Mergers and Acquisitions in the EU

There was a considerable increase in merger and acquisition (M&A) activity in the EU during the 1990s when the value of cross-border M&As[1] increased tenfold, from $36.7 billion in 1990 to $357.3 billion in 1999. It surged in 2000 to $586.5 billion and sharply declined thereafter to a mere $122 billion in 2003 (UNCTAD, World Investment Report 2004).

There has been a discernible shift of cross-border M&As towards services like banking, insurance, telecommunications and water. In fact, most M&As during the second half of the 1990s took place in services. This partly reflects the ascendancy of services in economies in general, accounting, on average, for 72 percent of GDP in developed countries by 2001. Moreover, most services are not tradable – they need to be produced when and where they are consumed. In addition, countries have liberalised their services FDI regimes, which has made larger capital inflows possible. EU firms have become the dominant actors, displacing the United States which could consider M&As their exclusive domain up to the 1980s. The propensity of firms to enter new markets through M&As rather than Greenfield FDI, is much greater in service industries.

The value of cross-border mergers and acquisitions in the EU rose again in 2004 and is expected to continue increasing in the near future. One major factor is the approval by ministers from EU countries, on November 25th, of a directive on cross-border mergers. The directive must, of course, be approved by the European Parliament before coming into force. The European Commission has been pushing for a law on cross-border deals, because serious differences in national laws make transnational mergers with companies in such countries as Austria, Denmark, Finland, Germany, Greece, Ireland, the Netherlands and Sweden all but impossible. Acquiring firms have to resort to creating new subsidiaries in these countries or complex holding structures (The Economist, December 4th 2004).

Germany, in particular, refused to make cross-border mergers easier. Its system of Mitbestimmung (codetermination) proved to be a major stumbling block in the protracted negotiations. In Germany, employee representatives make up one third of the supervisory boards of firms with more than 500 employees and half in companies with more than 2000. in other EU countries, too, workers' representatives sit on supervisory boards, but usually not more than one third. In other countries like the United Kingdom, Spain and Italy, employees have no voice on boards.

Because of Germany's insistence on *Mitbestimmung*, the final version of the directive says that a merger involving a German firm will have to adopt co-determination if one third or more of the employees are German. German companies are especially unhappy with this outcome. In fact, business associations have been trying to weaken co-determination in the country. They fear that foreign companies will shy away from mergers with German firms.

Taking a look at the cross-border M&A statistics again, we notice that, with the exception of France, Germany has been the country with the highest number of M&A sales in the EU. Since 2000, when M&A activity peaked in the EU and Germany's share exceeded 40 percent, it has accounted for more than 20 percent of EU M&A sales in every year and much more than France. The Mitbestimmung clause may therefore not be the impediment to cross-border mergers feared by some.

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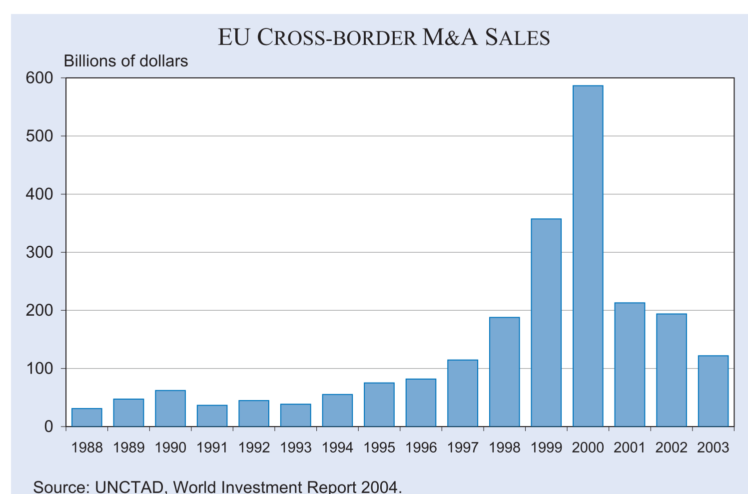

Source: UNCTAD, World Investment Report 2004.

[1] Sales by region of seller.