



AALBORG UNIVERSITY



Government Intervention in Mergers and Acquisitions

Master Thesis

Georgi Petrov Kandilarov

International Business Economics

4th Semester

Aalborg 2015

Table of Contents

1.	Introduction.....	5
1.1.	Background and Problem discussion.....	5
1.2.	Problem Formulation and Research Questions.....	10
2.	Methodology.....	11
2.1.	Paradigm and Paradigmatic Assumptions.....	12
2.1.1.	Burrell and Morgan’s Assumptions.....	13
2.1.2.	Arbnor and Bjerke’s Assumptions.....	16
2.2.	Methodological approach.....	17
2.2.1.	Burrell and Morgan’s Classification.....	17
2.2.2.	Arbnor and Bjerke’s Three Approaches.....	19
2.3.	Choice of methodological approach.....	23
2.4.	The Case Study and Case Selection.....	25
2.4.1.	Case selection.....	26
2.5.	Research methods and techniques.....	27
2.5.1.	Qualitative versus Quantitative Research.....	27
2.5.2.	Data Collection.....	29
3.	Literature Review.....	32
3.1.	Mergers and Acquisitions – Overview.....	33
3.2.	Classification of Mergers & Acquisition.....	36
3.3.	Understanding the Motives for M&A.....	38
3.4.	The Merger & Acquisition Process.....	42
3.5.	What are the Reasons that Could Lead to Failure.....	47
3.6.	Consequences of Cross-border M&As.....	52
3.7.	The Government Involvement in Cross-border M&As.....	56
3.8.	M&A Regulations in European Union and United Kingdom.....	61

4.	Case Studies	67
4.1.	Kraft takeover of Cadbury	67
4.2.	News Corporation takeover bid for British Sky Broadcasting	73
4.3.	Pfizer takeover bid for AstraZeneca.....	79
5.	Discussion and Analysis	86
5.1.	Overview	86
5.2.	The Type of Deal	87
5.3.	Motives and Goals	89
5.4.	The Consequences - Beneficial or Harmful.....	91
5.5.	Economic patriotism	97
5.6.	Framework.....	99
5.7.	Additional Notes and Recommendations	104
6.	Conclusions.....	107
7.	Limitations and Vision for Future Research.....	109
	Bibliography	111

Executive Summary

Mergers and acquisitions (M&As) are quite often considered as one of the best and quickest strategic methods to confront the global competitive market. However, it is indicated that these deals suffer from an alarmingly high rate of failure due to various reasons. Some of the challenges and issues that companies face occur also on the pre-deal stage. One of these obstacles can become the government intervention – a topic that has not been well researched and covered by the literature.

In this paper the issue of government intervention is critically discussed as a potential cause of M&A failure on the pre-deal stage. The possible reasons that might draw the attention of higher domestic and international institutions or trigger an intervention from the government are identified and discussed in details. It is explained what the government reaction involves, in which circumstances it is most likely to take place and how it is justified and implemented. The influence that this intervention might have on the outcome of the deal's negotiations is discussed as well.

A practical tool in the form of a framework is created in order to help managers and leaders that are planning to engage into a merger or acquisition. It is meant to facilitate them in understanding, identifying and predicting the possible negative government intervention in their specific M&A scenario.

The scope of the thesis has been narrowed down to investigating the government intervention in three M&A cases where foreign companies have targeted firms based in the United Kingdom. In chronological order the first case is the successful hostile takeover of Cadbury by Kraft, which faced a widespread disapproval in Britain. The second case concerns News Corporation's attempt to buy the stake it does not already own in BSkyB and the last one is Pfizer's offer to combine its assets with AstraZeneca, which at the end was rejected by the target's board of directors.

Six separate but coherently connected chapters are developed in order to find the answers to the formulated problem statement and research questions. The first chapter serves the purpose of introducing the essence and background of the problem, along with the formulation of research questions. Chapter two includes

the chosen methodological approach, as well as research methods and techniques of collecting and analysing the data in this paper. The next chapter is dedicated to presenting the literatures, theoretical knowledge, related researches and regulations needed to understand the problem of investigation, which later contributed to creating the framework.

All the information necessary to understand and follow the complex events from the three aforementioned M&A cases is presented in chapter four. In the fifth chapter the empirical cases are compared, evaluated and critically discussed from the perspective of the specific government intervention in each of them, along with all the reasons that triggered this response. In this chapter the framework is introduced by combining the information from the literature and the case analysis. In the last pages the reader can see a summary of the results and conclusions drawn from the paper as well as recommendations to what the foreign companies take into consideration when initiating a merger or acquisition deal in order to avoid negative government intervention.

Keywords: Government Intervention, Mergers and Acquisitions, Cross-Border, United Kingdom

1. Introduction

1.1. Background and Problem discussion

In the business environment of the modern world, the merger and acquisition deals have drastically increased. M&As are quite often considered as one of the best and quickest strategic methods to confront the global competitive market. They are usually undertaken with the aim of creating value in general and maximizing shareholders wealth.

A successful merger or acquisition has been proven to be highly beneficial in many ways. Realized synergies and improved financial performance can bring a fortune to the companies' shareholders and dictate the future of the involving companies. It is not uncommon for such deals to be worth billions of dollars and the increase in their revenue after a successful integration could be even higher. However, practice has shown that acquiring an organization or merging two different companies is **a long and complex task**, which introduces many obstacles and issues on different stages of the process from the initial negotiations to the actual integration.

Even though mergers and acquisitions today occur very often, there is still an alarmingly **high rate of failures**. Most researches in the area indicate that *“more than half of all M&A deals end up being unsuccessful”*.¹ These numbers refer primarily to the deals that managed to get pass the negotiation stage since they are easier to estimate. Therefore, the number of unsuccessful deals that have failed on pre-deal stage remains unknown as many of these cases do not reach public knowledge and are left undocumented. The issue that will be studied in this paper is one of the reasons that can lead to failure on the phase of negotiations, i.e. the **pre-deal stage**.

Over the years, scholars have investigated various reasons for failure. The issues could be poor strategic and financial fit, organizational differences, missed synergies, clash of national or corporate cultures and many more. Most of these problems have been covered in a large number of research studies and books,

¹ Cameron, E. & Green, M.; 2009; “Making sense of Change Management: A complete guide to the models, tools and techniques of organizational change”; Kogan page; 2nd Edition

and analyzed in different context with various cases.² In addition, the companies involved in an M&A face many challenges also before the deal is signed, ranging from the negotiation strategies to the formal regulations and legislations.

One of the necessary steps during the M&A process that the companies interested in a merger or acquisition must face and that might turn out to be a problem is the search of **government approval**. When two companies combine in either international or local M&A deal, it is possible for the government to get involved. The position that the government might take is either *to support* the initiative *or intervene* and even block the deal if a justification for such actions is found.

It is important to understand in what circumstances and for what reasons a given government can intervene in an M&A deal since the consequences of that decision for the companies involved could be huge. The firms cannot move on to the last stage of closing the transaction if the deal has not received an approval from the government of that given country. From a companies' perspective the *consequences* for both side of the deal can be **devastating**. All the time and resources invested in the process go to waste and all the expected benefits from a successful deal, which encourage today's firms to get involved in M&As, are lost.

The **importance** of mergers and acquisitions go far beyond and is not limited only to the interests and businesses of the participating companies. This is especially true when the deals are made between large entities that have huge assets and ensure employment to a lot of people as it is the case with many cross-border M&As. The consequences can have **significant impact** on a given industry and sector or even the overall economy of the certain region or country.

For instance, the **dismissal of employees** after a takeover is a common practice for various reasons. On the one hand, the foreign company can plan to hire their own employees to take the work places in the acquired one, and on the other hand some job positions will be duplicated and only half will be needed, such as the positions of the top management and CEO. Depending on the size of the acquired company, this might have an effect on the unemployment rates of the country and in a given region. In addition, the combined corporations are getting increasingly bigger and stronger, and that could be dangerous and pose a threat

² Straub, T.; 2007; "Reasons for Frequent Failure in Mergers and Acquisitions: A Comprehensive Analysis"; Gabler Edition Wissenschaft

of establishing monopoly gains. It is a part of the policy of many governments to increase competition at the market, which means actions against possible **monopoly or oligopoly**.

Of course, M&A deals might also have a **positive impact** on the industry and society. For instance, if the target firm is struggling and a stronger company steps forward to take it under its wing. This might mean a rescue as the company with the stronger position can provide the much needed finances, resources or know-how and help the struggling firm to grow again and strengthen its positions. In the same way that an M&A can lead to mass layoffs and unemployment it can also lead to new jobs. The same goes to the companies up and down the value chain that could be stimulated and engaged as a result of the deal, etc.

The large merger and acquisition deals can have a significant positive as well as negative impact on a given country on many levels and the nature of that impact varies with each and every deal. In that sense it is understandable why the large M&As often **drag the attention of the government**, since it is concerned with the well-being of its people and businesses. However there are no researches done in the area of government involvement in M&A deals that present a clear and all-embracing picture explaining in what circumstances, for what reasons and how does the government get involved.

Moreover, the government reaction will vary from country to country since we are dealing with different economic policies. The government intervention might not come as a surprise in countries where the government controls much of the economy and the approval of an M&A deal depends more on the relations between the board of direction and the responsible government officials than on anything else. For instance, it has not been until just recent years that China decided to allow foreign companies to engage in M&As with firms based in China.³

It is therefore more interesting to see that **government intervention in M&As** also occurs and is getting more and more common *in countries defined by high economic and market freedom*, such as many *western countries*. The reasons for the lack of theories and many researches done in this field could be the assumption that the levels of regulation should be kept low according to the Anglo-Saxon capitalist model. As Peter A. Hall had stated in the book *Varieties*

³ Angwin, D.; 2007; "Mergers and Acquisitions"; Blackwell Publishing Ltd

of Capitalism, in the liberal market economies there is almost no government interference in private parties' transactions. In other words it could be said that the "*laissez-faire*" principle is commonly applied in a number of areas. According to this economic system antitrust is viewed as unnecessary, because if a given company dominates over the competition, this should have been achieved through their better skills and innovativeness.

Discussing forward the choice of a particular country to investigate in this thesis we can mention that for decades the **UK** has been given as a primary example of **a liberal market**. However, as it was noted in a part of the response to the Kay review, for instance, the UK government stated that it would "*take a greater interest in mergers and acquisitions*"⁴ involving British companies. We mentioned that the number and size of international M&As has been rapidly increasing in the past decades. However, the *United Kingdom* in particular has been *more involved in this process* than all the other countries in the European Union. Britain has been the leader in selling firms to foreign companies and in addition, the UK incorporated multinational corporations have been purchasing more firms abroad than any of the other EU countries.⁵

When it comes to the choice of **illustrative cases from the UK** experience to be used in this thesis, we will take a look at the **most recent years** or in the past decade to be precise. During that period of time, there were three famous acquisition cases that included government involvement in the United Kingdom, where foreign companies attempted takeovers on high profile British businesses. In these cases the companies had high value and importance for the state and their successful acquisition would mean high impact on the country in many ways. So even though the reasons for interference and the particular concerns were different, in all of these three cases the government couldn't remain uninvolved.

Chronologically the first of the three cases was between Kraft, the world's second biggest food company and the confectionery Cadbury, one of the most famous British companies. The negotiations for the acquisition ended in February 2010, when Kraft's **offer was accepted**, *regardless of the widespread disapproval* in the British public and the ambiguous response from the UK government.

⁴ Department for business innovation & skills; 2012; "Ensuring equity markets support long-term growth"

⁵ Statistics reviewed from IMAA (institute of mergers acquisitions and alliances)

Next is the second case where Robert Murdoch's media conglomerate News Corporation proposed an acquisition of the telecommunication company British Sky Broadcasting. Competition concerns along with pressure from the media and public for the deal to be stopped, eventually led to the acquirer's decision to **withdraw its proposal** in July 2011.

Finally, the last and most recent case was Pfizer's attempt to acquire AstraZeneca – a case between two large multinational pharmaceutical corporations. Pfizer first made an offer in November 2013 and in May 2014 AstraZeneca **rejected the “final” offer** as Pfizer *could not get the UK government support* for the deal.

All these three cases received a lot of publicity. They were largely discussed in the media and attracted a lot of attention on all levels, ranging from the UK government and the European Commission to the entire British nation. Naturally, as a consequence the cases were well documented. *These events raised a lot of questions and discussions concerning the freedom of the liberal UK market.* Another reason worth mentioning for investigating this research area, the choice of the specific cases and that particular country is also the author's personal interest. As it comes from the perspective of the companies that might plan to initiate an acquisition of a British market in the future, this thesis can provide a basis for learning and show us another obstacle that the foreign firms might face in the M&A process, and suggest a way to predict and avoid it. Having in mind the discussion made so far, a problem worth researching could be formulated.

1.2. Problem Formulation and Research Questions

Problem statement:

The purpose of this study is to investigate the reasons and extent of the British government intervention in international M&As and to analyze its influence on the outcome of the deals' negotiations. In addition, the author aims to offer suggestions to the foreign companies initiating a merger or acquisition in the UK.

Research questions:

- What are the reasons that might determine the decision of a government to intervene in an international merger or acquisition deal?
- In what way does the government intervention influence the outcome of the deals' negotiations?
- Can a framework be developed in order to explain and predict the government intervention in mergers and acquisitions?
- Which factors must be acknowledged and what actions could be taken to minimize to possibility of a negative deal intervention from the government?

2. Methodology

The methodology chapter is the plan that guides the entire research. According to Kuada (2010) this chapter should consist of *a description on the reasons underlying the choice and use of the methods, techniques and methodology in the research process*. There is more than one way to conduct an academic research paper and it all depends on the view that the author has about reality since that view and the manner of creating knowledge differs from researcher to researcher.

In the following chapter of this thesis, the concept of paradigms along with the different methodology models will be discussed and described. However, in the academic world there are a number of professors and scientists that have come up with various methods that could be used to approach a problem. In this paper, two commonly accepted methodological approaches will be described, compared and at the end a choice of an approach will be made. The discussion will be based on two books, one of them written by Arbnor and Bjerke 1979 - *“Methodology for Creating Business Knowledge”* and the other written by Burrell and Morgan 1979, called *“Paradigms and Organizational Analysis”*.

Later in the chapter the reader will be introduced to some of the most important research methods and techniques available, as well as the ones chosen and applied in the thesis. After that, the research approach that has been set will be discussed. Further in the section the reasons why some type of data and information is more appropriate to use will be explained, following the description of which sorts of data that have been collected and for what purposes.

The development of this chapter is illustrated with the following figure:



2.1. Paradigm and Paradigmatic Assumptions

The research design of a thesis like this can be described as the action plan and guidance for the entire paper. The way reality is understood determines the way we form our interpretations of it and concepts, which on the other hand become preconditions for the created research. That is why it is important to address them before conducting the research. The methodological stance has a significant impact on the way that such research paper is created. *“Philosophy of science casts light in understanding the underlying assumptions of the research in connection to the reviewed papers and books”*.⁶

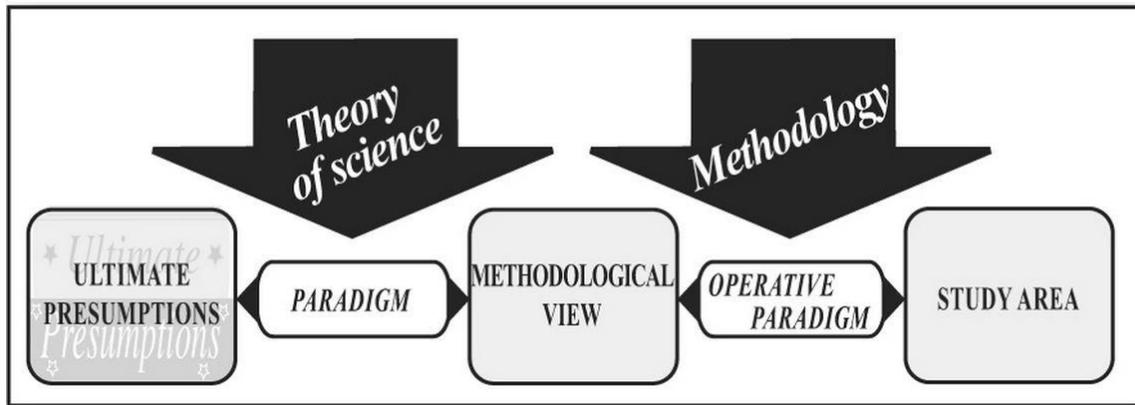
Firstly, we have to address the question of **what a paradigm is**. In the modern sense of the term, paradigm has first been used by Thomas Kuhn and he has defined this concept as *“cluster of beliefs, which guides researchers to decide what should be studied and how results should be interpreted”*.⁷ He argues that the old paradigms will be replaced by the new ones in a scientific revolution. In essence, a paradigm is *a set of rules that help the scientists conduct a research*. It is as well as the basic assumptions of reality since researchers perceive reality through a certain set of *“glasses”*. It explains how the research is conducted, what approach is used to answer the posed questions and how the results should be viewed.

Building further on this understanding, *in philosophy of science* many researchers perceive paradigms in **four sets of assumptions** - ontological, epistemological, methodological assumptions and assumptions about human nature.⁸ Further in this direction, distinction is often drawn between the **objective and subjective** approach to a research. Back in 1979 Burrell and Morgan have compared the two divergent perspectives in terms of the four sets of assumptions.

⁶ Kuada J.; 2012; “Research Methodology: A Project Guide for University Students”, Samfundslitteratur; 1 Edition

⁷ Kuhn, T. S.; 1970; “The Structure of Scientific Revolutions”; Chicago: University of Chicago Press

⁸ Kuada J.; September 2010; “Research Methodology: A Project Guide for University Students”; Aalborg University

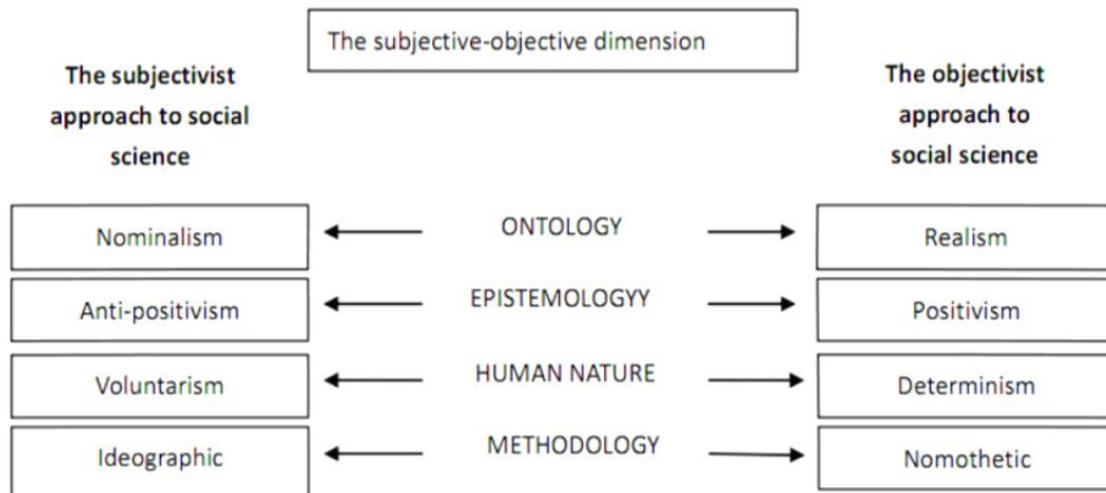


Source: Arbnor and Bjerke, 2009

On the other hand, Arbnor and Bjerke have placed their paradigms **in relation to methodology**. The use of paradigms according to their model expresses the *relation between the ultimate presumption and methodological view*. They are the first to introduce the concept of an **operative paradigm**, which is the connection standing between the methodological view and the study area. The difference is that a *paradigm is not affected by other faces*, because reality cannot be constantly questioned. It is the bridge that connects the methodological view and the ultimate presumption. On the other hand, the *operative paradigm can be changed much more often*. It also means that the operative paradigm or all activities related to creating knowledge are determined by the choice of methodological approach.

2.1.1. Burrell and Morgan's Assumptions

Burrell and Morgan have described a **set of assumptions** regarding the way that knowledge and world are perceived in a very straightforward approach. These sets of assumption are ontology, epistemology, human nature and methodology. These assumptions about social science are distributed in two dimensions which are the **objective versus subjective** scale. These two directions and the basic assumptions are illustrated in the figure below:



Source: Burrell and Morgan, 1979, page 3

1. Ontology

Ontology refers to the nature of what the researched is aiming to understand. It is rooted in philosophy and it describes the manner of observations of reality or as Kuada has explained it “*how the researcher sees the relationship between human beings and their environment*”.⁹ The division in the subjective and objective dimensions here is between **realism and nominalism**. On the one hand, the reality exists only in the mind of the individual and without him the reality is out of existence. On the opposite end of this understanding we have the reality and individual that both coexists as concepts and do not affect each other.

Burrell and Morgan argue that for the **realist** “*postulates that the social world external to individual cognition is a real world made up of hard, tangible and relatively immutable structures*”.¹⁰ It is said that the **nominalist** has no understanding of the real structure of the world: “*the social world external to individual cognition is made up of nothing more than names, concepts and labels which are used to structure reality*”.¹¹

⁹ Kuada J.; 2012; “Research Methodology: A Project Guide for University Students”, Samfundslitteratur; 1 Edition

¹⁰ Burrell, G. & Morgan, G.; 1979; “Sociological Paradigms and Organizational Analysis”; Ashgate

¹¹ Same source

2. Epistemology

Next come *epistemology*, which is the study that deals with the **nature and scope of knowledge** in the context of philosophy. While on the other hand, in the context of science, this set of assumptions cope with the knowledge that comes either from **observation or experience**. To put it in another way, “*how we know what we know*”¹² and *what we conceive as truth* or the nature and means of knowledge.

In the epistemological discussion that is illustrated in the figure above, Burrell and Morgan distinguish **positivism** and **anti-positivism** according to the *objective versus subjective* scale. For the **positivist** researchers, it is said that they view the truth in a completely *objective way* and the emphasis is put on “*on regularities and causal relationships between its constituent elements*”.¹³ The objective researchers are using the traditional approach and are looking for patterns that can be either verified or falsified. On the other extreme end, the *subjective* researchers or the **anti-positivists** believe that social science cannot be objective and it is all relative depending on the individual perspective from which the researchers are viewing. In other words, in order to understand, the individual has to participate.

3. Human nature

The third set of assumptions in social science is *human nature*. Here the relations between the humans (individuals) and their social environment are examined. The individuals are viewed as either the creators of that environment or they are determined by that same social environment. This set of assumptions has a classification divided to **voluntarism and determinism** based on the *subjective to objective* scale.

The actions of the **determinist** are influence by what is happening around him and he does not influence the truth since it is intangible. On the opposite extreme is the subjective view on the social science or the **voluntarism**, it is said that the independent and has free will. The individual can and do influence his environment and they co-determine one another.

¹² Kuada J.; September 2010; “Research Methodology: A Project Guide for University Students”; Aalborg University

¹³ Kuada J.; 2012; “Research Methodology: A Project Guide for University Students”, Samfundslitteratur; 1 Edition

4. Methodology

Placed in the last place of Burrell and Morgan's set of assumptions it is the *methodology*. Here the researchers seek certain methodology to acquire the needed knowledge or in other words this set of assumptions helps us answer the questions "*how are you about gaining the knowledge you desire*".¹⁴ According to B&M there are two possible approaches that the researchers might have that could lead that to gaining that knowledge.

With the **ideographic** method the researcher can understand the real social world only by looking closely at the individual and new knowledge get be acquired by analysing the subjective. In contrast, the **nomothetic** approach is defined by an objective view of the reality. Therefore, knowledge can be created by "*systematic protocol and technique by testing hypothesis in accordance with the cannons of scientific rigor*".¹⁵ These researches believe that reality can be observed from the outside by relying on regularities.

2.1.2. Arbnor and Bjerke's Assumptions

The paradigmatic assumptions of Arbnor and Bjerke are made from a philosophical point of view and can be classified into **four elements** that describe the paradigms: *conception of reality, conception of science, scientific ideals and ethics/aesthetics*. The six overall paradigms that have their roots in the four elements will be presented later in the following pages. Unlike Burrell and Morgan that had a very straightforward approach of explaining the paradigmatic assumptions, Arbnor and Bjerke give more space for different interpretations.

1. **Conception of reality** deals with our view of the world and what characterizes the real life situations. The conception of reality examines *the human interaction with its environment* and how the reality is constructed according to the philosophical ideas.
2. **Conception of science** has to do with how knowledge accumulated through education is influencing the researcher's concepts and beliefs

¹⁴ Kuada J.; 2012; "Research Methodology: A Project Guide for University Students", Samfundslitteratur; 1 Edition

¹⁵ Burrell, G. & Morgan, G.; 1979; "Sociological Paradigms and Organizational Analysis"; Ashgate

about the subject of study. This sets the way that “*a researcher assesses his knowledge accumulation in relation to other schools of thoughts*”.¹⁶

3. **Scientific ideals** refer to the assumption of how the researcher should develop the science in his work. This is related to the researcher as a person and has to do with his *personal desires* regarding his investigation. The standards, views and ideas of the researcher determine his work.
4. **Ethical and aesthetical aspects** are the element that has to do with what is morally accepted to do and what should be done by the researcher. The ethical part has two dimensions – *external*, which deals with the social responsibility toward the community, and *internal* that considers “*intra specific honesty*”. The aesthetical aspect refers to the appearance from research work and what the scientist conceive as beautiful or ugly.

2.2. Methodological approach

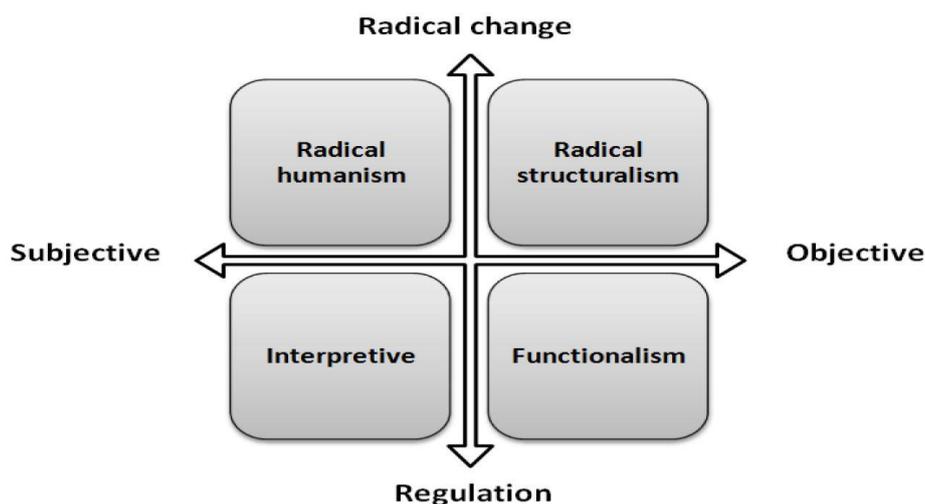
2.2.1. Burrell and Morgan’s Classification

Previously in the paradigmatic assumptions part, it has been described how Burrell and Morgan compare the four levels of understanding on the *objective-subjective scale* in social science. However, B&M also draw a distinction in the *regulation-radical change* dimension. On the one hand, they bring “*the sociology of regulations*” which has to do with “*those approaches to sociology which concentrates on explaining the nature of social order and equilibrium*”.¹⁷ While on the other hand stands “*the sociology of radical change*”, which approaches refer to the issues that come with change, domination, contradiction, emancipation and conflicts.

Burrell and Morgan have developed a **matrix** which is a **combination** of both scales – **objective versus subjective** and **regulation versus radical change**. The result of their analysis on the interaction between the two scales was four paradigms - *functionalism, interpretive, radical humanism and radical structuralism*. According to their authors, these paradigms should be viewed contiguous but separate at the same time. B&M argue that each of the paradigms in their matrix share common characteristics with the neighbouring ones, but they are also separate because they provide fundamentally different perspectives for the analysis of social phenomena.

¹⁶ Arbnor, I. & Bjerke, B.; 2009; “Methodology for creating business knowledge”; 3rd edition, Sage Publications

¹⁷ Kuada J.; 2012; “Research Methodology: A Project Guide for University Students”, Samfundslitteratur; 1 Edition



Source: Burrell and Morgan 1979, page 27

1. Functionalism

In the typology created by Burrell and Morgan, functionalism is a **combination of order and objectivity**. The premise here is that society has an existence of systematic character and is directed toward the production of regulations and order. This is a highly pragmatically oriented perspective because it represents the *pursuit for rationality* that the researcher poses. As it comes to the knowledge creating process, the scientists that adopt this approach are providing *practical solutions to practical issues*.

2. Interpretive

This paradigm shows a subjective perspective rooted in the sociology of regulation. Researchers that adopt this approach are using a **subjective way** to understand the fundamentals of the social world and the events there are seen in a poorly defined and ambiguous context. This paradigm seeks to *participate instead of observe* and explanations are sought in the form of individual subjectivity and consciousness.

3. Radical Humanism

This paradigm shares the same assumption with the interpretive one, that the **reality is socially constructed**. The concerns here are that the human potential is constrained socially and therefore society is anti-human. Consciousness raising networks are created, which have to lead to *social and economic structure changes*. Mutual-aid networks are also created and aimed at specific groups of individuals. High-profile non-for-profit organizations usually share this view and could be used as examples of the radical humanist paradigm.

4. Radical Structuralism

According to the Radical Structuralist paradigm, in the society there are **inherent structural conflicts**, which generate change through crisis in politics or economics. Groups or individuals in distress can get aid to soften the effects of these structural issues. However, *complete change cannot be achieved unless a complete transformation of society is undertaken*. As argued by Kuada J. (2010) this has been “*the fundamental paradigm of scholars such as Marx and Engels and of politicians such as Lenin of Russia and Mao of China*”.¹⁸

2.2.2. Arbnor and Bjerke’s Three Approaches

A popular paradigm typology is offered Arbnor and Bjerke who have developed six overlapping **paradigms**. These paradigms are closely related and similar to the six suggested by Morgan and Smircich (1980) but in re-arranged order.

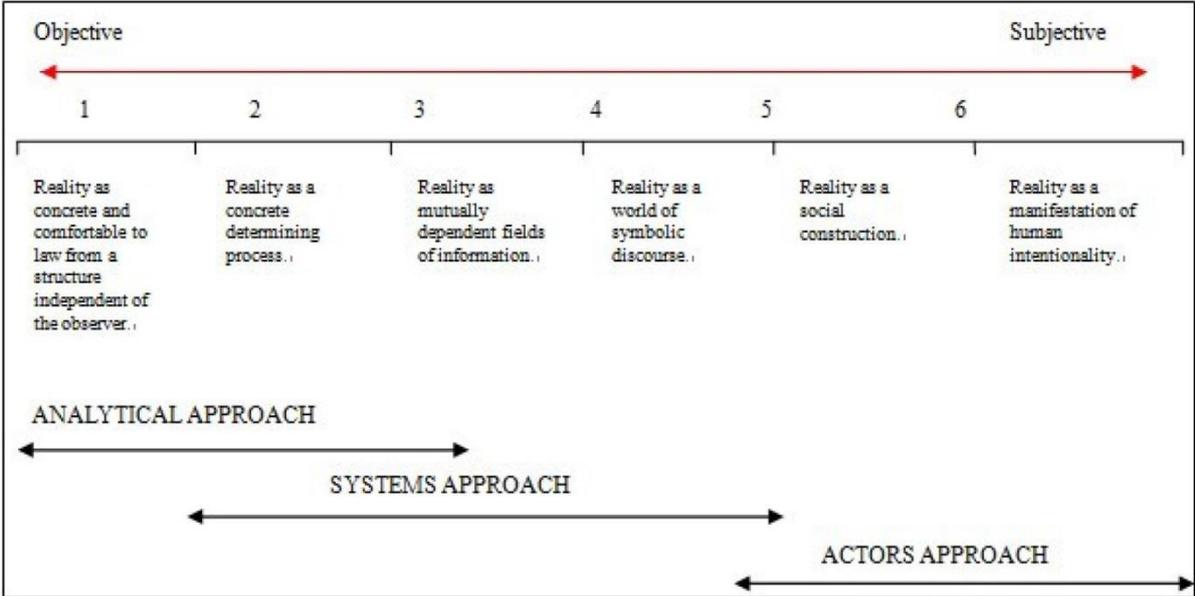
1. Reality is seen as concrete phenomenon that is conformable to law from a structure independent of the observer
2. Reality is seen as a concrete determining process
3. Reality is seen as mutually dependent fields of information
4. Reality is seen as a world of symbolic discourse
5. Reality as a social construction
6. Reality as a manifestation of human intentionality¹⁹

Arbnor and Bjerke have placed these **six paradigms**, rooted in the ultimate assumptions in philosophy, in a gradually changing *scale from objective to*

¹⁸ Kuada J.; September 2010; “Research Methodology: A Project Guide for University Students”; Aalborg University

¹⁹ Kuada J.; 2012; “Research Methodology: A Project Guide for University Students”, Samfundslitteratur; 1 Edition

subjective view of reality. When moving to the lower numbers or in other words to the left on the scale, the philosophical connection decreases and reality is becoming more objective and rational. When looking to the right or higher numbers, reality is gaining more subjective and relative nature, while the philosophical connection increases. Based on these paradigms, Arbnor and Bjerke have developed *three distinct methodological approaches* to knowledge creation: *analytical approach, systematic approach and actors approach*. These three views define the basis of the research paper according to the underlying logic behind them. The following figure illustrates the three methodological approaches in relation to the six paradigms on the subjective-objective scale:



Source: Arbnor and Bjerke, 1997, page 51

Analytical approach:

This approach is mostly used in business consulting and it is said to be the oldest of the three methodological approaches of Arbnor and Bjerke. Here the reality is independent of the observer and has an objective character. According to the analytical view, reality is seen to have a summative character and therefore the sum equals its parts. The researchers that adopt this approach can analyse the separate parts of the whole and understand the entire picture by just bringing the components of reality together.

The only true knowledge is seen to be the science knowledge and therefore the empirically verifiable facts are the basis to this approach. In this case the results are often generalized and the quantitative research methods are used, because this data is suitable for results that have a cause and effect relations, and logical

methods, etc. Any subjective effects are avoided by the scientists that adopt this approach by staying outside of the object that is researched. This approach can vary from a fully objective paradigm where reality is viewed as independent of the individual, to a more tangible paradigm where reality is perceived to be mutually depended on information.

It is important that the researcher should not and must not let himself to be subjective, because the data should not be interpreted, but simply promoted since the ground assumptions is that knowledge is based on facts. As it comes to the knowledge creation process, the research describes and explains the area of study through the use of hypotheses which are used to falsify or approve the formulated hypothesis.

To conclude, the analytical approach has its roots in physics where everything has to be quantified, measured and weighted with the purpose to explore cause and effect from a deterministic point of view and add new knowledge to the existing one. The researcher that adopts this approach is above any normative or ethical considerations that can influence the results of its work. The term “Ceteris Paribus” finds place as almost certain limitations of studies that use this methodological approach since the influence between certain variables are examined but the impact of other external ones is ignored.

Systems approach:

The roots of the systems approach can be traced back to holism, structuralism and the systems theory. On an ontological level, the researcher does not believe that a reality which is absolutely objective can exist. Instead he thinks that the reality can be assessed objectively and therefore this approach is place in the objective subjective area. Unlike the analytical view, in this approach it is not enough to simply divide the reality into smaller groups of components. The reality here is much more complex and every component is described as a system, which can function as a system on its own.

Reality is a set of systems including the relations that exist between them and therefore the sum of the whole is not equal to its parts. This is the first out of two ultimate assumptions that this approach is based on, while the second one states that these separate systems have similarities that can be compared and by doing that new understanding can be gained. The researcher can study the separate parts individually but in relation to the whole by putting the systems in their context.

The research made under the systems approach cannot give a full explanation of everything because the system which is a subject of analysis is influenced by other external variables and therefore the overall picture of reality is imperfect.

It is also implied that the system is viewed as static but only for a limited period of time. Changes can occur in any part of the system and they affect the other parts as well. This is a fundamental difference with the analytical approach where the environment is seen as stable and predictable, while the systems approach pays “*attention to the possible unpredictability of the context within which social actors are located*”.²⁰

In the systems approach it is common to work with models that describe the systems, their elements and the influence they have on each other. It's a widespread approach in the business world and researches done in accordance to this view can use both quantitative and qualitative data.

The knowledge in the system approach is based on three principles: totality, complexity and relativity. The totality is focused on the independency of the separate parts creating the whole, including their external and internal limitations. The complexity states that the picture of reality will be limited because of the complexity of the systems. The relativity refers to the subjective point of view of the researcher which is responsible for the created picture. In other words, the knowledge is not universal like it was in the analytical view but contextual, because it depends on the environment where the systems are interacting. The focus of this approach is directed to the real world and the results can be put into practice, instead of searching for absolute truth.

Actors approach:

The actors view is a completely different methodological approach from the previous two that have been described. It has its roots in the subjective traditions and the main emphasis is on the actors and their own interpretations. The reality here is very subjective and depends on the social constructs. Reality is a reflection of the individuals in it and is created by the interaction of these individuals. It is a result of the “*interactions between each individual's own experiences and the experiences of others within his social community over a period of time*”.²¹ This approach always assumes that reality is a social construct and as Arbnor and Bjerke mentioned, it is an interesting approach to understand social wholes.

The subjective experience in the actors approach promotes development through dialogue and it is an important tool in this context. When the actors and people use dialogues to exchange opinions, which represent their preliminary

²⁰ Kuada J.; 2012; “Research Methodology: A Project Guide for University Students”, Samfundslitteratur; 1 Edition

²¹ Kuada J.; 2012; “Research Methodology: A Project Guide for University Students”, Samfundslitteratur; 1 Edition

understandings, they may reach a new, mutual understanding and that understanding form the new reality in which they operate. Then they meet with new actors and through their interaction with them, another new reality is discovered and these actions are repeated in a never-ending process. The overlap of opinions or these subjective understandings construct the objective reality, therefore the more subjective it gets, the more objective it becomes.

This explains why the reality is created by the actor or actors and also the subjective nature of the approach is self-explanatory. The researcher is taking an active part in the process and the interaction made with the dialogues. His influence determines the results and findings of the research since it all depends on his point of view and the respondents are influenced by the specific questions chosen from the actor or the environment and situation that are the basis of an interview, etc.

Overall the actors approach revolved around concepts such as: interaction, individuals and subjectivity. The goal of the actors approach is to create a greater understanding of the relations of reality by isolating certain relations from it. The purpose of the researcher is to gain insight and liberation by interacting instead of just examining and analysing in a deterministic cause and effect perspective.

2.3. Choice of methodological approach

By looking more closely at the paradigms and approaches described by Arbnor and Bjerke as well as Burrell and Morgan, we can see that the approach which B&M present us is very specific, concrete and therefore *restrictively subjective view of reality*. Their description to the ultimate assumptions is very **straightforward** – *objective or subjective, radical change or regulations*. However, while studying A&B's descriptions one can see that these paradigms are more open to interpretation from what B&M offer us. Therefore, the author has reached the understanding that A&B offer a more **versatile**, more **comprehensive** and even more **universal interpretations of the assumptions concerning the reality**. Their paradigms have a more abstract nature, but it could be argued that the differences between the six of them are not easy to fully comprehend from the reader, which might be caused by their overlapping character.

The **B&M approaches** have *clear definition of assumptions*, because of their positioning on the two extremes or the two poles. At least the radical humanist and the functionalist do stand on the extreme ends, while the other two should stand as some sort of a middle ground. However they are still **black and white** because they have a 50:50 mixture of the subjective and objective scale. There is

no gradual change and homogeneity between the paradigms which is caused by plain and illustrative description about the ontology, epistemology, human nature and methodology.

The *gradual homogeneity and smooth transition* between the paradigms in the objective versus subjective scale is present to a much higher extend according to the **A&B model**. This is important when the research conducted is in the field of business since *the world of practice does not stand in a two-pole dilemma*. The researcher is given more choices to pick from and even though the A&B model is not perfect, the author thinks it is the more suitable one for the purpose of this paper.

In this paper **the systems approach** of Arbnor and Bjerke has been adopted. It is a consequence of the problem formulation and the topic of investigation of this thesis. The keywords are related to describing and explaining the phenomenon of government intervention in cross-border M&As. It has to be diagnosed what are the causes and extend of that intervention, which refers to systems. Starting with the paradigm that is the macro view that has to be established before the choice of approach, it is realised that *the world is seen as interconnecting systems*. In this research the foreign company is a subsystem, the domestic company is a subsystem, as well as the government in a surrounding subsystem along with all the institutions and commission which it represents. Competitors, customer groups, employee groups, along with investors, consultants, banks, public relations and all the other participants that are present in that environment and take part in the process are part of different systems and subsystems. They are all *parts of systems in a greater interacting system, where they all influence each other*.

Many of the major *systems will be analysed individually* under the assumption, based on facts that they interact as *part of the same holistic system*. According to the systems approach of A&B, we can have a mixture of objectivity and subjectivity as we are investigating different subsystems with different degrees of subjectivity/objectivity. It will be shown that even the government, for example, can also choose whether to participate or not based on subjective and objective motives ranging from anti-trust consideration to economic nationalism and their degree of trust to the foreign bidder compared to the domestic one. *If the reasons explaining the phenomenon are both subjective and objective, then they cannot be analysed from the researched in an entirely objective or subjective manner*.

The systems approach is the most suitable one for this study but it has to be mentioned that the *certain elements from the other views are not entirely excluded*, since some of the assumptions and conclusions will be drawn also from a variety of sources ranging from other quantitative studies to the authors subjective point of view on the issue. However, he sees the systems approach as

a machine where every part has an influence on the whole, while other external factors are also having effect on the overall performance and therefore the sum does not equal its parts. To conclude the paradigm chosen is “*Reality as Mutually Dependent Fields of Information*” and the methodology of this paradigm is referred as systems approach.

2.4. The Case Study and Case Selection

The **case study method** provides a great insight into organizations and individuals and at the same time is a valuable *link that relates the theoretical problems with the world of practice*. Yin has given a definition of this method and stated that it is “*an empirical inquiry that investigates a contemporary phenomenon within its real-life context; when the boundaries between phenomenon and context are not clearly evident; and in which multiple sources of evidence are used*”.²² Case studies allow the researchers to dive into the natural environment where events occur and study them while being closely linked to practice, instead of having to do it in sterile laboratory conditions.

Yin also argued that this method is very appropriate when trying to give answers to “**how**” or “**why**” questions in a research. Kuada further mentions that case studies are considered to be “*most appropriate in unravelling the complexities of any given social phenomenon, especially when **prior knowledge** about the phenomenon is **rather scanty***” and this is exactly the case with this thesis since there are little to no theories and researches done to explain the formulated problem in this paper.

The case study method is the preferred and most suitable approach to use when the researcher has adopted the systems view of Arbnor and Bjerke for his paper. This happens because a subject has to be examined both in a single system as well as in the context of other systems and its relations to them. To put it in other words, Yin can again be quoted: “*the case study method allows investigators to retain the holistic and meaningful characteristics of real-life events*”.²³

The author has decided to use a **multiple-case study** method in order to analyze specific cross-border M&A cases where the government has decided to get involved directly or indirectly. Through these cases, data has been collected and analysed in order to understand and further explore the main reasoning for a possible government involvement or at least see what stance they have taken in

²² Yin, R. K.; 1984; “Case study research: Design and methods”; Newbury Park, CA: Sage

²³ Yin, R. K.; 2009; “Case Study Research: Design and Methods”; Forth Edition, Vol. 5

the course of the negotiations. The multiple-case study method has been chosen because *using more cases increases the validity of the proposed framework* in this research. It can also prove the usability of that framework in different companies, industries and conditions. Thus, multiple cases have a greater sufficiency of answering the formulated problem.

2.4.1. Case selection

Taking advantage of the multiple-case study method, **three cases** have been selected and studies in which there are indicators that the government have intervened in any way. During the time the author has taken to study the field and seek for potential cases *several criteria* for selection of *the best cases that illustrate the problem of interest* have been set. While some of the criteria for selecting illustrative cases have been set during the research process, other simply refer to the problem formulation and the chosen research area which were explained in the introduction chapter, i.e. the keywords are government involvement, cross-border M&As and United Kingdom.

First of all, following the logic from the problem formulation, the selected cases were only where the acquiring and target firm are located and belong to different countries, in other words **cross-border deals**. It also makes sense to choose international M&As because of the greater complexity of the deals, the additional factors that influence the position that the government takes such as nationalistic policies, and last but not least because of the international orientation of the master degree studies for which this thesis is written.

The **size** of the participating **companies** and therefore the **size of the deal** were also taken into consideration, thus huge deals between big companies were chosen. Furthermore the United Kingdom has to be one of the sides in these international transactions, and for simplicity, accuracy and *reliability of the analysis* in all of the three cases the target firm was the one **based in the UK**. Again for the same reasons, all the events and negotiations related to these cases took place **in most recent years**, i.e. the past decade. The actuality of these events also gives reasons to believe that the findings, based on the literature and the cases, will be most relevant to the near future to come and therefore could be used as guidance by companies that consider an M&A deal in the UK. For the sake of variety and increasing the universality of the framework not only **unsuccessful** deals were picked, but also one that end up with a **successful** outcome, despite the initial reluctance of the government to allow that deal to take place.

Availability of information has been perhaps the most major issue to consider since government intervention occurs in the pre-merger stage and so if the deal

is not successful, all these events, challenges and the chronology of the negotiation and the actions of the government are simply not documented. In addition, the companies themselves are not willing to share information about this sensitive topic. Luckily there were these three cases that have become very famous and were accompanied by heated discussions from the media, the society and the UK government as well. Last but not least, the **personal interest** of the author toward these companies and these cases has also played a role to some extent into the decision to investigate in details and search for information about these cases.

2.5. Research methods and techniques

2.5.1. Qualitative versus Quantitative Research

There are *two main types of research methods* for business or social researches described in the literature and they are the quantitative and qualitative techniques. Generally the literature encourages the use of only one of these methods, even though the mixed technique is also gaining popularity among researchers. Whatever the choice should be, it has to be made according to the goal and assumptions of the specific researcher.

The **quantitative research method** has been dominant in the social and business studies, and it includes gathering and analysis of numerical and statistical data. The reasoning behind this approach has a deductive nature, when it comes to the relation between theory and research. Hypothesis formation is very often a practice and standard method of procedure, even though a lot of business researches using the quantitative approach are not following this principle. These hypotheses are elaborated from the theory, which is also the starting point of the work, and at the end they are tested by the research.

It is implied that a larger scale research should be conducted and *the nature of such research is positivist* with a defined *objective view of reality* in the social world. Logically, this method relies, for instance, on the frequent occurrence of a phenomenon. In addition, based on the gathered and analyzed data, general conclusions can be drawn for a whole studied population. Kuada explains that when using the quantitative method “*the researcher is expected to adopt a neutral stance towards the phenomenon that is under investigation*”.²⁴ This also

²⁴ Kuada J.; September 2010; “Research Methodology: A Project Guide for University Students”; Aalborg University

refers to the universality of findings made with an objective and positivistic approach.

On the other hand, there is **the qualitative research method**, which is defined by Straus and Corbin as “*any type of research that produces findings not arrived at by statistical procedures or other means of quantification*”.²⁵ Therefore this technique is directed to situational concepts with approaches that are not statistical. They also argue that this method allow to study the functioning of social movements, many different entities and even the live or experiences and behaviors of a person.

In general, the main emphasis falls on the fact that the qualitative research is concerned more with words rather than numbers or in other words the quantification of the collected and analyzed data. This method falls into interpretive epistemological view, so the understanding of the world has a more *subjective nature* and is gained through an analysis of the participants’ interpretation of it. The reasoning behind the qualitative research approach is inductive by nature. When it comes to the data collection the qualitative research is not limited in the manner of collecting information and that, compared with the quantitative method.

The **qualitative research method has been chosen** for this paper since the goal of the thesis is to identify and critically discuss in details the reasons and extend or in other words the motivation and process of government intervention in cross-border M&As. This research design will give the possibility to undertake in-depth analysis and understand those reasons, before giving some managerial recommendations on how it could be avoided from the companies’ perspective. For this research the qualitative approach is more appropriate than the quantitative because it will allow the author to give *robust descriptions and explanation of the phenomenon* instead of getting involved with quantification and statistical procedures. As it has been mentioned, the qualitative technique also gives more freedom in the data and information collection process. Therefore, it gives the possibility to study the government intervention in international M&As from *different perspectives and angles* without posing restrictions to some rigid definitions.

Even though the induction is generally the reasoning associated with the qualitative research technique, the **abduction** also is a suitable mode of reasoning.²⁶ It is a less familiar and less used mode of understanding. It often

²⁵ Strauss, A. & Corbin, J.; 1998; “Basics of Qualitative Research”; London: Sage Publications

²⁶ “Abduction” was first mentioned by Julius Pacius in 1597 and some argue that it was even Aristotle that introduced the term. However it was not until the 19th century when Charles Pierce (1839-1914) discussed the term in more details as a mean of inference, different from the two common types of reasoning (inductive and deductive). The abductive reasoning was later adopted and developed further by a number of scholars: Moore & Robin 1964, Hanson

begins with an incomplete number of incomplete observations and after that the most likely explanation to the issue of investigation is made. The explanation is *based on making an educated guess from the best information available* and of course after making the observations of the problem that has no clear answer. If the deductive reasoning guarantees the validity of the given conclusion, the inductive claims that it is very likely, the abductive mode of understanding is *the best guess*. The often given example of abductive reasoning is the way that doctors arrive at a diagnosis. Even if that diagnosis fails to explain some of the symptoms, he/she still has to make the best possible diagnosis and prediction possible.

This reasoning is not associated with any particular methodology and can be used when it is found to be needed and suitable. However it requires a support from inductive or deductive evidence. This reasoning can be considered as a way of handling information in an iterative way *when no clear sequential order already exists*. This explanation fits well in the complex issue investigated in this thesis, having in mind the assumptions that have to be made and the insufficient information on the phenomenon. Therefore an abductive reasoning will be used in a combination and support from inductive evidence. We can conclude with a very appropriate statement from Taylor “*the abductive approach stems from the insight that most great advances in science neither followed the pattern of pure deduction nor of pure induction*”.²⁷

2.5.2. Data Collection

Depending on the source from which the data is obtained it could be two types. Saunders argued that “*when conducting a research there are two main types of data that can be collected - primary and secondary data*”.²⁸ The author believes it is important to explain which kind of data has been used in this paper and what the reasons that led to this decision were.

Primary data

1965, Apel 1967, Fann 1970, Wartenburg 1971, Tursman 1987, Reichertz 1991 and Anderson 1995, etc.

²⁷ Taylor, S., Fisher, D. & Dufresne, R.; 2002; “The aesthetics of management storytelling: a key to organizational learning”; Management Learning

²⁸ Saunders, M., Lewis, P., & Thornhill, A.; 2007; “Research methods for business students”; Harlow: Pearson Education Limited

Primary data basically consists in **gathering new information first hand**. There are several types of primary data that can be collected and Saunders explain that this is the information “*obtained directly through surveys, observation, experimentation, interviews, questionnaires and focus group interviews, etc.*”²⁹ This definition is also supported by Arbnor and Bjerke. These methods of gathering primary data make possible to acquire in-depth information.

However, there are several factors that can be taking into consideration before going forward to collect first hand data. Firstly, it can be quite **time consuming** and **expensive** if, for instance, the author has considered taking interviews because the planning and organizing that they require. In addition, the *quality and reliability* of the collected information depends on the **subjective** interaction between the interviewer and the interviewees, as well as the qualities of the interviewer.

In addition, the decision whether to gather primary data or not *depends on the nature of the research question, the necessity and possibility to gather such data*. In this paper we are mainly dealing with failed M&A cases and the issue of government intervention takes place during the negotiation stage. The fact that the deals have an unsuccessful outcome makes the **topic sensitive for the firms**, while the fact that we are talking about the government policies and involvement makes the issue very **subjective and political**. In addition, in order for the data to have any validity, in this case interviews have to be made not only with both companies involved in the deal, but also with government representatives. This is the only way to fully understand what happened from all perspectives and understand the government reasons.

The researcher can decide to go forward with this expensive, time consuming and highly subjective methods, which therefore has a questionable validity, but it would only make sense to do it *when the necessary data cannot be obtained and found in secondary sources*. Fortunately, the illustrative cases selected for this research are accompanied with a lot secondary data, since they have become so popular in the public space.

²⁹ Same source

Secondary data

Pfizer & AstraZeneca Origin: US to UK firm Industry: Pharmacy Outcome: Unsuccessful	News Corp & BSkyB Origin: US to UK firm Industry: Media Outcome: Unsuccessful	Kraft & Cadbury Origin: US to UK firm Industry: Foods Outcome: Successful
--	--	--

Secondary data can be defined as **all available data** on a certain topic and it is implied that that data is already **collected previously** by someone else. Saunders gives us a more specific explanation by stating that “*the secondary data can include both quantitative and qualitative data and they are used principally in both explanatory and descriptive research*”.³⁰ **Secondary data is the chosen data collection method** of this thesis and therefore it is necessary to understand what are the advantages and possible disadvantages of it.

Starting with the **advantages** of using secondary data it is important that it is *easier to gather* than primary. It is also a *low cost* source of information because the only requirements needed are time and dedication. It is also important to mention that *some information is only available in the form of secondary data*. In addition, collecting secondary data implies a *variety of sources of information*. This increases the validity of that information and the researcher is *not restricted to a limited source*. For the explanation of some of the **cons** of this method the view of Wrenn, Stevens and Loudon will also be used and paraphrased. Firstly, although that information can be plentiful, some of it may not be relevant to use. In addition, *quality* of that data is *difficult to evaluate* and it also can be questioned because that data itself can come from primary or secondary sources. Finally, the information is gathered in different periods of the concerning events and is *not always up to date*.

The secondary data gathered in this paper comes from a **variety of different sources** such as academic journals, news articles, official statistics, previous researches, company websites, online materials, written case studies and conducted interviews, etc. As mentioned earlier this increases the feasibility and validity of the data and the “*Multiple Source of Evidence*” principle can be applied, since the use of these evidence in this study allow us to *address a broader range of issues* and *increase the overall quality* of the data and research. The three secondary case studies analysed in this paper will serve the purpose of giving empirical evidence that can support the points and help creating of the framework that will be proposed. Indeed primary data could be of use in this

³⁰ Saunders, M., Lewis, P., & Thornhill, A.; 2007; “Research methods for business students”; Harlow: Pearson Education Limited

research in order to gain a deeper understanding of the problem from the point of view of all participants, but due to the above stated reasons the decision to go forward with multiple secondary sources of information has been made.

3. Literature Review

In this chapter **an overview** of the merger and acquisition deals and their importance in the modern globalized world will be made. The reader will be introduced to the different **types of mergers and acquisitions** (M&A) as they are important to help us understand the **underlying motives** behind each of these activities. Both the motives and the specific types of M&A can give us an idea about in which cases and for what **reasons** these deals *might draw the attention* of higher domestic and international institutions. Then we will take a closer look at the **different stages and steps** that are taken *along the process* of completing a merger or acquisition. The chapter examines the various kinds of **challenges** that the participating companies face *on each of the stages* and points out on which phase is the *government involvement* most likely to occur. Then the possible effects and **consequences** will be described that the cross-border M&As have on the country's *economy, labour market, competition and industry*, etc. This is because the *harmful or beneficial* nature of these effects might be linked to the possible involvement of a given government. Furthermore in this chapter, it will be described *what the government intervention might involve, how is it justified and what does it mean for the companies* initiating an international M&A transaction. Finally, special attention will be drawn to the *competition policies and regulation* of the European Union Commission and the UK anti-trust authorities.

3.1. Mergers and Acquisitions – Overview

In the XX century, the world economy started to more and more form into a global system with elements that are related and dependent on each other. This has been a consequence of technological progress that became a key element in the economy development on a global scale. A logical sequence has been for companies to make the *transition from internal to external growth strategy*, in order to survive and gain a competitive advantage in the globalizing world. An important indicator of these trends is the integration processes of different companies and organizations combining their operations and businesses into the various forms of collaboration.

In today's world, *merger and acquisition deals play a vital part* in the international business environment. Every day investment bankers arrange the transactions between separate companies that come together from all over the world. Is it very common for some of these deals to be worth hundreds of millions or sometimes even billions of dollars. If they are successful, this can lead to *sustainable financial fortune to shareholders, employees and even dictate the development of entire cities or regions*. It all depends on the scale of the deals, the size of the combining companies and the specific industry in which they operate. Despite the fact that we know that there is no assurance for a merger or acquisition to end up being successful, it might still come as a surprise that the actual *rate of failure is very high*. As it has been mentioned by Cameron and Green (2009), there are more failed than there are successful deals when it comes to M&A, and the number of failures is close to *two thirds* of all attempts that are made in the world.

The *number of M&A deals has been growing* in the past decades and despite many of them failing, still the urge to combine businesses has never been bigger. In most recent years, the exception was during the years when the global economic and financial recession hit the markets worldwide. That heavily influenced the business world during that period, but with the effects of the crisis diminishing, the M&A deals are once again on the rise.

These corporate activities are seen from many firms as perhaps the *fastest and best strategic way to grow* in all aspects. According to *Thomson Reuters' 2014 year review*, the total value of M&A deals globally is totalled to more than USD 3.5 trillion during the last year of 2014. This is almost twice as much as the year

before and has not been seen ever since the year 2007. Again from the same source, it could be seen that the deals which have the strongest gain were media and healthcare. The M&A activity for targeted companies on The Old Continent was also up with over 50%. The overall *value and volume* of cross-border deals is also *increasing* in the past few years, accounting to one third of the overall M&A activity. *The cases that are going to be discussed* in this paper are exactly of that nature – cross-border deals from recent years, targeting European companies in the highlighted sectors of strongest gain.

For a long time the two different in nature terminologies (merger and acquisition) have been used without drawing a distinct line of difference. However, the complexity of these activities, especially the cross-border ones, along with the large financial stake that is associated with their success or failure, has drawn the attention of many scholars and researchers. The very first step was defining the terminologies, but the investigation has of course continued to making a difference according to all possible legal entities that are formed, and all the main underlying motives and factors. Many of the challenges and reasons for failure along the way of combining the two parties, were also discussed some of them briefly and others in more details. This allows us to acquaint ourselves with the big picture and dig into our area of interest by bringing different theories and practical examples.

In the legal dictionary we can find a definition for M&A which describes it as “*methods by which corporations legally unify ownership of assets formerly subject to separate controls*”.³¹ Speaking more strictly, mergers and acquisitions is a term that constitutes two other different terminologies. Firstly, we have the “*merger*”, which refers to the case where *two separate companies show the willingness to combine their operations and organizations to form a new legal entity, where the two separate ones cease to exist on their own and lose their legal independence*. A mutual control of their assets and activities is created. Put in another way, it can be said that this is the process of unification of separate companies into a new one. Ideally or in theory, the merger should occur between companies of the same rank of power, the same size, resources and significance, etc. In these situations the term “*merger of equals*” is commonly used. The strategic decision to go together as a one new whole is made and the stocks of

³¹ Mergers and Acquisitions; "West's Encyclopedia of American Law"; West Group Publishing; 2nd edition; 2008; Retrieved from <http://legal-dictionary.thefreedictionary.com/Mergers+and+Acquisitions>

both parties are surrendered, while new stocks of a new firm with different name are issued.

In the world of practice, of course, as one can guess, the “*merger of equal*” is often not the case. In the best scenario, the heads of both companies decide that it would be of common interest to merge in one and work together. This does not mean that they are equal, but if one side does not want to participate in a merger, it is referred as an acquisition. However, *in most cases one of the companies is financially stronger than the other and has better positions*, etc. In these situations the deal is closer to an acquisition but the acquired company is allowed to proclaim that it is involved in a merger. This is done because an acquisition often brings a negative effect on the acquired firm’s reputation. We can conclude that *the act of merger is friendlier than the act of acquisition*, which is usually more hostile.

On the other hand, the term **acquisition** is always used when one company is purchased by another. Another possible term to describe similar consequences is the takeover. In the urban language it is usually said that the acquired company is “*swallowed*” by the acquirer. The reason is because there is *no new company formed, there is no new stock on the market and only the purchased company ceases to exist* as an independent legal entity. The acquirer establishes himself as the new owner by purchasing the majority of shares of another company, which might continue to exist as a legally owned subsidiary. Generally speaking *the acquirer is the more powerful and bigger company*, while the acquired and also *smaller firm ceases to exist*. It could eventually be fully or partially integrated into the larger entity. Acquisition could be **friendly and hostile**, but it all comes down to the specifics of the situation itself. In certain situations it is *better to be acquired than face bankruptcy*. These circumstances also dictate the opinion of the public, media or government and determine their stance and actions for this issue.

At the end, the **difference between mergers and acquisitions** depends on the result of the transaction, whether both legal entities cease to exist or only one of them loses its independence to some extent. The expression which stands behind the abbreviation M&A, is generally used for all activities related to buying and selling companies, and in the broader sense both “*merger*” and “*acquisition*” are used together for convenience. Later in this thesis, the focus will be brought more to acquisition deals as they represent a specific interest of this research.

Still viewing the topic from a legal perspective, we cannot afford not to mention that it is also possible to have a case where two or more companies work together but there is no change in the legal status of any of them. If all sides of the arrangement participate by their own will and in the same time they preserve their independence, then we can speak about “*cooperation*”. In this volunteer arrangement, the initiating companies join efforts to work for a mutual benefit, instead of competing.

3.2. Classification of Mergers & Acquisition

Merger and acquisition deals can be classified into a number of different categories and types. It is according to the perspective in which they are viewed and analysed. However, it is agreed in the literature that most of them can be put under three main categories³² based on the relationships between the companies. In other words, these most commonly used categories are formed according to the competitive relations between the combining entities or also said their business structure.

Horizontal M&A: This case the integration is between *directly competing companies in the same industry or business sector*. They usually take the same place in the value chain or in other words are in the same spot in the sales and production process. One of the major pros in this type of merger is that both companies have a lot of knowledge in the industry and “*the managers on one side of the deal will know a lot about the business of the other side*”.³³ Therefore, know-how is easy to transfer and assimilate. Both sides probably share the same clients and industry processes, etc. Such deals often result in increased savings (which refer to synergies) due to the high probability of overlapping processes in both firms, and these expenses will be cut after the merger. For example the three empirical cases that will be introduced later in this paper present companies that operate in the same industry or business sector.

³² O’Connor D.; 2004; “The Basics of Economics”; Greenwood Press

³³ Moeller S. and Brady C.; 2014; “Different Types of Mergers and Acquisitions”; The European Financial Review

Vertical M&A: In this type of M&A both sides of the deal operate in the *same industry but on different levels of service upstream or downstream the value chain*. This is the second type of M&A and is more often characterized as acquisition instead of merger compared to the horizontal type. This process most often includes *buyers and sellers operating in the same field* that decide to combine their powers and gain strength by improving performance, profit and cut extra expenses. Thus, in case of an acquisition, it will exist in two basic forms: *forward vertical integration* in which the supplier purchase the buyer and a *backward vertical integration* where the customer buys the seller. In this type of M&A the common knowledge about the production and practices is much less. The same applies to the common clients and suppliers, although there could be some that are still the same. The vertical integration internalizes the transaction and processes between the parties. This gives the management greater degree of control. Processes could be easily monitored and performance should improve.

Conglomerate M&A: The third and also quite common type of M&A is the conglomerate. Here the two or more parties that combine their powers under one flagship are companies that are operating *in different industry sectors and their activities do not overlap*. Usually all other mergers and acquisitions that are not vertical or horizontal are considered conglomerates. The companies that can form a conglomerate are not related, they are not competitors and have no supplier/customer relationships. This type of M&A is most commonly described as mergers rather than acquisitions. Conglomerate may exist in many subtypes from joint-ventures to complete long-term mergers. The U.S federal trade commission also subdivided them into: product extension, geographical/marketing extension and pure conglomerate mergers. This type of M&A was much more common in the past and overtime its role has diminished, because it was not favoured that much by the financial markets and shareholders.

In addition, from a *geographic perspective* M&A deals can be **domestic or cross-border** ones. *Domestic* are those where the companies on both side of the deal are *based in the same country and/or operate in the same economy*. On the other, in *cross-border* M&As it is implied that those transaction that are between an acquirer and target firm which are *located and belong to different countries*. It is also important to mention that the complexity, regulation and opposition that could be faced in the cross-border M&As is much greater.

Another criterion for classification is usually made and that is according to the initiating company's approach toward the target firm's management team and leaders. In a **friendly** deal *the target firm's board agrees* to the proposed transaction. Controversially, in a **hostile** takeover the operation takes place *regardless of the decision* or the agreement that the target company's board show. In this situation the offer is referred directly *to the shareholders*.

There are also many other different types of mergers and others ways for classification categorized by various factors. However they can usually all be accounted to one of the main categories described above. Many of the other possible M&A types are more related to the strategic motives that drove the deal. The motivation and categorization are interrelated and it is important to understand the motivation to understand the classification, but it is more importantly to have an idea of the different types of M&As in order to figure out the apparent and hidden motives behind these activities. That will help us not only see why companies all over the world would want to be involved in that process but also, entering the core of the thesis, understand in what circumstances and for what reason do the government and public might disapprove or support a certain deal.

3.3. Understanding the Motives for M&A

We can afford to say that in general, the **main motivation** behind any mergers and acquisitions is to *achieve growth and improve the financial performance* of the parties involved. This is a conclusion that has been reached by different scholars, including Cameron and Green (2009). Although companies see engaging M&As is the fastest way to grow, it is also important to consider the fact that larger companies are more complex and harder to manage. It may result in the need of getting new machines, technologies, employees and managers, etc.

Engaging into such deal can also be the common and logical move in a company's lifecycle, as it is the example of News Corporation. Their bid for BSKyB was an essential part of the company's international growth strategy. It could be argued the *global expansion, in particular*, is the most frequent motive behind M&As. That is how a cross-border deal provides rapid foreign market penetration and diversification. There are also many other motives in the

literature quoted as possible reasons why companies anticipate in M&As, and no consensus has been reached into one single categorization of the motives. In this paper only the most important ones will be described, according to the author's opinion.

The keyword that explains the improved performance of the acquiring or the merging firms is **synergy**. Two plus two gives us five in this case, sometimes even more. It means that *the interaction of multiple elements in a system produces a result that is greater than the sum of their effects* while existing and operating separately. This equation represents the term synergy and is the special reasoning behind the M&As. This is a Greek term meaning “*working together*”. The reasoning is that two or more companies combined are more valuable than two or more individually functioning companies.

There are *more than one possible categorizations* of synergy, depending on the way they are achieved. Some authors like Dyer (2005) suggested a classification into three types of synergies: sequential, modular and reciprocal synergy, while other researches such as Chirkov (2005) proposed division into: financial, managerial and operating. We will not waste time by digging deeper into the many ways we can group these ways of achieving synergy, but instead we will just name some which the author considers to be the most important ones after reviewing the classifications from other scholars. That is because generally speaking, synergy is a broad term that can be achieved in a number of ways and include various processes that all lead to certain kind of synergy at the end.

- **Economies of scale:** When firms combine this is usually directly related to *cost cutting and increase their efficiency* due to their greater size, output volumes and scale of operations, etc. Moreover economies of scale can occur on many levels such as: at the organizational level, by improving and rationalizing the structure and personal management; at the level of production, producing less in a more efficient way; at the financial level, because the bigger company size allows access to better conditions when borrowing and renting, purchasing better machinery and equipment; their bargaining powers will also be higher; they could negotiate better prices with suppliers and so on.

- **Economies of scope:** This concept has a principal similar to economies of scale but it refers to the *expanded number of activities*, rather than an expanded volume. Efficiency is achieved by lowering the average cost of the company involved in a larger number of products or activities.

- **Resource transfer:** Resources are always distributed among companies. This transfer results in additional expenses for both sides. *Costs can be cut* by overcoming the asymmetry of information, or just combining the limited resources.

- **Resource acquisition:** This is usually done when the target company has some *valuable resources* that the acquirer, either do not have or it is just cheaper to have them in-house. Of course, if the desired resource is the people working there, then the acquiring company should make sure the people stay there after the deal is done.

- Exploitation of **undervalued resources:** Firstly, it needs to be determined if the resources are really undervalued. This is done by comparing the market value of the target with its book value. If these resources could really be acquired on a cheaper price than what they actual cost, then it would be wise to take advantage of them.

- The improved financial performance can also be reached by **staff reduction:** some of the departments will overlap their function after the merger; therefor this will result of course in job losses. For the companies this means reducing salaries and expenses for all these employees.

- **New technologies:** In the modern world it is crucial for firms to stay up to date with the *latest technologies*. By acquiring smaller companies that hold some kind of *innovation* valuable to the acquirer, he could maintain and ensure his leading position on the competitive market. This relates to patents, technologies and trademarks, etc.

Strictly financial synergy can arise, for example, from taking advantage of *favourable tax laws* in the home country of the acquired company. It is also possible to acquire a smaller company that has net financial losses or hidden income. This could be used by the more profitable firm that was interested in combining with the financially weaker entity in order to *reduce tax burden*. Another method for manifesting *tax benefits* could be in the form of lower cost of capital for the combined company, which will occur as a result of more stable and predictable movement of money in and out of the business. This will allow them to have higher debt capacity by borrowing more than possible as separate firms. There are many other possible methods to take advantage of tax laws as a result of a merger or acquisition.

Other laws and regulations in a given market or a certain change in them, could be the driving motive for a company to search for newly created

opportunities that were not previously available. **Deregulation** in a country or industry is a common and important factor that can lead to an increasing number of mergers or acquisition, because it could either be perceived as a shock or an opportunity. Still on the topic of laws and regulations, other motives could be to avoid and *overcome government policies, extra tariffs, regulations and other barriers* on the specific market.

Diversification can be considered both as a motive for M&A and also a controversial source for achieving *financial synergy*. It basically consists of exploring businesses or industries that were not part of the traditional area of expertise for the given company at that time. Due to the nature of diversification in the context of M&As, it is more common to result in conglomerates than it is for the other main types of M&A. It could be a sign of willingness or necessity of a company to create portfolios and a more profitable business, as a consequence of concerns to its existing and current market or clients. The goal of the company's management team could be to enter *new market with a new product*, and that improves the possibility to grow faster. The international markets provide even more opportunities in this case, where the variations in the customers' demand can make this approach less risky. That brings us to the next point.

In another category, we can place the desire to **achieve growth** as a main motivation behind M&As. Companies that seek growth through mergers and acquisitions are the ones that *choose external in front of internal growth*, and the ones that go for cross-border M&As are the ones that decided to expand internationally instead of domestically. As argued from Davidson and Gartner, growth can be indicated and measured by paying attention to the change in profit, sales, assets, output and market share, etc.

The consequences of the motive to achieve growth may, of course, overlap with the results of the other motives, but the reader should be aware of the fact that regardless of which the primary motivation factor is, at the end there are many other benefits that will probably be achieved, which could exist as primary motives for other M&As. They are all closely related. At the same time, growth can either be driven by or result in exploiting new markets or product, diversification by international expansion or penetrating into new lines of business, etc. Companies that seek to merge or acquire another firm, *should* pay the necessary attention and spend the time to *understand and follow the possible regulatory and legal compliances of the laws and regulations implied by the*

given government, especially when engaging an international deal. The governmental rules and laws will most likely be different for the countries on both sides of the deal and if they are neglected this could lead to closing the deal.

As a distinctive primary motive, it could be mentioned the desire to **achieve greater market power**. As a result of this goal, the combined companies after an M&A have a dominating position over their competitors and have a leading part of the market as an advantage over them. Dumas and Adler (1983) have given us one view on the subject as they described that really achieving a greater market power means that the company has “*the ability to raise price above the competitive price*”. In theory, if a given market is perfectly competitive, then such results would not be possible. However, practice has proven that in reality an increase in market power in some sectors *is possible to achieve as a result of an M&A*. Further support comes, for instance, from studies that have found out that an increase of market power and therefore prices has resulted as a consequence of M&As in the airline industry.³⁴

A result of a merger or acquisition is almost always associated with cutting staff and **changes in the management**, since many *positions* at the top staff will be *doubled*. Even though it most probably will be seen as a threat from the perspective of the target company, it could still be a reason for initiating M&A. *If the managerial staffs are not efficient enough*, the company could be acquired in a hostile manner with the goal to replace them and take control in the hands of the acquirer. However, the management improvement is risky, the results are not always certain and the high cost that goes along with most M&As is a factor that should be taken into account.

3.4. The Merger & Acquisition Process

³⁴ Kim, H. & Signal V.; 1993; “Mergers and Market Power: Evidence from the Airline Industry”; The American Economic Review

Successfully making a merger or acquisition deal to happen is a complex art that requires high expertise from the parties involved. It is a long process that goes through a number of phases and each stage consists of various steps. The participating firms can face different obstacles and challenges at any moment during the process before or even after the deal is made. These challenges have to be handled with cautions as each of them can result in an overall failure of the entire deal, which means huge resources spent in vain along with missed synergies and financial fortune.

In the following paragraphs, the reader will be given an outline of the M&A process followed by an overview of the various reasons that can lead to failure and hinder the deal. In that context, we will understand at *on which phase the government involvement is most likely to occur and what challenge it presents for a cross-border M&As.*

To effectively carry out the transaction and go through the process of M&A, the participating companies should have a detailed structured plan. Understanding and defining the stages and steps needed to be taken along the way to a successful deal is important part of implementation and preparation process. This allows the firms to minimize the risk and possible negative consequences of the transaction.

In the literature there could be found a number of different classification that divide and group the M&A process into steps, phases and stages. One straightforward and clear possibility is the distinction of three main phases: *the pre-acquisition, post-acquisition and integration stages*. This classification approach is commonly accepted by a number of authors, such as Angwin D. (2007) who has even divided his book “*Mergers and Acquisitions*” into three chapter parts carrying the name of these three phases in the M&A process.

However, after reviewing the literature the author has found a classification that he believes is a bit more specific, accurate and present a more uncommon but interesting approach to the classification of the M&A process. This typology is illustrated in the figure below and could be found in the book, published by PricewaterhouseCoo (PwC) in 2011 named “*Mergers and acquisitions strategies and best practices*”. The process is divided into four distinct stages, three of which are *pre-merger* and one *post-merger stage*, and each of them consists of several steps that need to be taken:

Diagram 1: Key M&A processes



Source: PwC Taiwan publication; 2011; “M&A strategies and best practices”; 2011; Xue Mingling³⁵

1. Strategic planning

Strategic planning is set to be the first phase of the M&A process. Through this planning a given company can *better understand its financial position*, reflect on its strategy and development option. This will determine whether the company is financially stable and can afford to support a merger or acquisition. It also helps the managerial team to understand *if engaging in an M&A deal fits the company’s long term strategic goals*. They reflect on the feasibility and sustainability of such a strategic move or in other words – the need for an M&A is recognized and the decision to search for one is taken.

³⁵ The translated diagram is extracted from the article: “Strategic Planning for Corporate M&A”; Peter Yu, Ross Yang; Available at: www.pwc.tw/en/challenges/financial-advisory/financial-advisory-20110701.jhtml

When the CEO and top managers decide that a merger or possible acquisition deal would be a suitable strategic move for the company, the next step would be to conduct a business or industry intelligence and investigate for suitable M&A target options. The *criteria for searching a potential target* for the deal should include: the geographic region and the industry in which the target operates, along with the specific services or products offered. The target's sales, profit and loss are also important to understand its financial stability. There are also other factors such as reputation, management team and distribution channels, etc.

2. Valuation

Valuation is the second of the four major stages according to the given typology. A suitable target for the deal has been selected with the help of the screening criteria and the other company is *informed about the intentions of the buyer*. Entering this stage a *non-disclosure agreement* is usually signed, so that the necessary information for developing an accurate valuation could be transferred between the sides of the future deal. Sometimes if the target company is well known in the industry or in the case when we are talking about *hostile takeovers*, *such agreement might not be signed* and the initiator side directly steps forward with an offer.

In all cases the buyer side carries on a valuation of its target along with the help of external or internal staff of investor bankers and financial advisors. This will help the buyer side to establish a price that it is willing to pay for the target. A wide area of knowledge is needed and a team of experts from different fields are assembled from both the side of the buyer and the seller. If this step is neglected, it might result in agreeing to a final price which is not favourable to one of the sides. Purchase or sale of assets and share and a *payment in the form of shares, cash or combination*, they all have an effect on the price and should be negotiated during this stage. Therefore, it is also true that the price of the deal is not equal to the price of the company since the condition and the terms of the transaction vary.

If a consensus is reached during these negotiations, both sides can go forward to signing a *letter of intent* and start detailed due diligence work. The letter of intent consists of the suggested price and terms of payments, along with the proposed structure and outlines the general conditions of the transaction. *Due diligence*, on the other hand, refers to the throughout investigation that takes place before the transaction is made. In this process, mainly the buyer investigates the seller

to determine if their records, book and everything else that have provided are true. It is also common for the seller to examine the buyer to analyse if he has the ability to purchase the entity and if he is suitable. Even though due diligence often focuses mainly on the other's company assets, liabilities and financial health in general, the process also should involve examining the corporate culture, the human resources. Pension due diligence can also be performed along with insurance and even environmental due diligence for M&As in some specific industries.

3. Negotiation stage

This stage comes right after most of the valuations have been completed. Even though according to this classification, only stage three is called "*negotiations*", it is important to understand that negotiations, in the sense of *discussion between the sides* of the deal aimed of reaching an agreement on certain issues, are *also carried in stage two*. Negotiations take place ever since the intentions for engaging into a merger or acquisition deal are revealed for the concerned parties.

Firstly, the companies negotiate the *approximate prices and general terms* of the transaction. If an agreement on the valuation stage is not reached they cannot sign a letter of intent (which even though it is not necessary for all deals, it is rational to have it for deals with big businesses) and cannot continue forward with discussing the details on the terms and conditions of the future deal, which take place in stage three. Therefore, for convenience, *when we later on talk about negotiations in this paper, we will refer to both stages two and three from this classification*.

However, the negotiations that take place after the due diligence step are the more important ones, because usually these negotiations are aimed at determining the final price for the deal and structuring the transaction with its legal form and tax planning, etc. *It is expected that the sides of the M&A deal have cleared the concerning points or reached a consensus on most of the problematic points that fit the interest of both sides*. Only after that point, a sales and purchase agreement (SPA) could be signed and the firms could work out the details of the transaction. A meeting with the shareholders is organized after the SPA agreement is signed in order to see if any and how many of them are opposed to making the deal happen as their approval is of key importance.

It is important to note that *the firms cannot move on to this last stage of closing the deal if the merger or acquisition deal has not received an approval from the government of the given country*. The regulations and legislations that apply for the given transaction must be followed.

4. Contract performance & Integration

With the approval at hand, the firms can wrap up the deal and close the transaction by entering the consolidation stage. This is said to be the last part of the M&A process. At this point an agreement on the deal is signed and the buyer makes the payment while the seller completes the handover.

The unfamiliar observer might think that the deal is done and the M&A process is over, but that is far from the truth. In fact, the future relationships determine whether the originally set goals that were the motivations for the deal will be achieved or not. On the *post-acquisition stage*, every merger or acquisition more or less faces the challenges of cultural *integration*, processes and organization integration, the issues between leaders or loss of key people, the danger of missing the financial synergies and other challenges that have been a subject of extensive researches, and are also going to be briefly mentioned in the next part of this chapter.

3.5. What are the Reasons that Could Lead to Failure

To explain the reasons that can lead to failure in any merger or acquisition, it is essential to first explain what *the meaning of the word “failure”* is in this context. The answer will depend on the perspective from which we are viewing the issue. If we say that an acquisition should be considered as failure when the *shareholder value has not increased* as a consequence, then this would be said only when focusing on the value creation challenge or synergies. Taking another example, if the *change* following after the merger or acquisition *is not accepted* by the employees, then this will also lead to failure, but from the perspective of culture integration. Therefore, a more general and all-embracing explanation is needed so that the term “*failure*” could be correctly used for all these cases.

A broad definition of the word could be that *any state or condition that does not achieve the originally desired goals* is a sign of failure. In the context of M&As, failing would mean that the initiating company *did not manage to achieve what*

they planned and expected, or in other words – whatever was the primary motivation to engage in the deal. However, it is possible in M&As that the original goal and primary motivation behind the deal is not reached, but other benefits or opportunities are revealed at some point within the same marriage between the firms. In this case it could be argued that the deal is *not a “failure”*, but it is just *not a complete success* in the originally intended manner.

A clear indicator of failing in an M&A deal is when the companies *break apart* or simply *never actually reach the point of signing the deal*. It is essential to state that in order to talk about M&A failure it has to be after the moment when at least one of the companies involved has revealed their intentions and interest in a merger or acquisition agreement with the other firm. The exact moment when companies *fail to combine*, depends on the nature of the issues that lead to this result. Conditionally, we can divide them into two general period of time, having in mind the M&A process that we discussed in the previous pages – before and after an agreement is reached and the final deal is signed (or pre-deal and post-deal stage).

In the next paragraphs, it will be described which are, according to the author, the main challenges that could hinder the deal or in other words, the reasons for failure. This is done in order to determine *when exactly does the government involvement could take place* and achieve a better understanding of the problem without taking it away from the overall context.

Pre-M&A Stage

There are many reasons that might lead to M&A failure during the stages before the deal is closed and agreement is reached. However, it is difficult to make a clear classification of these issues, to tell which the most important ones are or the ones that occur most often. This is simply because many of these intended deals remain hidden and unknown for the public, especially if the issues occurred during the early negotiations. We can still make an effort to name some of the major **reasons that can lead to failure during the pre-M&A stage**, based on the information available. Depending on the authors understanding of the topic, the reasons could be divided into the following groups:

1. The receiving part of the offer directly rejects the M&A deal proposal, because *they have no interest* in such an agreement.
2. *The full investigation* of the target company and/or the reverse due diligence *reveal obstacles* that are either unsurpassable or would require

too much resources and carry high enough risk for the companies to decide that the possible M&A collaboration would not be of their best interest.

3. Certain internal or external *circumstances might change* during the pre-M&A phase, which might require renegotiation or even lead to a withdrawal of the offer or end of negotiations.

A merger or acquisition offer could be rejected by its recipient, for instance, because they are **simply not interested**. The managerial team and CEO might not want to negotiate a potential deal because they *believe in their own potential as an individual company* and can do better on their own as an independent entity. They could be convinced that their potential could only be unfolded if they manage the company on their own. Perhaps they just *do not see the potential synergies* that could result in such an agreement on that stage of their development in general or with the firm which steps forward with the offer in particular. A strong *need for autonomy* and independence could also be the case for rejecting an offer. It all depends on the viewpoint of the managerial team and the CEO, and whether they decide that they are interested in negotiating a deal or not. It is also possible the actual reasons for their decision to remain unknown for the public or even for the bidding company. This is considered failure when the deal is planned to be a merger or a friendly acquisition.

Both the preliminary **investigation** and later the due diligence process can show that **the M&A deal is not in the best interest** of the firms and might not work or the original objectives are hard to reach. There could be numerous reasons that could lead to this decision of one or both of the companies to decide to discontinue the M&A deal attempts and further negotiations. For instance, the reasons could be related to discrepancy between the financial statement of the target and its real condition. Regulatory, legal and tax risks or issues can be found that are not allowing the deal to take place, especially in the more complex cross-border M&As. *Environmental roadblocks* can be present or simply the companies *managerial team* might be *lacking the necessary qualities* that were previously expected. Another reason that could be determined from the investigation that the *corporate cultures* in each of the companies are very different and the integration will be very difficult or that the cultures are simply incompatible. This list goes on with other issues that could be discovered during the full investigation process of the companies, which turn out to be

unsurpassable obstacles for the firms due to insufficient determination or resources to overcome them.

Even if everything seems to be in favour of the M&A deal, both sides have expressed their interest in the agreement and the investigation have shown that there are no obstacles that cannot be overcome, it is still possible for **unforeseeable circumstances to arise**. To begin with, *the valuation of the company can change* over the course of time. The buyer can try to lower the price or even withdraw his offer if, for example, the target has experienced a change in some of the key managers or executives, if it loses a valuable customer or there has been a downturn in the global or sector economy and so on. For instance, in 2008 General Motors and Chrysler were considering a merger, but then GM disclosed a \$4.2 billion quarterly loss which determined the breaking of the deal and the negotiations were discontinued.³⁶ Other reasons could be related to a *change in the regulations and legislation, a lawsuit, or if the deal is proven to be against public interests, etc.*

Another important factor that can lead to failure of the M&A deal at this stage, and will be discussed in more details in a later part, is the **governmental approval**. *Even if the formal regulations are followed* when designing the deal, it is still possible for the government to intervene by not giving an approval for the transaction. It all depends on the overall effects and consequences that the deal might have, which is related to the size of the combining companies and will be discussed in the next part. If the responsible institutions, represented by the government, decide that the M&A deal is against the public interests or raises antitrust consideration, they can refuse to give their approval and therefore the transaction could not be proceeded.

Post-M&A Stage

The **reasons for failure during the post-deal stage** have intrigued scholars for a long time and it could be stated that many of these problems have been covered in a large number of research studies and books, and analysed in different contexts with various cases. This is understandable because as Simpson stated, quoted in Kleiner and Nguyen (2003), *most of the reasons for failure are the ones that occur during the integration stage*. Moreover they are easier to

³⁶ Extracted from Bloomberg "Biggest Failed Mergers"; Available at http://www.bloomberg.com/ss/09/04/0407_failed_merger_talks/18.htm

analyse and gather information for, than the ones that occur on the pre-deal stage.

It could be argued that *most reasons leading to failure at the post-deal stage have their roots that can be traced back to the pre-deal stage*. That is because the full investigation, negotiations and planning that take place before the transaction is closed, should be directed at taking care of the issues that can arise on the post-M&A phase. It is interesting to see what the main issues that might hinder the deal on this stage are, but since this is not the main focus of this paper, they will be just briefly described.

- ❖ One of the most important challenges is the danger of ***culture clash***. As argued by Sliburyte: “*culture has become one of the largest barriers to successful integration and managing the culture in the integration process is one of the hardest tasks for managers*”.³⁷ The cultural conflicts mostly arise in the cases of cross border M&A as they arise on the bases of two types of culture – national and corporate (organizational) culture.
- ❖ **Inadequate or insufficient due diligence** means that there is a lack of a detailed analysis and investigation of the target company’s entire business. Incomplete due diligence will most probably lead to unexpected outcomes, challenges and issues on the integration stage.
- ❖ According to Gadiesh and Ormiston (2002) the most important problem to overcome is to have a clear **strategic fit and rationale**. Strategic fit means that the two organizations follow the same goals and objectives and share the same understanding of the time frame for achieving goals and even the same business ideology and philosophies.
- ❖ Paying too much or **overpaying** for a deal is not uncommon but the more it is paid for a company, the harder it is to get the necessary return of investment. In this sense the issue of paying more than it is necessary can be related to the challenge of setting the expectations straight and not being overly optimistic for the outcome of the deal.
- ❖ “*The integration of merging firms, is strongly affected by organizational factors, such as leadership*”.³⁸ **Lack of leadership** or their incompetence can result in issues during the integration process. In order for the change

³⁷ Sliburyte, L.; 2005; “The Impact of Differences in National Cultures on Mergers and Acquisitions”; Management of Organizations: Systematic Research

³⁸ Jadivan, M & Waldman, DA; 2009; “Alternative forms of charismatic leadership in the integration of mergers and acquisitions”; The leadership Quarterly

to be successfully implemented it has to be well managed by good leadership skills and in depth knowledge of the subject.

- ❖ **Other issues** and challenges, for instance, include a *lack of a backup plan* that can help to exit the merger in a timely and efficient manner with minimum losses, or properly *assessing the possible alternatives* besides a merger or acquisition and not just strive for bigness by combining with other companies. Other reasons could be related to a *loss in key personnel* and *external factors* from the business environment, etc.

3.6. Consequences of Cross-border M&As

As it has already been mentioned in the introduction, the number of M&A deals in the modern globalized world has been growing steadily. Some of these transactions have significant size, they can cost billions of dollars and *determine to financial fortune and future* of the business and operations of the combining **companies** along with the hundreds of **employees** within them. These deals also have a significant impact on the **industries** in which they operate, regarding the *competition* levels in that field, as well as the involvement of all local companies that are operating upstream and downstream the value chain linked to the given M&A. Logically, huge mergers and acquisitions or a series of such transactions, do have an influence on the **overall economy of the countries** they are based in.

These deals are usually measured by the amount of money they cost, but it is important to understand more about what is their actual *impact, effects and consequences*. As it is implied, the focus of the following pages will be more directed on the impact that the M&As have on the *countries' economy, society, competitors and other external subjects*, rather than the effect that these deals have on the participating companies themselves. Following the objectives of this thesis it also makes sense to pay more attention to the negative rather than the possible positive consequences of these deals.

There could be some very **positive effects** that follow with the cross-border M&As, not only for the combining companies, but also for the given economy and country. In the long-term these deals have similar effects as other forms of *foreign direct investment* such as the so called *Greenfield investment*. This happens because the bidder might continue with additional investments in the acquired company. The differences in similarities between these activities were

also analysed in separate papers written from authors such as Meyer & Nguyen or Jensen, both published in 2003.

It all depends, of course, on the type of M&A, its structure and the motives behind it. In the case of Greenfield investments case the positive macroeconomic effects are the biggest since the manufacturing operations and financial performance of the company will increase. In addition, specific and better *knowledge* could be *transferred* and especially when the goal is to increase the performance and efficiency of the less strong company. As an effect these investments could have an impact on the *employment* and in this situation the consequences will be as big as the company and business are.

If the business of the target company is enhanced so will be the *state revenue from taxes*. The willingness to *transfer new technologies* and know-how are closely linked to the potential that could be unveiled from the acquired firm and therefore the positive effects for the society and state, etc. Nonetheless, these actions can lead to a greater *involvement of local companies* that are located *upstream and downstream the value chain* linked to the given M&A, which includes suppliers and contractors, etc. The overall *development of that region* within the specific industry related to the merger could be improved as related services, business and infrastructure will be engaged.

An interesting viewpoint on the topic of **negatives M&A impacts** has been expressed by *Neto, Brandao and Cerqueira*. Their research is again conducted in regards not only to cross-border mergers and acquisitions, but to all foreign direct investment as well as green field investments. They do not focus on a specific industry or sector, where we mentioned that the related businesses and services could be engaged, and as a consequence developed and become more competitive. Instead these authors examined the impact that these deals have on *the overall economy* of a given country. They concluded that a difference could be observed between the effects that *developing countries* experience in contrast to the already *developed ones*. The countries with economies in transition proved to be much *more vulnerable* to the impact of the international M&As on their economies, especially in the short term. They experienced significant and usually negative effect on the economic growth, while in contrast the bad consequences on the economic growth in the already developed countries were *negligible*. However, whether we are interested in the effect within a single industry or the whole economy, we should have in mind the size of the deal, since the bigger the transaction and the combining companies, the bigger the

impact would be. In that sense, even if one single international M&A is not enough for visible effects to be experienced, when other acquisitions of that type take place in the same country the consequences will be eminent.

In the same way that an M&A can have a *positive effect* on the **employment**, it might also have a *negative one*. The strategy, motivation and pre-conditions of the M&A deal again have an effect when examining their consequences in this regard. There are certain changes in the personnel which are a normal result of many M&As, because some of the positions will be duplicated and there is simply no need to several people to do the same job. It is a common effect of these deals, or for instance, when only one single board of directors is enough to manage the companies that are now combined into one. These changes concern not only the CEO or board of directors but all the other lower levels of employees in the organization. This is of course sometimes seen as a positive result for the combined companies because it is related to cost cutting, but it is also seen as **a threat** for the people how will lose their job. Many years ago *Edwards T.* argued that “*One consequence of the general acquisition effect is for many mergers and acquisitions to lead to substantial redundancies*”,³⁹ and even though this statement was made long ago it could still be valid for today’s M&A deals. One of the meanings of that quote could be better understood from the examples that he gave of waves of mergers that led to *mass layoffs*. Depending on *the size* of the deal these actions can have an impact on the *overall unemployment rate in the country*.

Competition is one of the areas where big cross-border M&A deals have the most significant and obvious effect. The specific way that the deal could impact the competitive situation in a given sector or country, depends on the structure of the merger itself. When talking about **conglomerates** for example, since we mentioned them as a possible type of M&A agreement, there is *no direct effect on the competition*. As we explained conglomerates are formed when the two or more firms, that combine their powers under one flagship, are companies that are operating in different industry sectors and their activities do not overlap. Therefore there is no direct impact on the competitors because the merging companies operate in separate markets and therefore the number of competitors in these markets remains the same. However and *indirect effect could be that the conglomerate gain a competitive advantage* and make it difficult for new

³⁹ Edwards, T.; 1998; “The industrial relations impact of cross-border mergers and acquisitions”; EIROOnline

companies to enter the industry, this refers especially for small firms. This could lead to reduced overall number of small firms in the same sector.

On the other hand, there are the mergers or acquisitions with a **vertical** type of integration. In this type of M&A both sides of the deal operate in the same industry but on different levels of service upstream or downstream the value chain. The *competitive concerns* in this cases point out that *the newly acquired firm might start to deal only with the acquiring one and in that way other companies might lose their supplier or retailer*. The vertical integration in that sense could be anticompetitive because it limits the other companies' access to supplies or customers. In that case *antitrust regulations* might be imposed according to the competition policies of the countries involved or other relevant international institutions.

There are also some *competitive concerns* regarding the **horizontal** M&A. With these deals the integration is *between directly competing companies* in the same industry or business sector. That is why these M&As are *subjects of the most strict anti-trust reviews* from the regulatory institutions. After each deal of this type, the overall number of competitor on the market drops. On one side, this reduces the competition that the merging firms will face in the future and might create substantial market power for the merged entity. However on the other hand, this boosts the cooperation between the remaining competitors. The reduced number of remaining competitors after each M&A in the industry improves their ability to coordinate in terms of pricing, strategy and decisions-making, etc. This, of course, all depends on the specific industry in which the merging companies operate.

Still on the topic of competition, it should also be added that, from the perspective of the home country, these deals should not always be viewed as a threat. As it has been appropriately argued by *Buckley and Ghauri*: "*cross-border M&As can have a positive effect on competition if the foreign firm takes over ailing domestic firms that would otherwise have been forced out of the market*".⁴⁰ In other words, it is stated that policy makers may not always be concerned first about the possibility of market monopolization as a result of a strong M&A agreement. In some cases, it is possible that the acquired domestic company is actually **saved from bankruptcy** as a result of that takeover.

⁴⁰ Ghauri, P. N. & Buckley, P. J.; 2003; "International Mergers and Acquisitions: Past, Present and Future"; *Advances in Mergers and Acquisitions*

Last but not least, we can raise another concern related to international M&As again in the sense of foreign direct investments and this time it comes from the Keynesian economic school. The issue is that even though a given country on *one side of the deals benefits from potential positive effects* originating from the cross-border transaction, that does not mean and *there are no guarantees that the country on the opposite side will experience the same effects*. The same consideration can be applied on a similar principle for the possible negative effects and consequences that go together with certain M&As.

3.7. The Government Involvement in Cross-border M&As

In the previous pages, it has been stated that governments can sometimes decide to get involved into the M&A deals. This is because these transactions are a subject of government regulations, legislations and reviews, etc. In a research paper analysing the regulations of international M&As in the banking sector, the authors indicate that *“How, why, and for whom individual mergers and acquisitions generate net economic benefits becomes an increasingly important policy issue as industries globalize and consolidate”*.⁴¹ These challenges and issues to consider are relevant to any type of M&As but they are of even greater importance to the transaction that go beyond national boundaries because *“Different standards between different countries, as well as with supra-national regulations, presents firms with greater risks in cross-border deals that are likely to result in multiple regulator involvement”*.⁴² These statements once again reminds us that the deals of international M&As have become a subject of attention and discussion that no longer involves just the participating firms, but also the governments in the affected countries. This is just more proof of the fact that **government intervention**, especially **in cross-border M&As**, is an important and interesting challenge that companies might face when engaging in such deals.

This might not come as a surprise in countries where the government controls much of the economy and the approval of an M&A deal depends more on the relations between the board of direction and the responsible government

⁴¹ Carbo - Valverde, S., Kane E. J. & Rodriguez-Fernandez, F.; 2009; “Regulatory arbitrage in cross-border banking mergers within the EU”; Journal of Money, Credit and Banking

⁴² Angwin, D.; 2007; “Mergers and Acquisitions”; Blackwell Publishing Ltd

officials than on anything else. Angwin D. states that in has not been until just the recent past that “*China has changed its position from only allowing limited foreign ownership – through joint ventures, for instance – to permitting M&A as a crucial way to invigorate state and semi-state owned firms*”.⁴³ However, even the governments in countries defined by high economic freedom seem to be getting more and more involved over time. As part of the response to the Kay review, for instance, the UK government stated that it would “*take a greater interest in mergers and acquisitions*”⁴⁴ involving British companies.

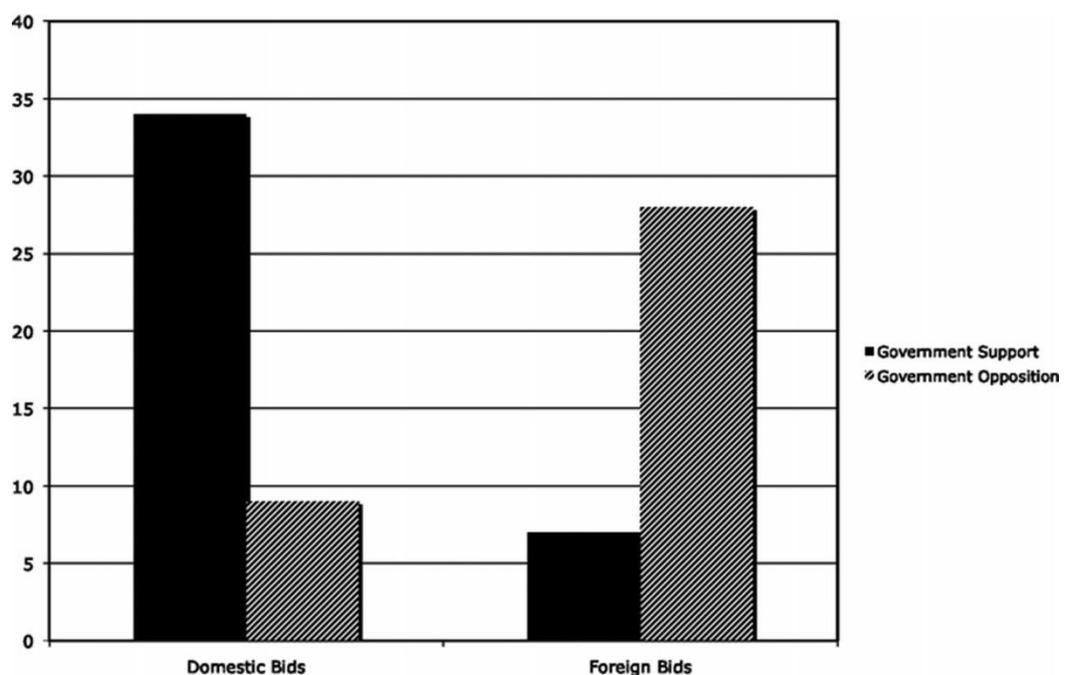
Perfect examples of the aforementioned regulations that take effect in these important transactions are the **anti-trust mechanisms**. The first question that comes to mind is to ask *what the purpose of these regulations is and why are they needed*. The goal is to prevent the combining companies from becoming a *monopoly power* and preserve the plurality on the market by insuring the presence of *enough competitors* operating in every sector or industry. In the previous part we described what the effects and consequences of the cross-border M&As could be on the *competition*, but to summarize it in short it could be concluded that in an industry with characteristics close to a monopoly, the company with the dominant position on the market can afford to *produce at a lower levels* while at the same time *selling on a higher prices* to the customers. This explains why such regulations are necessary and this reason alone could lead to the result of a blocked merger or acquisition from the responsible authorities. In a combination with some of the **other possible negative effects and impacts on the society or the economy** of a given country, that were explained in the previous part, such as *reduced state earnings* from taxes and *unemployment*, etc., it is obvious why a government can decide to get involved and *protect the interests of its country and society*.

However, it is interesting to see if any **other reasons for government involvement** might exist. This topic really has not been well researched or covered in the literature, but there is a very interesting research paper written by *Dinc S. and Erel I.* It studies the government reactions to large M&A deal attempts, both domestic and international, in the European Union in the period between 1997 and 2006. It was suggested that reasonable concerns that have a legal justification, such as *public interests, economic effects and competition*

⁴³ Angwin, D.; 2007; “Mergers and Acquisitions”; Blackwell Publishing Ltd

⁴⁴ Department for business innovation & skills; 2012; “Ensuring equity markets support long-term growth”

issues, are in reality not the only (an even not the primary) reasons for government involvement when it comes to international and domestic M&As of huge importance and scale. The research included a sample of 415 M&A bids and the conclusion reached from their analysis indicated that “*instead of staying neutral, governments of countries where the target firms are located tend to oppose foreign merger attempts while supporting domestic ones*”.⁴⁵ The following figure represents the reaction of support versus opposition from the government of the country where the company which is the target of the M&A deal is located. It is defined by having in mind the country of registration of the target company, its headquarters and main office or if it is majority owned, its parents’ country of registration.



Source: Figure 1. (Dinc, S. & Erel, I.; 2013; p.2479)

It can clearly be seen that the *government involvement*, according to the sample of these large EU M&A cases, is to support domestic bids significantly more than the foreign ones and on the other hand to *express higher opposition to foreign bids compared to domestic ones*. In that sense we are talking about **economic nationalism in M&As**. Even though we do not have a certain answer

⁴⁵ Dinc, I. S. & Erel, I.; 2013; “Economic Nationalism in Mergers and Acquisitions”; The Journal of Finance

on why and for what reasons do governments in Europe show nationalist behaviour, it could be argued that they *simply do not trust* that the foreign companies will work in the interest of the country and the wellbeing of its society. The next logical question concerns the ways that the government can get involved in the deals.

Earlier when the M&A process and related obstacles were discussed, it has been mentioned that **governmental approval** is one of the steps that have to be taken in the pre-M&A stage and a challenge to face for the entire deal. These approvals play an important part of the M&A deals because if they are not received this will prevent the entire transaction from happening. Even if every other factor is in favour of that merger or acquisition and the companies have flawlessly executed every other step in the process which promises a perfect deal and future fortune for both sides, if the approval is not received the deal is hindered. In the best case scenario, major changes could be required to be made in the transaction that would not be in the buyer's best interest or original intentions.

These approvals are usually given or denied based on certain **anti-trust considerations and the public interests**. In the United States, Hart–Scott–Rodino Antitrust Improvements Act requires that only deals with a value over a certain amount to be reviewed. On the other hand, the regulatory authorities in the European Union require ever smaller M&A deals to be examined, but that would probably be changed in the future since the complexity of these transactions and the time needed to review them puts an extra pressure on the authorities. The legal aspect of these mechanisms and especially from the perspective of the United Kingdom and EU Commission, which are of specific interest from this thesis, will be discussed in more details in the next part of the literature review.

The most direct way that the government can get involved in an M&A deal is by **refusing to give its approval** for the transaction. In some cases, if the government does not want a M&A to happen, because they believes it is against the public interests in any way, even a **changes to the regulations** could be made, for instance, *enacting a certain changes* that pose such conditions that can make the transaction impossible to happen. In other cases, it is said that the competition commission, represented by the government, can allow the M&A transaction to take place, but **only after “certain adjustments”** or in other words changes, are made. These adjustments may include changes to the terms

and conditions of the transaction or set unfavourable conditions that make the deal not worth it, undesirable and not tempting for the acquirer, but not impossible to happen. For that reason, this is a more mild way that the government could use to make the bidder back out from the deal with the target firm.

However, it is extremely expensive for the participating firms to put the time and efforts of their entire staff into the preparation for such deal, starting from the due diligence activities down to the fact that the very news of a blocked M&A result in a devastating effect on the share prices and significant drop in the reputation. That is why *few negotiations continue* forward until that final point in the pre-M&A process if there are **other indicators** which give them reasons to believe that an approval will not be given. Sometimes these extra costs are partially covered by a breakup fee, which could be embedded in the letter of intent if such exists. Unfortunately, not only that these compensations benefit just the seller but they also cannot cover the nonfinancial losses from the confusion among the employees or external investors due to the falls expectations of the future transaction.

A less severe intervention and another way to understand the government position in the country of interest and predict their actions is to pay attention to the **announcements made by government representatives and ministers**, etc. This is exactly what Dinc and Erel were looking for to determine government support or opposition in their research and what the companies negotiating an M&A are having in mind to give them a direction. *If there are announcements indicating an unfavourable government position regarding the transaction, many companies prefer not to continue investing time and resources* in the M&A process but rather just withdraw their bid for the target company. This helps them to prevent further losses and preserve their reputation and stock prices.

3.8. M&A Regulations in European Union and United Kingdom

Introduction to M&A legislation

As every other process, mergers and acquisitions are regulated by authorities who ensure that they are executed properly. Policymakers direct regulations towards entities depending on their location of incorporation and the legal type (private, public, listed). By taking a look at the Third Council Directive 78/855/ECC it could be seen that from a legal perspective, a *domestic M&A* is a transaction where both companies are incorporated in the same legal system. On the other hand, from the Tenth Council Directive it becomes clear that If the involved companies are incorporated in different systems, then we are talking about a *cross-border M&A*. The choice of legal system, made during their creation or when the transaction is closed in the case of a merger, is of great importance. That is because different authorities across the globe have various specific requirements that have to be satisfied in order to approve the validity of signed contract. Legal binding between companies incorporated in different countries requires a contract coherent with both legal systems.

During the takeover process, the acquired company loses its identity and the acquirer absorbs its rights and liabilities. On the other hand, during a merger the rights and liabilities are shared.

The logic behind the legal framework creation

Although governments tend not to interfere with the businesses for the sake of free market opportunities, laws are designed in order to protect national interests. Due to the nature of mergers and acquisitions, governments are concerned with the *public interests*, as well as the *fair competition*, since the process leads to the establishment of *a new, bigger and stronger entity*. Authorities seek carefully acquisitions, because the process involves dissolution of the acquired company.

During policy creation, governments direct their regulations toward entities depending on their legal type. Sudarsanam (2003) implies that public and listed companies are subjects to more legal requirements compared to private one, because their shares are held on the market.

The importance of the jurisdiction

As the countries' attitude towards monopoly is different, so do their legal systems, governing M&A processes. Goergen and Renneboog (2004) suggest that “*takeover legislation and regulations may contribute to the differences in wealth effects of domestic and cross-border acquisitions*”. They state that there is a relationship between the success rate of transactions and countries' legal systems, which results in the level of gain for the shareholders.

Legal regulation of M&As in UK

The UK Antitrust Regime

UK does not have a separate directive regulating mergers and acquisitions. Instead, the legislation concerning *competition* in general, has defined the merger control regime. The policy design suggests that concern number one for the British government, in terms of M&As, is the danger establishment of monopoly on the market.

With the establishment of the *Monopolies and Mergers Act* in 1965, UK has created the *Monopolies and Mergers Commission* (MMC) as a regulatory organ.

In 1998 the government enacted the *Competition Act* which transformed the MMC into the Competition Commission (CC) and created the *Office of Fair Trading*, under the *Fair-trading Act* in 1973. Both administrative organs were aiming to preserve the fair competition. Until the 2002, mergers were investigated in two stages. Stage one was performed by The Office by suggesting whether any deal should be monitored in details. Stage two was involving the Competition Commission which was making an analysis of the merger proposal, which then was sent to the Secretary of State for Trade and Industry. The Secretary then decides whether to suggest recommendations to the involved companies. The outcome of these recommendations could result in three possible outcomes, as outlined by Sudarsanam (2003):

- 1) The merger *is against* the public interests and cannot be allowed
- 2) The merger *is not against* the public interest and can be allowed
- 3) The merger can be allowed, but it *need certain adjustments*

The Competition Commission makes its analysis and arrives at a decision while considering whether that M&A deal: “*promotion of consumer interests,*

promotion of cost reduction, new techniques and products, and competitors, balanced UK distribution of industry/employment and promotion of companies' international competitiveness".⁴⁶

It was **not obligatory** to strictly follow the recommendations created by the Competition Commission until 2002 and the enacting of the Enterprise Act. According to this act, the decision of the Commission must be followed and can only be challenged by the court. It represents the ultimate legislative government approval of an M&A deal. The Act's provisions were meant to be stricter than any M&A regulations enacted from EU. The British regulators have the right to **covert surveillance**, according to this act. In other words, government is legally allowed to spy companies searching for approval. Also, cartels are subject to more serious punishments, one of which is possible disqualification of directors who dare not to follow antitrust regulations, or penalty up to 10% of company's turnover. By the *Enterprise and Regulatory Reform Act* from 2013, the institutions of the Competition Commission and the Office of Fair Trading became one institution - The Competition and Markets Authority.

The British government has recognized a need for additional specialized anti-trust regulators, because every industry has specific problems. Thus, organs like the *Office of Water* and *Office of Telecommunications* would as well examine takeover deal as long as it brings certain concerns regarding unequal competition in the sector they are regulating.

The M&A approval in terms of fair competition – The Substantial Lessening of Competition

The analysis performed by the government involves examination of the so-called Lessening of Competition by considering the following set of "*lessening effects*":

- *Co-ordinated effects* – examine the possibility of establishment of **oligopoly** from several firms. Usually the regulators analyse how much the price of the companies might increase due to M&A.
- *Unilateral Effects* – they might occur when a company is trying to acquire a rival and thus to **remove it as a competitor**. The regulators are

⁴⁶ Sudarsanam S.; 2003; "Creating Value from Mergers and Acquisitions: The Challenges: an Integrated and International Perspective"; Pearson Education

examining how much the company will *raise the price* of its products/services just because it is not challenged by a competitor.

- *Vertical Effects* - As the name suggests, this type of effects might be observed after vertical merger has occurred. Analysts examine exactly how much stronger will the new entity become compared to its rivals.
- “*If the authorities decided to disapprove the deal...*” - *The counterfactual situation*. The term applies to the so-called **counterfactual analysis** that is performed by the authorities as a part of the “*lessening of the competition*” analysis. The counterfactual analysis aims to suggest what the pros and cons of a rejected approval would be, and tries to predict the outcome of their (CC) disapproval. The examination suggests which companies might leave or enter the market and examine the overall stability and prosperity in the industry.

Regulator’s options

As it was emphasized earlier, a deal could be (1) approved, (2) disapproved, (3) allowed, but with certain adjustments. The question that appears is what kind of **adjustments** can be enforced by the British law? The wide-used options are:

- *Price capping* – the regulators adjust *the price of a company*, as it was operating in a ‘normally competitive’ market. The method uses the Retail Price Index formula to set a price. This option is used primarily for privatized entities.
- *Windfall taxes*- the authorities convert the “excess profit” into a subject to windfall tax. In other words they force the company not to pay high amount of dividends to its shareholders but to reinvest its profit.
- *Unbundling* – the regulators might force a company to “unbundle” the barriers for entry for another rivals. In addition the company might be enforced to open its infrastructure for usage by the competitors.

The City Code on Takeovers and Mergers (the Code)

The creation of the Code was in response to the EU Commission’s decision in 2014, which empowered the EU countries to apply the European Competition policy. In fact, the Code primary deals with the rights of the shareholders during

M&A process. In 1986 UK had established an organ responsible for the rights of the shareholders, called the Takeover Panel.

The Panel implemented the City Code and took a position of an advisory body. Its recommendations are not enforceable by law, in other words a breach of the City Code would not lead to government disapproval of the deal. On the other hand, the Panel has a significant influence and high reputation in UK and thus companies involved in M&As should follow its advices.

Breaching the Code does not lead to government disapproval of the deal and thus is not subject to this paper.

EU merger regulation

The creation of the EU jurisdiction was strongly inspired by the British law. *The Treaty on the Functioning of the European Union (1958), Article 101 includes the provisions dealing with mergers and antitrust.*

The provisions under Cross-border M&A (Directive 2005/56/CE) and Economic Concentration Regulation (ECMR, 139/2004) states that a merger or acquisition should not “*significantly impede effective competition*”. The EU’s regulations describe an undesirable M&A in terms of its possible effects on the market, similar to the Monopolies and Mergers Act in UK.

However, the European Union has *different system of investigating and approving* an M&A deal. The EU Commission is responsible for analysis and allowance of M&A deals. The mechanism is designed to investigate deals based on the turnovers that will be incurred by the new company if the deal is successful. The commission screens the deals of companies that will achieve a combined turnover within the EU area of more than 250 million Euro or a 5 000 million Euros worldwide turnover. It is necessary to be emphasized that the Commission has special way of defining the threshold, in order to estimate the power of the combined company in the EU market. However, the method of calculations is not going to be examined here. Again, the idea behind the regulation is to ensure the fair competition between companies.

Under the Economic Concentration Regulation, the EU has defined that an M&A should not lead to “concentration of shares”, which practically means that the Commission also examines the amount and stock price of the shares that will be bided in the M&A deals.

The British concept of “Substantial Lessening of Competition” is defined under EU’s legislation as **Significantly Impeding Competition**. As a consequence, the Commission has designed an option for **adjustment** of the deal similar to the option of *Unbundling* in UK. The EU Commission has the right to impose a decision stating that the combined companies have to offer any of their advantages to other companies in the market, which could be infrastructure, technology, and license agreement. The Commission backs-up the decision as a promotion of the global competitiveness and consumer protection.

The EU Commission does detailed analysis of the market and the history of the combining companies. Thus, the regulators are also evaluating the potential of the combined company in terms of position, technologies, products/services variety.

However, it is important to mention that that according to the EC regulations, a Member State is **explicitly allowed** to always take “*appropriate measures*” to protect its “**legitimate interests**”. This is based in article 21 of the European Commission Merger Regulation. These legitimate interests include public security, plurality of the media, prudential rules for financial companies and other public interests recognized by the EC.

Article 2 from Economic Concentration Regulation

Significant difference in the jurisdiction is the exception presented in Article 2 from ECR. The Article **allows** an acquisition deal, which would be categorized as threat for the fair competition in cases where the acquired company is almost insolvent. The Article implies that the balance on the market is secured, because the insolvent company would otherwise be unable to survive, which is in contrast with the primary idea of EU to promote economic progress and prosperity.

In general, the creation of the EU jurisdiction was strongly inspired by the British law and at the end the *EU regulations are less strict than the ones in the UK*. Therefore *disapproval* for an M&A deal that involves a British based company is *more likely to come from the UK authorities* rather than the EU Commission. Both systems have strict regulations regarding the possible lessening of competition and the public interests in general. If the firms involved in the M&A cannot show and prove that the deal is not against or damaging the public interests in any way, then the much needed approval will be declined or at least certain changes to the deal will be required.

4. Case Studies

4.1. Kraft takeover of Cadbury

Cadbury is one of the most famous British companies and is associated with the best loved chocolate in the United Kingdom. The company was founded back in 1824 by John Cadbury with the opening of his small shop, located in Birmingham. It was not until the year 1831 that he began making chocolate and cocoa. John rented a warehouse close to the shop where the production started. Ten years later, he and his brother expanded their production to more than 25 types of cocoa and chocolate for drinking. They continued their growth and were also producing for the royal family under a warrant. The family business was carried through the generations and John's sons continued growing an improving the company.

An important innovation that sets Cadbury apart from its competitors and made the owners billions of pounds was the creation of the chocolate bar in the mid-19th century. Over the years and after the revolution made in this industry, they focused mainly on the production of chocolate. By the end of the century the company has moved out of the city and established a big factory, which eventually led to the building up of an entire village for the workers employed in their production facilities. The importance of Cadbury was further strengthened with the help that they provided during the world wars.

In 1969, Cadbury merged with Schweppes and continued its growth and prosperity. By the beginning of the new century Cadbury-Schweppes has become the world's leader in confectionary industry. However in 2007 the company made the decision to close a British based factory and relocate part of the production to Poland, a decision related to the start of the global financial crisis. The consequence of that strategic move was massive job loss accounted for more than 700 people. There were also plans to close another factory 3 years later and that intentioned caused uproar from the Unions. After these events, along with reports for declining profitability, Cadbury and Schweppes broke their marriage and a demerger was a fact by 2008.

Kraft on the other hand, is an American grocery manufacturing and processing conglomerate. The history of Kraft dates back to 1903 in Chicago when James L. Kraft started selling cheese. The company itself (J.L. Kraft & Bros. Co.) was established in 1909 by James and his four brothers. The first factory was opened five years later and they started producing cheese in a revolutionary method that they patented, which secured them an incredible future growth and expansion in the US. The company diversified its production and soon had over 30 types of cheese in their inventory.

The success of the firm drew the attention of National Dairy Products Corporation and an acquisition followed in 1930. Kraft continued to operate as an independent subsidiary for decades after the takeover, but was eventually absorbed into the parent company and the corporation was later renamed to Kraft Inc. in 1976. By that time the sales were already reaching \$3 billion. Kraft continued expanding and growing by a series of mergers and acquisitions with other companies. Some of the more important ones were, for instance, the merger with Draft that was a producer of various non-food products. Later Kraft became part of Phillip Morris Companies Inc. and was soon combined with their General Foods unit, forming the world's second largest food company and the biggest in US and Canada.

An expansion to the European market was made with several acquisitions of a European and Scandinavian confectionary giants. In 1995, the company was reorganized and as a result also renamed to Kraft Foods. It continued its rapid growth and expansion in the following years with a series of other acquisitions with companies in the food business. By the beginning of the 21st century Kraft Foods was involved in a major worldwide expansion and its stock began public trading. Kraft Foods became completely independent company after a spin-off that took place in 2007. Overall, Kraft is an important US based international conglomerate that includes many highly profitable brands in a wide scale of food products.

Kraft made its **first attempt** to acquire Cadbury on 28.08.2009. The proposal was made on a meeting between the chairman of Cadbury, Roger Carr and the chief executive of Kraft, Irene Rosenfeld. During this initial offer Rosenfeld gave a valuation of Cadbury in terms of shares and cash or 755 pence per share. However Carr refused this offer: *“The Kraft bid was worth 300p in cash and*

0.2589 new Kraft shares for each Cadbury share".⁴⁷ Kraft was determined to continue forward with the negotiations and instead of giving up, the company decided to **make their bid public** on seventh of September. The announcer offer had a slight change in the given valuation of Cadbury and the price per share was dropped to 745 pence or GBP 10.2 billion. Again that bid was rejected without hesitation from Roger Carr.

As soon as the first bid for Cadbury was made and Kraft announced it publicly, a possibility of other companies interested in taking over the company aroused. If that happens, it is possible that the winner in the battle for Cadbury becomes a leader in the confectionary industry in the world. Cadbury's chief executive and management team were aware of that possibility and they made it clear that if the company had to be acquired by someone, then they would prefer another buyer. Practically all other companies that would have the resources to step into the bidding were mentioned in that statement, such as Nestlé, Ferrero and Hershey.

Cadbury had an experience from previous acquisition defences and after the hostile bid made from Kraft; Carr started to assemble a strong defensive advisory team for the company. They have sent a letter as a defensive document to Kraft and again officially rejected the offer naming it unattractive. The reasons Cadbury explained for this decision were that "absorbed into Kraft's low growth conglomerate business model – an unappealing prospect that sharply contrasts with the Cadbury strategy of a pure play confectionery company".⁴⁸ They argued that this future shows an undervaluation of Cadbury as a company and its future potential.

What we can consider as a response came on 16th of September from Warren Buffet. He is in second place in the world in terms of wealth and plays an important role in Kraft Foods since he owns 9.4% of its shares. In his statement he officially warned Kraft to be careful not to overpay for Cadbury. Several days later, the target company contacted the UK Takeover Panel to demand Kraft to receive a "put up or shut up" request. This means that they would have to either, make another higher offer and clarify their intentions, or step out of the bidding for half a year, which essentially would mean to admit they have no further acquisition intentions.

⁴⁷ The Telegraph; 24 May 2011; "Cadbury-Kraft takeover timeline"

⁴⁸ Moeller S.; 2012; "Case study: Kraft's takeover of Cadbury"; Financial Times

On 25 September, the UK business secretary, Lord Peter Mandelson, made a public declaration stating that "*foreign ownership of British companies could damage the country*".⁴⁹ This was part of his statement that declared the **government's intention to intervene** and oppose any buyer who "*failed to respect the historic confectioner*".⁵⁰ Another reasons why the company was important to the UK also was the fact that if Kraft's takeover attempt is successful then "*Cadbury's will become the last great British confectionery maker to fall into foreign hands*".⁵¹

The reply from the Takeover Panel came after just five days and fulfilled Cadbury's request. Kraft was indeed given time until 9th of November to propose another formal bid; otherwise they would be forced through the power of that authority to step back of the bidding for the next six months. By the time before that date came the financial results of the third quarter and Cadbury raised the stacked with improved sales and profit while Kraft had disappointing, lower than expected results for the shareholders, which in turn dropped the next year's predictions. However, Kraft was determined to follow Buffet's advice and on 09.11 they made a bid which was not higher than the original one.

It is interesting to note that at this point the Royal Bank of Scotland (RBS) was heavily criticised after it was discovered that the bank is financing Kraft and therefore helping their bid. RBS was criticised on the basis that it is "*acting against the best interests of the UK economy by backing foreign takeover bids*".⁵² The *leader of the Liberal Democrats*, Nick Clegg also said that the actions of RBS were "plain wrong" and that bank was bailed out from the taxpayers of the UK and therefore the people's money are used against their own interests. The *Prime Minister* Gordon Brown was also heavily criticised in regards to these events and he admitted that Cadbury was very important for Britain.

In addition, the union that represents Cadbury added that Kraft have not yet given any promises that the takeover will not result in **job losses** or **closure of factories**. The biggest union In the United Kingdom, Unite, expressed its concerns that if successful, the foreign hostile bidder is putting at risk 30 000 job

⁴⁹ Wearden, G.; 19 January 2010; "Timeline: Cadbury's fight against Kraft"; The Guardian

⁵⁰ Moeller S.; 2012; "Case study: Kraft's takeover of Cadbury"; Financial Times

⁵¹ Poulter S.; 8.09.2009; "£10billion hostile takeover bid to devour Cadbury's"; The Daily Mail

⁵² The Guardian; 2009; "Unions and MPs blast RBS for backing foreign takeover bid for Cadbury"

positions in Cadbury itself and the related businesses up and down the value chain. Unite appealed to investors, shareholders and everyone involved to save the company by saying “*protect Cadbury as an independent company and kick Kraft's bid into touch*”.⁵³

A possible white knight that might save Cadbury from the hostile takeover of Kraft appeared in the face of both Hershey and Ferrero Rocher from America and Italy. They declared their considerations to step forward with a possible bid for Cadbury but no guarantees were given from them. On the other hand there were also speculations that Nestle could join the battle for the British confectionery. All these expectations resulted in a significant increase in Cadbury's share price.

Keeping the UK takeover rules Kraft entered the 2 months battle for Cadbury after posting their 180-page offer document, which explains the bid to Cadbury's shareholders. In response, however the company launched its official defense and again promised higher dividends and financial targets to shareholder in order to convince them that Kraft undervalues their business and potential. Additional reminder was that Ferrero, Hershey and Nestle could also decide to bid for Cadbury.

However, on 5th of January Kraft sold its frozen pizza division to Nestle and Nestle later declared that they will not make an offer for Cadbury. Meanwhile Kraft increased their bid with 60 pence making the bid more tempting for the shareholders of the target company. There were also informal talks with Hershey from Cadbury for a potential merger in order to avoid Kraft's hostile takeover, but no development followed there. Two days later, by the time Cadbury launched their final defense document, Ferrero also decided to put itself out from a potential battle for the company.

The deal was sealed at an improved offer of £11.5bn on 19 January 2010. There was a given time of 2 weeks for the shareholders to state their agreement to the takeover and indeed 72% of them accepted the bid and Kraft took over control on Cadbury. The chief executive, the chief financial officer and the chairman of Cadbury were dismissed right away after decades spent in the company. The defence organised by the chairman managed to increase the initial price offered from Kraft as “*Carr left the company at least £450,000 better off after his robust*

⁵³ Labor News; 14 Jan 2010; "Debt-Heavy Kraft Could Put 30,000 Cadbury Jobs at Risk, Warns Unite"

*defence of Cadbury helped to force Kraft to add about £1 per share to its initial approach”.*⁵⁴

However, Cadbury’s employees were concerned about their jobs even though Kraft insured them that they have no such motivations and goals and that the factories in Somerset and Somersdale will remain open. In relation to this promise about the factories, Kraft further announced that the UK will benefit in terms of employment and jobs. This promise managed to **convince the regulatory authorities** that Kraft has best intentions for the deal and the consequences for the UK would be favourable: *“The Takeover Panel's ruling was based on Kraft's promise in official stock market announcements that the UK would be a "net beneficiary in terms of jobs”.*⁵⁵

Days after Kraft gained full control over Cadbury a statement was launched informing that **the factory in Somersdale will be closed** because of already made expenses over the transfer of production to Poland. The result was 400 jobs lost, but Kraft explained that they did not have the knowledge of the expensive equipment that was already installed in a Polish factory. However, for some this was a reminder of a case from 2005 when Kraft closed all the factories of Terry’s of York, a company which was taken over several years earlier, due to switch in production overseas.

The broken promise of Kraft was not left unseen and the Takeover Panel responded that the acquirer should have investigated Cadbury’s activities better before acquiring them. In addition, a business committee to the House of Commons was made to observe this issue and future issues related to takeovers. Again in relation to Kraft-Cadbury takeover, some **regulations** in the UK were also updated to make **hostile bids** harder to succeed: *“The Panel on Takeovers and Mergers believes it is too easy for hostile company bids to succeed, and for short-term investors to influence the outcome of a bid”.*⁵⁶

Another created regulation in 2010 stated that the bidders must reveal much more detail on their plans and intentions concerning the future of the target firm. For instance, some of that information also refers to the location of the future

⁵⁴ The Chartered Institute of Purchasing & Supply; 2011; “Case Study Kraft and Cadbury: A sweet deal?”

⁵⁵ Treanor J.; 26 May 2010; “Kraft rebuked for broken pledge on Cadbury factory”; The Guardian

⁵⁶ Hodge N.; 22 Nov 2010; "Takeover rules tighten after Kraft-Cadbury broken promises"; Financial Director

headquarters and other details. The number of shareholders needed to approve a takeover was also intended to be raised from a simple majority to 2/3 and these shareholders could be a subject of a long-term interest test. A proposal which came as a surprise from the Takeover Panel was to set a break fee which the bidder would have to pay to its target in case he pulls out. The motivation was that by doing so rival bidders would be discouraged and counter offers will be at a lower level. However, this last proposal was not accepted as it was found to be complicated to implement. Other intention was to force the acquirer to keep the promises he made during the negotiations to the target and everyone involved. He would have one year after the transaction is closed to make them happen. A change was also made for the target firms as they would have to reveal who is interested in taking them over on the negotiation stage. By doing so the bidder cannot stay anonymous and have a stronger position since other companies who might be interested in the bidding are not engaged.

All of the rules and regulations that were changed or updated after the takeover of Cadbury by Kraft were intended to avoid *hostile foreign takeovers* such as this one. If they are to be allowed, the changes made to the rules insure that the British government and people would be aware of the acquirer's intentions, motives and goals with the takeover, as his actions heavily influence the public interests. The motivation was to protect the British companies, their employers and all the other parties that share the possible negative consequences that could result after a hostile takeover.

4.2. News Corporation takeover bid for British Sky Broadcasting

Sky Television plc was originally a consortium made by Brian Haynes in 1980, called Satellite Television Ltd, based in the UK. He understood the possibilities revealed from using satellites to create a new type of television broadcasting. Satellite Television began a regular broadcast transmission in 1982 and was the first cable and satellite channel in Europe. The next year Rupert Murdoch, the founder of News Corporation, bought 65% of the company and later the rest, gaining a full control. In 1984 the company was renamed to Sky Channel and later to Sky Television after Murdoch launched a network of four other channels to the first one. However Sky was constantly experiencing heavy financial losses

because the cable television was not well developed in Britain where the company was based.

British Satellite Broadcast is a British television company, established in 1986 with a headquarters in London. The telecommunication firm have launched five satellite channels in the UK. By that time the only major competition came from Murdoch's Sky Television which also had a time advantage and had started since BSB's launch of channels was delayed due to design and manufacturing problems. Both companies were in constant confrontation and race to gain more viewers and subscriber base, and both experienced huge losses, debt and the long-going start-up costs. In 1990 the financially struggling but supported by Murdoch, Sky Television merged in an equal power deal with the healthier company in the same industry and country, British Satellite Broadcast and formed British Sky Broadcast (BSkyB).

During the first year of its existence BSkyB was still reporting financial losses because the technology used was at an early stage and thus not yet popular. However, the combination of the high quality programming of Sky and the successful advertising of BSB, the merger managed to achieve growth and positive financial results. The company continued to exploit the satellite technology and gained more subscribers. One important strategic move that insured further growth and laid foundations of security was the exclusive right of broadcasting the Premier League football. They held the monopoly to this right until 2007-2008, which was then lost after intense pressure from the European Commission.

BSkyB continued to stay innovative constantly introducing new channels and taking advantage of the new technologies in the industry. New packages for the customers, HD television channels and the introduction of digital services in 1998, all played an important role in keeping the company as the leader in the British market. It also introduced internet services and telephone lines to its customers. By the year 2010, BSkyB has reached a milestone of 10 million customers, which represented 36% of all households in the United Kingdom and Ireland. BSkyB acquired Sky Italia and Sky Deutschland in 2014 and changed its name to Sky plc.

News Corporation (News Corp) has its roots back to Adelaide in Australia where it carried the name News Limited. The company made several acquisitions in the United States in the 70s and Rupert Murdoch made News

Corp as a holding company in 1979. The holding continued its growth and rapid expansion engaging into more acquisitions, including the movie studio 20st Century Fox and significant UK newspapers such as The Times.

In the early 80s the corporation had a focus on publishing and newspapers, while later a diversification followed to satellite television. In the beginning of the 90s, News Corp was already a huge media empire with a number of successful television and newspaper brands under its control. The growth and expansion in this period was mainly driven by acquisitions. However the company also had a debt mainly because it had to support its UK based media Sky Television suffering heavy financial losses before the merger with BSB.

After a 7.6 billion USD refinancing package from the bank, followed by a well-planned financial restructuring News Corp successfully achieved stability with tens of millions of net profit rising after each year in the 90s. The company's performance was also boosted with several extremely successful movies and series such as "Home Alone" and "The Simpsons".

In the 21st century, News Corp continued its growth by acquisitions with companies such as the Fox Entertainment Group in 2005. The company also expanded in the area of internet with its biggest purchase of Myspace from \$580 billion later the same year. By 2010 News Corp has achieved its best positions and strength in its history. Later after a series of scandals, in 2012-2013 the company's assets were split into two publicly traded companies. The News Corp was renamed into 21st Century Fox and focuses mainly on media outlets. The other part of the company focused on the Australian branch of the business, including publishing and broadcasting.

Before the takeover offer of BSkyB was officially being made, the founder of News Corp, Rupert Murdoch had a long history of interactions with the British Prime Minister and other high government officials. On some of the occasions topics indirectly related to the future takeover bid were discussed. For instance, one of them was on 12 Feb 2010, when Murdoch and Jeremy Hunt, a British Conservative Party politician, "*discussed Sky commercial interests including BBC and media regulation*".⁵⁷

⁵⁷ The Guardian; 28 May 2012; "Jeremy Hunt emails: timeline of the BSkyB takeover that wasn't"

On 15 June 2010 Murdoch **first attempted** to take full control over the UK based telecommunication giant BSkyB. News Corp already owned 39% of the company and with the bid intended to purchase the remaining 61% of the business. News Corp made an offer of 675 pence per share and soon has increased that proposal to 700 pence or a valuation of the company for 7.8 billion GBP. However, “*BSkyB said that the new proposal still "significantly undervalued" the company*”.⁵⁸ The independent directors stated that they will not consider the offer unless it reaches at least 800 pence per share as they were expecting other significant profits in the following months.

On that time **government intervention was unlikely** and barriers were not expected to be posed in front of the deal. Financial Times quoted Jeremy Hunt who said: "*It does seem to me that News Corporation do control Sky already, so it isn't clear to me that in terms of media plurality there is a substantive change, but I don't want to second guess what regulators might decide*".⁵⁹ The UK business secretary, Vince Cable, also distanced himself from the speculations that he might intervene in the takeover deal. In addition, by that time “*News Corp is hoping the deal will only be scrutinised at a European level, because it believes it has already passed a plurality test in the UK*”.⁶⁰

However, on 11 October the leading media companies in the UK all signed a letter addressed to Vince Cable where they practically oppose the deal initiated by News Corp. The letter was signed by Daily Telegraph, Daily Mirror, Daily Mail and The Guardian. They stated that the takeover would pose a major threat to media plurality on the island by giving one company an unrivalled power with a dominant position in newspapers and pay TV markets. A leading consultant and analyst in the media industry, Claire Ender, has also sent a 20 page letter to Cable and other ministers to express her concerns regarding the deal and point out the reasons why News Corp’s bid should be stopped. The consequences of that deal would have serious consequences in their opinion and thus they urged the business secretary **to consider blocking the acquisition**.

The board of BSkyB has not yet agreed on the takeover proposal, but regardless of that fact News Corp notified the European Commission of its intentions on

⁵⁸ Sweney M.; 15 June 2010; "News Corp courts BSkyB board with improved offer"; The Guardian

⁵⁹ Fenton B.; 16 June 2010; "News Corp investors back bid for BSkyB"; Financial Times

⁶⁰ Sweney M. & Treanor J.; 15 September 2010; "Vince Cable adopts hands-off approach to News Corporation's BSkyB takeover"; The Guardian

the 3rd of November. However, on the next day Vince Cable changed his mind and made an **intervention notice** through his decision to refer the takeover bid to the regulating authorities. He **ordered** the media regulator Ofcom to review and **investigate the bid** for the proposed transaction between the two media companies. A report had to be made that examined the impact of the deal on the media plurality in the UK and the issues that might occur.

By the end of the year, 21-22 December, the European Commission made its decision and declared the deal to be approved and clear on competition grounds. In the same time the previously responsible for overseeing the deal, Vince Cable was removed of his role after he was secretly recorded to say that he has **declared war** on Murdoch. His place, of a person taking care of competition issues with the deal, was replaced by Jeremy Hunt.

It is interesting to notice that before **Jeremy Hunt** became a minister responsible for the takeover of BSkyB from News Corp, he has written a draft letter to the Prime Minister where he expresses a **support for the deal**, while also expressing his **view on a possible intervention**. Hunt has written “...we must be very careful that any attempt to block it is done on plurality grounds...” and “...if we block it [the deal] our media sector will suffer for years...”⁶¹ In his writing he also shares Murdoch’s concern that the **Ofcom** review demanded by Vince Cable is **not going to be fair**.

First Jeremy Hunt stated that there are no competition issues regarding the deal between News Corp and BSkyB. However later in January, based on evidence provided from Ofcom, he changed his opinion and declared that **there are competition concerns** and therefore the deal might be against public interest in the media plurality. Therefore, he is intending to refer the bid to the UK Competition Commission. News Corp questioned the accuracy of Ofcom’s analysis and claimed it was deficient in a number of ways, but Ofcom argued that their report was rigorous and clear.

In this situation, News Corp has been involved into several discussions with the Office of Trade Affairs and with Ofcom to explain and review its plans regarding BSkyB in details. Jeremy Hunt also had several talks with News Corp and the regulatory institutions. As a result, Rupert Murdoch made the decision to revise his plans on the deal. The new proposal was discussed again between the

⁶¹ The Guardian; 28 May 2012; "Leveson inquiry: Jeremy Hunt and Adam Smith's email correspondence"

same parties and a decision was made by News Corp to spin off Sky News and severed it from BSkyB. This way Sky News would become a separately listed company and significantly lowers the concerns regarding media plurality and competition.

After this decision, Jeremy Hunt has accepted the undertakings made from News Corp and on this basis he would approve the deal since Sky News would become a separate company from the enlarged company for at least 10 years. However a public consultation was launched to gain understanding on the public opinion of the revised deal and later 40 000 responses were gathered, in general expressing opposition.

Regardless of the negative public opinion, the actual greenlight to the bid for BSkyB came on the 30th of June after Hunt officially announced “*that the undertakings to spin off Sky News were still sufficient to ensure media plurality*”.⁶² Meanwhile the share price for the target company has increased and therefore News Corp was expected to have to pay about 1 to 2 billion GBP more than originally. In addition, several members of the parliament from the Labour party declared that they are against the deal due to the phone hacking scandal which was exploding by that time. However, this objection has been dismissed by Hunt and he gave the opposition one week to raise any other objections.

In July the phone hacking scandal in which News Corp was involved, continued to grow along with the public pressure for the deal to be opposed, reaching from 40, now to 150 thousands subscribers in the public consultations. Moreover, News Corp withdrew the undertakings it previously claimed to do if the deal goes forward, which brought back the competition concerns and the deal would again be referred to the Competition Commission. In that situation, the pressure from the UK parliament also increased and more parties claimed to be against the deal to progress.

On **13th of July**, due to a combination of competition concerns and pressure from both the public and the parliament, the US based media conglomerate **withdrew its bid for BSkyB**. At that time, all of the three major political parties were poised for News Corp to withdraw its offer. The corporation’s deputy chairman stated that “*it had become clear that the Sky takeover is too difficult to*

⁶² Sabbagh D., Robinson J. & Sweney M.; 30 June 2010; "Rupert Murdoch finally gets green light for BSkyB takeover – but at a price"; The Guardian

progress in this climate".⁶³ David Cameron also stated that News Corp should focus on its issues with the scandal and "*that must be the priority, not takeovers, so it is the right decision, but also the right decision for the country too*".⁶⁴ A 38 million GBP breakup fee also had to be paid to the UK media company after News Corp abandoned the deal.

4.3. Pfizer takeover bid for AstraZeneca

Astra AB was an international pharmaceutical company with activities focused on researching, designing, producing and selling medicines and medical equipment in general. It was a leading firm in its field founded back in 1913 in the Swedish city of Södertälje. The company was growing quickly expanding to new countries and even taking over other pharmaceutical companies and by doing that it protected itself from acquisition. After 1950 Astra began following a strategy of consolidation by selling all non-pharmaceutical businesses and focused on its core activities. Some very important products developed by Astra were penicillin, anaesthetics and others. By the end of the century, the company was well established in Europe, America and Japan with revenue of nearly 60 million Swedish kroner and over 20 000 employees.

Zeneca Group plc was a younger company established in 1993. The headquarters was located in London, Great Britain and it had three divisions one of which was the pharmaceutical. The company quickly grew and became a leader in its field across Britain. Over the years and by 1998 it had revenue of 5.5 million and about 34 000 employees.

Following the market development the two pharmaceutical giants made an agreement for a deal that was called a merger of equals in December 1998. Both separate companies ceased to exist and went into a common ownership with a name of the new company - AstraZeneca. A compromise was reached regarding the location as the main office was situated in London while the research and development headquarters was in Sweden. The motivation was to create a global leader in pharmaceuticals. The goal was to have a stronger R&D department, sustainable long-term growth, global power and reach, along with maximised

⁶³ Robinson J.; 13 July 2011; "News Corp pulls out of BSkyB bid"; The Guardian

⁶⁴ Same source

shareholder value, etc. Over the years, the company was involved in several acquisitions with a goal to increase their capabilities in developing medicine and innovation.

Today **AstraZeneca** is one of the global leaders in the pharmaceutical field and employs over 50 000 people. In its current situation the company's operations cover most parts of the world with over 100 countries and revenue of 56 billion USD for the year 2014. AstraZeneca has a “*primary focus on three important areas of healthcare: Cardiovascular and Metabolic disease (CVMD); Oncology; and Respiratory, Inflammation and Autoimmunity (RIA)*”.⁶⁵ The key figures are the CEO Pascal Soriot and Chairman Leif Johansson.

Pfizer was established back in 1849 in the United States from two young entrepreneurs, immigrants from Germany. The starting capital was only \$2500 which they used to create a santonin in a shape and taste of a candy. It was their first product which was an anti-parasitic used to treat intestinal worms. This was an immediate success and it launched the company from its start. They continued their growth as the Civil Wars resulted in increased demand for certain medical products so the company broadened its product line and increased the revenues drastically. However, Pfizer's strength and success really came after its started manufacturing citric acid. By the end of the century the company was a leader the United States and their chemical products experienced high demand.

During the next century and during the First World War Pfizer experienced the need to search independence from its European suppliers much needed for the production. As a result they found a new revolutionary method for mass production of citric acid from mould fermentation. In 1942 Pfizer seized to be a privately held company and its stocks were offered publicly on the stock exchange market with 240 000 shares. Later in the same decade, as penicillin became expensive Pfizer discovered a new antibiotic which made the transition from chemical to a pharmaceutical company and boosted their revenues.

The corporation started its international expansion to new countries outside of America in the very start of second half of the century. Their presence in Great Britain began in 1955 with the opening of a fermentation plant. Pfizer sustained stable growth after the discovery of several important medicines like Viagra and Diflucan, etc. During the 21st century Pfizer made several significant

⁶⁵ Quote extracted from AstraZeneca website on the “About Us” page

acquisitions with big and valuable companies such as Warner–Lambert, Wyeth and Pharmacia, which was first announced as a merger but later was completely integrated into Pfizer. These were all part of their overall growth and expansion strategy. Today Pfizer is one of the world’s leading multinational pharmaceutical corporations with revenue of 52 billion USD for the year 2013.

Leif Johansson, the chairman of AstraZeneca **was first approached** by the chairman and chief executive of Pfizer, Ian Read with the intention to **discuss a merger** on 25 November 2013. However on the actual meeting in New York, AstraZeneca received an offer of 59 billion GBP. The offer “*comprises 1.758 shares plus £13.98 cash per AstraZeneca share, a 70pc/30pc split*”.⁶⁶ Pfizer’s real intentions were to acquire the British pharmaceutical giant even though Johansson has already expressed his vision of AstraZeneca’s future as an independent sovereign entity before the meeting. According to AstraZeneca and their board of directors, Pfizer’s offer was significantly undervaluing the company along with its future possibilities and potential. The concerns at that point was mainly that the offer was not high enough and moreover some concerns aroused that Pfizer wanted to re-domicile to the UK by doing that acquisition.

Even though Pfizer stated that it was not interested in continuing the bidding after Zeneca’s rejection of the initial offer, a report in the 20 April’s newspapers revealed that this is far from the truth. A week later Pfizer contacted its target again and asked them to make an announcement that both companies are considering a potential merger agreement. The reaction from Johansson was quite negative as he declared that his company will not make such statement since the offer is not attractive to them, and there is no reasonable motivation for such actions. Regardless of that rejection, Pfizer still made an official announcement that a merger has been discussed with AstraZeneca and an offer with “significant premium” is already on the table.

In addition, it became clear that “*Pfizer stated in its takeover proposal that buying AstraZeneca would help it avoid paying hundreds of millions of dollars*

⁶⁶ Roland D.; 19 May 2014; “AstraZeneca Pfizer: timeline of attempted takeover”; The Telegraph

in tax in the US".⁶⁷ Pfizer revealed to AstraZeneca that the primary motives behind the deal are not only related to Astra's pipeline of cancer treatment but also to **avoid paying taxes in the US**. In other words, moving their domicile to Britain would make it possible for the company to take advantage of the UK federal tax which is almost half compared to the US one. (21% and 35% respectively) On the 29th of April Pfizer's main figures travelled to UK to speak with AstraZeneca and politicians from the British government.

In the beginning of May, Pfizer raised its bid, making its offer higher up to 63 billion GBP, which means 15.98 GBP in cash per share. Along with this bid came an explanation of Pfizer's motivations and goals with the deal, that this time had an emphasis not only on avoiding taxes and regulations, but the ones that are more **beneficial for the interests of the British pharmaceutical giant**. Mr. Read said that he sees a significant "*strategic, business and financial rationale for combining our businesses, with significant benefits for shareholders and stakeholders of both companies*".⁶⁸

In addition, the chairman sent a letter to the Prime Minister of the UK, David Cameron, where the company reassured the government that there is **no danger for the public interests** of the country and added "*a series of pledges to keep jobs and investment in Britain*".⁶⁹ The justification was that if the deal is successful, Pfizer will employ a fifth of its R&D staff in the UK and continue with research and development based in Cambridge that AstraZeneca planned along with keeping their manufacturing plants. If the business environment and other factors remain more or less the same, or at least without fundamental changes, these promises would be valid for at least the next 5 years after the deal is made. Overall Pfizer was making efforts to convince both AstraZeneca and the UK government that the deal they propose is in the best interest of the target company as well as the country and the public interests.

Basing its position on the same arguments as before, AstraZeneca again rejected the offer. According to the British company, Pfizer was still undervaluing their business and potential. The shareholders believed in the long-term perspectives

⁶⁷ Neate R.; 28 April 2014; "Pfizer's AstraZeneca takeover would give US firm substantial tax benefits"; The Guardian

⁶⁸ Pfizer website; 2 May 2014; "Pfizer Confirms Delivery of Increased Proposal to AstraZeneca"

⁶⁹ Roland D.; 19 May 2014; "AstraZeneca Pfizer: timeline of attempted takeover"; The Telegraph

and benefits that AstraZeneca could have as well as the leadership skill of the new chief executive, Pascal Soriot, since the share prices have increased in the past few years of his presence. The board also mentioned their concerns regarding the complexity that changing the domiciliation of Pfizer to the United Kingdom would pose.

By that time, in the political environment there were already discussions about a possible government intervention into the Pfizer-AstraZeneca deal. Therefore the Institute of Directors in Britain warned that an intervention would send a negative signal to the world, which **will put into question the liberal economy and market** of the UK. “*Government intervention to block an acquisition would send a disastrous signal internationally that Britain was **no longer a free and open trading nation** where the market will drive business, but an economy increasingly driven by the edicts and whims of politicians who choose to intervene on political grounds*”.⁷⁰ In the long-term intervening to block one deal would in their opinion have a negative effect on the whole economy by questioning the **business and market freedom** in front of the world.

The institute also argued that AstraZeneca is **not the national champion** that the UK politicians speculate that it is. Instead they stated that it is misleading to call it a national champion since it is an international company formed through several cross-border M&As. In addition, many of its shareholders and investors are not British, and most of the employees working for AstraZeneca are located even outside of Europe. This was emphasised by the Institute’s director of corporate governance – Dr Roger Barker. He also added that the cautions over the real motivation of the acquirer in an M&A deal should come from the companies’ directors rather than the government. “*The Takeover Code was revised after the Kraft takeover of Cadbury to make this wider responsibility of directors clear*”.⁷¹

On the 4th of May, the leader of the Labour party and the opposition in the UK, Ed Miliband blamed the Prime Minister for acting as a cheerleader for Pfizer’s takeover proposal. The **politician intervened** because in his opinion the assurances given from the US pharmaceutical company in regards to protecting the interests of Britain and AstraZeneca were short, inadequate and uncertain. He believed that the biggest takeover in UK history **has to be stopped** as

⁷⁰ Armistead L.; 2 May 2014; “Pfizer-AstraZeneca offer: IoD warns intervention 'disastrous' for Britain”; The Telegraph

⁷¹ Same source

Pfizer's "pretty dubious record" was giving reasons to be concerned about potential **loss of high-quality jobs and threatened national interests**. Moreover, "*the Labour leader called for a widening of the current public interest test to protect a company that is vital to the British national interest*".⁷² This refers to the public interest test that is undertaken by the Office of Fair Trading (OFT) and the Competition Commission (CC) to assess whether an M&A deal should be prohibited. In other words, he wanted the **takeover offer to be evaluated in more details** if it is truly in the national interests of the UK.

Meanwhile AstraZeneca was developing a defence strategy against Pfizer's takeover attempts. They wanted to highlight the company's future potential as an independent company and revealed that their strategy and the drugs which are in a process of development are going to result in doubled revenue in the following years. A target of 45 billion USD was set until the year 2023.

The UK government business secretary, Vince Cable along said he was "*prepared to invoke a public interest test even though that would involve a change in the law*".⁷³ By that time life sciences and biomedical science were not covered by that test and the protection of AstraZeneca's research and development base was a primary concern. Both Vince Cable and David Cameron demanded stronger assurances from the US pharmaceutical giant due to **political pressure** as well as concerns regarding **job losses** and cuts in UK science research.

Lord David Sainsbury, the former science minister, made a much more straightforward announcement directly saying that the acquisition by Pfizer must be **blocked by the government**. "*I am not in favour of the takeover of excellent and strategically important British companies by struggling foreign firms whose actions are fuelled by tax avoidance, and who want to asset-strip the intellectual property of the British company and then dismember it*".⁷⁴

In this heated atmosphere, Pfizer's CEO tried to convince everyone concerned that the takeover would be **beneficial for AstraZeneca and the public interests** in general. Ian Read also praised both Zeneca's and UK's science and

⁷² Watt N.; 4 May 2014; "Miliband: Cameron is a cheerleader for Pfizer takeover of AstraZeneca"; The Guardian

⁷³ Watt N.; 6 May 2014; "Vince Cable demands detail on Pfizer-AstraZeneca takeover proposal"; The Guardian

⁷⁴ Sainsbury D.; 8 May 2014; "Pfizer's takeover of AstraZeneca must be blocked"; The Guardian

research hub. However, several days later, on 13 and 14 of May he was quizzed in the British parliament about further details and assurances on the deal. Then he admitted that the deal would indeed result in job cuts and reduced research spending. The defence from AstraZeneca even argued that the delays in drug development, which would result from such takeover, would put lives at risk.

A politician from the Labour Party, Chuka Umunna, threatens that if his party wins the general elections, he would **block the takeover** of AstraZeneca. On 16 May, Pfizer approached its target with an offer of £67.5 billion in cash and shares during a private discussion between the boards. Ian Read made efforts to assure AstraZeneca that they would work for the best of both companies, as well as stating that no anti-trust or other concerns are expected to appear as an additional complication for the deal. Meanwhile, government officials were negotiating for an amendment in British terms with Brussels. The topic was that the UK government's public interest test **allows only ministers to block acquisitions** in case the national interests are concerned.

Two days later, on 18th of May Pfizer made its official and what claimed to be **final offer** to AstraZeneca. This offer valued the company at 69 billion GBP with 55 pounds per share. Pfizer again emphasised that this deal would make the combined company a world's leader and together advanced medicines could be discovered. In addition, they claimed that there are **no plans to go hostile** on this bid if AstraZeneca rejects the offer.

Even though AstraZeneca had one week to give their response to Pfizer's offer, the British based pharmaceutical company quickly **rejected** their bid on the very next day after the offer was made. AstraZeneca's chairman stated that Pfizer's desire for the deal was "*driven by the corporate financial benefits to its shareholders of cost savings and tax minimisation*". In their opinion, even though the offer was 10 billion GBP higher than the original one, it was still undervaluing the potential and value of AstraZeneca as an independent company. According to him, the deal was also raising concerns about the company, its employees and the life-science sector in the UK. After this event, according to British rules there has to be a **cooling off period**. "*AstraZeneca could reach out to Pfizer after three months and Pfizer could take another run at its smaller British rival in six months' time, whether it is invited back or not*".⁷⁵

⁷⁵ Reuters; 26 May 2014; "Pfizer gives up on AstraZeneca deal after offer is refused"; International Business Times

5. Discussion and Analysis

5.1. Overview

Starting with an overview of the three previously presented case studies, it can be said that they have some things in common. What is immediately **obvious and certain** is that we have three M&A deals where companies based in the *United Kingdom are the targets*. All the cases involved big *international companies* with operations spanning beyond national borders. They employ a vast amount of people, offering *many jobs* in the countries in which they operate and are reporting *significant revenues*. Moreover, there are indicators that in each of the cases there has been *some government intervention* done in various ways. And last but not least, the events of all three cases which took place *in most recent years*.

These facts were also the reason why these particular cases were selected. However this information alone is not sufficient in order to make an investigation and understand what are the visible and underlying reasons for government intervention in the UK, to what extent it went and in what way did the intervention happen. To understand that we need to take a closer look in these cases and see **what is not immediately obvious**: what were the *claimed* and what seemed to be the *real motives* behind the deals; what were the *expected consequences* and *effects* of each deal on the society, business and country; and what was the *exact type of deal*, because even this could bring a discussion.

Before moving on motives, effects and type, it is important to mention **the role that time played** over the years. In chronological order first, the events of Kraft-Cadbury case took place between August 2009 and January 2010. Second, come News Corporation's attempt to take full control of BSkyB in the time between June 2010 and July 2011. Finally, the newest case is the one between Pfizer-AstraZeneca which began in November 2013 and ended with Pfizer's final proposal on May 2014.

It is important to indicate the dates when each of the cases took place. This is due to the fact that it could be argued that **over the course of time** the UK government became more and *more reluctant* to approve these deals and its

position was stated with less and *less hesitation* after every deal. The events from Kraft-Cadbury case, for instance, were later reminded as a proof why the government should intervene in Pfizer's attempt to AstraZeneca. In addition, some *laws and regulations* have also been *changed* as a consequence of some of the deals.

However, the most *important change* over the course of time was **the understanding** that both the public and the government had about these deals, due to the experience they were gathering after each and every event. After the first case, back in 2010 and as a result of the enormous public and political pressure to oppose the deal, there were even calls for the UK parliament to introduce an *economic protectionism policy* when there are cases of large companies taking over valuable British firms. The Guardian also indicated that “*politicians of all persuasions are beginning to question the cumulative effect of Britain's relatively open market in corporate control*”.⁷⁶

In 2012, after the first two of our M&A cases, in a part of the response to the Kay review, for instance, the UK government stated that it would “*take a greater interest in mergers and acquisitions*”⁷⁷ involving British companies. In that sense it could be argued that by the time the last case took place, when Pfizer approached AstraZeneca, the climate for such deals have become **more unfavorable** for the American pharmaceutical company, compared to what it could have been if they have attempted the same deal several years earlier, before Kraft-Cadbury. However, this sole factor *cannot be enough* for a deal to go smoothly as other factors, which are more difficult to predict and understand, have proven to play a more important role in the government's decisions.

5.2. The Type of Deal

The exact type of M&A could also bring a discussion since it is **not clear in all cases** if it was an attempt for *merger or an acquisition* and therefore if it was *hostile or friendly*. As it has been explained, a merger of equals implies that both sides of the deal would benefit of such agreement. The boards of directors of both companies see the potential benefits and synergies that could be realised

⁷⁶ Roberts D.; 18 January 2010; "50 reasons to fight Kraft"; The Guardian

⁷⁷ Department for business innovation & skills; 2012; “Ensuring equity markets support long-term growth”

from the merger and thus it should be in the best interest of the companies and their employees. Similar conclusions could be made for a friendly acquisition, although to a lower extent, as the managerial team and chairman agrees to the offer. However if the deal is a hostile takeover or if a claimed merger is in reality a takeover, then it is possible for the government to make the decision to protect the target company, which is in weaker and more unfavourable position.

Cadbury - Kraft

In the first case, the American food processing conglomerate, Kraft tried to acquire the British confectionery company Cadbury. From the very beginning their intentions were to engage in a takeover. Cadbury's board of directors and chairman *did not agree to this proposal and never even considered it*. They assembled a defence team as soon as Kraft made their proposal public and it became clear that they intend to continue with the attempt regardless of the initial rejection of the bid. It is clear that deal between **Kraft and Cadbury** was a **hostile takeover**. At the end the offer was significantly higher than the original one, but the board again did not agree and the bid was directed to the shareholders. Certainly after the transaction was closed, all the key people in Cadbury were dismissed.

News Corporation - BSkyB

The proposal of **News Corp to BSkyB** came several months after the Kraft acquired Cadbury and was an interesting case because the chairman of News Corp already owned nearly 40% of the target and was a key figure in its board. The intention was to gain full control over the rest of the company. In addition, the American giant was much bigger, had a stronger position and it was obvious to everyone that BSkyB would be swallowed by News Corp. So it **was indeed an acquisition**, but the question is whether it was hostile or friendly.

Rupert Murdoch was also the owner of Sky that merged with BSB to form BSkyB. The fact that he owned 40% of the combined company that he approached with a takeover bid automatically means that 40% of the board of directors agreed to that offer. Therefore we can say that this was **not an entirely hostile bid**. However the rest of the board rejected that offer demanding a higher price per share and thus it **was not friendly either**. *We never really came to see whether the board would accept a revised offer* because over the next months there were regulatory and competition issues. By the time these issues were

cleared and the deal received a green light to proceed in a hostile or friendly manner, News Corp decided to withdraw their bid for the company.

Pfizer - AstraZeneca

In the most recent case between **Pfizer and AstraZeneca**, the Anglo-Swedish company was approached with an **offer for merger**. The chairman of Pfizer continued to refer to the deal as a merger throughout the entire span of negotiations. However *no one else* saw the potential deal as a merger. The media, the public, the government and the target company itself, they were all naming Pfizer's offer as a **takeover attempt**. Pfizer was *twice as big* as AstraZeneca in terms of operations, revenues, employees and every other aspect, and it was obvious that they do not have equal strengths and *the real intention was not a merger*.

Moreover, AstraZeneca expressed **no intention** to make a deal with Pfizer during the entire period and the board quickly *rejected all bids* made from the American company. Regardless of the fact that the target's board had no desire to negotiate a potential deal, Pfizer continued to make offers. As a result, the potential deal was not only seen as a takeover attempt, but it also became clear that if the acquisition takes place it would be **a hostile one**. An agreement from the board was not an option and as stated from Lord Sainsbury the possibilities are either to leave the decision to the shareholders or for the government to stop the deal. Less than one year ago, when Pfizer made their "final" offer to AstraZeneca, the company again claimed that it will not go hostile if the bid is rejected. However, the entire process was hostile since Zeneca's board showed no intention to consider accepting the deal at any time. The required cooling-off period expired by the end of 2014 and it is still too early to say whether Pfizer will keep its promise or it will approach the UK company again.

5.3. Motives and Goals

What plays an important role in these types of deals and determines the reaction from the government are **the claimed and actual motives and goals** that the initiator wants to achieve with the deal. The motives themselves can show a lot about what could be expected to happen from a certain deal. In general, it could be assumed that the motivation behind every M&A deal is to maximize

shareholder value and achieve some sort of *synergies*. These and other motives were discussed in the literature review but it is important to see what the goals of the companies from the presented cases were.

Cadbury - Kraft

Kraft's takeover of Cadbury was a milestone in its **long-term growth strategy**. They were aiming at rapid growth, product range expansion and new market development. Throughout its history Kraft had undertaken a series of acquisitions with other companies in the food business and had also expanded into Europe and Scandinavia with several acquisitions with confectionary giants. With the takeover of Cadbury, the American conglomerate gained control over nearly 15% of the global confectionary market. Kraft *claimed* that they wanted to take advantage of the **distribution channels** that Cadbury had established in some developing markets like Brazil, India and Mexico, where Kraft did not have strong positions by that time.

News Corporation - BSkyB

For **News Corp** the **acquisition of BSkyB** was again part of a **long-term growth strategy**. The takeover was a milestone which would allow them to integrate other important entities into their already huge empire, such as Sky Italia and Sky Deutschland. Moreover, "*the company needs the deal not just to find a home for its cash resources but to manage its current broadcasting assets more efficiently*".⁷⁸ The global satellite and integration strategies would not be possible without having full control over BSkyB.

Pfizer - AstraZeneca

In the last case, **Pfizer** claimed that its motives and goals through the **deal with AstraZeneca** "*would create the world's biggest pharmaceutical company, with the expertise to use scientific advances to find new medicines for cancer and other major diseases and the heft to navigate increasing pricing pressures*".⁷⁹ Pfizer had made efforts to put the emphasis on the side of their goals which is the most beneficial for their UK target company. The American company wanted to prove that the deal would be in favour of both side and therefore the

⁷⁸ Pratley N.; 11 July 2011; "News Corp needs all of BSkyB"; The Guardian

⁷⁹ Rockoff, J. D. & Raice, S.; 18 May 2014; "Pfizer Sweetens Bid for AstraZeneca"; The Wall Street Journal

government does not need to worry since it is in the best interest of everyone involved.

However Pfizer have already made the mistake to mention to AstraZeneca that the deal would allow them “*to take part in a recent trend of so-called **tax inversions**, under which it could reincorporate in Britain and pay significantly lower corporate tax*”.⁸⁰ Pfizer would also have the possibility to use billions of pounds from offshore point and avoid paying the higher US taxes for repatriating these resources. The tax inversion would not be possible without the takeover of AstraZeneca, since the US tax laws require at least 20% of the company to be of non-US ownership; otherwise it cannot relocate itself outside the States. This lead the UK target, government and public to believe that the highest desire on Pfizer’s list of motives and goals was its **tax-avoidance** strategy and thus the American pharmaceutical company was not concerned with the well-being and development of AstraZeneca but it was instead just using it as a **tool** to make savings.

In the **first two cases** the claimed and immediately visible **motives** were **not particularly harmful** to the UK side. However they were **also not beneficial** as these takeovers seemed to mainly serve the selfish interests of the acquiring companies and were not intended to contribute to the development of the target firms. The same issues could also be refer to **the last case** but there the primary focus and argument in favour of blocking the takeover attempt from both the target company and the government was the fact that Pfizer wanted to **avoid taxes**. Therefore the assumption followed that there would be no benefit to the UK side since the deal is only a tool for Pfizer to follow its own financial deeds.

5.4. The Consequences - Beneficial or Harmful

In general, the fact that the specific type of deal suggests that it would be beneficial for the company alone is not enough proof to be sure that it really would. And even if a certain deal is beneficial for the target company it does not necessarily mean that it would also be beneficial for the whole industry,

⁸⁰ Berkrot B. & Hirschler B.; 26 May 2014; "Pfizer walks away from \$118 bln AstraZeneca takeover fight"; Reuters

economy, society or country. This is one of the reasons why the deal is revised and analysed to see whether it is in **the public interests**.

What were perhaps the most important reasons for government intervention also in these cases were the perceived and possible **consequences and effects** that these acquisitions might have on the society, the competition, the target companies, the UK industry and economy, etc. These consequences are, of course, closely related to the motives, goals and type of deal.

Cadbury - Kraft

In the case of the hostile GBP10 billion **bid of Kraft** towards the British chocolate maker Cadbury, there were concerns present related to the consequences of the deal. As it has been described, there were concerns that Kraft is aiming to reduce its expenses with this takeover and therefore Cadbury and the UK will be the negatively affected side. The British Business secretary, Lord Mendelson expressed his concern that Kraft was just aiming to make some “*quick buck*” with the deal. The issues which were mainly addressed were related to the possible huge **job losses**, closure of plants and overall **unemployment** rising.

By paying attention to the public warnings and *announcements made by the government representatives* in the media, Kraft quickly realised what the concerns were related to. It also became clear that there would be a *huge opposition* from the local population, the workforce and the government. That is why, when the American acquirer published its official document outlining the deal, he used the occasion to **offer strong assurances** to the UK on the troublesome topics. Kraft tried to convince both the British people and the government that *their motives and thus the consequences* related to this deal are **not harmful** to the target company, the society and public interests, etc. the executive vice-president of Kraft stated: “*I am very optimistic that the vast majority of our synergy savings will come from things that do not affect jobs*”.⁸¹

This and other similar promises, centred on the claim that the UK will be the “net beneficiary” from the deal, were in fact the reason why the deal was allowed. Kraft’s chief executive also stated that the company has great respect towards the brand, people and history of Cadbury, as this was much needed having in mind the UK’s warm feelings toward their favourite chocolate maker

⁸¹ Kanter J.; 25 January 2010; "Procurement cuts to save Cadbury jobs"; Supply Management

with almost 2 centuries of history in the country. The government and therefore the regulatory authorities were searching for exactly this kind of pledges and guarantees to convince themselves that the takeover should be allowed to proceed. In the Cadbury-Kraft case there were **no** monopoly and **competition issues**, otherwise other regulations and institutions would have been involved and therefore more and different assurances or changes to the deal would have been required if the takeover was to be allowed.

News Corp. - BSkyB

In chronological order the second case was between the media giants **News Corp and BSkyB**. *In the beginning*, when the offer was made and publicly announced there were **no barriers and issues** expected to be posed in front of the deal, according to the statement of the culture secretary Jeremy Hunt. This was at least the position from the UK side and the chairman of the American company, Rupert Murdoch, quickly referred the deal to the European Commission to ask for approval.

Having in mind the events by that time, this statement and initial good-will from the UK government could be explained by a few facts. To begin with, the News Corp's chairman *already owned 40% of the target company* and both he and Hunt thought nothing much would change after the deal in regards to competition and media plurality. On the other hand, prior to the deal Murdoch had already spoken in private to Hunt any other key figures from the government "about politics and media plurality", therefore it could be speculated that he has *gained their trust and good-will*.

In the following months the environment changed. *All the other major media* in the UK wrote a letter to the business secretary declaring themselves against the deal and **asking** the government **to consider blocking the deal**. Following the pressure from the public and the media, the business secretary made an intervention notice and referred the deal to the UK competition authorities, but he was replaced by Hunt after he "declared war" on News Corp.

The *European Commission* approved the deal on competition grounds but with a combination of *public disapproval and pressure from the media*, **the government did not want to approve the deal**. Therefore, the Ofcom and the Office of Trade Affairs found that the deal could be against the public interest on competition grounds regarding the media plurality and the business secretary said he will demand the bid to be reviewed by the Competition Commission.

They were putting pressure on News Corp and it became clear that **the deal would not be accepted**. A clarification can be added that the European Commission approved the deal on competition grounds in general, but the specific issue of media plurality (i.e. in the specific industry) were a matter of UK authorities.

Overall the deal between News Corp and BSkyB was not approved because it was considered **against the public interests on competition grounds**. News Corp was forced to change the terms of the deal to avoid media plurality issues by suggesting a spin-off on part of the target. Thus this *revised deal was accepted* on competition grounds but it was already a different deal that is reviewed. However, by that time the phone hacking scandal was growing and News Corp lost the trust of the UK people and government. In that sense the acquisition of News Corp was against the public interests since, as Lord Prescott said, Rupert Murdoch was not considered to be the “*fit and proper person to be purchasing such an organisation*”.⁸²

It is not known what would have happened with the revised deal if News Corp has proceeded, because they **withdrew the bid** for the UK media company. BSkyB’s board of director did not have the chance to give their approval or disapproval before the bid withdrawal, thus even the deal type is not known for sure. In the beginning, when the offer was officially made, they agreed to negotiate the price with News Corp. This is something that the target companies’ boards did not do in the other two cases; therefore the deal between the media giants was the only one that had a chance to turn out as a friendly acquisition. However, having in mind that BSkyB’s board asked for a much higher price than what was initially offered, it is therefore not known what would have happened in the end. We could only speculate whether NC would have gone hostile if the independent directors have not agreed to the price or the deal itself.

Several members of the parliament and other key figures declared themselves against the deal since Murdoch was considered not to be the “proper” person. Therefore, it is possible that the government would further intervene, if News Corp had not withdrawn their bid, by returning the deal to the competition authorities or maybe even finding new arguments for which the deal is against the public interests of the UK. However, *the easiest way to block* an unwanted

⁸² Sabbagh D., Robinson J. & Sweney M.; 30 June 2010; "Rupert Murdoch finally gets green light for BSkyB takeover – but at a price"; The Guardian

deal *in the media industry* is on plurality grounds. It is even based in the European Commission M&A regulations that a country is always allowed to take the “*appropriate measures*” to protect its **legitimate interests** like national security and *media plurality*, etc. In that sense, it is useless for News Corp to insist on moving forward with the deal with BSkyB since there were enough indicators to show that the government is not in favour of that deal anymore and it is explicitly allowed to block it by law as it concerns a media company.

Pfizer - AstraZeneca

In the **Pfizer-AstraZeneca** case the concerns about the consequences and effects of this deal were directed to *several different areas*. Firstly, **the job security issue** of AstraZeneca’s staff was brought up for discussion. The politician, Chuka Umunna, pointed out that jobs can be threatened regardless of the fact that Pfizer offers pledges to keep them. The justification was in previous mergers and acquisitions that the American company was involved back in its history. All the mergers ended up being acquisitions and the target companies have suffered heavy job losses.

Pfizer tried to defend itself and tried to convince the UK government that these were decisions made because of the challenges they have had by that time, every case is a different situation and now it would be different with AstraZeneca. Other countries like the USA and Sweden also expressed their concerns in relation to the possible job losses since AstraZeneca was an international company with thousands of employees in many countries outside the UK.

Moreover, AstraZeneca was presented as a **national champion** by Chuka Umunna and other politicians. There the argument that it is too valuable for the UK to allow another company to acquire it: “*Do we really want a jewel in the crown of British industry, our second biggest pharmaceutical firm, to basically be seen as an instrument of tax planning?*”⁸³ This argument was later criticised by the Institute of Directors as they said that AstraZeneca cannot be a national champion since it is a multinational company formed through other M&As. Regardless of the fact that it was discarded, this argument tells us a lot about the feelings the UK had towards its pharmaceutical company and represents the high value it had.

⁸³ Ahmed, K.; 2 May 2014; “AstraZeneca rejects new Pfizer offer”; BBC News

In addition, there was the concern related to **the entire UK pharmaceutical industry** as AstraZeneca had extensive research and development operations in the country. The American company stated that AstraZeneca would be broken up and its assets put into Pfizer's three divisions, one or more of which could be sold off. A five year valid *pledge was given* to keep at least 20% of AstraZeneca's R&D workforce, but that was not enough for the UK and the prime minister required more security for the British *workforce, science and investment*.

A member of the Labour party and a former minister of science and innovation, Lord David Sainsbury, was the person who **explained** everything related to the deal and addressed most issues by speaking **clearly and openly** by the end of the events in May 2014. He said that he is in proud of the UK as an open trading country and is in favour of struggling British companies to be acquired but not the healthy ones. Therefore the UK is a free economy only as long as it is in their best interests; otherwise foreign takeovers should be blocked.

"I am not in favour of the takeover of excellent and strategically important British companies by struggling foreign firms whose actions are fuelled by tax avoidance, and who want to asset-strip the intellectual property of the British company and then dismember it".⁸⁴ Here in one sentence he addressed the issue related to Pfizer's *motives and goals*, the fact that *foreign* takeovers are even more unwelcome than domestic ones, and also that the *consequences for the target company* would be harmful as they would just use AstraZeneca as a tool and exploit it without contributing to its development.

Lord Sainsbury also pointed out what was already becoming clear by announcements from other government representatives or one could have guessed or expect it. There were three possible courses of action regarding Pfizer-AstraZeneca deal. First the government could **ask** for even **more assurances** from Pfizer but that was not giving the wanted results so far. Second, the **decision** for the deal could be left **to the shareholders** in case of the offer going hostile which was already expected. Or third, the government can **intervene and stop the deal**. The author agrees with all these statements and he understands and interprets the events surrounding Pfizer-AstraZeneca case in the same way.

⁸⁴ Sainsbury D.; 8 May 2014; "Pfizer's takeover of AstraZeneca must be blocked"; The Guardian

Sainsbury also gave a suggestion how the deal could be stopped by the government by using the legal possibilities and without breaking any rules. The UK can intervene by insisting from the European Commission that the deal is reviewed by British authorities in the context of protecting its legitimate interests. In that case, the EC will review the deal only for possible competition issues, while the UK government could hinder the deal on the basis of its legitimate interests. “A *legitimate interest* could be the *potential negative impact of the merger on the UK's research base*”.⁸⁵ It has also been revealed that this option was also considered by the secretary of state in case Pfizer insists on moving forward with its offer.

It is important to mention that some of AstraZeneca’s main shareholders were actually in favour of the deal and they expressed their discontent from the board when the negotiations went into the cooling-off period. In that case, it is possible that Pfizer would receive enough support from the shareholders in case the decision to proceed was made. For that reason the government was getting ready to intervene and stop the deal and it also made a lot of warning to Pfizer implying that this would happen. Perhaps this was the reasons that led the American pharmaceutical giant to its decision to make a final offer and stop with its attempts at least for the moment.

5.5. Economic patriotism

Again related to how *beneficial or harmful* the consequences of a merger or an acquisition would be, and therefore the likelihood of government involvement, is the **significance** of the deals. On the one hand, all the cases involved big *international companies* with operations spanning beyond national borders. They employ a vast amount of people, offering *many jobs* in the countries in which they operate and are reporting *significant revenues*. They were important businesses for the development of the whole sectors and industries in which each of them operated.

On the other hand the significance of the three deals came from the fact that these were all **well-known and valued** British companies. The public and

⁸⁵ Sainsbury D.; 8 May 2014; "Pfizer's takeover of AstraZeneca must be blocked"; The Guardian

therefore the government would show greater interest toward deals where famous companies with *long history and background* are the target. The statement of the Business Secretary, *Lord Mendelson*, in relation to the first case reveals a lot about the strength of the UK feelings towards a well-known domestic company, such as Cadbury. He declared that “*the British government would scrutinise a **foreign** buyer to ensure that 'respect' was paid to Cadbury's proud heritage*”.⁸⁶ A well-known company with a long history in a country would indeed have a “*proud heritage*” and would have become **a symbol** for the people. This is *another reason* why the government and public are **reluctant to accept an acquisition**.

This, on the other hand, is just more proof in relation to the argument that the exact **type of deal** is an important factor in determining the likelihood of government intervention. A merger would have preserved the UK symbol that Cadbury had become. However, a takeover means that the company **seizes to exist**, along with its name. In that way the valuable and precious company is lost and this triggers an *emotional response* from the target companies' country.

We knew from previous researches done, and presented in the literature, that foreign bids were not favoured, compared to the domestic ones, in all countries in Western Europe, including the UK. In the cases reviewed in this paper, the *foreign takeovers received a lot of opposition* which can also be attributed to that fact that they are foreign, and this is in accordance with the expectations of the author. However in the cases there were also facts and specific statements from government officials, which specifically proved that the fact that these were **cross-border** deals was **not in their favour**.

For example, the earlier quoted statement made by the Business Secretary on the UK, *Lord Mendelson*, in relation to Cadbury, included the adjective “*foreign*” as a reason why he is against the deal. This was noted by the critics and later he specifically “*denied there was any blanket opposition to foreign buyers*”.⁸⁷ This denial can even arguably prove the opposite to be truth. Another example was when *Lord Sainsbury* made a clear distinction between “*foreign*” and any other type of companies, in relation to Pfizer's attempt, by saying that he is against the takeover of strategic British companies by foreign firms which goal is tax

⁸⁶ The Economist; 19 January 2010; "Kraft and Cadbury: Chocs away"

⁸⁷ Macalister T. & Clark A.; 4 December 2009; "Don't try to make a quick buck from Cadbury, Mandelson tells Kraft"; The Guardian

avoidance. The list of examples demonstrating the different attitude towards domestic and foreign bids can continue but the point is already proven.

The bigger the companies involved in the M&A deals, **the bigger the consequences** and impact will be on the society, industry, competition and economy, etc. Not only that this introduces higher complexity and more regulations related to the deal, but it can also be the driving force for important changes that will influence the outcome of all the following deals in the future and even smaller but similar ones. Such changes can range from the society and government's perception on why these kinds of deals deserve intervention, to the actual changes in institutions and regulations.

5.6. Framework

The purpose of the case study analysis was to build some overall explanations of the issues of interest for this research. This is done by creating a general explanation and understanding that fits each of the individual cases, even though they have their differences. After analyzing the events from the empirical cases in the context of the British government intervention, it is now necessary to tie together these findings with the information presented back in the literature review chapter and see how they both relate.

The literature review served the purpose to introduce, essentially all the information, theoretical basis and researches leading to and needed to know in order to understand the research questions and the problem formulated in this thesis. This included the explanation on what mergers and acquisitions are, why they happen, what motives and goals are they after, and what their purpose is. The information given helped to understand why M&As can fail and see on what step of the process does the government intervention occur, as it presents one of the reasons for failing. It was important to understand what consequences and effects these deals might have and link them to the issue of government intervention. It has been described how a given government might intervene in a deal, what is the reasoning behind this action and what effects it might have.

All the information, theoretical basis and researches available have been presented, but unfortunately the issue of investigation has not been researched enough. There are no comprehensive frameworks previously developed to

explain the issue on government intervention from an all-embracing point of view.

In this situation, an attempt will be made to summarize all the previous gathered knowledge on the topic and tie it together with the UK government intervention patterns observed in the three cases. This will be done in a theoretical, logical, legal and practical point of view. The missing gaps will be filled where needed by making an educated guess based on the available information, which is in accordance with the systematic approach and abductive reasoning chosen for this qualitative research. The result would be to propose a scheme that summarizes the possible reasons that can lead to the decision of a government to intervene in M&As. These reasons will be related to the actions taken by the government along with its institutions or in other words, the certain form of intervention that is likely to be expected in each of the specific M&A scenarios that will be identified. All these points will be illustrated into a comprehensive framework.

Quantitative researches made on a large number of M&A bids in Western European countries have been presented in the literature review. They have showed that foreign bids have faced opposition from the government significantly more than domestic ones, and thus there is presence of economic nationalism in these countries. On the other hand, it has been argued that cross-border M&As have been reasons for concern because the perception of the people is that foreign companies are less physiologically and of course physically attached to the host country. This leads to the belief that the foreign companies can more easily take the decision to harm the host economy and industry with its actions. In addition, in the cases presented there were also facts and specific statements from government officials, which specifically proved that the fact that these were cross-border deals was not in their favour. Therefore a distinction has been made in the framework between **cross-border and domestic** M&As.

The distinction between **merger and acquisitions** in the framework, as well as between a **hostile or friendly** takeover has been made based on similar reasons. The type of deal in that sense is considered in relation to whether the deal is in the best interest of the target company or not, since this is another question which determines the reaction from the government. It has been explained that the companies participating in *mergers* have the willingness to combine their assets, activities and organizations, and unlike in *acquisitions* should be of more

equal strengths and rank. On the other hand, in the *friendly* deal the board of the target company agrees to the transaction and in the *hostile* they do not. Therefore the companies' interests and future are considered to be more threatened and therefore in need of protection in the case of acquisitions rather than in mergers, and in the case of hostile offers rather than in friendly ones. The board of directors is believed that should and will not agree to participate in a deal which is against the best interest of the company.

In addition, patterns supporting this understanding were also observed in the three empirical cases. Some of the statements made by government officials have given indications to believe that some of the concerns leading to these interventions were directly related to the type of deal. More specifically, the concerns from the UK side were linked to the anticipation and fear that these deals might at the end turn out to be hostile instead of friendly takeovers (in the first two cases) and more importantly to be acquisitions instead of mergers (in the last presented case).

Finally, one of the most important factor determining the government intervention according to the author has been chosen to be, whether the *consequences* of a merger or acquisitions will more **beneficial or harmful**. The legal framework in EU and the UK has defined *public interests and legitimate interests* in relation to M&A deals. These definitions have been changing their meaning and content over the years. However, regardless of the current legal definitions and having in mind the consequences and effects of these deals, it could be said that the government will be concerned whether an M&A would be in the *best interest of the society, the competition, a specific industry or sector, and the whole economy of the country*. In other words, if the consequences and effects would be beneficial or harmful for all the subjects involved. These consequences could be viewed in a separate context, but of course, one should bear in mind that they are related to and their effect could be multiplied by the type of deal or the motives and goals, etc. The close relation between these different factors has been easy to see throughout the analysis.

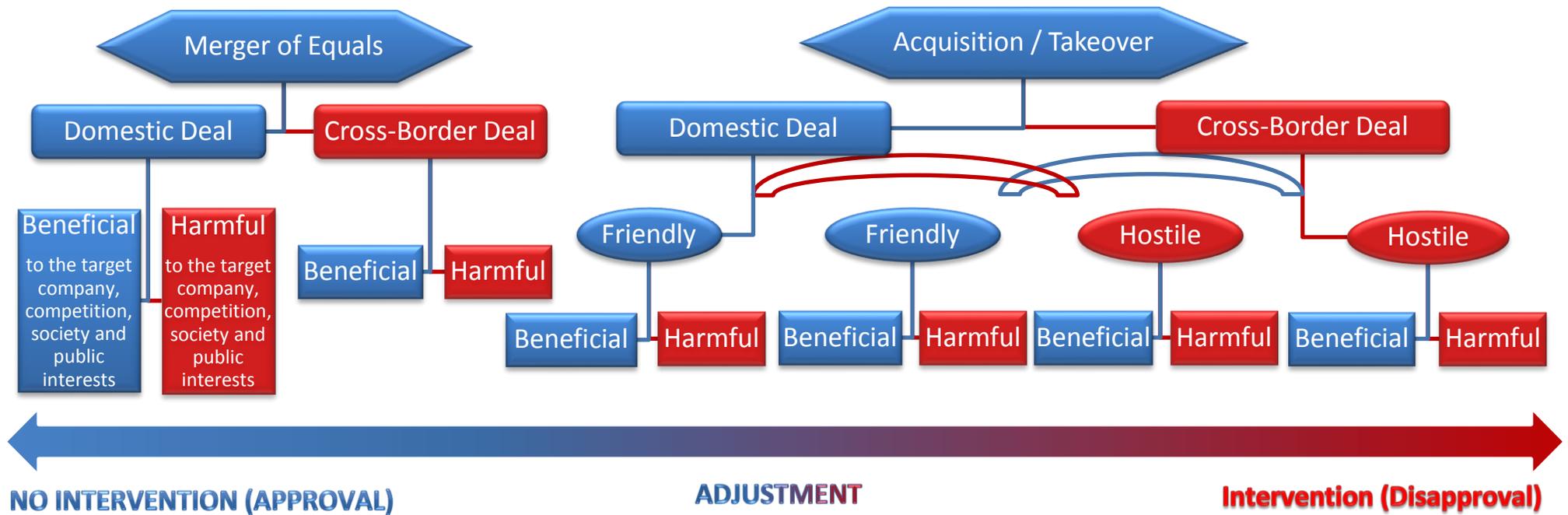
As it has already been mentioned, these different points and topics have been identified, discussed or researched in separate context, but so far the literature has failed to present how they are related in a comprehensive typology. In this framework, the author has taken all the points and has organized them together over **a scale** from highly possible government intervention on the far right to slightly possible on the far left, i.e. *approval to disapproval*, while the need for

required *adjustment* is placed in between. In addition, it has been identified that the *government intervention, as a possible reason for M&A failure, occurs on the pre-deal negotiation phase*, thus the framework is related to this stage in particular.

Following the logic from the proposed framework, the author has decided to illustrate on a separate figure the nature of the reasons for government intervention and the way in which it is imposed. It is suggested that the objective nature of the government intervention consists of the reasons that could be justified by the legal framework and facts, while the subjective one refers to the perceptions and assumptions made, as well as the issues of trust or personal opinion of the key figures responsible. Regardless of that nature, the combination of these reasons results in an intervention that can take different forms that have been organized in the framework in relation to their severity.

The author perceives the severity of a government intervention as to how much possibility for maneuvering there is from the company's side. The most severe intervention is blocking the deal and disapproval since nothing could be done by the companies to avoid it at that point. Next, some changes to the regulations or even the legislations and the institutions could be made. These changes could be done in a large scale, which would determine the overall business climate for future M&A deals or in a small scale that could influence the deal by making it less desirable or even impossible to make. The government can demand certain minor or significant adjustments to be made to the terms and conditions of the deal. This is a less severe intervention since the deal could still be made even though on different than the originally desired conditions. Last but not least, are the interventions made through the announcements and statements from government representatives and key figures. They serve as a preliminary warning for the companies that a more severe intervention might follow and show what the government opinion is about the specific deal. However, as the cases have shown, it is possible for that opinion to change over the course of time, thus companies still have space to maneuver and bring the odds in their favor.

The main purpose of the created framework and figure is to provide a tool for managers and leaders that can help them understand, identify and predict the possible government intervention in their specific situation.



REASONS AND TYPES OF GOVERNMENT INTERVENTION

Objective

- Against public interests
- Lessening of competition
- Unemployment
- Negative effects on economy and industry, etc.

Subjective

- Economic nationalism
- Trust
- Personal considerations

INTERVENTION SEVERITY

- Refuse approval/Blocking the deal
- Enforce a change in regulations, legislations or institutions, etc.
- Demand adjustments
- Announcements and statements from government representatives, ministers and other key figures

5.7. Additional Notes and Recommendations

It could be argued that *all of the three reviewed cases can find their place in the conceptual framework* developed earlier in this thesis. In other words, the framework is applicable according to these specific scenarios. Further research and analysis of more cases could, of course, contribute to the improvement of the framework's validity. However, the author believes the framework at its current stage could still be used as guidance from companies planning an M&A deal to help them understand how likely a government intervention would be in their specific case. Moreover, they could understand how the government can intervene and read the symptoms preceding it. This could be used to point them in the right direction during the negotiations of the pre-deal stage so that a positive outcome and approval can be achieved.

It can be seen in the three empirical cases that the *government's response to the deals was **not** consistent* throughout the entire period of negotiations. This is because they wanted to receive more information about the **plans** of the company that initiated the deal. Additional information and explaining were required to see what their **motives** were and what consequences could be expected. Throughout the negotiations the goal was to gather more evidence and even promises that would help the government to determine what the **type of the deal** would turn out to be at the end, whether it would be a merger or a takeover, friendly or hostile. They wanted to be sure when evaluating whether the beneficial **effects and consequences** of the deal would outweigh the harmful ones. These effects were examined in different perspective and in relation to various aspects such as the consequences over employment and jobs, the target company, the competition, the whole industry and the country's economy. In other words, it could be said that the government was trying to determine *whether the deal is located more to the left or to the right on the scale of the conceptual framework* in this research. Therefore, the decision could be made if the deal can be approved, stopped or allowed after certain changes are made.

It is important to add, that at the end **if the government wants to stop a certain deal, it would surely be blocked** even if a *change in the laws and regulations* are needed. The government can require a certain deal to be reviewed again and again by different regulatory authorities for various issues. If that is not enough to drive the acquirer away, the deal could be stopped by demanding a change in the terms and conditions, which will make the deal unfavourable and

undesirable for the initiating company. The changes could vary from small negligible adjustments to impossible to implement conditions. In more extreme cases regulations could be changed, institutions could be created and even entire acts could be written as the Enterprise Act from 2002.

In relation to the reviewed cases, it is interesting to mention that after the events from the takeover of the confectionery company, a proposal of **Cadbury's law** was made. The new legislation, proposed by the Labour Party, was intended to protect British companies specifically from **foreign takeovers** (*the specific changes made were explained in details in the Kraft-Cadbury case study section*). This law came into force and it was one of the most major changes for the last two decades. As a result of this change “*Research suggests around 40% of takeover deals in the last year [2012] have failed to meet their initial deadline*”.⁸⁸

When a big and **well-known** company is involved in a merger or acquisition deal this immediately draws the attention of the entire country. This is even more relevant to **takeover** and especially when it is a **cross-border** deal and the target company is a famous and important brand for the country. In that case the transaction will be a *leading business story and front page news* in the media for months. This has been the situation with the three cases reviewed in this paper and the reason why the information about them was publicly available.

In a situation like this a pressure from both the media and public would inevitably follow on the government to intervene or block the deal. As it has been presented in the cases, some members of the parliament, ministers and other important political figures were also in favour of government actions to stop the hostile takeovers from these foreign companies. Changes to the terms and conditions of the deals were required in one of the cases, and changes in the laws and regulations followed from the others.

If the government makes the decision to intervene and stop a deal then it will do everything in its powers, if it considers it to be necessary, and the deal would surely be stopped. The possibilities of the existing regulations, laws and institutions will be used and even new ones can be enforced. This can happen anywhere, even if it is the country with the most liberal market and economy, and there is no way of going around it.

⁸⁸ Ebrahimi H.; 21 October 2012; “Takeover Panel to review “Cadbury law””; The Telegraph

Therefore the companies planning on engaging in such deal could be advised to communicate to the government, public and media through all the possible channels. The author suggests that the companies should **bear in mind the framework** proposed in this thesis to help them understand in which cases a government intervention is more likely to occur. In addition, if the company aims to avoid negative government intervention, it should *try to position itself as much as possible to the left side* on the scale, according to the framework. Regardless of the type of deal, even if a cross-border hostile takeover is the choice, the initiating company should use its **negotiation skills** to bring the odds in its favour. It is a known fact that a merger could in time turn out to be an acquisition and a hostile acquisition can become a friendly one - it all depends on the negotiation approach and the way in which the offer is presented.

In addition, on the pre-deal stage **nobody can tell** what *the type of deal* would be until the agreement is made. The Pfizer-AstraZeneca case could turn out to be both a merge or a friendly acquisition if the board has agreed, or a hostile takeover if Pfizer insisted with its bid. No-one can also be sure and predict *what the consequences will actually be like*. It could only be speculated and predicted with assumptions based on various factors, but this also gives great possibility for manoeuvring during the negotiations. It was expected that Kraft would not cut jobs and close certain factories, but this is exactly what happened right after the deal was made. Moreover, the initiating company should **try to convince** the public, media and government that the effects and consequences of the deal *would be beneficial for everyone* involved. Depending on the deal this can include the operations, development and employees of the target company, the competing companies or the rest of them across the value-chain, the whole industry or sector in which it operates and the entire country, etc.

If the company wants to win the support and approval of the country, during the negotiation process it should try to explain and emphasize the beneficial consequences for the target, the competition and industry, etc. It is possible that the company tries to declare that these effects would be beneficial even if they are not, but this would not be recommended by the author since it is unethical, and in addition it could lead to other problems in the future even if the deal is approved.

6. Conclusions

The aim of this research was to investigate what are the motives of a given government to intervene in M&A deals and understand how far this intervention might go. Moreover the purpose was to analyze how this might influence the outcome of the negotiations and at the end offer suggestions to companies that plan get involved in a merger or acquisition in order to help them avoid the possible complications related government intervention. Due to the complexity of the topic and the huge field that had to be research, the thesis had to be narrowed down. The choice was made to investigate only cross-border M&As and the intervention of the British government in particular, all in the last decade.

In order to achieve the goals of this thesis an extensive research has been conducted on the literature, previous researches done in the area, as well the relevant legal and regulatory aspects. Next, three important M&A cases on the negotiation stage in the United Kingdom have been presented, compared, evaluated and critically discussed. The events in each of the case studies have been discussed from the perspective of the government intervention that took place in each of them.

Certain patterns of government intervention have been encountered and identified, throughout the analysis of the case studies. In a combination with the previously gathered knowledge presented in the literature review, this made it possible to build some overall explanations of the issues of interest for this research and illustrate it in a scheme. After determining the possible reasons and nature of government intervention, along with its influence on the M&A deals' negotiations, a framework has been developed. It tried not only to present a comprehensive explanation of the issue of government involvement, but also to illustrate the connection between the specific M&A scenario and the possible form of actions from the government, and in that way help companies predict the government intervention.

After all, it has been determined that the reasons for which a government might intervene in M&As, are related to the expected consequences and effects of the deal over the target company, along with its employees and operations, as well as the effects on the competition. The possibility of intervention is also determined by the perceived effects over the entire industry, along with the other

related companies up and down the value chain, and the whole economy of the country. The literature, researches and empirical cases have also shown the connection with other factors play a role such as the type of deal (merger or acquisition), their approach toward the target company's board of directors and shareholders (hostile or friendly) and the companies' nationality (domestic or cross-border M&A). The conclusion is that cross-border M&As would receive more opposition than domestic ones, acquisitions would encounter more opposition than mergers, and hostile deals can expect less approval than friendly ones.

It has been determined that an intervention in an M&A from the government can take the form of negative announcements and statements from ministers, representatives and other key government figures. These announcements show an opposition from the state and can serve as portents for more drastic measures before the deal is completed. More severe interventions can be made by either allowing the merger or acquisition to take place but with certain adjustment/changes in the terms, or by refusing to give it an approval and blocking the deal. Both enforced changes in the regulations or demanded adjustments to the deal could result in making it undesirable and even impossible for the company that proposed it. As a result further negotiations could be abandoned. The consequences of a blocked deal for a company could mean huge resources spent in vain during the process, along with missed synergies and financial fortune.

The author has suggested that the issues and challenges that can arise from government intervention should be considered and must not be underestimated by companies planning a merger or acquisition. The proposed framework can be used to help managers understand how likely the government intervention in their specific circumstances and situation is. The company initiator should use its negotiation skills to try positioning itself more to the left of the scale in order to avoid a negative intervention. The firm is also advised to communicate not only to the government, but also to the public and media through all the possible channels on its disposal. Overall, the identified relationships and connections in the framework can be used to analyse every other M&A.

7. Limitations and Vision for Future Research

No research comes without limitations and this thesis is no exception. The first limitation inevitably comes with the choice of methodological approach. Even though the systems view can grant us a more universal and comprehensive viewpoint of the topic of investigation, it is also quite limiting. On the one hand, all of the external elements and factors that influence the system cannot be analyzed and therefore the overall picture is imperfect. The author has made an attempt to take into consideration most of the factors that influence the government intervention, but other elements and influence of other factor do indeed exist.

On the other hand, the investigated system is static only for a limited period and changes can occur at any time. A simple example in the case of the intervention from the British government could be that the next elected government might not make the same decisions, as well as the combining companies will not be the same or operating in the same global or macro environment, etc. Overall, the analysis of the chosen government and selected cases, with the chosen theories and information, inevitably lead to a describing a subjective picture. The subjectivity is accordance with the chosen approach, but it would be interesting to see how other researchers might approach the issue and what their perspective of the phenomenon might be.

Other limitations come from the asymmetry or lack of information. From a theoretical perspective that the topic of investigation is under-researched and from an empirical point of view one should be aware of the fact that not all the information accompanying the negotiations would ever be disclosed. Therefore filling the missing gaps by making an educated guess in accordance with the abductive reasoning was necessary, as well as some assumptions and decisions had to be made. All this inevitably limits the research and could be done differently in another context. In addition, the constrains of time are always limiting as more examples could be presented to support the conclusions, even though the goals of the thesis could be fulfilled by answering the posed questions and giving valid recommendations.

The issue of government intervention is not limited only to the United Kingdom or to the three cross-border M&A cases presented. It is a phenomenon that might and usually does occur anywhere in the world. Analyzing different M&A cases

between companies from other countries and operating in different industries could widen our picture of reality. Researching the topic further by analyzing the authorities in different countries will also increase the validity of the proposed framework and this research as a whole. This would include different legal frameworks, regulations, different governments and institutions with their own separate rules. As it has been mentioned, these systems are not static and change over time, thus conducting a research and testing the framework in the same countries or with companies from the same industries but in different point in time, could also prove to be useful. In that sense it could be argued that the issue of government intervention in mergers and acquisitions could always benefit from future researches.

Bibliography

Ahmed, K.; 2 May 2014; "AstraZeneca rejects new Pfizer offer"; BBC News

Angwin, D.; 2007; "Mergers and Acquisitions"; Blackwell Publishing Ltd

Arbnor, I. & Bjerke, B.; 2007; "Methodology for creating business knowledge"; Sage Publications

Arbnor, I. & Bjerke, B.; 2009; "Methodology for creating business knowledge"; 3rd edition, Sage Publications

Armistead L.; 2 May 2014; "Pfizer-AstraZeneca offer: IoD warns intervention 'disastrous' for Britain"; The Telegraph

BBC News; 20 Jan 2010; "Clegg attacks Brown over RBS funding for Cadbury bid"

Berkrot B. & Hirschler B.; 26 May 2014; "Pfizer walks away from \$118 bln AstraZeneca takeover fight"; Reuters

Burrell, G. & Morgan, G.; 1979; "Sociological Paradigms and Organizational Analysis", Ashgate

Byrne, J.; 2010; "Timeline: The History of Cadbury's Chocolate"

Cameron, E. & Green, M.; 2009; "Making sense of Change Management: A complete guide to the models, tools and techniques of organizational change"; Kogan page; 2nd Edition

Carbo - Valverde, S., Kane E. J. & Rodriguez-Fernandez, F.; 2009; "Regulatory arbitrage in cross-border banking mergers within the EU"; Journal of Money, Credit and Banking

Clark, W. & Fast, M.; 2008; "Qualitative economics towards a science of economics"; Coxmoor Publishing Company

Coeurdacier, N., De Santis, R. & Aviat, A.; 2009; "Cross-Border Merger and Acquisition and European Integration"; Economic Policy

Coyle, B.; 2000; "Mergers and Acquisitions"; The Chartered Institute of Bankers

Davidsson, P. & Gartner, W.; 2003; "Arriving at the high growth firm"; Journal of Business Venturing

Department for business innovation & skills; 2012; "Ensuring equity markets support long-term growth"

Dinc, I. S. & Erel, I.; 2013; "Economic Nationalism in Mergers and Acquisitions"; The Journal of Finance

Dumas B., & Adler M.; 1983; "International Portfolio Choice and Corporation Finance: A Synthesis"; The Journal of Finance

Ebrahimi H.; 21 October 2012; "Takeover Panel to review "Cadbury law""; The Telegraph

Edwards, T.; 1998; "The industrial relations impact of cross-border mergers and acquisitions"; EIROnline

Evans, M.; 2000; "Course 7: Mergers and Acquisitions"; Excellence in Financial Management

Farrel S. & Mason R.; 19 May 2014; "AstraZeneca rejects Pfizer's final £69bn takeover bid"; The Guardian

Farrell, S.; 20 May 2014; "Pfizer's battle to buy AstraZeneca – timeline"; The Guardian

Fenton B.; 16 June 2010; "News Corp investors back bid for BSkyB"; Financial Times

Gadiesh, O. & Ormiston, C.; 2002; "Six rationales to guide merger success"; Strategy and Leadership

Ghuri, P. N. & Buckley, P. J.; 2003; "International Mergers and Acquisitions: Past, Present and Future"; Advances in Mergers and Acquisitions

Goergen, M. & Renneboog L.; 2004; "Shareholder Wealth Effects of European Domestic and Cross-border Takeover Bids"; European Financial Management

Goodman, S.; 2003; "Steady as She Goes: the Enterprise Act 2002 Charts a Familiar Course for UK, Merger Control"

Hall P. & Soskice D.; 2001; "Varieties of Capitalism: The Institutional Foundations of Comparative Advantage"; Oxford University Press

Hodge N.; 22 Nov 2010; "Takeover rules tighten after Kraft-Cadbury broken promises"; Financial Director

Hubbard, N.; 2001; "Acquisition Strategy and Implementation"; Revised Edition, Palgrave, Basingstoke

Jadivan, M & Waldman, DA; 2009; "Alternative forms of charismatic leadership in the integration of mergers and acquisitions"; The leadership Quarterly

Jensen, C.; 2003; "The Role of FDI in the Re-location of Industrial Activity. The Impact of Foreign Direct Investment on Regional Development in Poland"; Work package 4

Kanter, J.; 25 January 2010; "Procurement cuts to save Cadbury jobs"; Supply Management

Kim, H. & Signal V.; 1993; "Mergers and Market Power: Evidence from the Airline Industry"; The American Economic Review

Kleiner, B. & Nguyen, H.; 2003; "The effective management of mergers"; Leadership & Organization Development Journal

Kuada J.; 2012; "Research Methodology: A Project Guide for University Students", Samfundslitteratur; 1 Edition

Kuada J.; September 2010; "Research Methodology: A Project Guide for University Students"; Aalborg University

Kuhn, T. S.; 1970; "The Structure of Scientific Revolutions"; Chicago: University of Chicago Press

Labor News; 14 Jan 2010; "Debt-Heavy Kraft Could Put 30,000 Cadbury Jobs at Risk, Warns Unite"

Lindsay, A. & Berridge A.; 2012; "The EU Merger Regulation: Substantive Issues"; Sweet & Maxwell

Macalister T. & Clark A.; 4 December 2009; "Don't try to make a quick buck from Cadbury, Mandelson tells Kraft"; The Guardian

Maček Anita; 2012; “A Comparative Analysis of the Economic Effects of Cross-Border Mergers and Acquisitions in European Countries”; INTECH

Marchildon G.; 1991; “Mergers and Acquisitions”; An Elgar Reference Collection

Mason, R.; 2009; “Cadbury: a history of a chocolate maker with its heart in Birmingham”; The Telegraph

Massachusetts Institute of Technology; The History of Kraft Foods Inc.

McDermid, B.; 2014; “Mergers & Acquisitions Review: Financial Advisors, Full Year 2014”; Thomson Reuters

Meyer, K. & Nguyen, V. H.; 2003; “Foreign Investor’s Entry Strategies and Sub-national Institutions in Emerging Markets”; London Business School

Mingling Xue; September 2011; “Mergers and acquisitions strategies and best practices”; PricewaterhouseCoopers Taiwan

Moeller S. and Brady C.; 2014; “Different Types of Mergers and Acquisitions”; The European Financial Review

Moeller S.; 2012; “Case study: Kraft’s takeover of Cadbury”; Financial Times

Moeller, S. & Brady, C.; 2007; “Intelligent M&A: Navigating the Mergers and Acquisitions Minefield”; Wiley

Morris N.; 7 May 2014; "Pfizer could ditch AstraZeneca takeover bid without UK Government's support"; The Independent

Neate R.; 28 April 2014; "Pfizer's AstraZeneca takeover would give US firm substantial tax benefits"; The Guardian

Neto, P., Brandao, A. & Cerqueira, A.; 2008; “The Impact of FDI, Cross Border Mergers and Acquisitions and Greenfield Investments on Economic Growth”

O’Connor D.; 2004; “The Basics of Economics”; Greenwood Press

Poulter S.; 8.09.2009; "£10billion hostile takeover bid to devour Cadbury's"; The Daily Mail

Pratley N.; 11 July 2011; "News Corp needs all of BSkyB"; The Guardian

PwC Taiwan publication; 2011; "M&A strategies and best practices"; 2011; Xue Mingling

Reichertz J.; 2010; "Abduction: The Logic of Discovery of Grounded Theory"; Volume 11, No. 1, Art. 13

Reuters; 26 May 2014; "Pfizer gives up on AstraZeneca deal after offer is refused"; International Business Times

Roberts D.; 18 January 2010; "50 reasons to fight Kraft"; The Guardian

Robinson J. & Sweney M.; 4 November 2010; "Vince Cable refers News Corp's BSkyB bid to regulator"; The Guardian

Robinson J.; 13 July 2011; "News Corp pulls out of BSkyB bid"; The Guardian

Rockoff, J. & Raice, S.; 18 May 2014; "Pfizer Sweetens Bid for AstraZeneca"; The Wall Street Journal

Roland D.; 19 May 2014; "AstraZeneca Pfizer: timeline of attempted takeover"; The Telegraph

Rowley, C.; 1968; "Mergers and Public Policy in Great Britain"

Sabbagh D., Robinson J. & Sweney M.; 30 June 2010; "Rupert Murdoch finally gets green light for BSkyB takeover – but at a price"; The Guardian

Sabbagh D.; 11 October 2010; "British media join forces against Murdoch takeover of BSkyB"; The Guardian

Sachwald, F.; 2001; "Les fusions - acquisitions, instruments de la destruction créatrice"

Sainsbury D.; 8 May 2014; "Pfizer's takeover of AstraZeneca must be blocked"; The Guardian

Saunders, M., Lewis, P., & Thornhill, A.; 2007; "Research methods for business students"; Harlow: Pearson Education Limited

Schrader, M. & Self, D.; 2003; "Enhancing the success of mergers and acquisitions: An organizational culture perspective"; Management Decision

Sliburyte, L.; 2005; "The Impact of Differences in National Cultures on Mergers and Acquisitions"; Management of Organizations: Systematic Research

Straub, T.; 2007; "Reasons for Frequent Failure in Mergers and Acquisitions: A Comprehensive Analysis"; Gabler Edition Wissenschaft

Strauss, A. & Corbin, J.; 1998; "Basics of Qualitative Research"; London: Sage Publications

Sudarsanam S.; 2003; "Creating Value from Mergers and Acquisitions: The Challenges: an Integrated and International Perspective"; Pearson Education

Sweney M. & Treanor J.; 15 September 2010; "Vince Cable adopts hands-off approach to News Corporation's BSkyB takeover"; The Guardian

Sweney M.; 15 June 2010; "News Corp courts BSkyB board with improved offer"; The Guardian

Taylor, S., Fisher, D. & Dufresne, R.; 2002; "The aesthetics of management storytelling: a key to organizational learning"; Management Learning

The Chartered Institute of Purchasing & Supply; 2011; "Case Study Kraft and Cadbury: A sweet deal?"

The Economist; 19 January 2010; "Kraft and Cadbury: Chocs away"

The Enterprise Act 2002; Commencement No. 2; Transitional and Transitory Provisions; Order 2003, SI 2003/766

The Guardian; 2009; "Unions and MPs blast RBS for backing foreign takeover bid for Cadbury"

The Guardian; 28 May 2012; "Jeremy Hunt emails: timeline of the BSkyB takeover that wasn't"

The Guardian; 28 May 2012; "Leveson inquiry: Jeremy Hunt and Adam Smith's email correspondence"

The Telegraph; 24 May 2011; "Cadbury-Kraft takeover timeline"

Theater D.; 15 June 2010; "Rupert Murdoch reaches for the Sky with bid for full control of £12bn BSkyB Empire"; The Guardian

Treanor J.; 26 May 2010; "Kraft rebuked for broken pledge on Cadbury factory"; The Guardian

Wachman R.; 21 Oct 2010; "UK watchdog tries to ward off foreign takeovers"; The Guardian

Walsh R.; 1st October 2010; "A history of: Pfizer"

Watt N.; 4 May 2014; "Miliband: Cameron is a cheerleader for Pfizer takeover of AstraZeneca"; The Guardian

Watt N.; 6 May 2014; "Vince Cable demands detail on Pfizer-AstraZeneca takeover proposal"; The Guardian

Wearden, G.; 19 January 2010; "Timeline: Cadbury's fight against Kraft"; The Guardian

Wearden, G.; 3 October 2007; "Cadbury Schweppes closes UK factory and axes 700 jobs"; The Guardian

Wilks, S.; 1999; "In the Public Interest: Competition Policy and the Monopolies and Mergers Commission"; Manchester: MUP

Wrenn, B & Stevens, R. & Loudon, D.; 2008; "Marketing Research: Text and Cases"; Second edition

Yin, R. K.; 1984; "Case study research: Design and methods"; Newbury Park, CA: Sage

Yin, R. K.; 2009; "Case Study Research: Design and Methods"; Forth Edition, Vol. 5

Official websites:

European regulations are extracted from the European Commission website: <http://ec.europa.eu/competition/mergers/legislation/regulations.html>

Mergers and Acquisitions; "West's Encyclopedia of American Law"; West Group Publishing; 2nd edition; 2008; Retrieved from <http://legal-dictionary.thefreedictionary.com/Mergers+and+Acquisitions>

The translated diagram is extracted from the article: "Strategic Planning for Corporate M&A"; Peter Yu, Ross Yang; Available at: www.pwc.tw/en/challenges/financial-advisory/financial-advisory-20110701.jhtml

Bloomberg “Biggest Failed Mergers”; Available at http://www.bloomberg.com/ss/09/04/0407_failed_merger_talks/18.htm

Pfizer website; 2 May 2014; "Pfizer Confirms Delivery of Increased Proposal to AstraZeneca"; Available at http://www.pfizer.com/news/press-release/press-release-detail/pfizer_confirms_delivery_of_increased_proposal_to_astrazeneca

<http://marketrealist.com/2014/05/pfizer/>

<http://newscorp.com/>

<http://www.astrazeneca.com/>

<http://www.europeanfinancialreview.com/>

<http://www.imaa-institute.org/statistics-mergers-acquisitions.html>

<http://www.investopedia.com/>

<http://www.kraftfoodsgroup.com/>

<https://corporate.sky.com/>

<https://www.cadbury.co.uk/>