

BORDERLESS BUSINESS: THE DYNAMICS OF CROSS-BORDER M&A

- Adegoke Adedoyin, Ema Ogbe & Onyinye Igweonu

UNDERSTANDING CROSS-BORDER M&A

Cross-border mergers and acquisitions (M&A) are dynamic strategies for companies looking to expand their reach and serve more customers by entering new markets. With the global increase in such transactions, it is crucial for businesses to consider both the opportunities and challenges they present against starting from scratch through greenfield investments. These ventures are especially appealing in today's economic environment as companies aim for market diversity/expansion, create synergies, navigate regulatory changes, and embrace technological innovations. These transactions, while complex, offer a path to significant growth opportunities.

THE BUSINESS CASE: UNDERSTANDING MARKET FORCES AND STRATEGIC NEEDS

Beyond simply extending geographic reach, cross-border mergers and acquisitions are about taking new market opportunities, capitalizing on synergies, and strategically positioning the business for lasting success. Merging with or acquiring companies in jurisdictions with favorable tax legislation or companies with strategic assets, capabilities, or intellectual property not only offers a competitive advantage but also expedites growth. This access to proprietary technology, distribution networks, or talented personnel further strengthens market position.

The technology, telecommunications, and renewable energy sectors are facing a surge in interest due to their potential for growth and their alignment with worldwide trends. With deals in Africa increasing, driven by regional integration and the pursuit for untapped markets, the rise of the digital age is reshaping cross-border M&A. Industries like fintech and e-commerce are also experiencing rapid growth as companies adjust to evolving consumer preferences and the overall market landscape.

In 2013, Bharti Airtel, a major Indian telecom firm, made a significant move by purchasing Zain Africa from the Kuwait-based Zain Group for \$10.7 billion.¹ Through Airtel Africa, its subsidiary, Bharti Airtel efficiently merged Zain Africa's network and customer services with its operations. Utilizing its deep industry knowledge and understanding of local markets, Airtel quickly grew to become a dominant mobile operator across Africa. This acquisition highlights the advantages of cross-border expansion. Similarly, Access Bank Plc, a leading Nigerian bank,

¹ Bharti Airtel completes acquisition of Zain: https://www.business-standard.com/article/companies/bharti-airtel-completes-acquisition-of-zain-110060800176_1.html

enhanced its footprint in Kenya by acquiring Transnational Bank in 2019² and recently, in March 2024, the National Bank of Kenya (NBK) from KCB Group.³ These acquisitions are part of its strategy to grow and diversify in the region. Through these moves, Access Bank can leverage the existing customer bases and operational networks of these Kenyan banks to boost its presence and explore new growth opportunities in Kenya.

OVERCOMING GLOBAL INTEGRATION CHALLENGES

Integrating business operations across borders presents a unique set of challenges, including regulatory compliance across varying legal landscapes, integration difficulties involving disparate systems and cultures, and managing the diverse expectations of stakeholders. Additionally, financial stability must be maintained amidst currency and exchange rate volatility, while socio-political and economic conditions in the target market are carefully monitored. To overcome these challenges, businesses must adopt a comprehensive approach that addresses each of these areas:

- **Regulatory Compliance:** Thorough due diligence and proactive engagement with regulatory authorities are essential steps to mitigate compliance-related challenges and ensure a smooth integration process.
- **Integration Complexities:** Challenges may arise in areas such as technological integration, harmonizing business processes, cultures, and managing organizational change. A well-defined integration strategy, effective project management, and clear communication channels are crucial for overcoming these complexities.
- **Stakeholder Management:** Effective stakeholder management is essential for managing the diverse interests and concerns of stakeholders involved in the integration process. This includes employees, customers, regulators, shareholders, and local communities. Transparent communication, proactive engagement, and conflict resolution mechanisms are vital for building trust and fostering positive relationships with stakeholders.
- **Currency and Exchange Rate Volatility:** Managing the risks associated with currency fluctuations is crucial to maintaining the financial stability of cross-border transactions. Exchange rate volatility can significantly impact the valuation of assets, the cost of financing and the overall profitability of the deal. One way to manage this risk is by implementing effective hedging strategies and closely monitoring currency markets.

² Access Bank Sustainability Report, 2020 <https://sustainability2020report.accessbankplc.com/report/#section-1>

³ Nigeria's Access Bank acquires National Bank of Kenya in its second Kenyan acquisition, March 2024: <https://techcabal.com/2024/03/20/access-bank-acquires-national-bank-of-kenya/>

- **Socio-political and Economic Instability:** Integrating businesses should conduct thorough political and economic risk assessments, engage with local stakeholders and stay informed about geopolitical developments.
- **Tax Implications:** Understanding and planning for the tax consequences of cross-border transactions is critical to avoiding unexpected liabilities and optimizing tax efficiency. Tax considerations may include corporate tax rates, withholding taxes, transfer pricing regulations, and tax treaty implications.
- **Competition Risks:** Navigating competition risks introduces additional complexity to cross-border transactions. Companies must have a nuanced understanding of various jurisdictions' regulatory thresholds, anticipate potentially lengthy approval processes across multiple jurisdictions, and acknowledge the diverse criteria used by different regulatory authorities to assess a deal's competitive impact. Additionally, companies must be prepared to make necessary adjustments, including divestitures or other concessions, as required by regulators for deal approval. Adopting a multifaceted approach to addressing competition risks ensures that companies are well-prepared to navigate the intricate regulatory landscape governing international transactions and secure regulatory approvals in a timely manner.

CONCLUSION

As the landscape of global business continues to evolve, companies are increasingly turning to cross-border mergers and acquisitions as a pathway to growth and market expansion. Success in these ventures requires more than just strategic foresight; it demands an understanding of market dynamics, risk evaluation, and the implementation of strategic approaches. By embracing these principles, businesses can better position themselves for sustainable success in the dynamic global marketplace.

NAVIGATING CROSS-BORDER INTEGRATION: HOW WE CAN HELP

At SimmonsCooper Partners, we recognize the challenges and uncertainties that businesses face within the landscape of cross-border mergers and acquisitions. Local knowledge is invaluable in cross-border M&A, helping bridge cultural and regulatory gaps and ensuring informed decision-making for both sellers and buyers. Our specialized services are designed to enhance businesses' comprehension of the risks involved and provide guidance at every stage of international integration. Our goal is to facilitate successful outcomes, ensuring businesses are not just prepared to face global challenges but are also best positioned to capitalize on opportunities for expansion and growth in the international marketplace.

For further insights or to explore how we can support your cross-border M&A needs, please visit www.scp-law.com or reach out to us at info@scp-law.com.

SimmonsCooper Partners