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The Challenges of Executing Cross-Border M&A Transactions: A Focus on the Relationship between the U.S. & France

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Jena Angeliadis

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Thesis Committee:

Professor Bernard Smith

Professor Miao Chi

Professor Marie Pascale Pieretti

Abstract

This thesis explores several factors that affect cross-border merger and acquisition deals between firms based in the United States and in the member states of the European Union. It provides statistics regarding M&A and offers explanations for their growing volume in recent years and their successes and failures. The factors discussed are outlined in three chapters. Chapter one includes the differences in the regulations, government responses, and corporate governance strategies of the U.S. and EU regulatory agencies regarding M&A activity. Chapter two considers the concept of culture and its role in the M&A integration period and in the Hofstede Cultural Dimensions Model. Finally, in chapter three a regression analysis is used to test several variables and their contribution to the success of an M&A deal. This paper does not consider regulation, government response, corporate governance regimes, or national culture to be driving individual factors that affect M&A. Instead, it argues that they must be considered as a whole when accounting for the success or failure of M&A deals. Ultimately, this paper acknowledges the complexity and subjectivity of these aspects that have the ability to increase the high value of withdrawn M&A deals if they are not carefully examined and implemented.

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Thesis Introduction

Cross-border Merger and Acquisition (M&A) deals make the front page of the *Wall Street Journal* on a daily basis. According to Deloitte's M&A Trends Mid-Year 2016 Report, "the past year marked the busiest ever for mergers and acquisitions (M&A)...U.S. companies announced more than $2.1 trillion in transactions. Global M&A volume topped $4.7 trillion in aggregate" (Thomson, Thomas & Garay 2). The S&P Global Market Intelligence notes "to date in 2017, of the 8,119 announced worldwide M&A deals, 1,709, or 21.1% were classified as cross-border transactions...Should the early results...carry forth for the remainder of 2017, it would stand as the highest proportion of deals. Being cross-border...since 2008" (Peterson 1). Nevertheless, M&A suffers some economic consequences. "Thomas Reuters has highlighted that the value of withdrawn M&A so far in 2017 stands at US$205.2bn-around four times its level at the same point in 2016" (Withdrawn M&A 1). This paper in three chapters will address three separate aspects that should be considered when engaging in the process of a cross-border M&A deal, particularly between the EU and the US, in order to reduce the value amount of withdrawn M&A.

The first chapter will examine the antitrust, competition, corporate governance policies, and government intervention in the United States and in the European Union. First, we will discuss the well-known US financial regulatory agency, the Securities and Exchange Commission. We will consider the types of policies they enforce in order to not only keep investors safe and maintain a fair and efficient market, but also those in place to regulate M&A deals. Next, a discussion about competition and efficiency in the market will provide readers with the background needed to better understand the history and current policies of US regulatory agencies like the Department of Justice and the Federal Trade Commission on these topics. Following, the same presentation of European regulatory agencies' history and policies like the European Commission, will be provided. In section five of chapter one, the previous discussion about US and EU policies will be connected to the topic of M&A deals, using an analysis of the Merger Review processes of both the US and the EU.

Furthermore, in the following section, a study including regression analysis by Dinc and Erel will be demonstrated to readers to educate them on the topic of government intervention EU merger attempts from 19970-2006. Lastly, we will explore the historical development of corporate governance in relation to France's progressive participation and confidence in the stock market. In this exploration we will use the US new economy model to examine France's convergence with this model over time. One can now consider the methodology used in this chapter. In addition to scholarly articles, this chapter on regulation uses official websites of US and EU government agencies noted earlier, to incorporate information from them on policies regarding competition, efficiency, and market concentration indexes such as the HHI. Let us turn our attention now to chapter two.

Chapter two of this paper will bring to light the concept of national culture according to the Hofstede Cultural Dimensions Model. First, the importance of addressing cultural implications that may arise in the crucial integration period during the pre-deal and post-deal phases of an M&A deal will be reviewed. Then, the concept of national and corporate culture will be discussed, moving forward focusing on national culture. The model and its dimensions will be presented to demonstrate consequences that Hofstede believes to be a result of American and French behavior in business practices. Then, potential conflicts in cross-border M&A deals, especially between the US and France, as a result of this behavior will be presented. This chapter uses scholarly sources as well as affirmations from three interviewees surveyed for the purpose of this examination. Interviewee feedback on certain behaviors expressed in business as a result of national culture will be considered in conjunction with each of the cultural dimensions that Hofstede presents.

The first interviewee is a Drew University alumnus who is an Associate Attorney at a French law firm. He has lived in the US and France and speaks English, French, and Italian. The second, is a Global Product Manager for General Electric who lives in France and who has lived and worked in Mexico, the US, and France. He speaks Spanish, English, and French. Finally, the third interviewee is a Supply Chain Analyst who works for a global engineering products and solutions manufacturing company. He is a native English speaker. After the Hofstede model and the testaments to certain argued cultural behaviors in business from the three interviewees, critiques from scholars regarding the validity of the Hofstede model will be considered. Finally, let us turn to chapter three, a regression analysis study of factors and their contribution to the “success” of an M&A deal.

The last chapter demonstrates a regression analysis completed using a data set with 526 M&A deals proposed since 2000 that occurred between the US and the EU and

EU countries themselves. The data set was obtained from Bloomberg. This study includes independent variables that consider whether the deals were made in cash, the announced total value of the deal at the time of its proposition, the transaction value of the two companies' earnings in the year before the proposed M&A deal, if the target company had a parent seller company listed, and finally, if the deal was between two different sectors. Using these variables, I examine whether each variable makes an M&A deal in this sample more or less likely to succeed. The dependent variable "success", for the purpose of this study can be defined as the completion of a deal. The methodology for this chapter includes sources from other scholars and those who have completed studies on the same subject as well as the data set used, retrieved from Bloomberg.

Now that the three chapters have been outlined, the information provided thus far will allow the readers to apprehend the objective and overall argument of the paper. The objective is to analyze scholarly sources and consider professionals' experiences in order to gain a better understanding of the factors that contribute to the success or failure of cross-border M&A deals. The argument thus follows; when determining the ultimate success of a proposed cross-border M&A deal between the US and EU countries, or between EU countries themselves, three important factors must be taken into consideration, as outlined by the three chapters in this paper.

Chapter One

An Examination of the Antitrust, Competition, Corporate Governance Policies, & Government Intervention in the US & EU: A Focus on the US and France

I. Brief Focus on U.S. Securities & Exchange Commission

This fall I had the pleasure of interning with the Securities & Exchange Commission in New York City. The mission of the SEC is to enforce regulation to protect investors in the financial sector and maintain efficient financial markets (SEC 1). I experienced first-hand how examiners at the SEC ensure that financial firms such as investment advisors and brokerage firms abide by the laws that preserve the securities industry. I saw how the Securities Act of 1933 requires corporations to notify shareholders of any pertinent information that might impact the value of the securities they issue, and how the Securities Exchange Act 1934 authorizes the Securities and Exchange Commission to monitor and regulate brokerage firms, transfer agents, and private regulatory agencies like the New York Stock Exchange. (SEC 1). I observed how these acts guide the examinations of firms and I realized their importance. I realized that the complexity and unpredictability of the financial sector requires comprehensive regulation.

After being exposed to the regulatory duties of the employees of the SEC, I started to think about the types of regulations that exist to not only monitor the financial sector, but to maintain a healthy, thriving economy. Merger and acquisition transactions have dominated global commerce and have increasingly necessitated regulatory authorities to deal with them. “Over the last 20 years, merger regulation has become a reality in virtually every major economy in the world” (Bergman, Coate, Jakobsson, & Ulrick 306). This business continues to grow at a rapid pace. Although the SEC is not authorized to approve or reject mergers between firms, it is empowered to protect shareholders by monitoring and regulating the actions of company executives, traders and portfolio managers to ensure deals are transparent and no insider trading takes place. My internship at the SEC was to assist in examinations of portfolio managers who had engaged in large trades during corporate mergers and acquisitions to uncover evidence of insider trading on nonpublic information. Evidently, M&A deals not only impact the financial sector, but are subject to a great deal of SEC regulation.

The SEC’s Division of Corporation Finance has a variety of legal policy and accounting offices, including the Office of Mergers and Acquisitions that service investors, companies and advisors. SEC employees answer questions “about disclosure and other issues arising in business combinations and change-of-control transactions, including mergers, acquisitions, proxy contests, exchange offers and tenders offers” (SEC 1). The Division is also obligated to enforce several other statutes and regulations pertaining to mergers.

For example, mergers and acquisitions are subject to federal securities laws and regulations when tender offers are made. Section 12 of the Securities and Exchange Act of 1934 defines such offers as solicitation by companies and third parties to buy large shares of other companies whose stocks are registered with the SEC (SEC 1). It states “When a person or group of persons acquires beneficial ownership of more than 5% of a voting class of a company's equity securities registered under Section 12 of the Securities Exchange Act of 1934, they are required to file a Schedule 13D with the SEC" (SEC 1). Under the Regulation 14E, ownership of five percent or less are not subjected to the SEC's tender offer rules because these small offers are referred to as "mini-tender offers" (SEC 1). The SEC is one of several federal agencies who monitor and regulate such merger activity.

The U.S. Federal government's administrative agencies, especially empowered to monitor, approve, reject, or amend mergers and acquisitions proposals, are the Antitrust Division of the US Justice Department and the Federal Trade Commission. Similar governmental bodies exist in Europe, most prominent of which is the Directorate General for Competition of the European Union's European Commission. While somewhat decreasingly important in recent years, the competition authorities of the member states of the EU, for example the "Autorité de la concurrence", also play a role. This paper will examine how these authorities perform their tasks in the context of international cross-border mergers and acquisitions.

II. What is Competition & Efficiency in the Market?

Competition and antitrust authorities in the USA and the European Union employ a set of economic principles that guide their monitoring of and interventions in markets. Pelkman notes that most economists believe that properly functioning competitive markets allocate resources efficiently and maximize economic welfare (Pelkman 243). One must consider the driving forces behind competition to understand the need for U.S. and E.U. competition policy. "Ultimately, competition is driven by the market rewards of being better, cheaper, or more original than one's competitors, thereby enlarging one's market share and profits" (Pelkman 243). However, Pelkman argues that there are trade-offs between market dominance and economic efficiency (243). Free and legal competition sometime results in market dominance by successful and efficient firms (Pelkman 243). A dominant firm will gain extra profits from its monopoly power which will allow it to raise prices above costs, to curtail output, and to engage in price discrimination between its customers and across markets (Pelkman 243).

Furthermore, a company is this position can force its distributors and suppliers to accede to various anti-competitive practices such as resale price maintenance and exclusive purchasing and sales agreements. This power also allows a company to block entry of new competitors and to maintain its market dominance over time. Consequently, these practices can cause a suboptimal allocation of resources and a decrease in consumer and economic welfare (Pelkman 243). In addition, Pelkman and Nello note that a set of dominant firms who engage in collusive behaviors such as collectively fixing prices, agreeing to limit or control production, investment, and technological innovation, and agreeing to share markets and sources of supply, also reduce economic and consumer welfare (Pelkman, 254 and Nello, 365). This chapter will examine, in part, similarities and difference between US and EU antitrust, competition and merger policies, and why the latter have resulted in discrepancies and contradictory judgements on mergers and acquisitions in their respective jurisdictions.

III. The Policies of US Regulatory Agencies Regarding Market Competition, M&A, and Brief History

The Antitrust division of the United States Department of Justice (D.O.J.) and the United States Federal Trade Commission (F.T.C.) jointly implement the antitrust laws of the United States. Their objective is to "to protect the process of competition for the benefit of consumers, making sure there are strong incentives for businesses to operate efficiently, keep prices down, and keep quality up" (FTC 1). The Department of Justice through its Antitrust Division has statutory provisions that implement the objective of the antitrust laws specifically in the business of M&A. Before one can understand the strength of these current U.S. antitrust laws, it is important to understand the history behind them. Timothy J. Muris, chairman of the U.S. Federal Trade Commission, noted in a 2003 speech before the American Bar Association that "An accurate *positive* understanding of yesterday's enforcement trends helps formulate *normative* proposals about how the agencies should act tomorrow...beyond knowing what the enforcement agencies did, it is important to understand why they made specific policy choices and why those initiatives succeeded or failed" (Muris 2).

Muris rejects the narrative that federal antitrust enforcement was "too active in the 1960s and 1970s, too passive in the 1980s, and properly moderate in the 1990s" (1). Muris argues that rather than dramatic, mechanistic swings in antitrust enforcement from 1961-2000, there has instead been a paradigm shift in antitrust. Muris' historical analysis of US antitrust laws begins by examining the post-1960 decline in the enforcement of the Robinson-Patman Act which prohibits price discrimination in sales transactions (Elfand

1). In the 1970s, after the American Bar Association criticized the Department of Justice for failing to uphold the Act, the DOJ ceded its authority to the Federal Trade Commission who subsequently also neglected Robinson-Patman violations. (Muris 10). Thus, the number of RP cases decreased to an average of two per year reflecting a fundamental, long lasting change in antitrust philosophy and enforcement (Muris 11).

Horizontal and vertical restraints became the centerpiece of Federal Trade Commission antitrust enforcement efforts, with the focus being on dominant firm misconduct thru the 1970s under the Nixon and Ford administrations (Muris 11). Muris states that “These matters had serious implications for federal enforcement and U.S. competition policy that mere case counts do not adequately portray” (12). In the 1980’s, during the Reagan and Bush Sr. presidencies, DOJ and FTC dominant firm cases and actions declined. However, in the years of Clinton’s presidency, dominant firm prosecutions increased but to levels well below those before 1981 (Muris 12). From the 1980s through the late 1990’s merger policy had evolved, giving business managers greater ability to complete mergers. The merger guidelines were also evolving during that time (Muris 18).

Muris, who served on the Bureau of competition when it followed the 1982 guidelines argues, “In that period, the numerical thresholds were given more credence...For example, in 1984, the Reagan FTC successfully challenged a merger involving music distribution...that would have reduced...significant competitors from 6 to 5...When a 6 to 5 merger involving the same sector took place in the Clinton administration, the transaction cleared the FTC without a second request” (18-19).

During the 1980s the FTC was also concerned about market concentration as they are now, and used the Herfindahl-Hirschman Index to measure market concentration. "The 1982 guidelines denominated markets with a post-merger HHI of 1800 or more as 'highly concentrated'... Presumptively, divestitures were sought when the Herfindahl exceeded 1000 - the beginning of the guidelines' mid-range of concentration" (Muris 19). According to the 2010 Horizontal Merger Guidelines, an HHI above 2500 is considered highly concentrated (DOJ 1).

Section 7 of the Clayton Act, enacted in 1914, is the principal federal statute governing mergers, acquisitions and joint ventures and takes market concentration into account. It precludes the purchase of stocks and physical assets of one firm by another if it results in significantly less competition and/or creates a monopoly in a market. (U.S. Code 1). The Hart-Scott-Rodino Antitrust Improvements Act of 1976 added several premerger notifications and waiting period provisions to the Clayton Act. The act implements the ruling that voting securities of one person cannot be directly or indirectly acquired by another (as discussed in the SEC's Schedule 13D) unless both parties involved file notification pursuant to the waiting period which begins on the date of the receipt by the Federal Trade Commission and the Assistant Attorney General in charge of the DOJ Antitrust Division. The waiting period ends on the thirtieth day after the receipt date (U.S. Code 1). These two Clayton Acts are only two of several initiatives taken by the DOJ and the FTC to ensure that M&A does not negatively affect the US and global economy.

The Federal Trade Commission is responsible for monitoring compliance with the provisions of the Clayton Act and other antitrust laws of the United States. Its Bureau of Competition (BOC) is empowered to issue "Merger Guidelines" and conduct "Merger Reviews" that assess the likely consequences for prices, competition, product or service quality, and innovation of all M&A activity. The BOC receives notification of proposed mergers and renders its judgements on them, informing the parties to the proposed mergers. It also works with the US Department of Justice who is tasked with handling legal challenges to the FTC's decisions or prosecuting violations of the antitrust laws (FTC 1).

The Horizontal Merger Guidelines created in 2010 by the DOJ & the FTC outline the DOJ's and the FTC's principal analytical techniques, practices, and the enforcement policies regarding mergers and acquisitions that involve actual or potential competitors, i.e. horizontal mergers (DOJ 1). These guidelines are specifically used by agencies to forecast whether a horizontal merger may lessen competition. Additionally, "they assist the courts in developing an appropriate framework for interpreting and applying the antitrust laws in the horizontal merger context" (DOJ 1). Let us now consider *Section 5.3 Market Concentration* from the Horizontal Merger Guidelines.

Market concentration is used to determine the likely competitive effects of a merger and so agencies consider both the post-merger level of market concentration and projected market shares (DOJ 1). The Herfindahl-Hirschman Index is used to calculate market concentration. According to the US Department of Justice, "The HHI is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2,600 (30^2+30^2 +20^2+20^2=2,600)" (1). The HHI also considers the distribution of firms in a market, increasing as the number of firms in the market decreases and as the disparity in size between these firms increase. According to the HHI levels, markets between 1,500 and 2,500 points are moderately concentrated, and those with 2,500 points are highly concentrated (DOJ 1). This scale is important in determining if the DOJ needs to take further action. "The higher the post-merger HHI and the increase in the HHI, the greater are the Agencies' potential competitive concerns and the greater is the likelihood that the Agencies will request additional information to conduct their analysis" (DOJ 1).

An important thing to note is that "The purpose of these thresholds is not to provide a rigid screen to separate competitively benign mergers from anticompetitive ones, although high levels of concentration do raise concerns. Rather, they provide one way to identify some mergers unlikely to raise competitive concerns and some others for which it is particularly important to examine whether other competitive factors confirm, reinforce, or counteract the potentially harmful effects of increased concentration" (FTC 1). Section 7 of the Clayton Act is the catalyst in this guideline enforcement against collusive and dominant behavior such as the high market concentration that the HHI measures.

This act aims to prevent mergers that lower competition in the marketplace. These guidelines, as well as the antitrust laws and statutes discussed, demonstrate that the US clearly has a strong system in place to keep M&A transactions in line with the US regulations. In fact, the DOJ and FTC want these guidelines to be of assistance to the business community and antitrust practitioners “by increasing the transparency of the analytical process underlying the Agencies’ enforcement decisions” (DOJ 1). Furthermore, these guidelines are helpful in courts in the development of appropriate frameworks that can be used to interpret and apply the antitrust laws in the context of horizontal mergers (DOJ 1). Regulation aimed to “reduce competition” is certainly in place, but one can ask, what do agencies like the DOJ and FTC consider as evidence of adverse competitive effects.

Besides understanding the objectives and nature of US antitrust regulations, it is important to examine the kinds of evidence that the DOJ and FTC look for making judgements on the impact of proposed mergers and acquisitions. According to the Horizontal Merger Guidelines:

> “Explicit or implicit evidence that the merging parties intend to raise prices, reduce output or capacity, reduce product quality or variety, withdraw products or delay their introduction, or curtail research and development efforts after the merger, or explicit or implicit evidence that the ability to engage in such conduct motivated the merger, can be highly informative in evaluating the likely effects of a merger”. (DOJ 1)

These guidelines reveal the sorts of evidence the DOJ uses to assess the impact and determine the legality of mergers and acquisitions. First, according to *Section 2.1.1 Actual Effects Observed in Consummated Mergers* from the DOJ Horizontal Merger Guidelines, “when evaluating a consummate merger, the ultimate issue is not only whether adverse competitive effects have already resulted from the merger, but also whether such effects are likely to arise in the future" (DOJ 1). A given merger may potentially give rise to anti-competitive behavior and therefore, even though permitted to go through, is still subject to a post- merger review that monitors the behavior of the parties involved (DOJ 1). One can consider the types of evidence that agencies look for to point out anti-competitive conduct even for firms acting on their "best behavior".

To begin, from *section 2.1.2 Direct Comparisons Based on Experience* from the Horizontal Merger Guidelines, agencies examine historical events, the impact of recent mergers, entry, expansion, or exit, in the relevant market, in addition to the effects of analogous events in similar markets (DOJ 1). Muris, chairman of the FTC in 2003, stated "closely-related contribution of historical analysis involves the evaluation and interpretation of past experience" (DOJ 1). Variation among similar markets can also be labeled as reliable evidence. "For example, if the merging firms compete in some locales but not others, comparisons of prices charged in regions where they do and do not compete may be informative regarding post-merger prices" (DOJ 1). However, there are cases when such comparisons are not informative; when prices are set on a broad geographic basis. On the other hand, prices in similar markets may vary with the number of competitors in those markets, and agencies consider this as well (DOJ 1).

When considering possible price discrimination that may occur as a result of a merger and reduce competition in the market, the FTC and DOJ turn to the section *Targeted Customers and Price Discrimination* in the Horizontal Merger Guidelines. This is important to consider because "Such differential impacts are possible when sellers can discriminate, e.g., by profitably raising price to certain targeted customers but not to others" (FTC1). Adverse competitive effects on targeted customers can arise when price discrimination is feasible, and evaluation of competitive effects are completed by the FTC and DOJ regarding the type of customer.

For price discrimination to be feasible, differential pricing and limited arbitrage are two conditions that must be met. "First, the suppliers engaging in price discrimination must be able to price differently to targeted customers than to other customers. This may involve identification of individual customers to which different prices are offered or offering different prices to different types of customers based on observable characteristics" (FTC 1). Furthermore, targeted customers must not be able to defeat a concerning price increase by means of arbitrage. Arbitrage can be described as the indirect purchasing from or through other customers. "Arbitrage on a modest scale may be possible but sufficiently costly or limited that it would not deter or defeat a discriminatory pricing strategy" (FTC 1).

From sections *2.1.3, - 2.1.5* in the Horizontal Merger Guidelines, types of evidence of adverse competitive effects are discussed. The FTC and DOJ examine aspects such as merging parties' market shares in the relevant market, the level of concentration in that market and the change in concentration caused by the merger, and whether or not the two firms involved in the M&A deal will become or have been substantial head-to-head competitors absent the merger. Finally, the agencies consider whether a merger may decrease competition by eliminating, a "maverick" firm. This type of firm is defined as a firm that will play a disruptive role in the market, regarding the benefit of the customers (FTC 1). "For example, if one of the merging firms has a strong incumbency position and the other merging firm threatens to disrupt market conditions with a new technology or business model, their merger can involve the loss of actual or potential competition" (FTC 1). In addition to an overview of the types of evidence that agencies examine, it is worth briefly noting the sources of this evidence in order to gain a full understanding the type of process an M&A deal requires from a governmental standpoint.

The Department of Justice believes that "The most common sources of reasonably available and reliable evidence are the merging parties, customers, and other industry participants, and industry observers" (DOJ 1). Regarding merging parties, the DOJ and the FTC receive substantial information via documents, testimony, or data. They receive information about the preferences, views, and behavior of customers--- their response to price increases, their opinions on product quality, their predilections for different suppliers, and their assessment of the potential impact of the merger itself. The DOJ and FTC also study the history of the entry of new suppliers and solicit information from and secure the views of indirect customers, distributors, and industry analysts (DOJ 1). Thus, the DOJ and FTC rely on testimonies from many active market participants in establishing an evidentiary base for evaluating a new merger. This initiative aligns with that of the DOJ and FTC Horizontal Merger Guidelines themselves to increase transparency of this analytical process, as previously noted. The DOJ and FTC's Non-Horizontal Merger Guidelines are structured to do the same thing.

M&A deals that do not involve firms from the same industry are referred to as vertical or conglomerate mergers. As one will see in the Econometrics study in the next chapter, firms from different industries engage in M&A deals frequently and require their own set of regulation guidelines. "Although non-horizontal mergers are less likely than horizontal mergers to create competitive problems, they are not invariably innocuous" (DOJ 1). Section 4.1 and 4.11 of the Non-Horizontal Merger Guidelines declare that a merger between firms in different product markets may be deemed anticompetitive if the firms can potentially enter each other's market (DOJ 1).

If a merger were to occur and the one potential entrant firm was to merge into the market, market performance may immediately deteriorate due to the elimination of the competitive threat that the one firm held before. The behavior of the firms already in the market may change. This activity demonstrates harm to perceived potential competition. (DOJ 1). The elimination of the possibility of entry by the acquiring firm in the acquired firm's market reduces competitive pressures in that market (DOJ 1). Furthermore, sections 4.12 and 4.13 note the close relationship between perceived and actual potential competition and tasks the DOJ to use similar principles in judging non-horizontal and horizontal mergers. The DOJ considers market concentration and entry barriers, and analyzes the acquiring firm's entry advantages, the market share of the acquired firm, and the expected efficiency gains from merger when assessing either a horizontal or a vertical merger. To elaborate, the DOJ aims to recognize if a vertical merger would create competitively objectionable barriers to entry in a market. The DOJ might block a vertical merger if:

> "First, the degree of vertical integration between the two markets must be so extensive that entrants to one market (the "primary market") also would have to enter the other market (the "secondary market") simultaneously. Second, the requirement of entry at the secondary level must make entry at the primary level significantly more difficult and less likely to occur. Finally, the structure and other characteristics of the primary market must be otherwise so conducive to noncompetitive performance that the increased difficulty of entry is likely to affect its performance". (DOJ 1).

It is evident that the DOJ takes both horizontal and vertical mergers into deep consideration when examining the well-being of not only the U.S. economy but the global economy. Similar laws and governmental bodies regulate competition in Europe.

IV. The Policies of European Regulatory Agencies Regarding Market Competition, M&A, and Brief History

The European Commission, the quasi-executive branch and civil service of the European Union, is responsible for administering, monitoring, and enforcing compliance with most of Europe's antitrust laws. The EU Directorate General for Competition oversees and implements EU competition, antitrust, merger and other internal market policies in the interest of European consumers, business, and social welfare. European competition policy originated with the formation of the European Coal and Steel Community in 1951. Inspired by French Foreign Minister Robert Schuman, the ECSC was the first historical step towards the economic and political integration of Europe. This integration and creation of a common market for coal and steel called for a public authority to regulate these markets, which were severely distorted by trade barriers, cartels, and geographic price discrimination (Warlouzet 7). Furthermore, European businesses demanded change. For example, French Steelmakers wanted access to German coal at the same price as their German counterparts, and Renault, a French carmaker and steel consumer, desired a strong-anti-cartel policy to benefit from lower prices. Finally, Jean Monnet and German ordoliberals, a set of influential policy experts with transatlantic links to American officials, wanted to use competition policy to establish a modernized Europe (Warlouzet 7). Because of this push, unprecedented regulation came about.

The Treaty of Paris had created the European Coal and Steel Community (ECSC) and with it, a set of new antitrust provisions (Warlouzet 7). Decision making power over a wide range of anti-competitive practices was granted to a High Authority and Commission, two supranational bodies that were independent of the member state governments of the ECSC. (Warlouzet 7). However, Warlouzet notes that the aggressive antitrust provisions of the Treaty strongly contrasted with their weak and inconsistent implementation, as the governments of the member states constantly interfered with the High Authority's decisions. On the other hand, he also argues that the ECSC left three legacies for European Competition Policy: inclusion of competition rules in a Treaty designed to act as a catalyst for European integration through the opening of markets, a formal and strong institutional framework, and a weak system of implementation and enforcement (Warlouzet 8).

Another highlight of EU competition policy history is the Treaty of Rome (1957). This treaty created the European Economic Community (EEC). The antitrust provisions of the Rome Treaty were influenced by the network of German Ordoliberal thinkers who shaped the policies according to the doctrines of economic and political liberalism—including a major role for the state in creating and ensuring competitive markets (Warlouzet 8). The Treaty's provisions on competition and antitrust policy differed significantly from the policies followed by U.S. antitrust authorities (Warlouzet 8). Unfortunately, two main issues needed to be first resolved before the Treaty of Rome's competition rules could be implemented. These two issues included the competences assigned to the Commission and the priorities of enforcement. Thus, Regulation 17/62 was created with the influence of German ordoliberals (Warlouzet 9).

The ordoliberal network successfully secured the adoption of Regulation 17/62 and its features had a long-term influence on European competition policy. One of the main features of the Regulation was the system of notification: all agreements between companies that were operating within the EEC had to be reported to the Commission, within the competition restrictions of Article 85(1) (Warlouzet 10). However, the EEC Treaty did not call for merger rules and so under Regulation 17/62 mergers did not have to be notified to the Commission. Instead, the Commission was able to choose to conduct an inquiry regarding companies suspected of engaging in anticompetitive practices. (Warlouzet 10). "It was for the Commission alone to decide how to dispose of the case. Thus, the Commission gained a virtual monopoly of power both in terms of information and of decision-making (Warlouzet 10). However, Warlouzet claims that the

Commission did not manage to push for further authority over mergers, state aids, and state monopolies which was a setback of the Regulation 17/62 (Warlouzet 10). In 1962, the interpretation of Regulation 17/62 was deemed unclear for official and for business organizations, and more clarity was needed regarding proper legal treatment of distribution agreements.

British, French and German national competition authorities increasingly developed and deployed merger control policies focused on consumer protection in the mid-1960s and 1970s. (Warlouzet 13). The French created The Institut National de la Consommation in 1966 and the Office of Fair Trading was created in the UK in 1973. Following the global monetary crisis in 1971 and the oil crisis in 1973, a better ideological context for robust enforcement of competition rules to protect consumers and limit inflation swept thru Europe (Warlouzet 13). In late 1972, the Commission had prepared a draft Merger Regulation that had a procedural framework, roughly analogous to Regulation 17/62. An advisory committee would be created and composed of delegates from the EEC's member states. Furthermore, a threshold was established, in part to avoid an excess of notifications to the Commission and in part to avoid restricting the member states (especially Germany & the UK) from regulating any merger with a cross-border element (Warlouzet 14). Mergers would be dealt with by the Commission or by national authorities depending on a merger threshold, as stated by the new draft (Warlouzet 14). This Merger Regulation was supported by the European Parliament and by the Economic and Social Committee in 1974 however, due to strong opposition from the EEC Council, no decisions were made regarding the new Merger Regulation until

1989.

Briefly, the fifteen-year delay was caused by an economic debate that stemmed from the questionable compatibility of merger control with other initiatives relating to common policies in specific fields such as industrial policy, regional policy, and social policy and the launch of new initiatives after the oil crisis of 1973. At the European level, there was a lack of solidarity among member states in the energy field (Warlouzet 15). All in all, in 1989, the Merger Regulation was ultimately agreed upon. Warlouzet notes that the 1980's, given the ideological and political contexts during that time, were more propitious for the development of competition policy (17).

> "The development of neoliberal ideas, based on the limitation of the State to the role of referee in an economy driven only by free-market dynamics, spread quickly from Great Britain with Thatcher (1979) and the US with Reagan (1981) ...Even before these turning points, an evolution was visible in 1976, when Callaghan in Great Britain and Barre in France were appointed as Prime Ministers. This neoliberal trend clearly supported the development of an influential competition policy ". (Warlouzet 17)

Moving forward to 2009, the EC enforced its competition policy that led to its condemnation of Intel, a US technology firm. The Commission charged the firm a fine of one billion euros for executing anticompetitive practices. Warlouzet argues "This decision clearly shows the central position of EU competition policy in the political economy of Europe and the world, and in the European integration process...the situation was not achieved in a linear fashion but is the result of an evolving relationship between ideas and institutions which can only be understood through a historical lens" (1). This paper, going forward, discusses the current EU Competition Law Merger Legislation as of 2014, to draw comparisons and differences with current US antitrust laws and procedures.

European antitrust policy encompasses all aspects of competition policy, including merger guidelines. Article 101 of the Treaty on the Functioning of the European Union deals with agreements between actual or potential competitors who are operating at the same level of the supply chain (horizontal mergers) and establishes legislation on vertical mergers between firms operating at different levels of the value chain, e.g., between manufacturers and distributors (EC 1).

EU officials have developed their own US-style "Horizontal Merger" guidelines. "In the spirit of transparency and legal certainty, the European Community adopted the *Horizontal Merger Guidelines*… the *Guidelines* exhibit greater convergence with the DOJ/FTC Horizontal Merger Guidelines" (Zhu 640). The EU Competition Law Merger Legislation (2014) includes the 2004 "Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings". These guidelines are concerned with, as are the US guidelines, the impediment of competition from horizontal mergers, the strengthening of a dominant player in the market, and market concentration (HHI) (EC 1).

Non-horizontal mergers (vertical or conglomerate) have their own set of guidelines, as they do in US merger legislation. The EU Competition Law Merger Legislation (2014) also includes the 2008 "Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings". These guidelines, like those of the US, discuss provisions for mergers between companies that are active in closely related markets, and for market concentrations (HHI), market power, and impediment of competition (EC 1). "Types of vertical restraint typically infringe EU competition policy by...introducing price discrimination" (Nello 367). A case study exemplifying vertical restraint in terms of price discrimination is presented below.

For many years, the car distribution system in the EU allowed car manufacturers to sell through designated dealers in specific territories with the justification that cars require certain repair and maintenance. Manufacturers were obligated to allow dealers to sell cars to non-resident customers in the designated sales area (Nello 367). The Commission fined EU firms such as Volkswagen in 1995 & 1999 and Dutch General Motors in 2000 for attempting to block dealers from selling in other territories. In October 2002, a new regulation regarding car distribution was implemented, and offered distributors more freedom to operate multi-brand dealerships (Nello 367). Then, in May 2010, a sector-specific regulatory framework for vehicle distribution and repair called the Block Exemption Regulation No. 461 was introduced. This aimed at increasing competition in the market specifically for vehicle distribution and repair, by improving access to technical information needed for repairs and by making it easier to use alternative spare parts (Nello 367). This regulation is important for consumers because repair bills account for forty percent of the total cost of owning a car and this number is on the rise. Additionally, the Commission will now have an easier time preventing manufacturers from abusing warranties requesting cars only be services in authorized garages (Nello 367). Nello makes a point that “Although collusion is forbidden, Article 101 (3) TFEU envisages exemptions and permits other forms of cooperation between firms, which improve the production or distribution of goods, promote technical progress and allow consumers a fair share of the resulting benefit” (367).

Article 102 of the Treaty coincides with Article 101 to address collusive behavior demonstrated by a dominant competitor in the market. It “prohibits firms that hold a dominant position on a given market to abuse that position, for example by charging unfair prices, by limiting production, or by refusing to innovate to the prejudice of consumers.”(EC 1). Pelkman confirms that “in setting out the economics of anti-collusion, attention is focused on economic welfare effects...if collusion is perfect and encompasses all suppliers, then, in simple microeconomics, this is no different from monopoly” (248). M&A deals are examined at the European level to ensure these provisions are being followed.

The European Commission takes the examination of M&A seriously. The Commission recognizes the benefits of M&A such as market expansion and the development of new products but it also is aware that some deals may reduce market competition (EC 1). Therefore, there is a need for competition policy. Bartalevich states “competition policy plays a fundamental role…. the objectives…are to establish a competitive order to safeguard economic freedom…boost economic efficiency …maintain free and fair competition” (273). The Commission believes that the strengthening of a dominant player in the deal reduces market competition (EC 1). The

DOJ and FTC have also recognized a reduction in consumer choice, and product, service, technical innovation. The EC's action to examine proposed mergers is intended to prevent these things from happening. Additionally, the EC examines a specific merger if the annual turnover of the two businesses involved exceeds specified thresholds regarding global and European sales (EC 1).

The European Commission reviews all mergers between firms that do business within the European Union regardless of the location of company headquarters—either inside or outside of Europe. This is done because, although merging companies might be located outside of the EU, they may do business in the EU and therefore affect EU markets (EC 1). If a pending merger does not pose a threat to competition, it is approved unconditionally or conditionally. A merger deemed to potentially distort competition may be approved on the condition that a piece of the merged firm's business is sold off. If a deal does prove to be a threat and no alterations are made, the deal is prohibited. The merger of major competitors in a market is more likely to be denied to preclude the emergence of a dominant firm and the reduction of competition (EC 1).

Just as the European Union has a European Commission, the French République Française has the Autorité de la concurrence (The Competition Authority). The Autorité de la concurrence specializes in analysis and regulation of the functioning of competitive markets to maintain economic order (Autorité 1). However, the Autorité does not have jurisdiction over all deals in France. Deals are referred to the EC who sometimes returns them to the Autorité. The thresholds that are used by the EC to decide if a deal is worth examining is as follows. According to the Code de commerce – Article L430-2

(Commercial Code) from the Autorité, requires the EC to be notified of the M&A deal if the "total revenue excluding taxes generated in France in the retail sectors by at least two companies or groups of person or entities concerned exceeds 15 million" (Autorité 1). It is important to now examine each procedure used to enforce the merger reviews of the US and the EU and their respective antitrust laws.

V. Analysis of the Merger Review Processes of the US & EU

First, the steps in the merger review process of the FTC's Bureau of Competition can be evaluated. The Clayton Act 7A, as previously mentioned, requires parties involved in M&A deals that exceed a certain value to file premerger notifications and wait for the result of a merger review (FTC 1). Filing notice of a proposed deal is step one in the merger review process and the FTC has a premerger notification program to better assist those trying to file. However, not all deals have to file. There is a minimum value and size of party required. As of 2016, only deals worth more than $312.6 million required the buyer and seller to file forms on the proposed merger and to release information about their respective industry and business. The waiting period was thirty days for the date of the filing. (FTC 1).

Step two requires that one antitrust agency, either the FTC or DOJ reviews the proposed merger after staff from FTC and DOJ consult. The matter is then cleared to one of the agencies and once the clearance is given, non-public info is gathered from the reviewing agency about the two parties involved (FTC 1). Step three occurs upon completion of the waiting period. If the waiting period expires, the parties can close the deal unless the agency requests additional information. Additional information requests extend the waiting period (FTC 1). Basnage & Curtin suggest that if parties involved understand their obligations under federal securities laws and regulations they can organize their transaction to minimize their procedural burdens and waiting period. They may also avoid potential conflict with foreign legal or market requirements (Basnage & Curtin, 459). However, if an additional waiting period is required, the process will continue to step four.

Step four allows for the reviewing agency to have thirty more days to review any additional information given to them by the participating parties in the M&A deal. Step five, the final step, occurs when the second waiting period expires or the agency challenges the deal. There are three potential outcomes at this point: the investigation is closed and the deal continues unchallenged, provisions are presented to the companies involved in a negotiation, or the transaction is chosen to be processed for termination upon a filing for a preliminary injunction in federal court pending an administrative trial (FTC 1). To see if there are discrepancies between the US process and that of the EC, the EC's merger review process must be analyzed as well.

As discussed, the EC examines a specific merger if the annual turnover of the two businesses involved exceeds specified thresholds regarding global and European sales (EC 1). Per the first alternative, the two businesses must have:

> A combined worldwide turnover of all the merging firms over €5 000 million and an EU-wide turnover for each of at least two of the firms over €250 million" (EC 1). According to the second alternative, the two businesses must have "a worldwide turnover of all the merging firms over

> €2 500 million… a combined turnover of all merging firms over €100 million in each of at least three Member States…a turnover of over €25 million for each of at least two of the firms in each of the three Member States included under ii, and EU-wide turnover of each of at least two firms of more than €100 million”. (EC 1).

Once the companies are qualified financially for a merger review, the process continues with the notification stage, present in both the American and European merger reviews, as previously discussed. Once the notification is sent to the EC, Phase I investigation begins. The EC has twenty-five days to analyze the deal during this phase, unlike the DOJ and the FTC who have thirty days. During this time the EC requests information from the parties involved and questionnaires are sent to competitors or customers about their opinions on the deal. In an American review, this generally does not happen until stage three if necessary. Unlike the American review process, “more than 90% of all cases are resolved in Phase I, generally without remedies” (EC 1). At the end of phase I, a meeting is held where the EC informs the parties about the findings of the investigation. If there are any concerns and companies offer remedies, the phase is only extended by ten days, unlike the additional thirty days that it takes Americans, at stage four for that matter.

If a deal still raises concerns or threatens to reduce competition in the market after the ten-day period, a phase II investigation is opened. Phase II allows for a detailed analysis of a merger’s effect on competition and therefore requires additional time (EC 1). This analysis requires extensive information gathering specifically, a company’s internal documents, economic data, and detailed questionnaires from other market participants (EC 1). Additionally, the EC analyzes "claimed efficiencies which the companies could achieve when merged together. If the positive effects of such efficiencies for consumers would outweigh the mergers' negative effects, the merger can be cleared" (EC 1). However, unfortunately if, after all additional investigation, the EC believes a proposed merger will still negatively affect competition, the EC will send a statement of objections to the parties announcing their conclusions (EC 1). Parties are then able to respond within a given time frame.

From the start of Phase II, the EC has ninety days to make a final decision on them merger. As formerly discussed, in its final decision the EC can unconditionally or conditionally clear the merger, or prohibit it (EC 1). Comparing the timelines of the American review process and that of the European, the EC process can take up approximately anytime between one month to four months, like the DOJ or FTC process. Based on this specific compare/contrast analysis of the two review processes, there are just discrepancies in that there are up to five steps in the American review while the European review has two phases which have different steps within. However, they share an important similarity. They "both share a basic objective: protecting consumers from anticompetitive mergers" (Bergman, Coate, Jakobsson, & Ulrick 306) and they work together under one framework that they use to assess cross-border M&A deals, to carry out that objective. "Deals between the EU and North America account for 76% of all cross regional activity by value" (Baker & McKenzie 2015). Because this percentage is relatively high, the US and the EU use an advisory framework instilled by the US-EU

Merger Working Group.

This framework is called “Best Practices on Cooperation in Merger Investigations” (DOJ 1) and is used in cases where either the DOJ or the FTC is reviewing the same merger as the EC’s Competition Directorate-General (DOJ 1). This framework is divided into five sections. The first section, “Objective”, explains that many mergers in international business are most likely to be reviewed by both the EU and the US in addition to other jurisdictions, and in this review process there is a mutual interest in reaching non-conflicting outcomes (DOJ 1). One could agree that this outcome would be in the best interest for all parties and agencies involved in the review process. There are evidently many US-EU mergers and as discussed, they each could take from one to four months to close. Therefore, communication is so important.

“Communication between Reviewing Agencies” is the second section of the framework. It is understood that once a merger arises that appears to require the review of both the US and EU, the liaison officers from both reviewing agencies must contact each other. It is encouraged that regular communication is exercised but the framework suggests a time frame for consultations based on the different timetables of the US and EU review processes. Consultations are particularly beneficial at significant stages of the investigation:

> (a) before the relevant US agency either closes an investigation without taking action or issues a second request; (b) no later than three weeks after the European Commission initiates a Phase I investigation ; (c) before the European Commission opens a Phase II investigation or clears the merger

> without initiating a Phase II investigation; (d) before the European Commission closes a Phase II investigation without issuing a Statement of Objections or before DG Competition anticipates issuing a Statement of Objections; (e) before the relevant DOJ section/FTC division makes its case recommendation to senior leadership; (f) at the commencement of remedies negotiations with the merging parties; and (g) prior to a reviewing agency's final decision to seek to prohibit a merger. (DOJ 1).

Referencing back to the discussion on how the US and the EU take similar initiatives using different steps and phases, this communication framework demonstrates the organization and professionalism among the American and European regulatory agencies. This is crucial when addressing the booming cross-border global M&A business. These agencies also are aware of the need for coordination with the timing of the review process. The framework in section three on coordination on timing summarizes the content on communication and key stages in the merger where there should be meetings, required document submissions, interviews, and particularly time frames for notification filings. It is recommended in the framework that the US and the EU agencies as well as the participating merging parties complete filings, as discussed, at the same time. "If filings in the EU and US are not made in parallel, meaningful cooperation can still be achieved if the timing of the filings allows for cooperation of the agencies at key decision-making stages of their respective investigations" (DOJ 1).

Section four is collection and evaluation of evidence and section five is regards remedies and settlements. In terms of evaluation of evidence, efficient investigatory coordination is key and will benefit all parties involved. Through this coordination, the reviewing agencies will ask for information requests at mutual times. They may even arrange for group presentations and interviews with the merging parties and both reviewing agencies if possible (DOJ 1). Section five expresses how coordination and cooperation makes determining remedies and settlements more feasible.

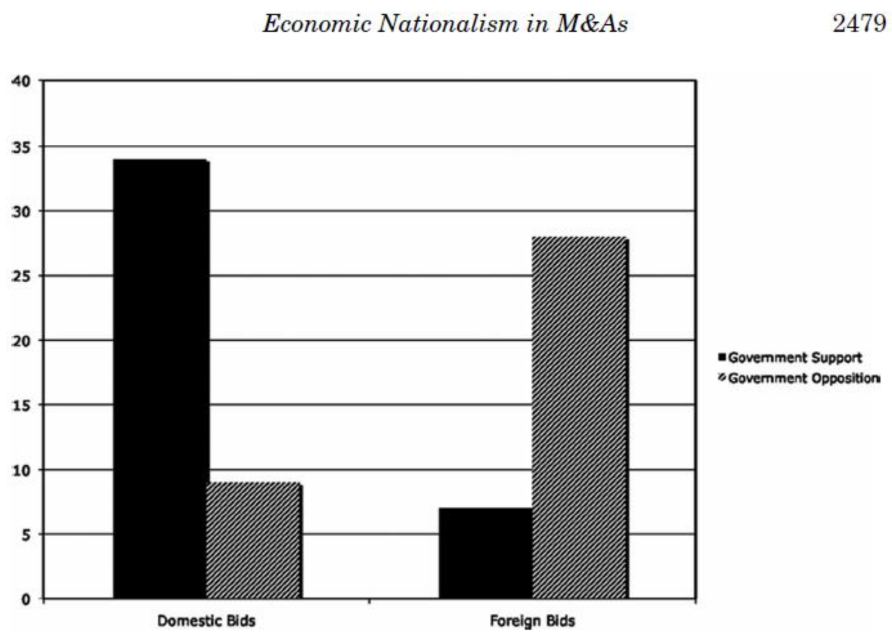
When there is a deal that will affect the EU and the US markets, if it is ultimately approved, the remedies provided by the merging parties to the reviewing agencies will be similar or even identical (DOJ 1). On that note, it is also important to recognize that "even if the geographic market is limited to only one jurisdiction, or the product markets or competitive effects of the merger are not identical in both jurisdictions, the remedies offered in one jurisdiction may be linked to, dependent on, or influence those offered in the other jurisdiction" (DOJ 1). From the summarized sections of US-EU Merger Working Group Agreement, it is apparent the M&A Review Process, particularly between American and European agencies, is organized and detailed. Moreover, this represents a strong relationship that the US and the EU have in terms of processing and executing cross-border transactions.

VI. Government Intervention in an EU M&A Deal: EU Merger Attempts 1997-2006: Based on the Study by Dinc and Erel

In this section of chapter one, I consider the research of Dinc and Erel regarding the study of government reactions to large corporate merger attempts in the EU from 1997-2006. Their results provide evidence that competition policies are not the only way that governments influence the pattern of mergers and acquisitions. Dinc and Erel argue that the presence of government interventions often depend on the “nationality” of the acquiring company. They define “nationality” of a company as its country of registration or its parent’s country of registration (Dinc and Erel 2478). “Nationalist interventions by domestic governments do not simply take the form of opposition to foreign acquirers”. They also offer support for domestic acquirers seeking to create domestic companies “that are considered too big to be acquired by foreigners” (Dinc and Erel 2472). I will summarize Dinc and Erel’s study, focusing on their statistical result that an independent variable, which they label *Foreign Acquirer Dummy*, has an impact on a dependent variable, which they label *Government Reaction and* which indicates either government support, opposition, or neutrality. Lastly, I will explore other types of government intervention discussed.

Dinc and Erel’s sample consists of the largest twenty-five merger target firms (as measured by market capitalization) from fifteen EU countries between 1997 and 2006. The countries include Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, and the UK (Dinc and Erel 2478). All of the sampled firms were publicly listed. Using Thomson Financial’s SDC Mergers and Acquisitions database, they identified merger attempts and their characteristics. Their sample included mergers where the acquiring firms aimed to become a majority owner or to cross the twenty percent ownership threshold to become the largest shareholder. It included merger bids by firms in the same country as the target country (197 domestic bids) and merger bids by firms from different countries (218 foreign bids) (Dinc and Erel 2478).

Dinc and Erel found data on government reactions to the merger bids, the dependent variable, in newspaper coverage about each merger. They concluded that the target firm's government had three choices regarding the bid at hand: support the bid, oppose the bid, and be neutral/do nothing about the bid (Dinc and Erel, 2478). To clarify, by "governments" Dinc and Erel mean prime ministers and cabinet members, and only referred to their feedback regarding the



mergers. The researchers argue that "The main advantage of our approach is that it focuses on direct government reactions rather than surveys of nationalist sentiment or the ideology of the ruling party, which may or may not be correlated with actual actions" (2479). The scholars provide this simple chart to demonstrate the frequency counts of government support or opposition to the bids presented in the study. Based on this graph, the scholars report that "We show that domestic governments are more likely to support domestic acquirers and oppose foreign ones even though the EU treaty does not leave them with jurisdiction to rule in merger attempts on the basis of nationality" (2472).

Dinc and Erel provide the table below that summarizes government responses bids on their domestic firms. While in the vast majority of cases governments were neutral, the difference in the proportion of neutral responses to bids by foreign and domestic bidders was statistically insignificant. "The Pearson chi-squared test provides

	Government Reaction			
	Opposition	Neutral	Support	Total
Domestic Bids	9	154	34	197
Foreign Bids	28	183	7	218
Total	37	337	41	415

Note: Pearson's Chi-squared p-value < 0.001.

evidence against the equality of distributions for government reactions by the nationality of the acquiring company at a significance level better than 1%" (Dinc and Erel 2480).

It is important to note the nature of the independent variable used by the authors of the study, *Foreign Acquirer Dummy.* It is equal to one when the bidder firm is not from the same country as the target firm, and is equal to zero if otherwise. The dummy variable is the main variable of interest. Not only is it found to be statistically significant at the 1% level, its results depict the term nationalism as defined by the scholars. "As mentioned in the introduction, we follow an old tradition in economics and use the term nationalism to denote the preference for natives against foreigners" (Dinc and Erel 2483). Based on the results of the *Foreign Acquirer Dummy,* "European governments are 15.1 percentage points more likely to oppose and 13.6 percentage points less likely to support a foreign acquirer, on average" (Dinc and Erel 2483). Considering the common methods of implementing nationalism allows scholars to better understand the national government reaction to a proposed M&A deal.

EU Merger Regulations allow domestic governments to oppose a merger with intentions to protect their national *Public Interests*. However, these interests are left undefined in the Merger Regulation and so Dinc and Erel argue this method is limited in practice. Any public interest must first be recognized and affirmed by the European Commission (Dinc and Erel, 2476). Next, some governments attempt to use *Moral Persuasion* as a method to stop a merger, even if they do not have de jure power to stop it, claiming that they are threatened by the fact that the acquiring company will be dealing with a hostile domestic government regarding regulatory issues upon the completion of the acquisition (2676). Finally, as Dinc and Erel note, domestic governments hold *Golden Shares* in many previously public and recently privatized companies that are targets of bids. Golden shares can be described as the right to veto major corporate changes, such as the decision to be acquired. Foreign acquirers may view this as a major deterrent; however, these "rights are increasingly in a legal gray area because they are frequently rejected in the European Court when challenged (Dinc and Erel 2477). We have briefly considered a few types of government intervention in M&A in affecting firms resident in the member states of the EU. I now analyze the corporate governance regimes of an EU member state, France, and the US, and their effect on M&A activity.

VII. A Consideration of the Historical Development of Corporate Governance and the Confidence and Participation in the Stock Market: France & the US

Now that I have explored and compared the antitrust laws, regulations, and the merger guidelines of the US and EU countries, I consider the differential role and influence of the stock market in M&A between the US and EU countries, France in particular. To aid in this consideration, I examine the US "new economy" business model of corporate governance and the concept of "shareholder value" (O'Sullivan 24). In this section, I consider the implications of the model itself, and then illustrate France's convergence with the U.S. model and its focus on the stock market. This will provide a better understanding of how these aspects affect M&A transactions, particularly between France and the US.

Firstly, I introduce the U.S. new-economy business model and its history. Through the 1970s and the 1980s, a resurgence of U.S. information and communication technology industries provided a foundation for the so-called "new economy" in the late 1990s (Lazonick 691). What caused the development of the new economy? According the Lazonick, "underlying the emergence of the new economy were massive post-World War II investments by the U.S. government, in collaboration with research universities and industrial corporations, in developing information and communication technologies" (Lazonick, 691). The table provides some brief information on the new economic developments that occurred as a result of the transition from the old-world economy business model to the new- world economy business model. For the purpose of the analysis in this section, I will consider the new intensified focus on the stock market.

When comparing the provisions of the old and new models, it is evident that the stock market plays a more prominent role in the latest model. Lazonick notes that "Through the offer of what came to be known as 'broad-based' stock-option plans, the rise of the new-economy model relied for its success on prospective stock-market gains to induce professional, technical, and administrative labor” (680). Furthermore, this new model considers possible M&A transactions in the fact that it “relied on prospective stock-market gains to induce financial capital accumulated in the old economy to be transferred to the new economy in the form of venture capital” (Lazonick 680). Venture capital is important in M&A deals because it can serve as a type of funding for new businesses including a merger, acquisition or even an IPO (Investopedia 1).

More importantly, this model has been the catalyst for the US economy’s implementation of the ideology of maximizing shareholder value” (Lazonick 680). Because of this ideology, Lazonick argues that the U.S. sectors have become highly financialized in the sense that U.S. company performance is measured by earnings per share (680). Moreover, he argues that corporate executives in the U.S. have an obsession with distributing “value” to shareholders in the form of stock repurchases (Lazonick 680).

Table 1
Strategy, Organization, and Finance of the Old- and New-Economy Business Models

	Old-Economy Model	*New-Economy Model*
Strategy, product	Growth by building on internal capabilities; business expansion into new product markets based on related technologies; geographic expansion to access national product markets.	New firm entry into specialized markets; sale of branded components to system integrators; accumulation of new capabilities by acquiring young technology firms.
Strategy, process	Corporate R&D labs; development and patenting of proprietary technologies; vertical integration of the value chain, at home and abroad.	Cross-licensing of technology based on open systems; vertical specialization of the value chain; outsourcing and offshoring.
Organization	Secure employment: career with one company; salaried and hourly employees; unions; defined-benefit pensions; employer-funded medical insurance in employment and retirement.	Insecure employment: interfirm mobility of labor; broad-based stock options; nonunion; defined-contribution pensions; employee bears greater burden of medical insurance.
Finance	Venture finance from personal savings, family, and business associates; NYSE listing; payment of steady dividends; growth finance from retentions leveraged with bond issues.	Organized venture capital; initial public offering on NASDAQ; low or no dividends; growth finance from retentions plus stock as acquisition currency; stock repurchases to support stock price.

Source: Lazonick, *Sustainable Prosperity in the New Economy?* 17.

O'Sullivan notes that this model has increasingly served as the ideal of 'good' corporate governance. "When corporations maximize shareholder value, it is argued, the performance of the economic system as a whole...is enhanced" (O'Sullivan 26). Given the U.S.'s interest in the stock market and how the market has the ability to affect the possibility of new emerging M&A deals, it is worth asking whether the French follow the same ideology. This analysis will allow me to draw some conclusions on potential matters of contention when conducting an M&A deal between the US and France.

The first point to note is that the French corporate economy since the late 1990s has been increasingly influenced by the stock market (O'Sullivan 25). Some scholars argue, "there are growing pressures on national systems of corporate governance to converge on a model that supports an increased focus on shareholder value...a model that closely resembles the US system of corporate governance" (O'Sullivan 24). However, O'Sullivan argues that France has not yet created a system of corporate governance in which the stock market is as prominent as it is in the US system (24). Furthermore, O'Sullivan's argues that French views on the effect of the stock market on productive capabilities regarding particular enterprises, industries, and economies did not readily match American views (25). A brief look at the history of the French system of corporate governance evidences a lack of convergence on a model focusing on the stock market like that of the U.S.

O'Sullivan discusses the French post-war system regarding corporate governance. To begin, by 1976, the French state held a majority of shares in forty of France's top five hundred companies and minority shares in thirteen others. Despite this, families still played a central role, owning common stock among leading French companies; ninety four of France's leading five hundred corporations (O'Sullivan 33). However, in 1982 Francois Mitterand's program of widespread nationalization resulted in the French government owning one hundred percent of the twenty largest French industrial firms (O'Sullivan 33). Then in 1986, Mitterand's government did an about face and began to transfer corporate assets from the state to private hands. However, the stock market crash of 1987 cut short these re-privatizations (O'Sullivan 33).

In 1988, the Socialists resumed the privatizations and diluted the state's direct equity share in the French corporate economy. Ultimately in 1997, the Socialists sold off state enterprise assets "worth Ffr 167.5bn[3] thus surpassing the total amount generated by the privatization efforts of the Balladur and Juppé governments from 1993 until June 1997 (O'Sullivan 34). O'Sullivan concludes that "In France by the mid-1990s, in the wake of a series of major privatizations…the post-war system of governance had come undone" (31). At this point, O'Sullivan asks whether the "French system of corporate governance would move towards an increased focus on shareholder value, and thus evolve to more closely resemble the Anglo-American systems" (31).

O'Sullivan concludes that by 2000, France's system of corporate governance had not yet converged on the US system based on shareholder value, but was heading in that direction (32). In the 1990s the stock market did play a part in French corporate life more than before. Notably, the number of companies introduced on the stock market increased as a result of the establishment of the Nouveau Marché, a dramatic rise in the value of M&A activity involving French companies, and an increased corporate reliance on shares as the basis for employee compensation (O'Sullivan 32). I now analyze the effects of the increased prominence of the stock market in French corporate life, on M&A activity.

O'Sullivan notes that reliance of French corporations on the stock market has been increasing for three purposes: they have become a source of corporate finance, they serve to facilitate merger and acquisition activity, and they offer share options and employee share ownership schemes (39). Let us consider the French's participation in the stock market for the purpose of M&A transactions. In the late 1990s, the French corporate sector was involved in the most recent wave of M&A activity. In fact, O'Sullivan argues that "If there was a revolution in the role of the stock market in the French corporate economy in the late 1990s, it was in facilitating mergers and acquisitions (M&A)" (40). It is important to note that a tendency of this trend of M&A involving the French was the use of shares rather than cash to conclude these transactions. Furthermore, there was an increase in cross-border M&A transactions involving French companies that displayed a stronger tendency to be the acquirer than the target (O'Sullivan 40).

O'Sullivan also brings to light the fact that as a result of the French's active participation and "Notwithstanding the major increase in M&A activity that involved French companies in the late 1990s, it should be noted that very few of these deals were hostile transactions" (40). Only 19 hostile bids involved French companies from 1991 to 2000 (O'Sullivan 41). Regarding the idea of a hostile bid, some clarification may be desired. Without wishing to attach too much importance to these details, I do think that one should briefly consider a situation such as a hostile takeover in which an M&A deal may try to be prevented, perhaps in a cross-border deal for instance.

To provide some clarification, a hostile bid is synonymous for a hostile takeover which can be described as an acquisition of one target company by another acquirer company in which the target company's management is resistant to the completion of a deal. A deal like this will be initiated with a tender offer, as previously discussed in this chapter. Even though the board of directors may reject the offer, if a sufficient number of shareholders accept the offer, the sale of the stock can proceed and the deal can be completed (Hostile Takeover 1). One can draw a conclusion that a board of directors may reject a hostile bid because it can promote major changes in the organizational structure of a company. This type of structure maintains institutional rules and policies, delegated responsibilities, and flow of decisions (Organizational Structure 1). It is now worth turning one's attention back to O'Sullivan's praise of the French involvement in the stock market and its implementation of its tools such as using shares as an exchange of payment when conducting an M&A deal.

Upon the consideration of the research by O'Sullivan and Lazonick regarding the US new economy corporate governance model and France's attempt to create a convergent model, one can draw some telling conclusions. First, France's increased presence in the stock market and desire to emulate the US corporate governance model can be argued as having served as the catalyst for the French's increasing participation in the wave of M&A activity, particularly cross-border. Furthermore, O'Sullivan also positively reveals that France's proposition of hostile takeovers was low compared to the great amount of M&A deals that involved French companies. As accomplished in this section of this chapter, it is necessary for one to consider the discrepancies in corporate governance models of the two countries involved in a cross-border M&A deal. One should also examine particularly one party's confidence and participation in the stock market which evidently plays a major role in M&A transactions.

VIII. Conclusion

The M&A review process is an important topic that the US and EU authorities take very seriously. They know that the business of M&A transactions, particularly cross-border, is growing and requires a great deal of regulation due to its influence on the market. It is positive to see that the US and the EU take similar initiatives & actions throughout each of their merger review processes and that the respective agencies desire a minimal amount of conflict when reviewing a deal together. The enforcement of antitrust and competition laws exist in both the American and European legislation as established with the presence of the SEC's Schedule 13D and Regulation 14E, The DOJ's and FTC's Clayton Act 7 and 7A, and the DG's Competition policy. These regulations ensure that the economies of the US and EU remain efficient and prosperous through the evaluation of cross-border M&A transactions and the careful monitoring of competition in the market.

CHAPTER TWO

The Concept of National Culture According to the Hofstede Cultural Dimensions Model: An Analytical Critique with a Focus on the Consequences of American and French Behavior in Business Practices: M&A

I. Introduction:

This chapter will provide insight on an important aspect worth considering when conducting an M&A deal: the role that culture plays in its failure or success. National culture is a concept that many choose to ignore, however, scholars like Drouart & Pereira believe in its importance in accounting for the high percentage of failed M&A transactions today. As noted in the introduction of this dissertation, “Thomas Reuters has highlighted that the value of withdrawn M&A so far in 2017 stands at US$205.2bn- around four times its level at the same point in 2016” (Withdrawn M&A 1).

First, this chapter discusses the importance of managing cultural differences in the pre and post-M&A deal integration phases. Then, it will present and discuss the concept of national culture. The Hofstede Cultural Dimensions Model, which focuses on six dimensions of national culture, will then be introduced as the primary source of analysis. The model itself and some brief historical background will be presented. Following the presentation of the model, the experiences of three business professionals who were interviewed on this topic will be offered. Their feedback will demonstrate the validity of Hofstede’s cultural dimensions, as well as the attestations to this model from scholars

Drouart and Pereira.

The first interviewee is a Global Product Manager for General Electric who currently lives in Paris. He is fluent in Spanish, English, and French. The second interviewee is an associate attorney at Latham & Watkins Law Firm in Paris. He is fluent in English, French, and Italian. My last interviewee is a Supply Chain Production Analyst who works for a global engineering products and solutions manufacturing company and is a native English speaker. The language fluencies of these business professionals are included to demonstrate each of their knowledge of diverse backgrounds. The chapter will conclude with a brief criticism presented regarding the credibility of the Hofstede Model in defining and assessing the impact of national culture on the success of M&A transactions.

II. Cultural Integration in the Pre & Post-Deal Phases

Due to the rise of cross-border M&A activity, scholars and business professionals are increasingly noting the importance of pre and post-merger integration strategies which target the merging of different "national cultures" for successful merger outcomes. For example, King & Wood Mallesons law firm offers a "Cross-Border M&A - 2016 Checklist for Successful Acquisitions in the United States". Number four on the list talks about integration planning. The firm claims "one of the reasons deals sometimes fail is poor post-acquisition integration, particularly in cross-border deals where multiple cultures, languages and historic business methods may create friction" (1). Drouart and Pereira also note in their extensive research on this topic that poor integration planning and execution is one of the five major causes of a merger failure. Since merging cultures is part of the integration process, the process itself is worth considering.

As discussed in the chapter on regulation, the pre-deal stage of a merger is a very important part of the regulatory arrangements and communications between the firms involved. Drouart & Pereira agree that “the pre-deal phase is arguably the most important phase and it includes many steps: selecting M&A candidates, target analysis, initial contacts” (2). In my interview with the supply chain analyst, he discussed how “having customers based all over the world makes communication and coordination of customer demand and needs complex”. One can argue that this could hinder M&A development in the pre-deal phase before any post-deal integration can even occur. Since it requires that merging firms schedule meetings to discuss business matters, the supply chain analyst argues that coordination is an issue. “The first of these difficulties is coordinating meetings and simply making time to communicate. With time zones that span from one hour to twelve hours difference, ensuring we connect with customers frequently is a high priority”. If communication issues are not addressed, the firms may not make it to the post-deal integration phase.

Though scholars note the importance of the pre-deal phase, they also argue that firms must carefully manage the post-deal integration, when the most strategic and cultural problems arise and must be dealt with (2). That being said, it is worth turning one’s attention to the post-integration period, a crucial period for the employees, including the management of both firms. It can be a time to boost employee confidence and to create positive reinforcement. As far as Drouart & Pereira are concerned, “during the integration phrase, current employees of a firm may view mergers and acquisitions as a fearful period...layoffs, loss of control, possible relocation, losing their identity or work reputation...on the other hand...these employees hoped for improved processes, new goals, integration of finding different functions and learning new skills" (5). Salyachivin argues that the examination of sociocultural integration and the acknowledgement of human factors in cultural integration can improve the chances of successful outcomes in M&A deals. He notes the importance of the ways that managers can support the development of a shared organizational identity in their ultimate success. (10-11).

Executives from law firm King & Wood Mallesons add that "executives and consultants who will be responsible for integration should be involved in the early stages of the deal so that they can help formulate and 'own' the plans that they will be expected to execute...too often, a separation between the deal team and the integration/execution ...teams invites slippage in execution of a plan" (Watchell, Lipton, Katz, King, & Wood Mallesons 1). It is clear that executive presence in the pre-deal leads to a smoother post-integration process. Furthermore, the supply chain analyst interviewed agrees that "having a diverse workforce is a key consideration when one business or group acquires another. The right policies, managers, and leadership have to be established and implemented in order to optimize business operators". Integration, due to its intricate implementation process and overall significance, could take longer than expected. Howard Johnson, Managing Director of Veracap Corporate Finance advises that "even though executives may think integration of two companies can happen in three months, it often takes years for full integration: 'It's not just the information systems; it's the culture and people integration" (Drouart & Pereira 4-5). One can now consider the concept of culture.

III. The Concept of "Culture"

To begin, it is worth examining the definitions of national and corporate culture that are used by scholars such as Rottig, Drouart, and Pereira, and McSweeney. "It is important to identify that there are two different types of culture in an organization: national culture and corporate culture" (Drouart & Pereira 5). Though both concepts are introduced in this chapter, Hofstede's model, the model I use, focuses on national culture. However, the definitions of both national and corporate culture allows us to better understand the implications of the Hofstede model. Drouart & Pereira's defines "national culture" as "a set of behaviors, norms, and beliefs shared by the people in a specific nation" and "corporate culture" as developed over time from the cumulative traits of the people in a specific company" (5).

McSweeney, a critic of Hofstede's model, argues that 'National culture' (hereafter 'culture')...if it is assumed to exist - can be theorized on a range from the scarcely significant to the dominant driver" (4). He notes that Hofstede's depiction of 'culture' includes the "breathtaking claim that it shapes the social action of defined populations enduringly and predictably" (4). Quoting Hofstede, "It *affect*[s] human thinking, feeling, and acting, as well as organizations and institutions" (McSweeney 5). McSweeney notes that Hofstede and his scholarly supporters believe that national "'Values' are 'the dominating force in life'. 'Culture' Etounga-Manguelle states, 'is the mother, institutions are the children' (McSweeney 5). It is held to be as Hofstede described it 'the software' of the mind" (McSweeney 5).

McSweeney notes, "the notion that 'national culture' shapes the behaviour of the populations of discrete national territories (countries) both within and outside of organizations...has extensive support within...the academic...communities" (1). Rottig, an adherent of Hofstede's views notes that "national cultures comprise the prevailing values of a society, encompassing language, religions, traditions, customs, and historical heritages" (101). National values" are closely interrelated with national culture. "Professor Geert Hofstede conducted one of the most comprehensive studies of how values in the workplace are influenced by culture" His cultural dimensions model can now be considered.

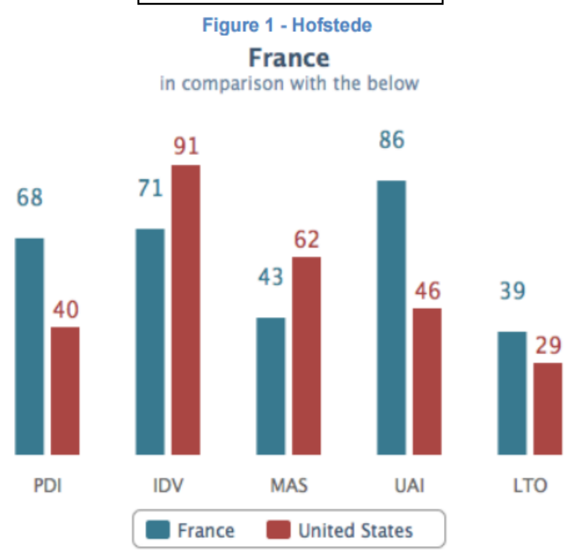
IV. The Application of the Concept of "National Culture" Using the Hofstede Cultural Dimensions Model

The development of Hofstede's six-dimension model provides insight into its uses. Hofstede analyzed the role that culture played in the work life of IBM employees' between 1967 and 1973. He assembled a large database from questionnaire responses of IBM employees from 50 countries. (The Hofstede Centre 1). Hofstede's definition of culture as "'the collective programming of the mind distinguishing members of one group or category of people from others'" led him to create six dimensions of national culture" (The Hofstede Centre 1). The six dimensions are power distance, individualism/ collectivism, masculinity/femininity, uncertainty avoidance, long-term orientation, and indulgence versus restraint (Drouart & Pereira 6). "The cultural dimensions represent independent preferences for one state of affairs over another that distinguish countries (rather than individuals) from each other" (The Hofstede Centre 1). Evidently, these dimensions were created on the basis of Hofstede's personal notion of culture. The scale for the model is from 0-100, with a country having a low cultural score in one dimension if the value is less than 50 and vise-versa (The Hofstede Centre 1).

Drouart and Pereira use Hofstede's model to compare American and French culture, arguing that "understanding cultural gaps in business behaviors in France and the United States is crucial for M&A success" (6). First, Drouart and Pereira define the six dimensions for their audience: power distance (how members of society accept power and handle inequalities among people); individualism/collectivism (expectation that individuals must care for themselves and immediate families only); masculinity/ femininity (masculinity representing a preference in a society for achievement and competitiveness; femininity having a preference for cooperation, a more consensus-oriented society and quality of life); uncertainty avoidance (how comfortable members of society feel with uncertainty); long-term orientation (extent to which a society is more present or future oriented); and indulgence versus restraint (society of indulgence allows for free gratification of natural human drives that include enjoying life and having fun; restrained society suppresses gratification of needs and follows strict social norms) (Drouart & Pereira 6).

Drouart and Pereira include Hofstede's "French vs. Americans Analysis" in order to analyze how the two countries compare with one another, and how these scores would affect business transactions. The first four dimensions in the graph provided by Drouart and Pereira, have values that were updated in 2015. (See Hofstede's 2015 Dimension Data Matrix (1)).

Source: Culture Vulture



First, one can consider dimension one, power distance. It is higher in France than in the U.S. Calori, Lambkin, and Very note that high power distance should lead to a relatively high centralization of decision making in French companies, compared with American" (364). Drouart and Pereira agree with them. They comment on France's score of 68 in power distance compared to the United States' score of 40, and note that "this may cause many problems for American acquirers. In French organizations, the boss takes complete responsibility for practically all decisions…the hierarchy is to be respected and not simply a convenience as it is for Americans (7). The associate attorney interviewed agrees completely with Drouart on this notion of power distance and he provides an explanation. He says that his French boss, who is "American trained", takes more of an American approach to management. However, he also stated directly that "I have worked with French partners and that is the case, that you have no comment on what the director says and that it is horribly inefficient because they don't necessarily know what they are doing". He also agrees that in some cases, the French don't trust their employees to do their job and they like to oversee everything. On the other hand, American employees are relied on to do their jobs by management. He provides an example.

He once worked as an in-house attorney with the Clarins Group, a French luxury cosmetics group. His boss, the general counsel for the firm, only gave her employees limited information, never the full picture. He said this made doing the job impossible because he would only get pieces of the puzzle. His French boss's argument was that he [my interviewee] did not need to know everything because she [his French boss] was going to take care of it. The attorney's rebuttal argument was that he was in charge of his assignment and he could not be in charge if he did not know all the pieces. His response to this situation was, "It was a very French mindset of, oh, well, I know what I'm doing, so just trust me and we will be fine...I was like, I can't trust you because I don't know what you're doing and I am an American".

My interviewee's testimony supports Hofstede measure of France's power distance score of 68 compared to the U.S.'s score of 40. One could argue that the United States has a different methodology when it comes to authority. Drouart and Pereira draw the conclusion, regarding Americans, that "their low score of 40 on the power distance represents their focus on equal rights for all. For them, superiors are always accessible and the same language is used to communicate goals" (8). GE Global Product Manager attests to this fact when he discusses his company General Electric, an American company. "We do not have a well-placed hierarchy, we are all leaders, we are all managers. Even if you are at the bottom, you are expected to be a leader in whatever you are doing". Drouart and Pereira agree when they say the "French will most certainly find it rude if a lower rank individual attempts to overpower the opinion of a senior person (8). However, in the eyes of an American director, that person of lower rank may be taking initiative which is praised in the United States. The GE General Product Manager makes the point that in his American firm, no matter what position you are in, you are able to make a decision and you are expected to do what you are supposed to do. This example lends supports to the fact that Americans score higher than the French in the individualism versus collectivism dimension of Hofstede’s model. On that note, let us now consider the individualism/collectivism cultural dimension.

According to Hofstede’s scale, the United States is considered to be highly individualistic compared to France (Drouart & Pereira 9). One can argue U.S employees are expected by management to be self-reliant and to display initiative. A Managing Director for J.P. Morgan Chase in the U.S., notes that he looks to hire people he does not have to watch over to ensure their work is done properly. In other words, he wants employees who are self-reliant, supporting Drouart and Pereira’s claim. Unlike the Americans, the “French will rely more extensively on group acceptance when making business decisions” (Drouart & Pereira 8). Drouart, Pereira’ and Hofstede's claims about American’s relatively strong belief and commitment to individualism and self-reliance are challenged by some scholars and often by counterexample. Let us consider one such recent case from the American financial services industry.

In October 2016, news outlets announced a scandal at the Wells Fargo Bank, one of the largest financial institutions in the US. The scandal revealed the behavior of American employees that some can say represents an anti- “individualistic” persona.

Due to strenuous sales goals and immense pressure, at least five thousand Wells Fargo employees, over the course of four years, opened at least one million fake bank/credit card accounts on behalf of customers who were in the dark regarding this activity. Elizabeth C. Tippett, Assistant Professor at University of Oregon School of Law and writer of the article on the subject called "Wall Street vice: How Wells Fargo encouraged employees to commit fraud", states "These workers likely knew better than most what it's like to be slapped with unfair overdraft fees or undeserved hits to their credit rating..So why did they do it?" (1).

Do the French rely more on group acceptance than Americans in business? The reason the Wells Fargo employees committed these acts demonstrates the falsity of the claim. The article reveals that employees faced the risk of losing their jobs to end up working at "McDonalds" and aggressive yelling from management if sales goals were not met (1). Elizabeth Tippett notes that the guidance suggests that incentives that are highly salient and are foremost in an employee's mind matter a lot. "It's hard for an employee to ignore the threat of losing one's job or even the threat of embarrassment in front of other employees". She also includes in the article, "'[I]n many contexts, individuals are motivated by social comparisons, such as learning about the behavior of their peers" (1). One can argue that this suggests that these American employees at Wells Fargo were heavily relying on group acceptance when making the decision to commit fraud. They wanted to surpass their peers and satisfy management.

It is worth now turning one's attention to Hofstede's masculinity/femininity dimension. Let us examine the topic of efficiency. The French and Americans may differ in their opinions on this due to their different value scores in this dimension. France's score of 43 in the dimension of masculinity versus femininity, compared to the United States' score of 62 may result in a different method when it comes to use of time and efficiency and business. France's lower score indicates that they take more of a feminine approach to business according to Hofstede (Drouart & Pereira 9). For example, the French believe that time should be used wisely in order to enjoy life and they are accepting of two-hour lunches because they allow for relationship building (Drouart & Pereira 9). To Americans, efficient use of time is strongly valued (Drouart & Pereira 9). It can be argued that the reasoning for this is because Americans take a more masculine approach in business and are very competitive and thrive for achievement, according to Drouart and Pereira (6).

First, a discussion on the topic of efficiency in the eyes of the American and French can be considered. In an interview with the associate attorney, his statement parallels Drouart and Pereira's interpretation of the Hofstede scores associated with efficiency in business. He states that:

> "The last IPO I did, the French company wanted to do a dinner while filling in the documentation. That drove me crazy, I was there until five in the morning, why are we doing this? It needs to get done. Also, for me, from the client's perspective, it costs them so much more money because every hour I am there, I am billing, so as I am sitting there having dinner with you I am billing...For them it's normal, they want to have a much more cordial meeting".

One may suggest that a situation like the one noted above may serve as an indication that efficiency methods must be initiated in a French-American M&A deal in order to prevent a lack of productivity and money. With regard to productivity, one can now consider the uncertainty avoidance dimension. This dimension may be used to explain the differences in expectations of productivity by the French and the Americans.

Drouart and Pereira put forward that France's high score of 86 on the uncertainty avoidance dimension represents the fact that they have a fear of a future that is uncertain, which their business attitude can be attributed to (9). According to Drouart and Pereira, the French like to explore all of their options before solidifying a business deal, hence their eagerness to build relationships before making deals (9). The GE Global Product Manager interviewee agrees with Drouart and Pereira. In our conversation about differences between French and American business practice he states that:

> "French people are very confrontational, they are very challenging, every sentence, every point you make, they are challenging it...that's their nature...I think that is really good because at the end, when you are challenged on your idea...you get more and more ideas..more ways to defend". He goes on to say that if Americans and French people are doing a business deal and Americans see a number they are comfortable with, they will continue with it. On the other hand, if the French see a number they feel comfortable with, they will still challenge it even further….because it's their nature, they just want to".

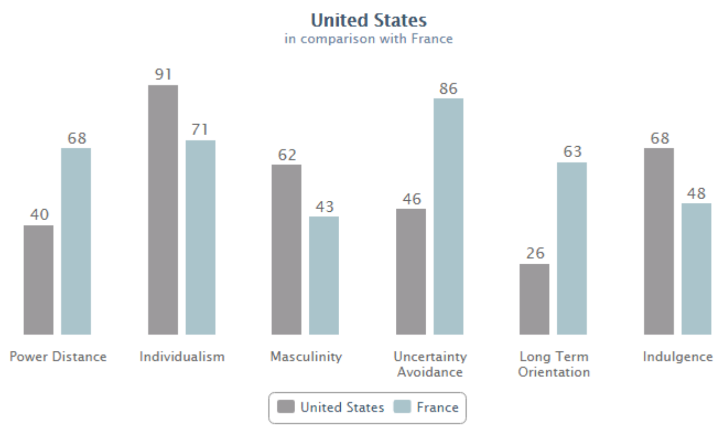
One can say that this business executive's experiences with the French attest, in his case at least, to the point that Drouart and Pereira made about the French wanting to explore all options before making a deal. This correlates to the French's high score of 86 regarding uncertainty avoidance. One can argue, on the basis of the Hofstede model, that the French executives' need to challenge every decision before moving forward may contribute to a fear of a "future that is uncertain" in a business deal.

On the contrary, Drouart and Pereira affirm that "Americans frequently accept new ideas in business practices and are openly willing to take risks" (9). The GE's Global Product Manager, in the interview, stated that "American people, they just want to see facts....in a business case, for example, if they are seeing a number they feel comfortable with, they can continue with it". One could argue that the French are more risk-averse than the Americans (Drouart & Pereira 10). This may cause conflict in an M&A deal because the two countries may or may not be able to come to consensus on business strategies as quickly as Americans would like, in order to increase productivity (Drouart & Pereira 10). It can be claimed that Americans, because they are more willing to take risks and they like quick results, can be considered to be more short-term oriented. In a 2015 model from The Hofstede Centre, of Drouart's and Pereira's model, the scores solely for long term orientation have changed, whereas the others have stayed the same from the older model.

As per the 2015 Hofstede Cultural Dimensions Model, the U.S. is now at 26 from 29, and France is at 63 from 39 (Dimension Data Matrix 1). Comparatively, in terms of indulgence levels, the U.S, with a score of 68, represents the Americans' weak control over their impulses, defining them as indulgent (The Hofstede Centre 1). Their short-term, risky behavior can possibly account for their high indulgence score. Regarding

France's behavior, the country scores a high of 63 on long term orientation, representing its risk-aversion and the time that the French take to carry out business procedures. This was previously demonstrated in the interview with the associate attorney in the conversation about France's tendency to aggressively challenge decisions before closing a deal. Similarly, France's score of 48 on the indulgence scale puts the French in the middle of being indulgent and restraining themselves (The Hofstede Centre 1). Therefore, one may say that the French restrain themselves from risky behavior in business.

Source: The Hofstede Centre



At the same time, the French indulge, according to Drouart and Pereira, because they take a more "feminine approach" to business in the sense that they fulfill their desire to enjoy life and they take two-hour lunches in order to build relationships. For example, Drouart and Pereira argue that "the French will spend an inordinate amount of time reviewing all the facets of a problem and will insist on knowing the long term objectives of a project (10). This also connects back to the fact that the French are supposedly not comfortable with a future that is uncertain, and so French take more time to ensure that the future of a deal or project has the outcome that they would like. Drouart and Pereira are not the only scholars who use Hofstede's model to attest to their belief that national culture is a compelling concept that can be considered in the process of M&A between two cultures.

Calori, Lambkin, and Very have claimed that differences in organizational culture and management practices between firms that are merging may be problematic. Also, acquisitions specifically on an international level can enhance the incompatibility between the buyer and the acquired firm (361). To further explore and understand this incompatibility, particularly regarding France/U.S. transactions, Calori, Lambkin, and Very analyze Gupta's and Govindarajan's 1991 study of the structure of control within multinational corporations (362). Gupta and Govindarajan differentiate between formal organizational structures and control systems, and informal coordination mechanisms (Calori, Lambkin, & Very 362) when analyzing international corporations. From a formal structure, comes sub-control strategies which include centralization (decision making authority) and formalization (attempt to control behavior indirectly through the use of procedures and methods) (Calori, Lambkin, & Very 363). Conversely, "Informal coordination…complement formal mechanisms and are based on informal communication patterns and emergent behaviour" (Calori, Lambkin, & Very 363).

Calori, Lubatkin, and Very use the concepts of formal and informal management structures in order to analyze Hofstede's 1980 study of work-related values and associated management practices (364). For example, "on the basis of Hofstede's cultural dimensions…combining high uncertainty avoidance and high power distance should lead to a relatively high centralization of decision making in French companies, compared with American" (Calori, Lambkin, & Very 364). This could negatively affect the way that French executives compromise with American executives when making important decisions in a business transaction. Perhaps the French may feel more superior and unwilling to compromise. In support of Hofstede's affirmations, at the same time, D'Iribarne "found that U.S. companies exercise more control over procedures and contracts than the French firms, where a 'logique de l'honneur' governs social relationships (Calori, Lambkin, & Very 364). When closing an M&A deal, this "logic of honor" could be an issue for an American director who, according to D'Iribarne favors contracts to solidify deals. The associate attorney interviewee can attest to this argument.

He says when he executes business matters, he likes to email and always likes to have a trace. The French on the other hand like to call. He discussed how Americans like to have everything in writing where the French are more verbal. He attributed this to the fact that under French civilian laws, unwritten contracts are valid whereas Americans need to have everything in writing by law. One can question if verbal versus written agreements are truly the result of a national culture based on behaviors or perhaps one that arose due to certain laws mentioned above that shaped the French thought process. Nevertheless, this difference noted between the Americans and the French regarding business agreements may cause conflict during a cross-border M&A deal between the two. Because of this, one may believe that a French person will complete a task solely on the fact that the person said they were going to, and gave a verbal agreement. On the other hand, an American may have a difficult time believing him or her. The attorney continues the conversation. As an American himself engaging in business with the French he speculates, "How do I know if you're legally bound? I have no proof that you're legally bound". He also adds that the Americans and the British are not very trusting, whereas the Latins, the Spaniards, the French, they are very trusting.

He says, "Me working with Italians for example, is always very interesting, I am Italian and I speak Italian, but I am American, but I am considered as one of them". He notes this conflicts with business at times. For example, he will ask an Italian executive for something and he or she will say that they will provide him with what he needs when it's ready, no stress; same with some French partners. In fact, this lenient behavior does not work well with him, he needs a deadline. Furthermore, he notes how his own boss is French but is American trained so when he wants something, he wants it "ten minutes ago", and one can argue that this mindset is considered to be "American".

From this interview alone, it seems as though national culture does play a part in cross-border business, but also that culture may be derived from policies, as demonstrated with the American need for written contract versus the French's verbal agreements due to civilian laws. In further research one could explore the root of American and French laws in detail that may contribute to a national culture that has emerged from a developed mindset resulting from these laws. However, this paper focuses on Hofstede's model and the response to it based on experience and scholarly research from interviewees and academic scholars. One can now consider these cultural differences presented by Hofstede when evaluating a case study of a failed cross-border merger.

The Daimler-Benz merger with Chrysler of 1998 is a very well-known international M&A transaction that resulted in a failure. One might ask, was national culture really the culprit or did corporate culture, mentioned briefly, play a part? This is an example of an American/European attempted merger. Daimler, a ‘conservative, efficient, safe’ German automobile company, and Chrysler, a ‘daring, diverse and creating’ American automobile company had numerous corporate cultural differences (Culture Vulture 1). From one perspective “It was this failed partnership that first rang the alarm bells that cultural factors just cannot be ignored on a global level, especially not within mergers and acquisitions” (Culture Vulture 1). On the other hand, Tuck School of Business released an article that argued there was no culture clashes involved in the deal, supported by a quote from the former Vice-Chairman of Chrysler, Robert Lutz, stating “‘there was a remarkable meeting of the minds at the senior management level. They look like us, they talk like us, they’re focused on the same things, and their command of English is impeccable. There was definitely no culture clash there’” (4). One can consider both articles’ analysis of the failed merger.

First, according to the culture vulture perspective, parallel to the concept of organizational structure provided by Calori, Lubatkin, and Very, regarding this merger, “Cultural differences and organizational culture are both acknowledged to have played their part” (Culture Vulture 1). “The attitude to hierarchy was quite different. Daimler was a very hierarchical company with a clear chain of command and respect for authority. Chrysler, on the other hand, favored a more team-oriented and egalitarian approach” (Culture Vulture 1). Under those circumstances, it is easy for managerial conflict to arise. Calori, Lubatkin, and Very affirm that “Differences in organizational culture and management practices between firms may be sources of conflict and may impede the implementation of synergies and limit the benefits of the merger” (361).

Clearly, American and German managers had different values that drove and directed their work (Culture Vulture 1). When considering these values, we can consider the origin of such.

One may agree with Hofstede, based on his model, that these values and management styles are a result of national culture. On the other hand, one may suggest that these differences simply arose from years of developed corporate culture. To reiterate, corporate culture is defined by Drouart and Pereira as developed over time from the cumulative traits of the people in a specific company" (5). Regardless, conflict, pertaining to management, can provoke a rapid plunge in efficiency and productivity, which, in turn, can negatively affect the business overall. In addition to hierarchical issues, the companies differed in their values in respect to their clients and product, and also there was mistrust among the employees (Culture Vulture 1). This point leads into the discussion of the merger from the Tuck School of Business at Dartmouth.

Despite, the claim from Lutz that no cultural clash existed, the Tuck article argues that "the culture clash seemed to exist as much between products as it did among employees" (5). Tuck School argues that much of this clash was due to the natural relationship between two companies with different wage structures, corporate hierarchies and values, supporting the argument of Calori, Lubatkin, and Very, as previously discussed. The mistrust among employees could have resulted from the fact that the American workers earned more money than their German counterparts. Furthermore, there was a demonstration of mismanagement by Daimler Chrysler CEO Jürgen Schrempp in 2000, two years after the merger occurred. The CEO "let it be known to the world-via the German financial daily...that he always intended Chrysler Group to be a mere subsidiary of Daimler-Chrysler… 'The Merger of Equals statement was necessary in order to earn the support of Chrysler's workers and the American public, but it was never reality" (Tuck School 6).

What caused the merger to suffer at a deeper level was the fact that Chrysler and Daimler-Benz's brand images were founded upon opposite premises (Tuck School 5). The Daimler-Benz executives declaring publicly that they would never drive a Chrysler (Tuck School 4). "James Holden, Chrysler president from September 1999 through November 2000, described what he saw as the 'marrying up, marrying down' phenomenon. 'Mercedes [was] universally perceived as the fancy, special brand, while Chrysler...the poorer, blue collar relations'" (Tuck School 4). This could have been the result of disparities in product development philosophies, hindering joint purchasing and manufacturing efforts. Daimler-Benz remained faithful to the mantra "quality at any cost" and Chrysler aimed to produce price-targeted vehicles (Tuck School 6).

Furthermore, with reference to Veracap's Managing Director Howard Johnson's pivotal point about the importance of the "people integration" regarding the employees, these two companies in their early stages of merging, did not address the integration process properly. For example, "Employees on both sides were reluctant to work with each other. During the initial stages of organizational integration, Chrysler's key executives either resigned or were replaced by their German counterparts" (Culture Vulture 1). Without question, management did not acknowledge Johnson's argument that M&A is about the "culture and people integration", as previously stated (Drouart &

Pereira 4-5). Ultimately, these factors did greatly affect the company's productivity, causing a sharp reduction (Culture Vulture 1). Considering this information, one could reason that disparities in corporate structures and frameworks did a play a part in the failure of this merger, i.e. wages differences and poor management practices, as well as disparities in the two corporations' places in the market.

V. Critiques of Hofstede's Cultural Dimensions Model

After examining the scholarly opinions and interviewees experiences in favor of the differences in culture based on the Hofstede model, let us now consider those who disagree with the model and its implications. To begin, McSweeney and his fellow critics of the Hofstede model do not believe it possible to depict or characterize a set of distinct values or culture permanently and universally adhered to by an entire nation. Swidler (1986) argues that the values 'model used to understand culture's effects on action is fundamentally misleading'. John Meyer and colleagues say that '[a] notion of 'abstract values internalized by individuals through socialization simply leaves out too much'. McSweeney notes "they explicitly reject...a general value system into which individuals are socialized" (4) and that Hofstede generally draws on this system.

McSweeney cites Gerhard and Fang who question the evidence used by Hofstede, his value score responses. "There is *zero* empirical evidence derived or derivable from their questionnaire and/or interview based depictions of national cultures or statistical representations of those cultures, of an influence on individuals' *behaviour"* (McSweeney 5). Oyserman and Uskul argue that "the asserted link between the descriptions of a national culture and national action is not extracted from, and is not extractable from, respondents' answers. It is presupposed" (McSweeney 5). The values scores that Hofstede's interviewees assigned to each dimension, are at best highly subjective and plagued by individual biases.

According to McSweeney, "even if we suppose that (a) the...mean values scores are accurate national averages; and (b) the ...values are causal…, deducing the subnational from anyone of the...averages and rankings is at best wholly speculative" (5). He adds a supportive notion from the esteemed company Starbucks stating "'comparisons between averages may say nothing about specific situations'" (6). Finally, McSweeney himself asserts that "the claim that national uniformities are a consequence of 'national culture' is a mere assertion that ignores other possible explanations" (6). Thus, McSweeney is taking up an idea suggested earlier regarding the example of the American Wells Fargo Scandal in terms of employee behavior within the individualism/collectivism dimension. One can advance that McSweeney's assertion is plausible, noting that there can be other explanations and circumstances that constitute an American person's or a French person's behavior, particularly in business.

VI. Conclusion

This chapter has presented scholarly research and insight from business professionals on a complex topic that has been argued to greatly affect the global economy as a whole: the presence of national culture in the business of cross-border M&A. As demonstrated, culture itself and Hofstede's model in particular used to depict it, can be viewed as subjective. However, integration is agreed to be a necessary aspect to ensure a smooth M&A development process and post-merger collaboration. Many have argued that integrating two different cultures is a major aspect of this process, but there will always be a debate regarding the true meaning of one's culture and its derivation. This paper has discussed the concepts of national and corporate culture. The important part of this discussion is to realize that one does exist, particularly regarding the presence of "culture" in the impactful business of cross-border M&A on a global level involving firms from different countries. It is worth considering the testimonies of business professionals such as those interviewed for this paper as well as academic scholars regarding the implications of the Hofstede model. When conducting a new M&A deal with two firms from different parts of the world, the concept of culture, in all of its forms should be considered, particularly in the post-merger integration phase.

Chapter Three

A Regression Analysis Study of Factors and their Contribution to the "Success" of an M&A Deal

I. Introduction

In this chapter I use econometric analysis to uncover the factors that contribute to the success of Mergers and Acquisitions deals between U.S. and E.U. based companies, between companies based in different E.U. countries, and between companies based in the same E.U. countries. It uses a data set comprised of 526 M&A deals attempted since 2000 obtained from "M&A Precedents Since 2000" (Bloomberg 2000-2016). The data set includes cross-border deals and as well as deals within one EU country alone (i.e. France and France). Chapter three explores the impact of factors that determine the success or failure of both cross-border and non-cross-border deals. Furthermore, it compares the number of deals completed with the number of deals terminated or withdrawn. The results show that 19% of a total of 526 deals were either withdrawn or terminated. According to this study, these deals are considered to have failed. Through this study, one can consider the contribution of certain factors to this failure rate.

II. Literature Review

Various studies have looked at the success and failures of cross-border mergers. Calori, Lubatkin and Very (1994) examine the influence of national culture on cross-border M&A between firms in the United States, the United Kingdom, and France. Based on the classic work of Hofstede (1980), they argue that national differences in how managers exercise authority in their firms pose various challenges to the success of cross border mergers. They note that “in line with their national administrative heritage: the French will exercise higher formal control by centralization”. American managers prefer relying on control through rules and procedures. Using surveys of managers who were asked to rate their firms on a point scale for several management variables, they demonstrate the existence of differences in the post-acquisition management strategies and practices between French and American buyers of firms in the United Kingdom” and e and between British and American buyers of firms in France”. They assess the impact differences in management control over resources and strategy on attitudinal and economic performance.

Unlike Meschi and Métais (2013), Calori, Lubatkin, and Very use a questionnaire to gather data directly from 392 French managers and 612 British managers. Both studies use regression models but it is interesting to see how two different data collection methods are used to construct a similar econometric regression analysis. Kish & Vasconcellos (1998) use logit and multiple regression models to test the hypothesis that macroeconomic variables, including bond yields, exchange rates and stock prices, have an influence on cross-border acquisitions deals between U.S. firms and European firms. They examine deals that occurred between companies based in Germany, Italy, the UK, and France from 1982 to 1994. Their logit model examines the impact of bond yield differentials in different countries on cross border M&A deals and their regression model investigates the impact of different stock market valuations in different countries on cross border M&A. The results “suggest that foreign acquisitions occur more frequently when bond yields in the acquirer's country are higher than those from the country of the firm being acquired.

In addition, after some debate, Harris and Ravenscraft (1991) conclude that a depressed US stock market relative to foreign stock markets encourages foreign acquisition of US companies" (Kish & Vasconcellos 1998). Kish and Vasconcellos note that the argument provided for this conclusion is based on empirical observation showing the covariance of returns across different economies (and in same industries) is likely to be smaller than the covariance in a single economy (Kish & Vasconcellos 1998). The Kish and Vasconcellos article is most relevant to my work in this chapter in that I too examine the impact of financial variables on M&A success such as the announced total value of a deal.

Dinc and Erel (2013), as discussed in chapter one, take a different approach when analyzing the topic of cross-border M&A activity success. To review, the researchers conduct a study to address the questions, "Do governments really resist the acquisitions of domestic companies by foreign companies?" and "If so, are such reactions just political statements or do they have real economic effects on mergers and acquisitions?" The study examines economic nationalism, i.e., negative government reactions to merger attempts in the EU countries between 1997-2006. The sample consists of the largest 25 merger target firms, by market capitalization, in a number of EU countries, and controls for variables like target acquirer, bid characteristics, and macroeconomic conditions. Like Meschi and Métais (2013), the study uses data from the SDC Mergers and Acquisitions database. It is also similar to preceding studies because the researchers use a multinomial logit model to test the dependent variable. However, in this case, the dependent variable is government reaction which can be modeled as opposition, support, or neutral reaction. This article has a unique perspective because government and policy decisions are strong variables to test to see if they contribute to a successful or failed M&A deal.

Meschi & Métais (2013) examine a different issue with the M&A literature. It offers a critique of scholars who argue that acquisition experience and acquisition performance are positively correlated. To do this, they examine the concept of organizational forgetting. The authors look at how “forgetting” depreciates acquisition experience and increases the likelihood of failure in subsequent acquisitions. The researchers conduct a survival analysis of 731 U.S. firms acquired by French firms between 1988 and 2006. They hypothesize that the more acquisition experience a firm has, the more developed their acquisition management expertise becomes, making them more likely to execute successful acquisitions. Their results show that old acquisition experience has no significant impact on acquisition performance and medium-term acquisition experience reduces the chance of failure. “The Cox regression models examining the impact of acquisition experience on the probability of acquisition failure display a good statistical fit ($p<0.05$)” (Meschi & Métais 2013). One can examine subsequent studies that have been completed to compare/contrast results.

Salyachivin (2013) explores the impact of M&A on employees, a key factor in accounting for the success or failures of mergers. The author discusses a (1989) study by Buono and Bowditch, which includes longitudinal and cross-sectional field studies, surveys, and interviews of employees' reactions to a merger or acquisition. Their results revealed that M&A deal may lead to low levels of job security, job satisfaction, and negative employee attitudes towards management. While Salyachivin's study (2013) explores the financial factors Buono and Bowditch look at the human factors behind employee reactions to M&A deals. The results of both studies can be compared and contrasted when seeing how they respectively contribute to the success of a cross-border M&A deal.

III. Data and Methodology

This paper uses the data set "M&A Precedents since 2000" gathered from Bloomberg Professional Terminal. My final sample includes M&A deals between firms based in the United States and the European Union, between firms based in different member states of the European Union, and between firms based in the same member state of the European Union. Dinc and Erel (2013) include mergers in fifteen European Union countries which I use in my data set. Additionally, Vasconcellos and Kish (1998) examine cross-border M&A deals between the United States and four EU countries which I also include in my data set: Germany, Italy, the UK, and France. According to Kish and Vasconcellos (1998), these four countries represent the bulk of the acquisitions from the EU, which is why they are important to consider. Deals with missing information on announced total value and the transactional value of the previous 12-months (before M&A proposition) are dropped from the sample.

Some of the variables from the data set are then used to create dummy variables, such as the different types of payment methods that are used to make the M&A

transaction. The base group is cash payment and the variables are described in Table 1. The dependent variable Success is defined as whether a deal is successfully completed (1) or terminated (0). The other seven of nine independent variables are also binary.

SellerCompanyListed is a dummy variable that controls for whether the deal has a listed parent seller company for the target company (1) or not (0). Furthermore, to parallel Meschi & Métais (2013), I included five dummy variables for detailed payment methods and results reveal that they are jointly insignificant. Another variable in the regression is a binary variable that controls for whether the deal happens between two companies from different sectors (1) or the same sectors (0) (DifferentSectorDeal). For example, mergers between two energy companies (0) or between an energy company and a financial company (1). My variable differs from the one used Buono and Bowditch (1989) and includes more sectors than they use - the banking, computer services, food, retailing, construction, and engineering.

Additionally, I hypothesize that an M&A deal involving two companies from different sectors will succeed less often than an M&A deal involving two companies from the same sector. The experience and expertise required to successfully manage, operate, and integrate firms from different sectors may be beyond the capacities of their employees and executives. Furthermore, it is possible that a clear and common set of business objectives will not emerge from firms with different perspectives on clientele, profit goals, and market competition.

Table 2 presents descriptive statistics of all nine variables used in the regression analysis. Only the variables used in the final probit will be noted in this brief overview.

From this chart, 33% of deals from the sample are made between two companies of different sectors. Deals with a parent seller company of the target company make up 11% of the total deals. Cash deals make up 62% of the deals, the highest among all payment types. Finally, the average announced total value of the deal is 7 billion dollars and the average transaction value of earnings is 20.746 million dollars. This study uses a probit model and the regression equation is as follows:

$$Success_i = \beta_0 + \beta_1 Dcash_i + \beta_2 AnnouncedTotalValuemil_i + \beta_3 TVEBITDA_i + \beta_4 DSellerCompanyListed_i + \beta_5 DDifferentSectorDeal_i + \mathcal{E}_i$$

I predict that the AnnouncedTotalValuemil will have a positive coefficient because if two companies involved in a M&A deal are worth more combined, then they will have more access to a large staff of skilled managers and attorneys to make the deal work. Additionally, I expect that the coefficient of the variable TVEBITDA should be positive as well because more profitable companies are likely have better personnel and deploy better strategies. I predict that the variable DifferentSectorDeal will have a negative coefficient. Finally, I foresee that the variable “SellerCompanyListed” will be positively related to “Success”. The probit model is used as the final regression to estimate the effects of the control variables on the probability of success. Thus, the final results are based on this final probit regression analysis.

IV. Results

Table 3 represents the results for the probit regression used to examine the probability of success of a cross-border M&A deal based on each variable. The payment variables are not included in this final results table. The only variables with statistically significant effects on success are AnnouncedTotalValuemil and SellerCompanyListed. AnnouncedTotalValuemil is statistically significant at the 5% level, and SellerCompanyListed is statistically significant at the 10% level. If the announced total value of two companies involved in a proposed M&A deal increases by one billion, the probability of success decreases by 1%, ceteris paribus. Even though this result is statistically significant, economically it is insignificant because of how small the decrease in probability of success is. This outcome could be perhaps a result of a government intervention type entitled *Creating National Champions* proposed by Dinc and Erel in chapter one. This intervention proposes that the merger of two domestic companies gain more support "in the hope of creating a new company that is too big to be taken over by foreign firms. Target size is often a good deterrent of foreign acquisitions" (Dinc & Erel 2477). Besides target size defined as the value of the one target company individually, one could argue that target size can mean the announced total value of the deal as a whole. Since many cases in the data set used in my study included cross-border deals in the data set between companies from different countries, the implementation of this intervention tactic is plausible. One can also briefly suggest that deals larger in value may be more difficult to coordinate among management in terms of asset allocation and employee responsibilities.

On a different note, M&A deals are 43% more likely to be successful if the parent company of the target firm is listed on an exchange. This result is both statistically and economically significant. This result affirms the claim of Salyachivin (2013) that when a new parent company assumes ownership, change is usually swift as the acquirer imposes its own systems of control and the parent seller company provides more logistical and financial support to facilitate the sale. While the variable DifferentSectorDeal unexpectedly has a positive coefficient, implying that mergers between firms in different sectors are more likely to be successful, it is statistically insignificant at the 5% significance level because its (p= 0.254) > .05. Thus, no conclusions can be drawn from this result.

Finally, in the probit regression of all variables, the TVEBITDA has a positive coefficient as expected. Even though only two of the four final variables used in the probit regression are individually statistically significant, the probit regression as a whole is statistically significant at the 5% significance level. Based on these results from the analysis of mostly quantifiable financial variables, it can be argued that other non-financial based variables could be added to potentially strengthen the statistical significance of the independent variables and the probit regression as a whole. This conclusion is analogous to that of Salyachivin (2013), claiming that the study of similar human factors and organizational cultures provides a better understanding of the failures of M&A deals than just financial factors.

V. Conclusion

To conclude, using data gathered from Bloomberg Professional Terminal, the work in this chapter demonstrates that AnnouncedTotalValuemil of a deal and SellerCompanyListed are statistically significant in their impact on the success of an M&A deal. There can be improvements made to my regression by adding more quantifiable variables to potentially increase statistical significance and draw more conclusive arguments. Additional independent variables may include bond yields and stock prices, used by Kish & Vasconcellos (1998) and other variables such as employee identification and job satisfaction used by Salyachivin (2013). These are presented to be factors that influence M&A deals in their studies. Furthermore, if researchers are given more public access to data on the details about cross-border M&A deals in general, more data can be gathered and further studies could be completed. Those who are involved with the M&A process such as executives, financial analysts, attorneys, the government, etc. can use this study as well as others to help improve the success rate of international M&A deals.

Chapter Three Tables

Table 1: Variable Descriptions

Symbol/Variable	Description	If Dummy, then "1" & "0"
$Success_i$	Completion of a deal or not	
β_0	Constant	-------
$\beta_1 AnnouncedTotalValuemil_i$	Announced Total Value of the transaction when proposed (in millions)	-------
$\beta_2 Dstock_i$	Deal was paid in solely stock	1 = Deal was paid in stock 0 = Deal was paid in something other than stock
$\beta_4 Dcashstock_i$	Deal was paid in both cash & stock	1 = Deal was paid in cash & stock 0 = Deal was paid in something other than cash & stock combined
$\beta_5 Dcashstockdebt_i$	Deal was paid in cash, stock, and debt	1 = Deal was paid in cash, stock, & debt 0 = Deal was paid in something other than cash, stock, & debt combined

$\beta_6 Dcashdebt_i$	Deal was paid in both cash & debt	1 = Deal was paid in cash & debt 0 = Deal was paid in something other than cash & debt combined
$\beta_7 TVEBITDA_i$	Transaction Value (in millions) of the previous 12-months (year before M&A proposition) earnings before interest, taxes, depreciation, and amortization of the target country and acquirer country combined.	--------
$\beta_8 DSellerCompanyListed_i$	The country listed that serves as the location of the parent company (owner/seller) of the target country	1 = If there was a listed parent seller company of target company involved in deal 0 = If there was no parent seller company listed
$\beta_9 DifferentSectorDeal_i$	The deal included two companies from different sectors (i.e. the two companies in deal were from energy sector)	1 = If the two companies involved were from different sectors 0 = If the two companies involved were from the same sector
E_i	Error term	--------

Table 2: Summary Statistics

N = 526

Variable	Mean	Standard Deviation
AnnouncedTotalValuemil	7009.129	11995.91
Dcash	.620	.486
Dstock	.167	.374
Dcashorstock	.032	.177
Dcashstock	.143	.350
Dcashstockdebt	.004	.062
Dcashdebt	.013	.115
TVEBITDA	20.746	43.76
DSellerCompanyListed	.112	.316
DDifferentSectorDeal	.325	.469

Table 3: Results

Probit Regression Analysis

Significance Level (** = 5%, * = 10%)

Variable	Probit
DCash	.1534292 (.131)
AnnouncedTotalValuemil	-.0000114 (4.78e-06) **
TVEBITDA	.000116 (.001)
DSellerCompanyListed	.4143314 (.236) *
DDifferentSectorDeal	.1667643 (.125)

Thesis Conclusion

As discussed in the introduction of this thesis, the purpose of this analysis is to present three important aspects that should absolutely be taken into account in the pre-merger deal process, in the case of a cross-border M&A deal, particularly between the US and the EU. To summarize, these aspects include differences in regulations and policies proposed by respective regulatory agencies, the concept of national culture and its role in the integration period, and empirical factors that can be tested using regression analysis to test the outcome of a deal, i.e. the success or completion of a deal, before it happens. This examination as a whole is unique to others because it encompasses the different claims made by scholars that attribute certain factors alone to the success or failure of an M&A deal. It does not consider regulation, culture, and data, to be driving individual factors that affect M&A, but instead argues these three subjects must be considered as a whole when developing a new M&A deal. Additionally, this paper acknowledges the complexity and subjectivity of these aspects that have the ability to increase the value of withdrawn M&A deals as noted earlier if they are not carefully examined and implemented. Furthermore, this research is useful to executives in companies looking to initiate a deal, professionals in human resources such as industrial psychologists, corporate lawyers, financial analysts, shareholders, and government members. Each of these types of people listed are involved each day in a new M&A deal proposition. One can argue that these individuals should be fully educated on the power that a full review of these factors presented in this paper have in increasing the success of not only cross-border deals between the US and the EU, but deals made on a vast international level.

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