other mediators (in the case of Cadbury's case, they owned 31 per cent of the shares at the end) who may have been influenced by the offer price and how fast the deal could be accomplished. Other shareholders may have legal concerns that need to be ironed out but this can regularly be done after the deal is completed just as Kraft did.

4.4.3 The case of SAB Miller Plc. v Royal Grolsch NV (South Africa):

SABMiller is a global brewing and bottling public limited company worth £21 billion. It was founded in South Africa in 1895. In the year 2007 in the month of November, the Grolsch brand formerly purveyed by 392-year-old Royal Grolsch NV turned out to be a target of a an extraordinary acquisition in the brewery industry, with SABMiller cashing in a premium of €816 million which at the time was an equivalent of \$1.2bn or £583m with an 84% premium over Grolsch's then share price. On the one hand, the strategic rationale surrounding the acquisition of Grolsch was that the deal would improve SABMiller's market share in premium beer markets. On the other hand, SABMiller's motivation in the deal was to exploit the potential of the brand extensions in international markets, both in native,

²¹⁴ Moeller S Case Study: Kraft's takeover of Cadbury

established areas such as South Africa, Europe and America, as well as in flourishing emerging markets. Hence the company envisioned a significant surplus prospect for the Grolsch brand across Africa and Latin America in particular, where the premium segment was and is still in its infancy. The acquisition was able to add a business with annual sales of more than €300 million.²¹⁵

According to SABMiller, the period of November of 2007, Royal Grolsch's company profile was categorised as such:

*In 2006, Grolsch reported turnover of €317.6 million and net profit of €19.2 million. Total worldwide sales volumes were 3.2 million hectoliters (hls), comprising 1.6 million hls of domestic volumes in the Netherlands, and 1.6 million of international volumes... Grolsch achieves approximately 80% of its international sales volumes in the UK, the United States, Canada, France, Australia and New Zealand through a network of alliances.*²¹⁶

It must be noted that at the time of the SABMiller deal there were a number of other mergers and acquisitions taking place in the breweries industry not limited to the Inbev's historic aggressive takeover of Anheuser Bush, the Carlsberg / Heineken's takeover of Scottish Newcastle as well as the SABMiller's own previous acquisition of Molson Coors.²¹⁷

It so happened that the deal was sealed with SABMiller paying a generous premium of 4.7 times 2006 reported EBITDA earnings when the two brewers reached a conditional agreement in 2007. From the viewpoint of the two companies, SABMiller's acquisition was a successive target move that was seen to be a highly contested global conglomerate game of 'expand or die'.

By introducing and adding Grolsch to its already established brands, SABMiller aimed to establish a north European brand which is also viewed as the superior Dutch brand with a north European heritage and this according to SABMiller would complement and in addition make SABMiller's existing international brand a huge portfolio. By introducing brands such as Grolsch Premium Weizen, Grolsch Dunkel Weizen and the like, SABMiller knew that it would inevitably fill the missing gap given the trends of beer consumption that stagnated the markets. Besides the management of SABMiller growing the brand in various capacities such as targeting the Grolsch's existing focus markets; identifying

²¹⁵ Wilson A 'SABMiller Will Purchase Grolsch for EU816 Million' available at <http://www.bloomberg.com> (accessed 19 November 2007)

²¹⁶ SABMiller Annual Report 2007 available at <http://www.sabmiller.com> (accessed on 30 May 2015)

²¹⁷ Mongeau SA (Mergers & Acquisition analysis: SAB Miller Plc acquisition of Royal Grolsch NV Masters Thesis, Erasmus Rotterdam School of Business 2009)

appropriate portfolio opportunities to introduce Grolsch as a premium North European beer; identifying opportunities to grow the brand via a portfolio approach with SABMiller's international brands; sharing market innovation and through people development and training to have readily equipped skilled personnel to take the brand to the next level.²¹⁸

SABMiller was able to make public the transaction primarily with the intent to spread it across 60 countries. But as it turned out, and basing on the quantitative research analysed, it was found that SABMiller had paid too much of the fees to takeover Grolsch as the calculation stood at €816million as the accepted bid price. This simply means that SABMiller paid an extra €19 million just to acquire Grolsch which according to the buyer valuation should have been €797million. This placed SABMiller at a negative present value. But one should be able to ask himself or herself as to why SABMiller was that generous in their bidding process. Accordingly, one of the reasons for the generous bidding by SABMiller was due to that fact that there was a competitor 'Anheuser-Busch' that SABMiller aimed to knockoff in a move that was considered do or die. Also Heineken had snubbed SABMiller in the home ground in the Netherlands and this must have acted as a motivator for the South African giant brewing company.²¹⁹

Despite the higher offer for the takeover that was placed at 84% than what the average share price of Grolsch's share price, it could be seen from the cash flows in the preceding month that SABMiller was in a good financial position.

For some analysts such as those from the Standard & Poor's, they were able to issue comments stating that the amount paid was high though this would not change SABMiller's debt rating.²²⁰ Therefore even though SABMiller overpaid for Grolsch, it had clear reasons and motivation and thus did not pay heed to the NPV (Net present value) of the company.

SABMiller role players believed that in history after all and especially in the brewing industry, expansion was seen more via expensive and aggressive acquisitions or takeovers. For example in 2002-2008 a brewery conglomerate mania was acquired by the investors as a "winner take all" long term game plan which involved building a thorough brand portfolio that was sustained by an international

²¹⁸ Mongeau SA (Mergers & Acquisition analysis: SAB Miller Plc acquisition of Royal Grolsch NV Masters Thesis, Erasmus Rotterdam School of Business 2009)

²¹⁹ Mongeau SA (Mergers & Acquisition analysis: SAB Miller Plc acquisition of Royal Grolsch NV Masters Thesis, Erasmus Rotterdam School of Business 2009)

²²⁰ Ewing J 'It's Miller Time for Grolsch' (2007) 19 *Business Week*

functioning juggernaut and riding growing economic progress in developing markets particularly those in Asia and South America while also taking into consideration markets in Russia and Africa.

Today as some researchers view things around the world, the idea that there are emerging nations is myth since the economic crisis that recently hit the world did affect the world broadly and deeply especially in the BRICS nations which affected consumer confidence and therefore placing products like beers to be hit hard. This is expected to be worse if the depression continues. What it teaches us is that SABMiller paid much more than it should have. During the strong moments when the economies are doing well mergers and acquisitions of breweries is expected to bring great yield but not in times of depression. In final analysis, the success of the merger and acquisition depends on the prospects of the economic situation and the consumer spending power after the economies recover. However if the global economies continue to enter into recession then takeovers or acquisitions involving such huge deals are bound to have negative returns on investments.



4.5 Conclusion:

Chapter four examined mergers and acquisitions as a business strategy with emphasis on cases of USA, UK and South Africa. Specifically the chapter addressed the Historical and legal Framework of Mergers and Acquisitions in USA, the Historical and legal framework Mergers and Acquisitions in UK as well as Mergers and Acquisitions in South Africa and legal framework. In terms of cases, this chapter provides an analytical understanding of the cases of M&A's (including: *The case of Microsoft v Yahoo in US*; *The case of Kraft v Cadbury in UK* and *the case of SAB Miller Plc. v Royal Grolsch NV in South Africa*). It can be stated that the three countries have different histories in regards to the mergers and acquisitions. The United States has the longest history of mergers and acquisitions and a lot of studies have been carried out in the US to try to understand history of mergers and acquisitions. UK has the second History of mergers and acquisitions while Southern Africa has recent and shorter history. The next chapter focusses on the findings and conclusions



CHAPTER 5

FINDINGS, DISCUSSIONS & RECOMMENDATION FOR THE RESEARCH

5.1 **Introduction:**

The discussion that follows is based on the findings from secondary research data of qualitative nature. The case studies as well as the reviewed literature results, successively help to check the validity and reliability of the preliminary findings. The discussion is based on the three areas that relate to the objectives or research questions and one more is introduced as after the investigation and these are: (a) The factors that influence mergers and acquisitions as a strategy for business growth; (b) the effect of mergers and acquisitions on business growth; and (c) the relationship between mergers-acquisitions and business growth

5.2 **The factors that influence mergers and acquisitions as a strategy for business growth:**

This section addressed objective one of the study. In subsection 5.2.1, the explanatory analysis of the factors that influence mergers and acquisitions as a strategy for business growth are presented (Economies of scale, consolidation, globalisation, creation or gaining of access to distribution channels, gaining access to new products and technologies, enhancing or increasing products and or services, increasing market share or access to new markets and Diversification).

5.2.1 **Exploratory analysis:**

The findings reveal that the main factor for mergers and acquisition projects is market share and branding. The findings suggest that there exists an aggressive protectiveness over market share between competitors operating within the same sector such that when the prospect to merge operations presents itself, most company leaders and management see this as a probable growth in market share on the horizon. Whatever happens at post-merger and or acquisition operations, whether it's profitable or not depends on how well the operation is executed. For example the idea of branding and how customers perceive the product under them is entirely secondary. The main motive is to gain market share as earlier stated. This falls in line with the case of SABMiller whose strategic rationale surrounding the acquisition of Grolsch was that the deal

would improve SABMiller's market share in premium beer markets. On the other hand, SABMiller's motivation in the deal was to exploit the potential of the brand extensions in international markets, both in native established areas such as South Africa, Europe and America, as well as in flourishing emerging markets. Also in the USA case where Microsoft wants to acquire Yahoo, the key reason is to increase the online market share which at present is dominated by google search engine.

Other examples cited here in support of "market share gain" include the merger between Daimler-Benz and Chrysler in 1999 which was influenced by the desire and the opportunity presented to it to expand its product offers in the North American market. This was done regardless of what would be the outcome. There was a merger between Time warner and America online (AOL) in the early 2000 as both companies saw a strategic fit. This meant that AOL would transform itself into a media house while Time warner would get an internet presence.²²¹

However some other literature reviewed indicated other factors that influence mergers and acquisitions ranging from strategy, synergy and talent. These studies provided with precision that achieving economies of scale is one other factor that influences mergers and acquisitions apart from having a great market share.

Strategy is another factor that has influence on merger and or acquisition activity. Results from the case reviews and other secondary sources proved that mergers and acquisitions were influenced by the prevalent strategy. Findings correlate to the article in the Economist magazine which suggested in 1999 that mergers work when there is a strategic fit (strategic fit postulates the extent to which a business organisation is corresponding its assets and competencies with the prospects in the outer environment. The matching takes place through strategy and it is therefore important that the business has the concrete assets and competences to accomplish and fund the strategy).²²² In addition the article cited a "closeness of approach" as being the reason for success of the 1996 merger between Sandoz and Ciba-Geigy that led to the creation of Novartis. In another example, Google was able to acquire Ebook technologies during the early 2011 that

²²¹ Angwin D 'Mergers and Acquisitions across European Borders: National Perspectives on Pre-acquisition Due Diligence and the Use of Professional Advisors' (2001) 36 *Journal of World Business* (1) 32-57.

²²² Grant RM *Contemporary Strategy Analysis: Concepts, Techniques, Applications* 6 ed (2007)

enabled it to expand into the electronic market. This technically acted as an extension of Google's scheme to scan books electronically.²²³

The findings revealed that mergers and acquisitions were also influenced by Synergy. As found out from the literature reviewed, cost and revenue synergies are cited as important factors in influencing mergers and acquisition activities. A combined business corporation restructures common functional units, such as accounting and finance, human resources and investor relations. Matching administration layers are eradicated and the merged business can end up with a more reorganized exclusive structure. These actions can save costs and improve decision making all through the business. Additionally, cost synergies are realized via economies of scale which means that a bigger company is in position to discuss better prices with its providers and better still heighten the utilization of its manufacturing capacities. Once two businesses merge the sales agents of both businesses in general have a much more inclusive set of products that they can provide their customers, hence essentially increasing revenue as well as profit growth. This is similar to the oil industry where for example, the mergers between Exxon and Mobil and between BP and Amoco have turned them into what the industry calls "super majors". Both merged companies are now competing head-on with Royal Dutch shell.

Another factor that was found to influence merger and acquisition activities is access to talent. For instance when Google and EBook and or software maker Oracle and hardware vendor Sun merged, the amalgamated corporations were able to achieve access to professional and proficient engineers, as well as research expertise, copyrights and patents. According to the American Institute of Aeronautics and Astronautics, talented employees and managerial staff has been a key driver to the merger and acquisition activity in the aerospace industry.²²⁴

²²³ 'How to make mergers work' The Economist January 2009

²²⁴ The American Institute of Aeronautics and Astronautics (AIAA) (2015: Mergers and Acquisitions) available at <https://www.aiaa.org/tc/mgt> accessed on 24 May 2015

5.3 The effect of mergers and acquisitions on business growth:

To answer this objective the researcher focused on the problems or issues associated with mergers and acquisitions from the case perspective as well as literature information and also the factors deemed necessary for a merger or acquisition to succeed before generalizing the effects of mergers and acquisitions on business growth. To be precise the researcher begins with subsection 5.3.1 and discusses the findings on the problems or issues that affect mergers and acquisitions. In subsection 5.3.2 the research looks at the necessary factors for the success of the mergers and acquisitions using data from the cases and also data from literature sources based on various case studies on mergers and acquisitions. Finally the researcher draws a general exploratory analysis on the effects of mergers and acquisitions on business growth in sub section 5.3.2.

5.3.1 The problems resulting from merger and acquisition ventures:

In connection to some of the problems on the necessary influences for realisation of mergers and acquisition, cases and other secondary sources helped to answer the question on the problems that have occurred in the companies as regards such ventures. The case reviews were conducted for the case of South Africa and as well as for the UK and US companies involved in this study. It should be recalled that recognizing and trying to side-step or even resolve these issues or problems does not warranty the success of the project but rather it could help to try and make such ventures smooth and hence increase the possibility of their success.

The findings revealed that the most serious problem is how to achieve mutual settlement on the price between acquirer and the one being acquired. To be precise, the one to be acquired also known as the seller could have an unreasonable expectation of the value yet on the other hand the one that wants to acquire also known as the buyer may not agree to price presented by the seller especially when believed to be so high. In one of the secondary source reviews the research pointed out the following statement:

“Price is one serious contentious issue that is always the subject on the topic of mergers and acquisitions here. Negotiating the value of company is a serious obstacle that needs a lot of time, haggling and following the regulations.”

Moreover, some case reviews posit that arising from both the buyer's side and the seller's side is the problem of not finding the right buyer or the right seller with particular characteristics needed by the buyer or seller. For example one of the two cases on this issue raised stakes to the researcher as it was noted with concern that sometimes the buyer may be too expectant of the timing through the preparation stage. And that during this stage, the buyer and other outside advisors such as lawyers and accountants could experience some issues that may prolong the scheduling of the information package. As a consequence, some information might not be available from the buyer's side at the approved plan, which in turn results into the suspension of the whole process.

Concerning the problems that may arise within the venture players, there are challenges of the work that needs to be done within a given time frame for the merger and acquisition to take place. Some two cases reviewed indicated that the massive amount of effort that needs to be accomplished within a given limited amount of time is quite a challenge. Meanwhile some other case reviews highlighted the issue of coordinating with the buyer, the external consultants, the counterparty and their advisors. Once again the issue connected to price is raised although this time it concerns the unlike viewpoints on value of the firm between the investment bank and the accountants in which the security bank has a market worth-focussed assessment while the accountants or auditors often tend to use more hypothetical models such as Discount Cash Flow to estimate value.

As one journal further emphasized, "undoubtedly there could be different opinions on valuation from various parties however." This is much more of a serious concern especially if the perspective is varied, for example when it comes to what valuation model to apply, or extremely, if the assessment on the prediction differs to a large degree.

Also some journals reviewed were able to bring about the problems curtailing from the business environment, being uncertainty in terms of timing, market development, price expectations, and strategy or tactics from the counterparty. Quoting from the journal, one researcher indicated that:

"It takes a while from launching the process to closing the deal. During that time, the company itself develops as the market develops. A lot of the parameters may have changed. As a result, the valuation may change. And it may not be possible to find the right buyer/ seller."

In summary, mergers and acquisition transactions have both positive and negative effects on business growth. One needs to note that they do not always lead to business success as sometimes they register

failure. Just like studies by various Authors shows, Mueller has indicated, merger and acquisition have a negative influence on firm growth.

5.3.2 Necessary success factors cited from journals, editorials, books, newspapers and magazines:

To get the answers from the secondary sources on the necessary factors for success, the review of literature was carried out. It was found that the experience, skill and efforts of the players played a major role. A lot of sources provided a very rich description for this factor. This factor denotes what is termed as having a merger and acquisition focused on the deal team including having great advisors with great effort. In simplicity, the findings reveal that for successful mergers, the team must be able to demonstrate its competency effectively in such key areas as marketing to potential buyers and negotiation. This factor relates to two other factors which include the venture manager's competence and commitment and venture team members competency and commitment in the research proposition.

Based on the reviewed literature it was also found that having good harmonization both within and outside was essential for merger success. This broad factor pointed out by some cases where individuals who participated in corporation research could be drawn alongside the core principle of two other influences that were revealed by the case sources; that is the communication and information sharing and exchange as well as the client consultation and acceptance.

A well-structured process was equally found to be a necessary factor after the literature reviews conducted from the data gathered. This factor relates to the development of the venture plan which mergers and acquisition advisory firms need to consider before mergers and acquisition project execution.

Other reviews provided the act of procuring client agreement on the strategy for the merger and acquiring process, the commitment from client on the project and clear and constant communication as being key player factors for the success of the venture.

One source however deferred from others and mentioned Predictability as one of the key determinants of the success of the merger. The source indicated that:

“There should be high predictability on how the process would go, regarding company value, how much time the process takes, and other issues in minimizing the effects of unexpected situations.”

This may well be interpreted as the ability to avoid unexpected events which can be seen as a Risk management factor.

Some findings pointed out that the success relates to the tight secrecy, the cautious and precise valuation of the target enterprise through appropriate due diligence, the Inventiveness and flexibility of agreement structure as well as the Judgement of the deal as in keeping the original timeframe, appropriate implementation of the project, swiftness as being paramount for the success of the merger and acquisition ventures.

Other additional necessary factors that were frequently mentioned in the cases during the review included the act of having a figure of key likely acquirers with appropriate profiles. This necessary element in particular tackles the issue of a sell obligation and to the merger situation. If there exist in the market many potential buyers who are interested in the deal, it will not take long to sell the client's business or to identify a good fit for the merger. Furthermore, in the case involving an auction process, the presence of a sizable number of prospectus purchasers will upsurge the competition, and possibly, this will drive the price high in support of the client who in this case will be the seller. One particular case on this issue explained:

“Success depends on finding key potential buyers, which have a strategic reason and financial resource, and maintaining them throughout the process as well as understanding the potential buyers’ strategy.”

The findings also provided evidence from the review that having the accurate and thorough information in the data house is very important for the success of mergers and acquisition ventures.

One of the mergers and acquisition consultative firm's responsibilities is to conduct analyses on the selling company (on behalf of either the seller or the buyer) in various areas, such as performance, business planning, its markets, financial situation, etc. in order to support the buyer in making key choices such as the value of the evaluated company, whether it is a 'good fit' or not, etc. In a bid to guarantee a rightful valuation, the members on the project team need to be in position to have access to the rightful data so as to skilfully exercise their investigative skills and understanding to synthesize the information. Still on this issue, one source indicated that in the instance of giving counsel to the buy side, it's of paramount importance for the project team to know that somehow it may encounter challenges because sometimes their information is incomplete or it may be inaccurate and thus

questionable. However this kind of problem may not be so serious in the instance of giving counsel to the seller side because usually the project team is given the access to a variety of information about the clients company.

The last factor that may influence the success of mergers and acquisitions is the superiority of the selling company. Basing on the case reviews conducted it was found out that one of the key necessary factors for mergers and acquisitions projects is actually the superiority of the selling company. One source reviewed projected that from the seller perspective, if the business corporation that is selling is having good performance at the time of sale, then it will experience high valuation as well as promising future growth and strong market share. As such this company will easily attract potential buyers and it will also be easy to sell it in the short run. This precisely means that once the company that is to be sold becomes attractive, then it's likely that it will easily close the deal and with very attractive prices for the seller. However on the other hand, in reference to the buyer section, when trying to find the strategic fits such as the synergies, cultural fit among others, it's in the interests of the buyer to take over the right target company and one with quality to facilitate the integration process in due course. This can also be right for instance in the case of where a particular merger is positioned on strategic fit to initiate future growth.

It is important to note that the reviews were performed on existing data in the different companies in the key case countries; USA, UK and South Africa. The results do not show one relative important factor deemed necessary for the success of the merger but rather gives the general view of the reviewed information and since the data is based on already existing corporations that have carried out mergers and acquisitions activities in past, the researcher finds such information relevant to the cause. Although some of these factors are not indicated in the literature review, since they are based on the data collected from the different sources it generally adds to the body of knowledge on the necessary factors for the success of mergers and acquisitions in any industry.

5.4 The effects on business growth:

The research findings show that mergers and acquisitions have a significantly negative impact on business growth. This coincides with Kumar's study which used the event study method to conclude that mergers and acquisitions had a negative impact on firm growth.²²⁵ The study finding is also supported by Odagiri and Hase who in their study found out and concluded that mergers and acquisitions did not improve the growth rate three years after the merger and acquisition.²²⁶ At the same time this some studies conducted in Japan revealed a positive growth after the merger and acquisition.

Never the less most of the studies including this particular one show that mergers and acquisitions have a negative effect on firm growth. All past studies have used the event study method although there appears to be a consensus regarding negative effects of the mergers and acquisitions. Given this, estimates of the effects of mergers and acquisitions may possibly have a time reliant issue in that performance prior to and following merger and acquisition performance are predicted under different business situations.²²⁷ Accordingly, if one has to put to light the effects of merger and acquisition on the growth of the business or enterprise, it was of paramount importance to investigate the effect from a different viewpoint, especially one that has to do with the challenges and the other that has to do with the necessary factors for success. However it may be more significant in future to relate the growth of the firm or company between merger and acquisition firms and the non-merger and acquisition firms for particular time periods.

²²⁵ Kumar MS 'Growth, acquisition activity and firm size: evidence from the United Kingdom' (1985) 33 *The Journal of Industrial Economics* (3) 327–338

²²⁶ Odagiri H & Hase T 'Are mergers and acquisitions going to be popular in Japan too? An empirical study' (1989) 7 *International Journal of Industrial Organization* (1) 49–72

²²⁷ Neumann M Bobel I & Haid A 'Business cycle and industrial market power: an empirical investigation for West German industries 1965–1977' (1983) 32 *The Journal of Industrial Economics* (2) 187–196

5.5 The relationship between mergers-acquisitions and business growth:

The relationship between mergers and acquisitions and business growth as a comparative analysis of cases in USA, UK and South Africa was examined in this section. In so doing, the section responded to the third and last objective of the study. A descriptive analysis of the linkage between mergers and acquisitions and business growth is presented in subsection 5.5.1 and a conclusion is made from the findings in subsection 4.2 on the relationship between mergers-acquisitions and business growth.

5.5.1 Descriptive Analysis:

The findings in the study provided evidence from the respondents that there is no direct relationship between mergers and acquisitions and business growth for large firms but rather for small firms. Some reviewed sources noted with concern that the growth of the firm in the post-merger depended on some key issues. For example one source noted that:

“If the size of the firms is small, merger and acquisitions activity could lead growth but it’s not so easy with large firms due cultural practices between staff in the two firms and the whole restructuring process which makes it tough.”²²⁸

This relates to the findings by Dunne and Hughes who found out that post-merger growth depended on the size where small firms usually grow faster than larger firms.²²⁸

Also in connection to the findings in the preceding statement, another study noted that firm size growth is a nonlinear theoretical underpinning which comes from the concept of the long-run average cost curve. Traditional microeconomic references argue that an “L-shaped” long-run average cost curve exists as firm size increases.²²⁹ It can be seen that small company’s face quick decreasing costs because of the long shaped curve, which in effect has a great positive effect on firm growth. On the other hand however since large companies exist under nearly static cost curves, their growth potential from the cost curve does not improve a lot. The end result is that, less positive effects from firm growth will be realised. This linear relationship is introduced to try to find whether there is a positive relationship between merger-acquisition and business growth.

²²⁸ Dunne P & Hughes A ‘Age, size, growth and survival: UK companies in the 1980s’ (1994) 42 *The Journal of Industrial Economics* (2) 115–40

²²⁹ Laidler D ‘Monetarism: an interpretation and an assessment’ (1981) 91 *The Economic Journal* (361) 1–28

Besides the findings above, the study findings in relation to merger and acquisition and firm size was based on the differences in the behaviours of both the small size and large size acquirers. One particular source that was reviewed indicated that small acquirers will experience very high returns as compared to larger firms. This finding correlates to the findings of Moeller, Schlingemann and Stulz, who noted that small acquirers tend to have positive abnormal returns but large acquirers tend to show negative abnormal returns.²³⁰ In their findings they argued that the variance may be as a result of the fact that small acquirers usually takeover or acquire reasonably large target firms but this is not usually the case with large acquirers since they usually takeover or acquire moderately small target firms. Also earlier studies by Asquith, Bruner and Mullins that investigated the relative size of firms and business growth indicated that the size of the firm was related to its performance in regards to the ratio of acquired firm size to acquiring size.²³¹ In addition a study conducted by Seth also provided convincing evidence that for acquisitions that involved synergies especially those that involved a modestly large target yielded more synergy compared those that involved. This takes us to the earlier finding that small firms achieve faster acquisitions after acquisitions compared to large firms since small firms tend to takeover relatively large firms.

Ideally however, post-merger and acquisition amalgamation would be quicker for large acquirers who merge with comparatively small target firms since the larger acquirers have the competency to adequately absorb the comparatively small target firms. Overall, the managerial capability and know-how of small acquirers would not be adequate enough to understand immediate merger and acquisition synergy as equated to large acquirers.

Therefore, it could be largely agreed that post-merger and acquisition integration for small acquirers will naturally be slower than for larger acquirers. Nonetheless, small acquirers would be likely to show superior synergy in terms of company growth due to the larger comparative size of the deal but the amalgamation speed would be slower. On the contrary, large acquirers would be anticipated to have less synergy since large acquirers usually acquire comparatively smaller target firms, which add less to firm growth. However, because of the reasonably small target size, large acquirers would apprehend synergy faster than small acquirers.

²³⁰ Moeller SB Schlingemann FP & Stulz RM 'Firm size and the gains from acquisitions' (2004) 73 *Journal of Financial Economics* 201-28

²³¹ Asquith P Bruner RF & Mullins D 'The gains to bidding firms from merger' (1983) 11 *Journal of Financial Economics* (1) 121-39

Despite the growing importance of mergers and acquisitions as a tool for firm growth in the various industries, little has been done to examine the relationship of mergers and acquisitions and firm growth thus far. Therefore based on the findings it can be concluded that there is no direct relationship between merger-acquisition and firm growth but rather it depends on key areas for example sizes of firms where small firms have some direct relationship to business growth unlike the large firms.



5.6 Summary, conclusions and recommendations for research:

5.6.1 Summary:

Mergers and acquisitions ventures are faced with challenges of how to achieve mutual settlement on the price between acquirer and the one being acquired, the considerable amount of effort that needs to be accomplished within a given limited amount of time, the valuation of the firm by the bank and the accountants, the different opinions on valuation and challenges arising from the business environment. Although technological changes have taken place little is being done to speed the process of merger and acquisition activities and also to ensure their success. The goal of this study was to examine the effect of mergers and acquisitions as a strategy for business growth through a comparative case analysis of mergers in the USA, UK and South Africa.

Specifically, the study examined the factors that influence mergers and acquisitions as a strategy for business growth, determined the effect of mergers and acquisitions on business growth and investigated the relationship between mergers-acquisitions and business growth. It was anticipated that understanding these relationships would assist the merger and acquisition role players to come up with suitable ways to address the post-merger and acquisition challenges that business firms that have merged and acquired other firms face.

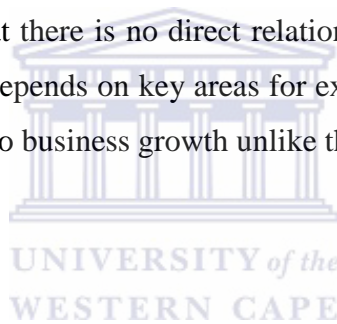
The study utilized only secondary data. The secondary data that was analysed included the review of literature from journals, editorials, books, newspapers, newspapers and magazines. The study was case based. Exploratory and descriptive approaches were used to answer the objectives.

Analysis of the factors that influence mergers and acquisitions as a strategy for business growth showed that the desire to gain the market share was the main reason as to why firms engage in merger and acquisition activities. The findings indicate that an aggressive protectiveness over market share between competitors operating within the same sector was the key reason for firms to merge or take over other firms. Accordingly, when the outlook to merge operations presents itself, most company influential members and management see this as a probable growth in market share on the horizon. The findings also pointed out other key factors such as the strategy

employed by the firm, the synergy and talent as being important factors influencing merger and acquisitions. The study found out that merger and acquisition transactions have both positive and negative effects on business growth. The study therefore determined that mergers and acquisitions do not necessarily lead to business success in that sometimes they register failure. This was compared to the study findings by various Authors that used the event study method to determine that mergers and acquisitions have negative effects on business growth.

Analysis on the relationship between mergers-acquisitions and business growth was found to be positive for large acquirers as they were expected to have less synergy compared to small acquirers and that would contribute to less growth of large firms. However for small firms growth would be more noticeable because of greater synergy given the relatively larger deal or transaction taking place.

It was therefore concluded that there is no direct relationship between merger- acquisitions and business growth but rather it depends on key areas for example sizes of firms where small firms have some direct relationship to business growth unlike the large firms.



5.7 Conclusions:

The results showed on one hand that mergers and acquisitions in the United States and UK are more concerned about making more profits especially from the seller point of view and also protecting their management staff from being fired or terminated by the acquirer. To achieve this objective, they keep twisting the discussions and prolong the whole process. At the same time they introduce new system of payment for their staff where they draft a resolution that if staff is terminated they would be compensated the amount that is equivalent to a specified period of time and the amount would vary on the position of the employee.

In the UK and US it was found that some firms want to use forced takeover of their competitors even when they are not ready to sell. It was discovered that most firms resist being acquired by other giant firms in these two countries while those that want to acquire will use shrewd methods proposing the acquisition or takeover without prior notice. Those that have to be acquired will put up strong opposition and do not just submit. The opposition now becomes the bargaining tool for the willing buyer to meet the demands of the seller.

In South Africa merger and acquisitions do meet strong objections as compared to the UK and the USA. This could coincide with history of mergers and acquisitions in the country which shows that the activities of merges and acquisitions are still very current and therefore firm's shareholders are willing to make more money through such deals. Besides, there is not strong leadership in running some of these businesses and as such small firms are willing to get cash in with abnormal profits from the sale and through the whole process of role playing in the transaction within shorter periods of time.

It was also found that the most activity that takes place in South Africa is merging as opposed to acquisitions as there are more willing investors from other parts of the world to inject money into the new markets of Africa where business is just starting to boom. One can say that there is not much competition for market share value in South Africa as compared to the USA and the UK. It is also easy for the merging firm shareholders to strike a deal regarding employees and management where firms from outside South Africa can easily bring in their management to replace the local management given their shareholdings and expertise. It appears like there is a notion to prefer management from firms that have existed for a long time in countries like the UK, USA, Japan and other developed countries compared to the developing countries. As such one can conclude that there is no serious desire by the

shareholders to protect the management of the corporations in South Africa when it comes to the activities of merging.

5.8 Suggestions for Further Research:

As with any other research, this study was subject to some limitations. The following suggestions are proposed for the benefit of those interested in pursuing further research on subject of the effect of mergers and acquisitions as a strategy for business growth through a comparative case analysis of mergers in USA, UK and South Africa.

First, the present study was based on case studies of the USA, UK and South Africa. Other cases were not necessarily given attention in this study. Analysis based on exploratory data for some cases used here has some limitations, such as the inability to continue with the tracking of merger and acquisition activity that has not been executed to date.

In the near-future however, it will be possible to provide the evidential findings after the merger and acquisitions activities have been completed with all the details provided to the researchers.

Second and lastly, this study focused on particular cases within the USA, UK and South Africa. It is possible to do a similar level of analysis for other cases in the same countries such as Nestle South Africa and Pfizer Inc, Stefanutti Stocks (Pty) Ltd and Energotec (Pty) Ltd in South Africa; Canagra Investments (CMA) Ltd and Canada Malting Co.Ltd in the USA as well as BMW AG. And The Rover Company in the UK. It's possible to include more than three cases in the analysis although the limitation would be the time and resources to gather all the data and carry out a huge comparative analysis.

Thirdly, it's not just enough for businesses to merge with the interest of expanding their market share and or making their products known. A good example is the case of SABMiller whose strategic rationale surrounding the acquisition of Grolsch was that the deal would improve SABMiller's market share in premium beer markets. From the literature businesses entering mergers tend to focus on the present offer rather than what happens in the future. It's therefore possible that businesses analyse the future prospect resulting from the merger and acquisitions. This would however call for the need to employ good economists and business analysts.

Lastly, strong regulations and legal frameworks are called for to protect all kinds of businesses. In the present times a number of countries are embracing small to medium enterprises as sources of employment. If shack businesses are left to monopolise the businesses environment, more harm than good will be created. The US has in a series of waves come up with laws prohibiting monopoly takeovers but for some reason another law is developed to counter the profiting law. In future therefore more research is required to find a lasting solution against forced takeovers and to eliminate the shack companies that want to monopolise business.



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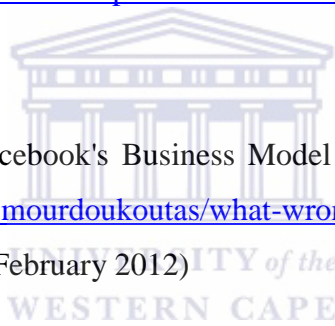
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