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Master Thesis

How to grow internationally:
Merge or ally?

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Abstract

Master thesis in Business Administration and Business Law

Title: How to grow internationally: Merge or ally?

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Purpose: The aim of this thesis it to compare different international growth strategies, mergers and acquisitions (M&As) versus strategic alliances, especially in relation to the amount of realised synergy. A secondary aim is to show the legal aspects of growth, in particular how cases considered under the EU merger regulation have been handled.

Method: This paper analyses 2 M&As and 3 alliances between auto manufacturers operating on the European market. The main focus is on synergy realisation as well as the legal aspects under EU law. Using the case survey method the paper was able to arrive at comparable numerical figures.

Conclusion: It is shown that both M&As and alliances on average realise almost the same amount of synergy, but the individual cases show large variations. None live up to the full potential synergy. Consistent treatment of the partnership is important as is trust in order to gain synergy realisation. To achieve synergies you need to be willing to share and integrate. If this is done in a planned manner, identifying best practise, the partnership is more successful, whether it is a M&A or an alliance.

The legal definition can differ from the business definition. The EU merger regulation looks for change of control (concentration) or co-operation and if the partnership becomes dominant. The procedure and rules vary whether it is a concentration or a co-operation agreement. Concentrations are dealt with more swiftly and receive individual decision whilst co-operational agreements can take longer to receive a decision or can aim to be covered by a block exemption. It is in the companies best interest prior to the formation of the partnership to pros and cons of different aspects. There is no link discovered with the amount of synergy realisation and legal type of partnership.

Preface

This paper would never have been completed, never have been as comprehensive, never have taught me as much, had it not been for my two tutors, Professor Rikard Larsson and Catrin Karlsson. They both inspired me to go further, read more, write more, think from different angels and keep at it. The beauty of writing a thesis in two different fields was reflected by working with these two dedicated educators. They kindly forced me to write the two parts so that the other side understood which made me understand more. The time they spend went, as it often does in the academic world, beyond what was required. I thank you.

I also thank the dedicated staff at all of Lund universities libraries, especially during those hot summer months when we all wanted to be somewhere else. There are many more who deserve credit, family and friends, researchers around the world who provided unpublished reports, course mates and fellow students. Especially Noriko, who not only helped me as a second coder but also supported me throughout and was a source of inspiration and motivation. All in all it has been an adventure writing this paper, I hope you will get something out of reading it.

Sincerely

Björn Fuisting

Table of contents

Chapter 1 Introduction

1.1 Background

Size matters! In the world of business size matters, sometimes you need to be small, fast and flexible but often you need to be large and resourceful while keeping lean and maintaining speed and flexibility. With size your costs can be spread out over more units. You can finance R&D efforts, enter new appealing markets, ward off take-overs and you can purchase other companies etc.[1]

In certain industries size matter more than in others. In the automobile manufacturing industry it has been predicted that as the industry matures and growth slows down, a successful producer will need an output of 2 million units annually.[2] Only a handful manufactures reach those numbers today.

To achieve the desired growth companies traditionally build, buy, merge with other companies or co-operate through alliances.[3] To build through organic investments is a bold and difficult choice in a market with large surplus capacity.[4] As a result the automobile industry has seen, and will continue to see, a lot of consolidation in order for the players to become bigger.[5] To maximise synergies and minimise overlap of operations the current wave of consolidation has been international.

[1] Gammelgaard, 1999
[2] Zesiger, 2000
[3] Gammelgaard, 1999
[4] Donnelly et al, 2002
[5] Bruner et al, 1998

1.2 Problem area

These international growth strategies vary greatly in their level of success. A merger or alliance can revitalise a company and achieve large synergies, yet another merger, even between already successful companies, can have devastating effects and both companies involved end up worse off than prior to the merger.[6] Why? Is there anything in common between successful mergers or successful alliances? There have been attempts, this paper is not one, to create handbooks for M&As and alliances. However, most of them simple concluded that the situations, companies and industries are unique. Should we instead look at the difference between M&As and alliances? Could an unsuccessful merger have been a more successful alliance? M&As and alliances incorporate a wide range of co-operation options with various degrees of integration. What are the advantages with each choice? Depending on the objectives of the growth strategy companies choose different levels of co-operation, often the decision is influenced by legal circumstances. What are the legal options and consequences? How has the EU regulatory system dealt with these mergers and alliances? Companies operating in the EU and wishing to merger, acquire or form an alliance have to do so in accordance with the regulations and notify the merger task force.[7]

As seen above the M&A and alliance field contains a number of interesting issues related to growth method and expected performance of the chosen method. It is impossible to know in advance how it will turn out but it is possible to measure afterwards, make generalisations and draw conclusions on what influence the chosen business and legal form of the strategy had and what other possibilities were available to the companies. By doing so this paper would like to answer the following question: Are there any commonalties between successful M&As and alliances and does the legal structure have any effect on the success of their partnerships?

[6] For a discussion on success and failure of M&As and alliances see Cartwright & Cooper 1996

1.3 Aim of study

The aim main of this thesis is to compare different international growth strategies, mergers and acquisitions (M&As) versus strategic alliances, especially in relation to the amount of realised synergy. A secondary aim is to show the legal aspects of growth, in particular how cases considered under the EU merger regulation have been handled.

To choose the optimal strategy for growth is crucial to its success. Consolidation within the European market is set to accelerate as the EU is expanding. The applicant states posses both interesting markets and production areas and once they are operating under the same regulatory system, current EU based companies will have more options for growing internationally. These developments make this area of study highly relevant and interesting.

1.4 Demarcations

This paper will not cover greenfield investment as a growth option nor will it discuss the US regulatory system or any other local legal systems other than that of the EU.

Even though greenfield investment is an option to grow internationally which car manufacturers use, this paper is focusing on the strategic choice when growing more rapidly through M&As or alliances. Greenfield investments take time to mature. In order to make comparisons the paper is focusing on the more radical and sometimes dramatic results that international expansion through M&As and alliances entail. However, greenfield investment will in an indirect way be covered since it is often one of the sought after synergies when seeking a suitable partner. This can take the form of utilising the partners existing investment rather than conducting their own greenfield investment, as well as jointly sharing the expenditure for new greenfield investment.[8] Both forms are represented in the analysed cases.

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[7] The specifics of the regulatory system in regards to M&As and alliances are further discussed in chapter 4.
[8] Lorange & Roos, 1993

To present a true picture of more than one regulatory system would be extremely resource and expertise demanding. This would be beyond the main purpose of this paper since the aim is to give more of a business perspective on the issue. However, the legal impact can be significant and therefore can not be left out if a comprehensive view is desired.

The role of the EU's regulatory system is, in comparison to the US's for instance, still very much evolving. The merger regulation and its powers are going though constant change and therefore represents an exiting field of study.[9] Also in all but one of the chosen cases the dominating partners have been based in Europe. In the remaining case where the non-EU partner was the dominating partner, the alliances focused on the UK market and to lesser extent the Japanese. Therefore the EU regulatory system had more significance than the American or any other local regulatory system if looking at the case sample as a whole. Within the very large EU regulatory system the focus is on the regulation regarding concentrations and co-operation as well as how the relevant cases have been judged.

These limitations also enable the limited research resources and efforts in general to be more concentrated and focused.

1.5 Disposition of the thesis

The thesis is divided into seven chapters. The introduction gives a background to the paper, discusses the topic of international growth in general, states the aim, problem and delimitations of the thesis. The methodology explains to the reader the choices made by the author in regard to subject, analysis method, industry and case selection.

[9] Currently their exists a draft of changes to the Merger regulation. However since this paper looks at existing

Chapter three is the theory discussion. Here are some of the theories and definitions regarding M&As and alliances are presented to the reader here. Next is the legal choice. A selection of the merger regulation rules highlighting the difference in procedure for a concentration with EU aspects and Article 81 of the Treaty are introduced here. The legal definitions will be given and compared to that of the business. A recent case is used to illustrate some of the rules.

Chapter five presents the empirical findings in regards to the cases, including a description of the analysed cases, the legal treatment it received and the coding results. The empirical data is further compared in chapter six, both to the M&As and alliances to each other and the two groups to each other. Also, the paper speculates on what could have been done differently to achieve more synergy in the cases. The final chapter presents the conclusions drawn from the study, the limitations of the study that was discovered and gives suggestions of possible future research.

cases and how the were dealt with by the then current Merger regulation the new proposal will not be discussed.

Chapter 2 Methodology

2.1 Choice of subject

M&As and strategic alliances affect tens of thousands of people every year and billion of dollars in value.[10] The successes vary, are often hard to calculate and it is a highly debated area.[11] To understand this business phenomena better and to attempt to categorise both the choices and result is very important. Once part of the work force many of us will be affected by the employer's choice of international growth strategy, or by the competitions. Having an international focus during the university education and hopes of working in the international business community the author has a personal interest in the chosen area. The relevance to fellow students within the MEA-business section is also likely to be high due to their international background.

2.2 Analysis method

When doing empirical research, researchers are faced with the difficult choice of method, qualitative or quantitative. Qualitative studies can provide rich in depth analysis but due to the time consuming nature are usually limited to a small number of individual cases and lack the comparability among anothers. Due to the limited ability to make comparison, few generalisations can be done.[12] Also some of the richness, their major strength, can be lost in the condensing of the material into a comprehensible report format. Quantitative surveys on the other hand can easily be compared and a large number of variables can be gathered. However, not much detail can be absorbed and the level of depth the method can reach is far less than that of a quantitative method like a case study.[13]

[10] Despite a demising trend in 2002 the M&As are predicted to incorporate US 0.7 trillion in value on a global scale. The Economist, March 21, 2002
[11] Cartwright & Cooper, 1996
[12] Bryman, 1995
[13] Bryman, 1995

The preferred choice in this paper is the case survey method.[14] It aims to combine both qualitative and quantitative analysis. By utilising qualitative existing case studies analyse them and "code" them according to a proven case survey method, the different case studies will become more systematically comparable. This enables the paper to utilise both the richness of case studies whilst being able to compare statistically. Also the paper will give a summary of the cases and make qualitative comparisons.

2.3 The coding system

Professor Rikard Larsson has developed a coding scheme for M&As, which has later been expanded and adjusted to incorporate alliances as well. It has been expanded from originally covering 84 variables to currently incorporate 147 different variables, including synergy potential and realisation, human side and trust issues.[15]

The coding system aims to maximise both the level of the qualitative side and the quantitative side by utilising case authors as coder of the cases and by having multiple coders who, if any differences, resolve them by the consensus method. However, due to time limitations and lack of influence in the M&A research world, this paper did not aim to utilise author codings which is otherwise recommended.[16] To in some small part attempt to make up for this loss in additional information that the case author possess, the research phase of the process has been expanded to not only search for suitable cases to code but also other information about the case found in printed material as well as the ever richer mass of data stored in electronic form in databases and on the internet.

[14] For a detailed description and discussion see Larsson 1993
[15] Appendix 1 consist of part of the coding scheme titled "M&A Case Survey". The instructions and for this study relevant questions are included in to give the reader a better understanding of what is involved. For further explanation regarding the coding system please se Larsson 1989 and Larsson 1993.
[16] Larsson 1989

The process of multiple coders has been retained thanks to the assistance of the supervisor and designer of the case survey method, Professor Larsson and the efforts by a fellow student within the same topic, Noriko Yagi.[17] The very time consuming consensus method was also retained since it has been proven to improve the quality of the codings, as any direct mistakes are usually found and eliminated. Difference in views and background leads to a more comprehensive view which becomes apparent during the consensus discussions and consequently enhances the understanding of the coding schema and thereby improve the accuracy of the results at issue as well as any subsequent codings.[18]

The coding scheme though was originally not intended for alliances but has later been adapted and expanded to enable it to incorporate them as well. This is the first study to apply the existing coding scheme to alliances and is part of a present attempt to extend the schema to include alliances as well as M&As. However, some difficulties arouse due to the difference in nature between the two. This will be further disused in chapter seven.

The coding database already contains over 60 M&As which are all coded on the original 84 variables but currently is being expanded to incorporate the additional 63 variables as well. By adding new cases to the database, as well as use the existing material in order to draw new conclusion, this thesis can be a part of a continuing research project, adding to the scientific studies in a small but better way then otherwise possible.

[17] Due to the close collaboration and cooperation, this paper in parts resembles that of Yagi's. Since the same cases were utilized in order to have a third coder this was unavoidable.
[18] Larsson 1989

2.4 Selection of industry

Within the last five decades the car industry in Europe has gone through tremendous change, conciliation and forming of various alliances.[19] Some have been deemed being successful, others less so. This industry is an excellent example to use in order to attempt to find generalisations since it is highly globalised and is experiencing a large over capacity which is putting pressure on the actors to consolidate in order to safeguard future survival. There also exists vast research materials about the industry as well as several case studies. However, there are few attempts to try to compare these qualitative case studies and make reliable comparisons.

2.5 Selection of cases

The cases were chosen first for the interest to the study and once a case was identified it was up to the author to find suitable material in order to conduct the codings. Thanks to the flexibility in the case survey method and the coding scheme the material was sourced from a variety of publications, ranging from Harvard cases, conference papers, magazine articles to academic reports. Also, the number of sources on each individual case can vary. On some of the cases multiple sources were used in order to cover more aspects of the cases.[20]

The cases all have a connection to the European market, which is the field of study this program focuses on. There is a balance mix, three to two, of strategic alliances and M&As. There is also a varied degree of success in the cases. Of the eight partners in the cases two, Renault and Rover, appear twice and the country of origin are the same for some of the companies. This is been purposely selected to see if any results can been drawn on the base of nationality of the company and to be able to compare the same companies attempts to growth with different partners.

[19] Pilkington 1999
[20] The more recent the cases, the more need there was for multiple sources. This can be related to the fact that

The chosen cases are, the Honda-Rover alliance, the Renault-Volvo alliance (and proposed but aborted merger), the BMW-Rover merger, the Daimler-Chrysler merger, and the co-operative alliance between Renault and Nissan. An additional case, Volvo-Scania is also discussed as an example but not coded.

2.6 The legal method

The cases and field were chosen mainly due to business aspects but all contain interesting legal aspects. Four out of five have been directly dealt with by the merger task force and the analysis and discussion of those, as well as a hypothetical discussion of the fifth, will constitute the qualitative part of the empirical legal data. The more general legal discussion will highlight the differences in definition and terminology used in the legal field versus the business field, as well as the implications being tried under different categories. It will be based on current EU regulation, treaty articles, directives, notices and case law.

2.7 Analysis

The analysis will be comparative in nature, it will look at the cases from a qualitative point of view both in regards to business facts and legal facts. It will compare the different strategies chosen, the effects and the results of those strategies. The paper will speculate on other options available and what results they could have had. It will also compare the realisation of potential synergy based on the codings. A summary of the cases will be given in the paper to support the qualitative analysis.

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comprehensive in-dept studies, such as doctoral thesis, take time be conducted.

2.8 Objectivity

In order to ensure objectivity of the codings the coding system utilises multiple coders, who in case of disagreement have to resolve their differences and come to a consensus. This ensures that a single coders personal views does not influence the codings. The method also has a practise case for first time coders after which they discuss their codings with the author of the coding system who also has written the practise case. This "calibre" coders and ensure that the same reference frame is used.[21]

In order not to be influenced by subjective views of the case author the case studies are screened for validity.[22] Usually the case studies have been published which ensures a minimum level of objectivity.[23] If a case study contains important information but is suspected of being one sided in its presentation of information, a second source is also used. As mentioned above, when studying resent cases in depth, objective, published case studies can be difficult to obtain and therefor on those occasion this paper has used multiple sources of information. The legal information used is mainly legal texts and legal case dealt by the EU competition authorities. This should ensure their objectivity.

2.9 Validity

The case survey method is a valid research method. The coding system utilised in this paper has been developed by Professor Rikard Larsson who has received two doctor degrees. One from University of California, USA and a second from Lund University, Sweden for his work on this system and its application. He has also been extensively published in international research journals. For the discussion of the validity of the case studies the case survey utilises see previous section 2.8 Objectivity.

[21] This is checked in Q1 f. (See appendix 1)
[22] See Appendix 1 Q7 and Q8.

Chapter 3 Merger, Acquisition and Alliance Theories

In order to better understand the topic of the paper the definition, type and measure of success of M&A and Alliances need to be explained.

3.1 Mergers & Acquisitions

3.1.1 Definition

Mergers and Acquisitions is a commonly used term however its meaning can vary depending on the context. Often the terms are incorrectly used interchangeable or the group name M&A is used. The fact is that a merger, according to accounting standards, occurs when two or more companies create a new entity which consolidates the previous companies balance sheets, whilst an acquisition occurs when one company purchases another and consolidates it into its existing balance sheet.[24] When a M&A occurs it will often be portrayed as a merger in a business sense, whilst in a legal sense it will be an acquisition.[25] This can be done in order to facilitate a better integration of the two companies and avoid stating a power difference. This paper will use the group term of M&A, however in the case descriptions and discussions a more exact structure description will be given. The legal definitions will be discussed in the next chapter.

3.1.2 Type of M&As

M&As can be classified in three major strategic fit categories; horizontal, vertical and conglomerate. The US Federal Trade Commission has further developed five different types of M&As:[26]

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[23] See Appendix 1 Q5.
[24] Abrahamsson & Kraus, 1990
[25] Blasko et al, 2000
[26] Summarized in Larsson 1990, p 34.

Horizontal, combining companies with the same products and markets i.e., competitors.

Vertical, combining companies with possible buyer-seller relationship i.e. forward or backward integration

Conglomerate product extension, with non-competing products but functionally related in production or distribution

Conglomerate market extension, with the same products but in different geographical markets

Pure conglomerate, with different markets and products. i.e. unrelated.

Larsson has further developed the FTC classification into six groups depending on product and market relation.[27]

	Market Relation	
Product relation	Same	Different
Same	Horizontal M&A	Market extension (Product concentric) M&A
Long-linked	Vertical backward M&A	Vertical forward M&A
Unrelated	Product extension (Market concentric) M&A	Conglomerate M&A

This paper focuses on horizontal M&As (and alliances) which operate on overlapping market and product segments, i.e. competitors.

The definitions of the intentions of M&As often reads like a cheesy novel with likeness to a more or less welcomed and courteous dating/courtship.[28] Siehl, Ledford and Siehl present four basic approaches to M&As;[29]

1. Pillage and Plunder
2. One-night stand
3. Courtship/Just friends
4. Love and Marriage

This paper's focus is on achieving positive long term international growth and therefore the M&As discussed fall under the last category, Love and Marriage, as they are aiming for long term integration through blending and assimilation. If trying to categories the three alliances they would best suit the Courtship/Friends category since they aim to keep the separate identities of the organisations whilst working together in a more co-operative nature.

3.1.3 Measuring results

The rate of success of M&As is also a highly debated area. Depending on how you define success the rate varies.[30] Sometimes M&As are considered a failure if they dissolve, however if the M&A is a joint venture it might dissolve ones it is successful in achieving its set goal instead. The stock market measure a success of an M&A if the new entity has a higher market capitalisation than the previous separate entity.[31] This measure can be misleading since other economic factors can influence the share price. Instead this paper looks at synergy.

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[27] Larsson 1989
[28] See for instance Bengtsson et al's (1998) description of the Renault-Volvo alliance and Donnelly et al's (2002) description of the BMW-Rover merger or Cartwright & Cooper's (1996) more overall discussion on the topic, as well as the popular and business press.
[29] Siehl, Ledford and Siehl in Cartwright & Cooper, 1996
[30] Cartwright & Cooper, 1996
[31] Blasko et al, 2000

Synergy is defined as when the sum of two or more parts is greater than the value of the parts individually: 2+2=5. The purpose of most M&As are to achieve some kind of synergy. The belief is that two companies together will achieve better results that the two companies independently, often through cost cutting and savings. In particular this paper is looking a realisation of potential synergy.[32] A successful M&A (or alliance) is one which has managed to utilise most of the potential synergy identified.

3.2 Alliances

3.2.1 Definition

Strategic alliances can entail a very broad definition that actually incorporates M&As.[33] Lorange has defined the options in terms or degree of vertical integration with the parent firm;[34]

Hierarchy	Mergers & Acquisitions	Joint ownership	Joint venture	Formal co-operative venture	Informal co-operative venture	**Market**
Large	Degree of vertical integration					None

According to Lorange this also means higher interdependence the larger the degree of vertical integration. This paper does, however make a distinction between M&As and alliances. It chooses to use the definition by Bengtsson et al which sees strategic alliances as an "interorganizational mean of, through co-operation, reaching strategical goals." [35] The definition still allows for a variety of alliances and can both included or excluded partial ownership.

[32] For a description of synergy potential and synergy realization see Appendix 1
[33] See for instance Lorange & Roos, 1993 and Bengtsson et al, 1998
[34] Lorange & Roos, 1993
[35] Own translation from Bengtsson et al, 1998, p 24

3.2.2 Type of Alliances

Alliances can take many shapes and forms and are generally harder to categories than M&As due to the on-going development that can occur in alliances, whilst M&As are a one of structural change. Killing[36] presents an overview of alliances types with three main categories which all include several subcategories.

Traditional Joint Ventures

Two or more partners join forces to create a new incorporated company in which each has an equity position and representation on the board of directors. Sub-categories; *Independent ventures*: JV where the venture general manager is given a great deal of autonomy to manage as he sees fit. *Dominate parent ventures*: JV were one parent plays a dominate managerial role. *Split-control ventures*: JV in which each parent plays a separate and distinct role. *Shared-management ventures*: JV in which both parents play an active managerial role so all significant decisions are shared.

Non-equity Alliances

Non-equity alliances are agreements between partners to co-operate in some way, but they do not involve the creation of a new firm, nor does either partner purchase equity in the other. Sub-categories; *Trading alliance*: an agreement between competing firms to buy and/or sell technical information, goods or services. *Coordinate-activity alliance*: an agreement between firms to co-ordinate activities and share information to the benefit of all partners. *Shared-activity alliance*: an agreement between firms to work directly together to achieve a common objective. *Multiple-activity alliance:* a non-equity alliance that has many component parts.

[36] Adapted from Killing in Contractor & Lorange (ed) 1988

Minority Equity Alliance

Minority equity alliances are similar to non-equity alliance except that one or both has taken a minority equity position in the other. Sub-categories; *Passive minority equity alliance*: an alliance in which the equity acquisition has been made, but no joint programs have been undertaken. *Single-active minority equity alliance*: one in which one joint activity has been undertaken. *Multiple-activity minority equity alliance*: One in which a number of joint activates have been undertaken subsequent to an equity acquisition.

The alliances in focus in this study all came to incorporate minority equity stakes to various degrees. This is in line with the theory that cross-ownership serves as strong stabiliser for a co-operative alliance.[37]

The reasons for forming an alliance can be general in nature but are often proven to focus on a specific application. Bengtsson et all has categories the reasons for forming an alliance into three broad types: market related reasons, production related reasons and development reasons.[38] An alliance can incorporate more then one reason and it can vary between the partners within the same alliance. The alliances in this study include all three reasons. Within the automobile manufacturing industry development and production related alliances are in general common whilst more often attempting to keep markets (in particular market segments, marketing and brand identity) separate. However, market access in general is a common reason.

[37] Lorange & Roos, 1993
[38] Bengtsson et all, 1998

3.2.3 Measuring results

The success or failure of an alliance has been measured in many different ways, for instance financial indicators, survival and changes of ownership.[39] If the alliance has fulfilled its objectives it can be seen as successful, but those objectives can be different for the various alliance partners. An alliance can be a success for one company but a failure for its partner. To isolate the effects of the alliance is difficult, as is comparing to other options for growth. In order to compare the success between M&As and alliances the same measure of realisation of potential synergy, described above in 3.1.3, has been adopted for both forms in this paper.

3.3 M&As versus Alliances

The main difference between M&As and different from of alliances is control.[40] A pure acquisition means that the bought up company becomes under the control of ones own. Usually M&As are various forms of acquisitions. To achieve growth but remain in control requires large financial resources. To instead opt for co-operating renders less control but can be conducted in many ways and could be a lesser financial strain. Trust is a key issue.[41] As described above there are many different shapes an alliance can assume and often it develops and change over time. Rather than buying a whole corporation a company can propose a joint venture with the specific division it is interested in and if successful this can grow to a multi-activity alliance. For long term stabilisation equity swaps can be conducted.[42] However, without control you can not alone decide how an alliance will develop or what it will include or if it will continue. A ship with two captains does not always sail straight.

[39] Lorange & Roos, 1993
[40] Planander 2001
[41] Larsson 1993
[42] Lorange & Roos, 1993

Chapter 4 The Legal Choice

When deciding on a growth strategy companies have to take into account the legal consequences of that strategy. M&As and alliances will generally fall into two different categories when dealt with by the EU rules: concentrations and co-operations. The procedure and rules are different for the two and as a consequence a M&A or an alliance can attempt to fall under one or the other. The two groups are treated very differently by the Commission in terms of speed and legal certainty. The structure of the M&A or alliance is the main focus in determining the correct category. The business classification of the deal is often misleading when looking from the legal point of view.

Concentrations (with a Community dimension) are dealt with by the Merger Regulation adopted in 1989, whilst co-operation of competitive behaviour falls under Article 81 of the Treaty establishing the European Community.[43] The definitions and rules are given a brief overview below for those readers not familiar with competition law.[44] Defining the relevant market is a key issue in determining the effects both concentration and co-operation agreements will have on the competition. To illustrate this and other procedures one of the most recent case within the motor industry is used as an example at the end of this chapter. Also a comparison between the two categories through looking at how the types of M&As and alliances given in Chapter 3 would be dealt by the EU regulation is made.

[43] Hereafter refereed to as simple "Article 81" and "the Treaty". Both Article 81 and the Merger Regulation while be discussed in more details later in this chapter.
[44] Since the business law section is only a secondary aim the author has tried not to make a too drawn out list of rules, regulations and definitions but refers to existing law literature for a more lengthy and detailed discussion, i.e. Korah 2000, Lane 2000.

4.1 Concentrations

"A concentration shall be deemed to arise where:

(a) two or more previously independent undertakings merge, or

(b) one or more persons already controlling at least one undertaking or -one or more undertakings acquire, whether by purchase of securities or assets, by contract or by any other means, direct or indirect control of the whole or parts of one or more other undertakings."[45]

The issue of control is central in this concept. A concentration occurs if an undertaking acquires the *possibility* of exercising decisive influence on its own, or jointly with other undertakings, over another undertaking such that they can no longer be considered independent. This influence may derive from majority shareholding or "substantial minority shareholdings, but may also arise from number of other factors, individually or in combination, such as management agreements or close commercial links between the undertakings concerned."[46] A transaction can be deemed a concentration even if it does not result in the parties formally becoming parent and subsidiary.[47]

If a co-operation agreement fails to be considered a concentration but is a form of collusion it will be dealt under Article 81. Part of an agreement can be deemed being a concentration whilst other parts not.[48] The definitions given for M&As in section 3.1.1 of this study will give rise to the formation of a concentration under the Merger Regulation. However, alliances can be seen as being both concentrations or co-operation agreement or a mixture of both.

[45] Article 3(1) Council regulation (EEC) 4064/89 (amended by council regulation 1310/97)
[46] Cook and Kerse, 2000, p 5
[47] Cook and Kerse, 2000
[48] See for instance Case No IV/M.0004 Renault/Volvo

4.1.1 Community dimension

Concentrations with a Community dimension are required to give prior notification to the Commission.[49] Community dimension is determined by the world-wide and EC-wide turnover of the parties involved. Turnover is based on the preceding financial year's audited figures. The figures were originally ECU 5 billion combined world-wide turnover and ECU 250 million, individual EC-wide turnover.[50] In 1997 the regulation was amended to also give Community dimension to concentrations where:

> (a) the combined aggregate world-wide turnover of all undertakings concerned is more than ECU 2500 million;
> (b) in each of at least three Member States, the combined aggregate turnover of all the undertakings concerned is more than ECU 100 million;
> (c) in each of at least three Member States included for the purpose of point (b), the aggregate turnover if each of at least two undertakings concerned is more that ECU 25 million; and
> (d) the aggregate Community-wide turnover of each of at least two of the undertakings is more than ECU 100 million; unless each undertaking concerned achieves more than two-thirds of its aggregate Community-wide turnover within one and the same Member State."[51]

If the concentration does not fulfil the turnover conditions it will come under the jurisdiction of the Member States' merger control unless the Member State refers the mater to the Commission under Article 22(3).

4.1.2 Appraisal of concentrations

If the transaction has been deemed to constitute a concentration with Community dimension it is then appraised if it is compatible or incompatible with the Common Market. Article 2(2) of the Merger Regulation provides that:

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[49] Prior notification is defined as not more than one week after the first of:
i) the conclusion of the agreement
ii) the announcement of the public bid, or
iii) the acquisition of a controlling interest

[50] 1 ECU = 1 Euro. This paper will use ECU and Euro interchangeably.

> "A Concentration which does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the Common Market or in a substantial part of it shall be declared compatible with the Common Market."

Dominance has been defined as the ability of an undertaking to act independently without regard it its competitors, or its customer and in particular to set prices as it chooses.[52] Dominance can both be single firm dominance and collective dominance in oligopolistic markets.[53]

To determine whether the concentration strengthens or creates dominance first the relevant products and geographical markets need to be established in order to see what market shares the concentration has. This is not at simple as it may sound. The Commission has a model for this but usually the concerned partners tend to want a broader definition of the markets than the Commission. The broader product and geographical market the harder it is to "create a dominate position".[54] For instance regarding cars the market is not seen as all cars Europe wide but divided into separate markets depending on the size of the car and its engine. The products with in the same relevant market must be seen as interchangeable. A sports car does not fulfil the same function as a minivan. The narrowest segmentation used by the Commission for cars is the following:[55]

A: mini cars
B: small cars
C: medium cars
D: large cars
E: executive cars
F: luxury cars
S: sport coupés
M: multi purpose cars
J: sport utility cars (including off-road vehicles)

[51] Article 1(3) Council regulation (EEC) 4064/89 (amended by council regulation 1310/97)
[52] Case No 85/76 Hoffmann-La Roche & Co. AG v Commission of the European Communities
[53] Joined cases C-68/94 French Republic v Commission of the European Communities (Kali und Salz)
[54] This is true for the analysed cases within the motor industry but not necessary for other cases within other industries.
[55] Case No IV/M.1204 Daimler-Benz/Chrysler

Europe can also be also dived into different national markets if different conditions, purchasing habits, technical requirements and preferences, market shares and price levels exists in the different countries. [56]

Market shares above 25% can indicate dominance, however usually higher market shares in combination with other factors are required for the Commission to react. If a company has markets shares around and above 50% it should be prepared to prove that it does not have a dominate position.[57] Time is an important factor in judging dominance. The company needs to have had a dominating position for at least three years and the market must not now experience changes that would change the historical strong position. High market shares may provide no indication of market power, particular if entry barriers are low.[58] If a high current market share is likely to change in the future due to changing conditions then it does not constitute a dominant position. In the analysed cases in this paper market shares (in individual countries) of as high as 44.8% were not seen as a threat to competition partly due to being in a segment characterised by "new market entries and shifts in market shares."[59]

Market shares are also judge in relation to the existing competitors. If the company has market shares several times that of its nearest competitors it is a further indication of dominance. On the other hand if there exists several strong competitors with high market shares on the same market the company can not as easily be seen as dominate. To be seen as dominate it is necessary for the company to have a continues high share of the relevant market and that there is no actual or potential competition that can threaten the dominating company's position.[60] In

[56] Examples for both relevant product and geographical markets will be given below for the concerned cases and the issue will be illustrated in the discussed example in 4.5.1 and 4.5.2 If a detailed explanation is desired see for instance Korah 2000, Cook and Kerse, 2000 or Carlsson et al, 1999.
[57] Carlsson et al, 1999
[58] Cook and Kerse, 2000
[59] Case no IV.M.1204 Daimler-Benz/Chrysler §17
[60] Carlsson et al, 1999

the case Hoffmann-La Roche the court stated that market shares that varied between 63-66% over three years were signs of a dominant position and that the nearest competitors shares of 14.8% and 6.3% confirmed the conclusion.[61] None of the companies analysed in this paper has been judged to be dominate but in section 4.5 a related case within the automobile sector is discussed and the question of dominance is further illustrated.

The Commission has to adjure to strict time limits in assessing if a concentration is compatible with the Common Market. Within one month the Commission must carry out an initial examination to ascertain whether the M&A or alliance falls within the scope of the Regulation and if so weather serious doubts are raised as to its compatibility with the Common Market.

The Commission must take one of three decisions

a) that the concentration does not fall within the scope of the Regulation
b) that the concentration falls within the scope of the Regulation but does not raise serious doubts as to its compatibility with the Common Market
c) that the concentration falls within the scope of the Regulation and raises serious doubts as to its compatibility with the Common Market.

If the third option is decided upon it will also compromise the initiation of further proceedings to determine whether the concentration creates or strengthens a dominant position as a result of which competition would be significant impeded. The further investigation must be completed within four months after which a decision regarding the compatibility must be reached. So far the vast majority of decisions have been taken after the initial stage and declared the concentration compatible. Concentrations that raise serious doubts about their compatibility often try to avoid being judge incompatibility by committing to certain undertakings aimed at counteracting the dominance. These undertakings have to be of a structural nature i.e. selling of

[61] Case No 85/76 Hoffmann-La Roche & Co. AG v Commission of the European Communities page 461

a part or allowing competitors access to a distribution network. If a company has several business operating on the same market it can sell of one equalling the same addition of market share the company will gain through the concentration. Such an undertaking would ensure the competitive balance would remain in tact.[62] In total the Commission has only found 18 cases of concentrations incompatible with the Common market after completion of the second stage of investigation.[63]

These strict time limits and the fact that a decision is taken are of major advantage to the firms involved, compared to the more uncertain outcome if the M&A or alliance falls under Article 81 of the Treaty dealing with co-operation.

4.2 Co-operation

Article 81 does not only apply to M&As and alliances but it prohibits collusion in general that may affect trade between member states and has the objective or effect of restricting competition.[64]

Article 81(1) contains three essential elements. There must be:

a) an agreement between undertakings, or a decision by an association of undertakings or a concerted practice,
b) which may affect trade between Member States, and
c) which must have as its objective or effect the prevention, restriction or distortion of competition within the common market.[65]

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[62] See for instance Case No. COMP/M.1980 Volvo/Renault V.I. § 49 and 50.
[63] Despite the sometimes high attention given to the cases prohibited 99% of cases are found compatible with the Common Market, see up to date European Merger Control Case statistics on: http://europa.eu.int/comm/competition/mergers/cases/stats.html
[64] As mentioned above in 4.1 M&A fall under concentrations (per definition used in this paper) so hence forth only alliances will be referred to.
[65] Since the focus of this paper is on international growth options conditions a) and b) are assumed to be fulfilled and their definitions and specific conditions will not be discussed. For further information please see for instance Korah, 2000, Steiner & Woods 2000 or Lane 2000.

Agreements which are incompatible with Article 81(1) may be exempt through Article 81(3) if they "contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefits, and which does not:

a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of those objectives;
b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question"

Most agreements in strategic alliances which are found to "have as its objective or effect the prevention, restriction or distortion of competition within the common market" can argue they are "improving the production or distribution of goods or is promoting technical or economic progress", however are caught by "indispensable to the attainment of those objectives". They may have had a legitimate purpose but taken steps that went further than necessary.[66] Exemptions are discussed further in 4.2.3

The agreements falling under Article 81 can be horizontal or vertical agreements:

Common types of horizontal agreements	Common types of vertical agreements
Price fixing agreements	Exclusive distribution agreements
Production quotas	Exclusive purchasing agreements
Market sharing	Franchising agreements
Other horizontal arrangements	Selective distribution agreements
	Licensing agreement

This paper is mainly interested in horizontal agreements and especially the ones categories under "other horizontal agreements" among those are joint ventures and co-operative agreements.

[66] Korah, 2000

4.2.1 Joint ventures

A very exciting field within EU Competition law and highly relevant to this study is joint ventures. The term "joint venture" does not have a legal definition but can be either a concentration or a co-operation. It can actually also be a concentration that involves co-operation between the parent organisations to the joint venture. The classification and procedure rules have therefore been a dilemma both from a legal and business point of view. Originally joint ventures with a co-operative nature fell outside the Merger regulation and was dealt with under Article 81. However, this proved to be impractical due to the long handling time and uncertainty in getting clearance from Article 81(1). First a fast track application model was provided in order to improve the situation and in the latest revision of the Merger regulation it has been modified to now also cover full-function joint ventures with co-operative nature. The co-ordination of competitive behaviour will still be appraised under the Article 81 but within the merger notification and time frame making it truly more of the one-stop-shop envisioned.[67]

To distinguish witch joint ventures fall under the Merger regulation or Article 81 the Commission has issued several notices. The Commission has among others defined what constitutes joint control and a full-function joint venture. Joint control is a key issue regarding joint ventures. Joint control can be established on a legal or de facto basis. There is joint control if the shareholders (the parent companies) must reach agreement on major decisions concerning the controlled undertaking (the joint venture).[68] Joint control exists where two or more undertakings or persons have the possibility of exercising decisive influence over another undertaking. Decisive influence in this sense normally means the power to block actions which determine the strategic commercial behaviour of an undertaking.[69] It can be in the form of equal

[67] Article 2(4) of the Merger Regulation
[68] Commission Notice on the concept of Concentration OJ C 66 of 02.03.1998 §18
[69] Commission Notice on the concept of Concentration OJ C 66 of 02.03.1998 §19

voting rights, equal number of appointments to decision-making bodies, and/or veto rights regarding appointments of management, budget, business plan, investments and other key decision.[70]

Besides joint control the Notice on the concept of Full-function joint ventures also states that for a joint venture to fall under the merger regulation it needs to include a structural change of the undertakings, operate on a lasting bases and "perform the functions normally carried out by undertakings operating in the same market", i.e. it needs to[71]

i) have a presence and carry out a recognised activity on a market;
ii) be self-sufficient or largely self-sufficient in terms of resources;
iii) have sufficient commercial independence and identity of its own that it is not simply operating as an auxiliary or service company for its shareholders.

It can not just perform a specific function for the parents like limited to R&D or production. Such joint ventures are auxiliary to their parents companies business activates. It needs to have its own resource, including finance, management, staff and assets. If the joint venture does not meant these qualifications it will not be considered a full-function joint venture and thus coming under Article 81.

4.2.2 Co-operative agreements

To assist business in assessing the compatibility of an individual co-operation agreement with Article 81 the Commission has also issued two Notices with Guidelines for horizontal and vertical co-operational agreements.[72] These very comprehensive notices will give companies an indication on how the Commission would be likely to look at their case. They compliment the R&D and Specialisation block exemptions discussed below in section 4.2.3. The guidelines

[70] For more detail see Commission Notice on the concept of Concentration OJ C 66 of 02.03.1998 §20-29
[71] Commission Notice on the concept of Full-function joint ventures OJ C 66 of 02.03.1998
[72] Commission Notice 2001/C 3/02 and 2000/C 291/01. For this study horizontal agreements are the most relevant.

do not cover every possible aspect of an agreement but focus on co-operation which potentially generate efficiency gains, namely agreements on R&D, purchasing, commercialisation, standardisation, and environmental agreements.[73] Alliances or other forms of co-operation that primary declare intentions are judged to be impossible to give general guidance for and hence not covered.[74] To ensure that an agreement will not be stop due to Article 81 companies can tailor them to fit under one of the block exemptions.

4.2.3 Exemptions

Exemption form the prohibition of Article 81(1) can be granted only if the agreement has been notified to the Commission. If an agreement is declared being in breach of Article 81(1) without having obtained an exemption in will be declared void. Unlike under the Merger Regulation agreements under Article 81 are not generally issued with individual decisions but rather come under one of the block exemptions or are issued a comfort letter. This is done to simplify the procedure and to relive the Commission of some of their workload.

The areas selected for block exemption are those which although restrictive of competition within the wide meaning of Article 81(1), are on the whole economically beneficial and pose no real threat to competition.[75] Several Regulations have been passed granting block exemption to certain categories of agreement but have in November 2000 been replaced with two more general block exemptions: the Specialisation block exemption Regulation and the R&D block exemption Regulation.[76]

[73] 2001/C 3/02 § 10
[74] 2001/C 3/02 § 12
[75] Steiner & Woods, 2000
[76] Commission Regulation (EC) No 2658/2000 and No 2659/2000 of 29 November 2000. For vertical agreements there is also the Block exemption on vertical agreements No 2790/1999.

The two block exemptions are a move away from listing exempted clauses and places greater emphasis on defining the categories of agreements which are exempted up to a certain level of market power (25% of the market share for R&D and 20% for Specialisation agreements). They also specify the restrictions and clauses which are not to be contained in such agreements., i.e. limiting the output or sales, fixing of prices or the allocation of markets or customers.

4.3 Legal classification of business terms

The types of M&As and alliances discussed in 3.1.2 and 3.2.2 does not always have to be looked upon in the same manner from a legal point of view. As stated above all M&As as classified in this paper, constitute a concentration since they involve a permanent change of control. However, alliances are not as clear cut. Out of the three main alliance categories the *Non-equity Alliances* are the most co-operative in nature and will hence fall under Article 81. They do not create a new firm nor involves purchases of equity in one another. However, in the subgroup of *Multiple-activity alliance* the different components of the alliance could jointly constitute change of control and thereby constitute a concentration. It depends on how extensive the activities are.

Minority equity alliances do not necessarily make up a concentration since they do not give the alliances partner control in each others companies, but if the minority stake entitles the alliance partner to veto rights over key decision in the management of the company it would constitute decisive influence and hence change of control.[77] Also if the minority equity stake in conjunction with other activities can make it a concentration, for instance if the decisions are taken on a joint basis and the individual alliance partners are deemed to be dependent on each other and therefore can not be seen as operating individual corporations any longer. The size of

[77] To be a concentration it assumes the minority equity alliance fulfill the requirements of full-functioning joint venture, see 4.2.1.

the minority equity stake is also of importance. The closer it is to 50% the more dependent the partners are of each other for instance in terms of profit. Provisions of possible future purchases or the disallowance of increasing the stakes in each other is also taken into consideration when assessing the case.

Equally if not even more difficult to generalise in legal terms is the business category *Traditional Joint Ventures*. One major point is that the joint venture needs to be a full function joint venture. The business sub-category best portraying this would be *Independent ventures*, whilst the others, *Split-control ventures* and *Shared management ventures*, risk as being seen as merely auxiliary to the parents and thereby not a full function joint venture. In those cases the joint venture would not be seen as a concentration but judged under Article 81 instead. *Dominate parent ventures* might not even be seen as a concentration at all if the dominate partner does in fact have sole control.

4.4 The Benefits of Choice

Companies who seek to expand internationally naturally have preference in finding the best business model to do so. However there is also a legal "choice". If the rules and procedure for concentrations or co-operation agreements is preferred the companies can attempt to tailor the expansion to fit the desired category. As shown above the Merger Regulation provides for a fast evaluation and a firm decision. Since 90-95% of concentrations are cleared within one month this is highly desirable for businesses. The notification procedure has attempted to be made business friendly and the latest revision, which also brought co-operative joint ventures under the Regulation, has continued in that fashion. However, regulated speed of the investigation means that the companies themselves need to be prepared and act fast. Informal, confidential talks prior to the notification is highly recommended but maybe not always a viable option with the secretively that surrounds negotiation of M&As and alliances.

To instead fall outside the merger regulation and be subject to Article 81 is debatable a higher risk. Risk in the sense that it is more uncertain. Individual exemptions take a very long time and are not the norm and comfort letters give little legal reassurance. The revised more general block exemptions and the notices issued by the Commission is an attempt to make it easier for companies to draft agreements that will not infringe the Treaty but if a quick definite answer is desired it is better to tailor the agreement to ensure it is a concentration.

4.5 An example-Volvo/Scania

The proposed concentration between Volvo (trucks and buses) and Scania was stopped by the Commission in 2000.[78] This case is a good example to illustrate some of the things discussed earlier in this chapter such as product and geographical market definition, dominance, undertakings of structural nature and the positive and negative aspects of strict time limits. It is particular interesting since Volvo later in 2000 acquired Renault V.I: (trucks and buses) which did not go against the Merger regulation.

4.5.1 Relevant product market

To determine if a concentration or co-operation creates or strengthens a dominate position first the Commission needs to establish the relevant markets, both the relevant product market and the relevant geographic market(s). In the Volvo/Scania case the Commission first separated buses and trucks and then divided each division into three further subcategories; trucks into different tonnage, below 5 tonnes, 5-16 tonnes and above 16 tonnes.[79] Heavy-duty trucks (above 16 tonnes), which was the only truck segment of interest in this concentration, could then possible be dived further into rigid trucks and tractor trucks but the Commission leaves the question open since it does not effect the assessments in this case even though the two

[78] Case No. COMP/M.1672 –Volvo/Scania
[79] For this example only the trucks will be discussed since much is repetitive for the two.

categories may not be fully substitutable.[80] The Commission identified further criteria's such as, length of the truck, engine size, number of axles and cabin type, on which the customer will base its purchasing decision on, but again leaves the question open regarding their impact on the relevant product market. However, these aspects played a more significant role when determining the relevant geographical market.

4.5.2 Relevant geographical market

The Commission and Volvo agreed on the relevant product market but differed in opinion regarding geographical market. Volvo claimed that the relevant geographical market for trucks is the EEA[81], as the Commission had decided in an earlier case regarding touring buses.[82] Volvo claimed their were similar market conditions regarding heavy trucks and therefor the same geographical market should be adapted. The Commission on the other hand pointed out national differences in price levels (up to 40-50% variation between neighbouring countries), customer preferences (regarding engine size, length, cabin type number of axle, tractor or ridged,) technical requirements (a special "cab crash test" is required for Sweden), purchasing habits (most purchases are done on a national basis), distribution and services network (without a sufficient local services network manufacturers can not efficiently penetrate a market) and market share variations (large variations in market share exist even in neighbouring countries with similar topography).

All these factors jointly lead the Commission to decided that there existed national markets for heavy trucks in Sweden, Finland, Denmark, Norway and Ireland. If other national markets existed was not relevant to this case since it was only on these markets "New Volvo" would become dominant. The bus market went through a similar approach.

[80] This is a common option used by the Commission which allows it to leave the exact definition open and hence keeps it workload down. It can be frustrating for companies because they do not receive and exact definition on which they can base future arguments.
[81] European Economic Area, consisting of the EU member states and EFTA countries.

4.5.3 Dominance

New Volvo would gain market share up to 90-100% on certain national markets. This clearly shows dominance and what made it worse was that Scania in all markets were seen as the most viable option to Volvo. Many customers choose between buying either a Scania or a Volvo. This choice, and thereby competition, would be eliminated by the proposed concentration. When Volvo and Renault V.I. later joined forces they were not seen as being closest substitute for each other and hence them joining did not eliminate as much competition as in the Volvo/Scania case. Also because they were not such close substitutes Volvo and Renault V.I. did not have the same large overlaps of market share on the same geographical markets.

The concern regarding protection for prices increases for the smaller buyers of trucks was also raised by the Commission. The truck market consist of many single truck operators who have little buying power and would not be able to exercise any pressure on a New Volvo if they increased the price. Also a price increase of even 10% would not be substantial enough to attract more manufacturers to the relative small markets in the Nordic countries. Therefor it was seen that New Volvo would become dominate and competition impeded.

4.5.4 Undertakings

Volvo offered to commit to several undertakings in order to limit its dominance; opening up of Volvo's and Scania's dealer and service networks, divesting of a distributor, best efforts to ensure the abolition of the Swedish cab crash test and to suspend the Scania brand name for two years. However, only the selling of its distributor was actually a structural undertaking. The rest would have little positive impact on the competitive climate if any. It was also debatable if they were practical doable. The undertakings were seen as not nearly weighing up the impact of the two largest competitors joining forces. Once again comparing it to Volvo/Renault V.I., Volvo

[82] Case No. IV/M.1202 – Renault/Iveco, Decision of 22 October 1998

committed to sell its remaining shares in Scania as a structural undertaking to improve competition. Also, Renault V.I. agreed to sell one of its bus manufactures which had an market share in France equal to that of Volvo's to ensure the competitive situation remained intact on the market.

4.5.5 Time Limits

The strict time limits that the Commission are forced to upheld is seen as a positive by most companies reporting a concentration. However, Volvo on several cases did not provide requested information, comments and commitments within the given time frame. This lead to that the case was briefly suspended and that Volvo's last offer of undertakings was not considered.[83] This shows that the difficulties also lies with the business parties who have to be well prepared and act fast. For large companies they might be used to a different situation with their home nation's politicians and bureaucrats.

The Volvo-Scania case received a lot of publicity especially in the Swedish press were EU was made out to discriminate smaller member states and be against the progression of their industries. This paper is of the meaning that few of those who made such claims have read the case since the alternative would very likely have been impeded competition, less choice and higher prices for the customers. It would have been interesting though to see the actual effects of the concentration and to compare its synergy effects to that of those coded for this paper.

[83] Case No. COMP/M.1672 –Volvo/Scania § 3 & § 359

Chapter 5 Empirical case analysis

The empirical data collected consist of five cases that have been coded in order to allow comparison. The availability of information on the individual cases varies, mainly due to the amount of time passed since the M&As/alliances. It is not the purpose to recreate the cases here per se but in order to ensure the reader can follow the discussion a brief summary will first be given on the five cases, with the mergers first followed by the alliances in order of time. The legal dealings will also be discussed before proceeding to the coding results. [84]

As stated earlier the cases have been purposely selected in the order be able to make comparisons, draw conclusions and draw parallels. A European focus, in the terms of operating on the European market, was maintained.

The legal procedure for each case is discussed, stating what legally happened and how the Commission reacted. This is to give a broader picture and a better understanding of the issues involved during a M&A or a alliance. As stated in chapter 4, once the Merger task force receives a notification of a concentration is has to determine whether a change of control has occurred and if the concentration has community dimension and lastly if it is compatible with the Regulation, i.e. does not create or strengthen a dominate position. The car manufacturing industry involves large turnovers and all the companies in this study therefore meet the demands for turnover to qualify for community dimension. The most relevant issues discussed are therefor if a change of control, and thereby a concentration, has occurred and the compatibility. In the following chapter the paper will go further and analyse the interesting legal aspects as well as compare and draw conclusions.

[84] The material that the summaries are based on is listed in the reference list under coding material.

Finally the coding results are given for each case in relation to potential synergy and realised synergy[85] as well as strategic potential, which is the sum of strategic similarity and strategic compatibility[86] and finally organisational integration.[87] By having coded all cases using the same coding method the paper can present a numerical finding for potential synergy and realised synergy in the cases analysed. This aims to show first if the companies did have any potential gains by joining forces and how much of these gains they have actually managed to realise. Two of the cases show zero realised synergy, this is due to the coding method used. The values are collapsed from 5 variables to 3. In fact a 0 does represent some realised synergy but at very low levels. Strategic similarity and compatibility is an indicator if the two companies were compatible in organisation structure. Organisational integration shows the companies interacted and co-ordinated their efforts to enhance synergy realisation. Further comparison and analyses of the coding results will be done in the following chapter. The data will be compared both to each other and M&As vs. alliances.

5.1. The BMW-Rover merger

The merger, or more correctly the acquisition of Rover by BMW, was some what unusual since it was a specialist manufacturer who bought a broader, more full-line manufacturer. It was a welcomed move by the competition authorities as it strengthened BMW's position and potentially increased its possibility to become a major competitor rather then the more niche player it had previously been. This was also the major reason behind BMW's decision, it wanted to grow and become a full-line producer without over stretching the very profitable BMW-brand. BMW had no presence in the increasingly popular segment of Sport Utility Vehicles (SUVs) nor in the entry level segment. By acquiring Rover it would be operating in all

[85] The results are deriven from Q26 to Q47 in Appendix 1.
[86] Deriven from Q 90 to Q 93 Appendix 1.
[87] Deriven from Q 48 and Q 49 Appendix 1.

segments of the car industry. Especially interesting was the Land Rover and Mini brands. It would also gain production facilities in the compared to Germany lower cost UK.

It acquired the Rover group from the cash strap British Aerospace for $550 million in 1994, after the preferred partner Honda had declined to become a majority stakeholder. However, BMW made a major mistake by keeping an initial hands-off stance to the Rover management in order not to seem to imposing and culture insensitive. Consequently it failed to discover the serious weaknesses that Rover had. The major problems being the ageing car models and poor quality standards. After a year a German management team was introduced and the quality control system received a major overview. Promises of a total new Rover model, not a BMW clone, were given but progress was slow. In order not to dilute the carefully guarded BMW-brand the company did not want to build the lower value Rovers on the same platform as the BMWs. This protection of the BMW-brand also meant that parts and technology was not jointly developed or sourced. The existing models received a facelift but essentially remained the same.

BMW invested a lot of money in attempts to modernise the facilities and built a new engine factory. It renegotiated with the workforce for revised working conditions more in line with its operations in Germany and also asked for and received finical assistance from the UK governments. In the negotiations of the financial assistance BMW threaten to move the production to Hungary were it allegedly would receive favourable tax conditions as well as financial assistance in setting up a modern production facility. The 200 million in state-aid BMW finally received was challenged by its competitors as not complying with EU regulation regarding state aid. This uncertainty as well as the increasing strong British pound and refusal to adopt the Euro contributed to the negative view of the investment.

After continuing looses BMW finally sold off most parts of the company, except the Mini brand and the new engine facilities. From Rover's perspective little was added to its strength even though large sums were invested. The brand position kept weakening and after the successful Land Rover part was sold of to Ford, the remaining parts only fetched the humiliating price of 10 pounds in the beginning of year 2000. After the sale workers felt betrayed by the earlier promises to keep Rover and rioted in the streets and demolished parked BMWs. The new Mini, produced in the UK, has since successfully been launched by BMW and the company has also produced there own branded SUV and have plans to build a BMW branded entry level car, but BMW still is not a true full-line producer.

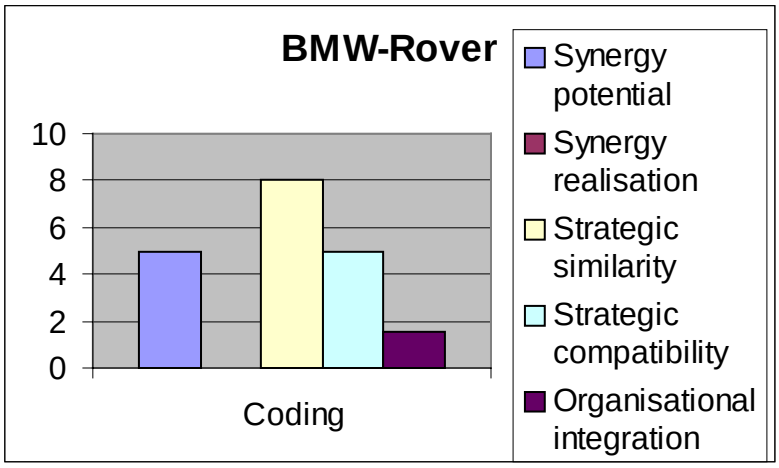
5.1.1 The legal procedure

Since BMW acquired 100% of share capital in Rover Group Holdings from British Aerospace change of control definitely took place and thus a concentration. In judging the compatibility the EU's merger task force was actually very positive, even encouraging the concentration in this case. BMW and Rover only had limited overlap of market share in the different segments and market. If the market share exceeds 25% it can indicated dominance but as stated in 4.5.3 larger market shares as well as other factors are usually required. BMW and Rover did exceeded 25% (Germany 26.1%, UK 28.4%) in the KKL segment (large passenger cars)[88] however since Rover added less the 1% market share and the competition was seen as strong this was of no concern to the Commission. Instead the Commission stated "It is possible that the merger will have some pro-competitive effects on the car market, since BMW will now be able to compete with the large automobile producer on the full range of cars."[89]

[88] KKL = kleine Klasse in BMW's internal segment division which corresponds to the more generalized large cars segment used in comparing different manufactures.
[89] Case No IV/M.416 BMW-Rover §18

In the case the issue of state aid was discussed since Rover had long received assistance from the UK government. Any future responsibility for repayment of that aid though remained with the BA group as a condition of the sale. State aid later was also an issue during BMW's ownership, but after BMW sold Rover the investigation was terminated by the Commission without any decision taken. The new owner has since continued to receive state aid for training which has been approved by the Commission.

5.1.2 The coding results



BMW and Rover had a potential synergy of 5 but failed to live up to the potential an realise any of it[90] Neither company gained in strength during this time. Rover became much worse off without the Land Rover and Mini brands. Whilst BMW had very little to show for its investments. The two organisations were fairly well suited for each other strategically but it did not seem to help. The low number on organisational integration shows that the two companies did not interact or co-ordinate very well after the merger. 1.5 is the lowest score out of the coded cases and it is due to that the company wanted to protect the BMW-brand. For synergies to be realised the merging companies need to interact more. Had they done so the synergy realisation would have been higher. The merger is a case of unrealised potential.

[90] As mentioned in beginning of the chapter 0 does actually represent some but very low amount of released synergy.

5.2 The Daimler-Chrysler merger

Trumpeted as the sensational merger of equals within the car industry, this is actually an acquisition made by the long successful Daimler-Benz. At the time of the “merger” both the companies were hugely profitable and the purpose was to ensure long-term prosperity as well as exploit large potential synergies. The production and market concentration matched each other very well and greatness was predicted by many observers and analysts. Chrysler was very much an American company with over 90% of sales concentrated to North America. It had gained a reputation for innovation and design more so than quality.

Daimler-Benz was and had been for a long time very profitable in its car section but was only operating in the high value markets and needed for long term prosperity to increases its volume. In combining the two companies you had the potential of gaining high volumes, participation in all segments, innovation, adaptability, and technology and quality excellence.

However, the merger suffered initial difficulties and especially the Chrysler part did not live up to expectations with large losses. The share value decreased as American investors abandoned the company and it was omitted from the Fortune 500 list due to being classified as a German corporation. Also there was a severe drain in key personal at Chrysler and continuing culture and work practice difficulties. After some major management reshuffling Daimler has firmly taken control and results have improved and especially technically the two companies have created a lot of synergies. So far there has yet been no joint production in a company owned factory but both companies have identified areas of best practice and are continuing to work on how to ensure best standard practices in all areas. Chrysler has started to be marketed and sold more outside America and has now returned to profitability.

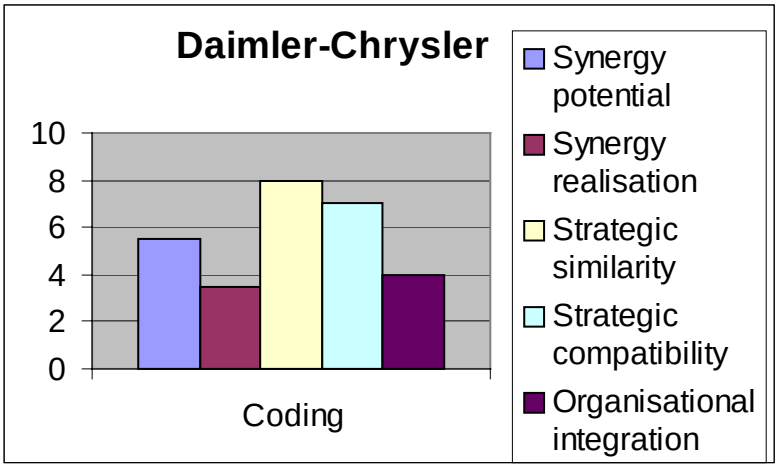
It is debatable if the merger is a success or not. From a pure stock valuation it has clearly cost the Daimler shareholders whilst the Chrysler shareholders were initially better off. The transaction seems stable and possesses yet unrealised potential and since it was a long term survival/prosperity decision it is yet to see the final result. Daimler-Chrysler were also in discussions to make an investment in the troubled Nissan but partly due to the then current internal concerns it decided to break of the negotiations and subsequently Renault became Nissan's partner.

5.2.1 The legal procedure

The reason why the merger of Daimler and Chrysler actually was an acquisition is due to law, mainly tax law. It was done to avoid the large tax cost associated with transferring assets from the existing American company Chrysler to a new merged American entity. It was preferred to create a new German incorporated company and to make to make Chrysler's US operations a subsidiary of it. Many investors disliked that this "once great US company" became foreign owned and a large backlash by American investors occurred when it was no longer listed as a US company.

Since it was an acquisition the Commission clearly judged it as an concentration. The EU competition authorities did not see the concentration as raising any serious doubts over its compatibility. The two companies had very little overlap in the different segments and markets and Chrysler had overall a very small presence on the European market, 0.7%.

5.2.2 The coding results



Over half, 3.5 of the 6.5 potential synergy has been realised in the merger. This is mainly within the technical field. There is still a lot to do on the human and organisational level. The merger is relative young and still stable and since the organisations are a reasonable good strategic fit it has a good possibility to increase its level of synergy realisation. It is clear that Daimler-Chrysler has aimed to integrate since the merger. They score high on the organisational integration strategy, 4 out of 5 possible. The company has strategically worked at identifying the best working and technical methods and then aimed at transferring those to the other company.

5.3. The Honda-Rover alliance

The alliance started out as a once off production licenses agreement in 1981 but grew into an alliance through a serious of joint ventures over several years. It was initiated by Rover in an attempted to quickly update their ageing and poor quality car fleet whilst re-building the necessary skills within the company. Rover wanted to take advantage of the superior engineering and quality that the Japanese producer possessed. It specifically sought a non-European partner in order to not be in direct competition with each other. Honda wanted to learn more about the UK and European market in a low risk manner whilst complying with the various import regulations that were in place at the time. Also Honda was interested in Rover's knowledge in how to adapt their cars, especially the interior, to suit the European style.

The co-operation was deepened and even extended to include the parties purchasing a 20% stake in each other. Rover adapted its production methods somewhat to that of Honda's even though they had different selling strategies. Throughout the relationship Honda remained the stronger partner since it was financially successful and had successful operations on other markets. The UK market was new to Honda and the even though co-operation with Rover was important Honda was not dependent on it. In fact, Honda declined to become a majority owner when the parent company of Rover, BA, wanted to sell Rover in order to raise funds. When instead BMW bought Rover in 1994, Honda felt betrayed and eventually the alliance was broken off.

To measure the success of this alliance is rather difficult. Rover was left in a very bad state partly due to its over reliance on Honda in supplying new models, but without Hondas help Rover would very likely not have survived at all. There have been many debates on how Rover could have managed better both prior to, under and after Honda's involvement.

From Honda's perspective it reduced both its cost and risk to enter the UK market and in general spread out a lot of development cost through the alliance. It profited from the co-operation and never took any larger risks by not including its newest innovations in engine development. However, Honda was not satisfied in the way things came to an end but not committed enough to deepened the alliances and increase its risk by purchasing Rover. To this date Honda has quite stubbornly remained one of the few independent car manufactures and as a rule only co-operates on limited projects with other manufactures.

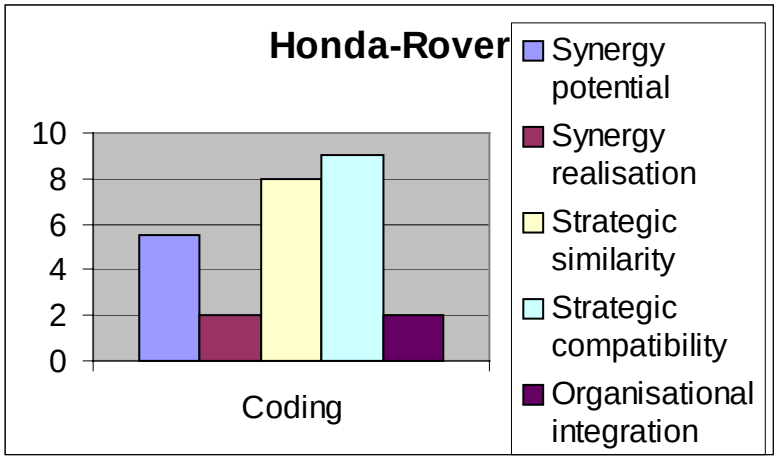
5.3.1 The legal procedure

Legally the Honda-Rover alliance is a serious of joint ventures providing Rover with components and production methods for existing Honda models. It is the only case in this paper which has not been screened by the Merger control simply because it was prior to its existence. However, the alliance did not provided for any more extensive co-operation than that of Renault-Volvo (the car part).[91] Especially since Honda-Rover initially did not involve any cross-ownership. It would most likely not have constituted a concentration and hence fallen under Article 81 instead.

There could never have been any question of dominance since Honda did not operate on the UK market and had a very small market presence in Europe at all. Any co-operation would also most likely not have received any attention under Article 81 since the agreements did not stop Honda from marketing and selling its own cars in the UK or Europe nor Rover in Japan. Had Honda instead of BMW bought Rover in 1994, even the minority stake of 49% it was maximum willing to do, it would surely have been a concentration. The same arguments as the Commission used when assessing Renault-Volvo (the truck part) would have been applicable.[92] But once again highly unlikely not to be seen compatible with the Common market due to very limited market share overlap.

[91] See 5.4
[92] See 5.4

5.3.2 The coding results



Honda-Rover had a total synergy potential of 5.5 and a realisation of 2. The alliance lasted for 13 years and was adjusted several times as new agreements were entered into. More synergies could have been realised had Honda been willing to go further into the partnership but even though the two companies had a very high strategic potential (the highest of the coded cases) was Honda unwilling to do so, illustrated by the rather low score of 2 on organisational integration. Maybe Honda was right in doing so, because Honda had less to gain by furthering the alliance than Rover. You can say that most of the unrealised 2.5 synergy was within the Rover corporation.

5.4 The Renault-Volvo alliance

The two companies had long co-operated through a cross-supply agreement involving engines and gearboxes and in 1986 the smaller car and truck manufacturer Volvo made an inquiry to purchase Renault's truck division. That transaction did not take place then, but the offer eventually led to the forming of a rather complex alliance including 25% cross-ownership in the car division and 45% cross-ownership in the truck division in 1990. The alliance was jointly run through a series of committees with 50-50 participates on them. This was despite the fact Renault was substantially larger than Volvo in the car division.

There were large potential synergies to explore and the two companies did indeed make some headway with both joint R&D and bus production among other things. Renault was mainly strong in France and the southern Europe while Volvo had stronger presence in Scandinavia and in the US. In the truck market Volvo had a very good market position in the heavier larger trucks while Renault had some success in the light truck section. The truck divisions actually were a better strategically fit and hence Volvo's original interest in them only.

After moderate success during the initial two years there were growing tensions between the two companies. Not at the top level but at the operational level. The integration work went slowly and there were rather large differences in work culture, priorities and some language problems as well. In 1993 the two CEOs wanted to speed up the integration and synergy realisation and therefore proposed a merger. At the top level this was seen as the solution to increase synergies and speeding up the decision making process, rather than continuing with the current slow committee steering.

The merger however would make Renault the dominate partner in a 65-35 split compared to a previously equal alliance. This was a factor, together with some ongoing disagreement, which resulted in that the workers, through their representatives, managers and shareholders of Volvo protested and convinced Volvo's board to withdraw their support for the merger. Soon after the alliance was broken off. The proposed merger is seen as one of the major failures in the modern automotor history and a very costly one, especially for Volvo.[93] In the alliance agreement there was a so called poison pill which roughly meant that the partner breaking of the alliance would have to pay damages to the other. Volvo paid Renault SEK 5.2 billion under the terms of the pill. The only business dealing that survived the merger attempt was the original industrial

[93] Johnson 1999

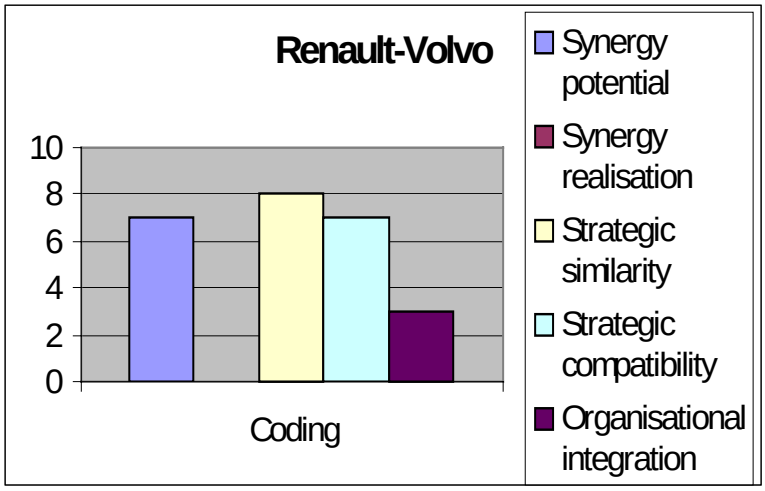
co-operation agreement. In a later development Volvo did buy Renaults truck division and Renault found its partner not in Europe but across the world in Japan.

5.4.1 The legal procedure

The legal procedure of this alliance is interesting and somewhat complicated. The parties agreed to purchase stakes in each other. For the car division it was between 20% and maximum 25%. Neither party could purchase more than 25% of each others car division. In the truck and bus section they agreed to exchange 45% of shares. This, and the way the trucks and bus division was run and integrated, lead to that the Commission say that the truck and bus section was deemed an concentration but the car section was not. The Commission argued that the two companies became dependant of each other in regards to trucks and buses and could not "act independently without substantially affecting their own interests in this business activity"[94] The car section on the other hand was not seen as a concentration because it had a ceiling of how much each partner could own of each other. This, in the Commission view, safeguarded the independence of the two companies. The car part of the alliances hence came under Article 81 (ex 85) of the Treaty.

The truck and buses concentration had some rather large market shares. The truck market was generally seen as competitive and the two companies did not have large overlap of market shares. However, in France Renault held 69.7% of the bus market and Volvo 64% of the bus market in the UK. The concentration though did not add any additional market shares on these markets and the competition in general was seen as strong. The large market shares did not raise any concerns and the Commission allowed the alliance.

5.4.2 The coding results



As the codings show the Renault-Volvo alliance was not very successful. It had the jointly highest potential, 7, but failed to live up to it and did not realise any synergy.[95] The two companies should have aimed at resolving their differences in another way than proposing a merger to try to achieve some of their potential. They did actually have a fairly good score on integration strategy, 3, and worked fairly hard to facilitate synergy realisation therefor the partnership should have been able to realise more synergy had they not changed the organisational form of the co-operation. The alliances was fairly brief and had they continued better results could be expected. Also it should be noted that part of the potential and strategic fit was in the trucking divisions which now actually have merged.

5.5 The Renault-Nissan alliance

Finally this study looked at the Renault-Nissan strategic co-operation alliance as it is commonly called. Suffering under severe debts and unprofitability Nissan was in need of a partner that could take on some of the dept load and help the company turn around. Both Ford and

[94] Case No IV/M.004 – Renault/Volvo of 07/11/1990
[95] As with BMW-Rover it did create some synergies but due to collapsing of the variables the amount is too small to register. Without collapsing Renault-Volvo did realise more synergy than BMW-Rover.

DaimlerChrysler had backed away from possible co-operation, but France's Renault needed to reduce its dependence on the European market and expand its range of brands in order to secure long term survival and decided to purchase a 36.8 % stake of Nissan in March 1999. This in effect gave Renault control of Nissan since it was by far the largest stakeholder and the only one with a veto right. However, this transaction is not labelled as an acquisition or a merger, even though Renault has, and will again, increased its stake to a total of 44.4% and Nissan will also purchase 15% of Renault.[96]

Renault sent over Carlos Ghosn to Japan in order to turn things around. Mr. Ghosn made some dramatically changes and among other things introduced nine cross functional teams as part of his Nissan revival plan. The traditional seniority and reward systems were also adapted to reflect more individual performance and responsibility. The plan has worked and Nissan has become profitable and has paid off a large portion of its debt.

The alliance is overseen by a separate company were the parties have equal control. So far the alliance has been successful, not only in staging Nissan's turn around but Renault has also entered several new markets through Nissan's established network. Excess production has been utilised and both companies has been helped by the others strengths and established production and networks. The two companies wish to continue co-operating but to keep their separate identities. It will aim to have to full range brands that can supply all market segments and markets. Since the alliance is still at a very early stage it is difficult to predict the long term possibilities for it but it has good potential and some analysts even, half jokingly, say that Nissan one day might end up becoming the stronger alliance partner.

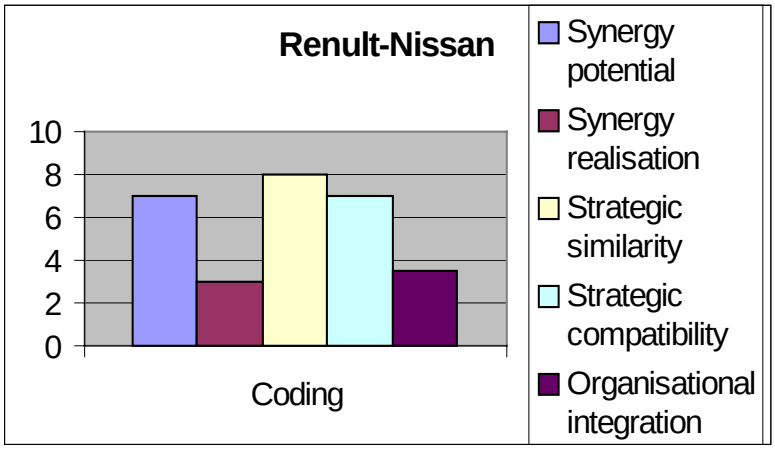
[96] It can be argued that Renaults relationship is not of an alliances character since they in fact has acquired control of Nissan, but the way the transaction is being managed is more in the manner of an alliances than an acquisition and both parties refer to it as an alliance.

5.5.1 The legal procedure

Even though Renault did not gain a majority of the voting shares it was deemed as gaining control over Nissan and thus a concentration according to EU regulation. This fact can sometimes be difficult to explain but as discussed in chapter 4 it is a matter of decisive influence. By being the only shareholder with more than 33.4% Renault could veto key decisions. The rest of the share capital was widely dispersed with no other share holder having more than 6%. The deal also gave Renault the right to appoint three key top managers and thus direct influence over the day to day management. These factors lead the Commission to concluded that Renault had de facto control over Nissan.

In regards to the compatibility there were very little overlap of markets and products. Nissan had less than 5% market share in all segments in Europe and thus the concentration did not create or strengthen a dominant position.

5.5.2 The coding results

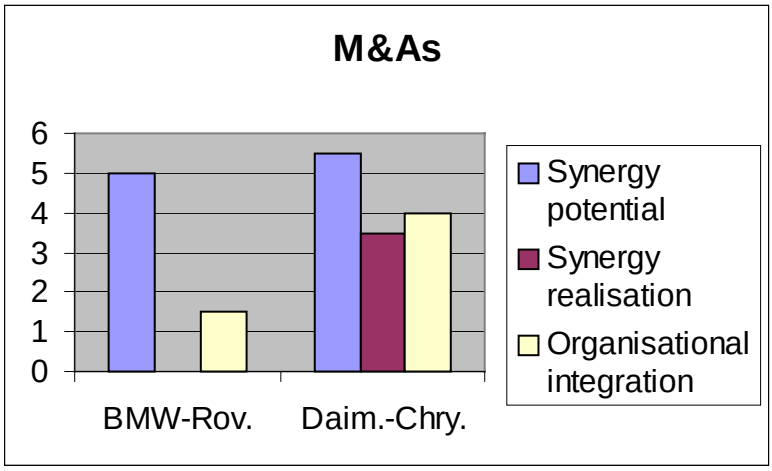


Even though the Renault-Nissan alliance is looked upon as a great success story by industry analysts it has realised less than half of its potential. This is, in this papers opinion, due to the factor it is still a very young alliance with a good position to make further gains. The analysts and industry journalists praise the fact that it has been a profitable partnership. Nissan has

turned around very quickly and is contributing to the profitability of Renault. Apart from the purchasing price, no great sums by industry standards have had to been invested whilst both companies (mainly Renault) are utilising existing investments in infrastructure to expand. The two partners have spent a lot of effort in integrating the two companies even though they officially remain two separate entities. During the course of writing this paper the alliance has enjoyed further successes that could not be taken into account.

Chapter 6 Empirical comparative analysis

6.1 The M&As



The two M&As analysed in the study both involve profitable German luxury vehicle producers acquiring more broad range Anglo-Saxon car producers. The BMW-Rover merger turned out a failure and was consequently broken off, whilst Daimler-Chrysler, all though experiencing initial difficulties, is still operating, realising synergies and with no signs of ending.

BMW never claimed that Rover was an equal partner but refrained initially from being too dominant in order not to seen as imposing its national and corporate values on the UK firm. This stand-off approach, reflected by the low organisational integration score, is seen as a severe mistake and contributing to the failure. This is supported by the analysis; the longer the companies wait with the integration efforts, the less synergy is realised. In BMW's case almost none of the identified potential synergies were realised.

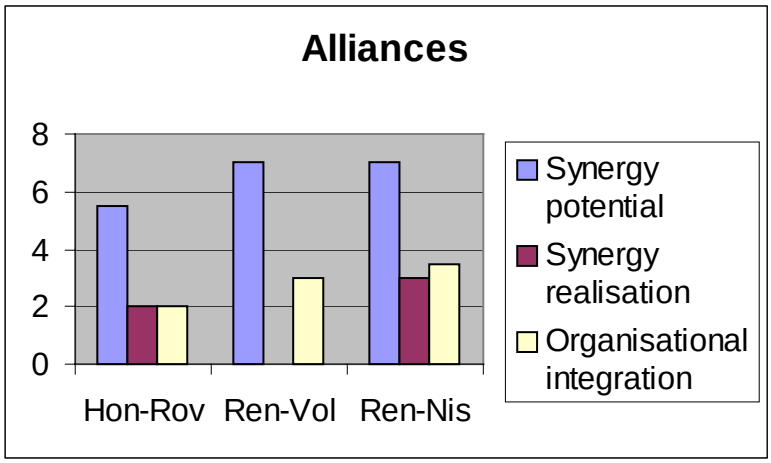
Daimler-Chrysler is similar but the merger was originally stated to be a merger of equals. This due to the fact that both companies were profitable and successful at the time, compared to Rover's long bad performance. However, as Daimler-Chrysler began to experience trouble the initial (over?)careful and respectful Germans became clearly dominant and took charge of the company, as seen by the high organisational integration value.

The fact that Daimler managed to turn Chrysler around whilst BMW failed can be attributed to two main factors. First and most important Chrysler was never in such a bad state for such a prolonged period as Rover was. Chrysler had before the merger completed major reorganisation and rationalisation. Rover had a long history of relying on state aid to survive and had a very poor track record of financial performance. Secondly, BMW was very reluctant to commit to extensive integration of the two companies because it did not want to diminish the value of the BMW-brand. Even though the Chrysler brand did not have the same high quality status as Daimler-Benz it did not have as much negativity associated with it and some of Chrysler's technical solutions were superior to that of Daimler. As a result the technical integration of Daimler-Chrysler went much further and resulted in far more synergy realisation and savings than at BMW-Rover.

Both Daimler and BMW were seeking long term solutions to their strategic growth when acquiring their partners but it seems like BMW were more interested in entering two specific segments, SUVs and small cars. This was achieved through the successful Land Rover and the Mini brands. It is therefore surprising that BMW paid little attention to Land Rover during the merger and in the end sold it to Ford. Even though some of Chryslers brand portfolio was more interesting than others, Daimler has taken a more total approach to Chrysler aiming to keep the company as a whole and further develop its products and markets. Legally there is little difference, both BMW and Daimler acquired their partners. In conclusion, Daimler-Chrysler has been a more successful merger because it aimed for a deep level integration with all aspects of the two companies and it had chosen a more successful and solid partner.[97]

[97] The level of success referred to here is only comparative between the two discussed mergers, if other strategies such has an alliance would have achieved better result is discussed below.

6.2 The Alliances



Out of the three alliances two involve France's Renault as one party, Japanese firms are allying with European partners on two occasions, all three came to involve cross-ownership, one was a major failure, one experienced limited success until its end and one is still thriving and continuing to make synergy realisations. Legally they are: one co-operation agreement, one half concentration and half co-operation and one acquisition of control. As far as synergy realisation in relation to legal status of the alliance a conclusion you can draw is that half measures result in very little synergy. Renault-Volvo did not amount to very low amounts of synergy partly because it was not clear how the alliance was run and in what shape it should operate. First it was an alliance then it was suppose to become a merger. The Honda-Rover alliance does support this argument because it was broken off, and thereby no more possibility to make synergy realisations, when a change in legal status was proposed. Honda started to co-operate with Rover because it wanted to co-operate, not as a way of acquiring Rover. Volvo's board and shareholders wanted to co-operate with Renault not be bought by them.

Both of Renault's alliances were in order to secure the long term future viability of the company. The alliance with Volvo incorporated cars, trucks and buses, and involved extensive

co-operation and commitment. The deal was designed to be difficult and costly to reverse in order to deepen the commitment. This created a dependency on each other. Once the proposed merger was aborted the alliance relationship had suffered irreparable damages since it had been made obvious that Renault was to be the dominate partner. Because an alliance is less permanent in structure, even with cross-ownership and poison pills, it is dependent on voluntary participation of all involved parties. A feeling of being less worth than the other could be very damaging to the partnership.[98] Bringing in a third party, BMW, to the Honda-Rover alliance was damaging much in the same way. This was a change of conditions one partner could not agree to and therefore left the alliance.

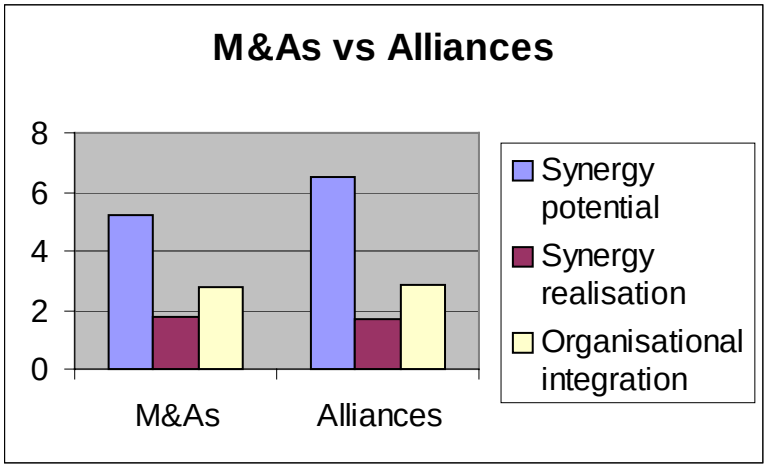
Renault has learnt from its previous attempt and has consequently been very careful to respect and not offend Nissan in its negotiations and the following alliance, even though enjoying a stronger position. This time Renault and Nissan has realised quite a bit of synergy working in a similar manner as the failed alliance with Volvo. The differences are that there are less committees that over see the alliance and that Renault has been able to put in place a number of personal in key positions at Nissan. This allows for a greater amount of control. Even though it is an relative equal alliance it is clear which side has the control if need be. Also Nissan was in a position of great need and thereby more willing to adapt and make necessary changes than Volvo (and Renault itself) was.

The Renault-Nissan alliance's success has made it into a role model not only on successful alliances but also how to go about restructuring failing Japanese firms and how to co-operate between a Western and a Japanese corporation. Nissan was in need of a short term solution to its financial problems and after first Ford and then Daimler-Chrysler broke of negotiations Renault

[98] This is also true for mergers as seen in DaimlerChrysler, but they can not as easily go separate ways.

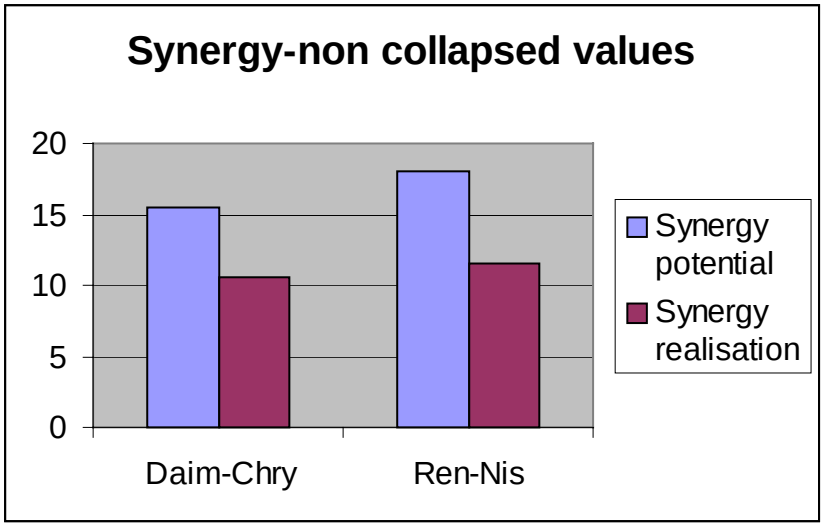
remained to only interested party. Rather than taking advantage of the situation and downgrade their offer Renault continued to show respect for Nissan. Even though it has in fact acquired control over the Japanese producer the alliance is co-ordinate through a separate company with 50-50 control. The fact that Nissan was never forced to surrender has contributed to the willingness of its employees to endure the difficult changes necessary for it to return to profitability. This choice Renault has made to operate as an alliance rather than enforce its powers and control Nissan is very interesting. Would Daimler have enjoyed more success if it had taken a similar approach with Chrysler?

6.3 M&As versus Alliances



The three values show what potential the joining firms had, how much was realised and what efforts was but in making sure the potential was realised. Looking at the averages of the two groups there are virtually no differences in synergy realisation nor organisational integration. This is consistent with the theory that the amount of realised synergy is related to the organisational integration. If the two partners don't interact and co-ordinate their efforts the synergy will not be realised. Since the averages are so close no firm conclusion can be drawn on what method of co-operation gives the best result. The alliances as a group had more potential and hence has more lost (unrealised) synergy.

To look at if from a different angel the paper compared the Daimler-Chrysler merger with the Renault-Nissan alliance. They are the two most interesting cases to compare since they are the two most successful partnerships and the only two still operating today. The synergy realisation codings show that Daimler-Chrysler was more successful, both in the amount of synergy realised, 3.5 and as a percentage of its potential than Renault-Nissan. However, much of the qualitative data supports the fact that Renault-Nissan has been more successful. To see if the codings could be misleading due to the collapsing from 5 variables to 3 the author went back to the original variables. Then it was discovered that Daimler-Chrysler had a synergy potential of 15,5 and realisation of 10,5 whilst Renault-Nissan had a synergy potential of 18 and a realisation of 11,5. Therefor the codings prior to being collapsed does support the quality data and puts Renault-Nissan as the most successful partnership in terms of synergy realisation. The interesting questions are why and what could have been done differently.



As discussed previously in a legal sense both Renault and Daimler acquired their respective partners but then have chosen to portray the relationships differently. Daimler-Chrysler was very strongly stated to be a merger of equals until things started to go bad and it was made clear by the German CEO that this was not the case. Renault never stated that Nissan was an equal partner; however it did treat it as such and has continuously labelled the co-operation an

alliance. Renault has been consistent in its handling of Nissan, Daimler has not been with Chrysler. The way the agreement was portrayed initially has changed, much as Renault-Volvo and eventually Honda-Rover was. A major change breaks confidence and a partnership needs confidence. Chrysler could not back away from Daimler because Daimler owned them but its key personal could and did.

In order to remain a successful company a strong identity is vital. If two companies merger either one of the existing identities survives or a new emerge. Whilst if you have an alliance between two companies you can remain operating under two separate identities and still integrate the operations. Naturally a company can acquire another producer and keep it as a separate entity with its own identity, i.e. what Ford did with Volvo, but it then needs to be clear that that is the intention from the beginning.

The Daimler-Chrysler merger was very public including a name change but the actual integration has been less formal. No cars are yet jointly produced, no new overseeing corporation or body has been formed, both companies still have there original headquarters. But the CEO (previously from Daimler) has publicly stated who is in control and gradually Chrysler has been adapted to fit the Daimler corporate culture.

Renault and Nissan have remained separate organisations but are co-ordinating actives through a joint corporation. Renault has utilised Nissan's over capacity in among other places Mexico to produce its cars. Maybe Chrysler would have kept more of its key personnel had it not imposed its corporate culture on Chrysler but let it operate in its own right? However, had it from the onset stated that Daimler should be the dominating partner the merger might never been approved by the Chrysler management.

6.4 What could have been

6.4.1 Honda-Rover

It is very difficult to make generalisations weather a merger would have been better than an alliances but looking at the discussed cases this paper claims that, Honda-Rover would have been a more successful merger than BMW-Rover was. But from Honda's perspective it should have remained a case by case alliance. From Rover's it would have benefited from a more permanent structure but not necessarily in the shape of a merger. Honda would have continued to spread its cost whilst becoming more experienced and established on the UK and European markets, eventually having the option to stand alone or continuing collaboration with Rover. Rover on the other hand needed to learn and improve vastly before considering such an option and therefore needed a stabile long term relationship. Legally an Honda-Rover concentration in 1994 would most probably have been approved by the Commission since the two companies had minimal overlap of market shares.

6.4.2 BMW-Rover

BMW should either have attempted to in a speedy manner integrated with Rover or merely kept/bought the compatible production of Land Rover, Mini and maybe MG. Those segment were of most interest and value to BMW's and could have more easily been integrated into the firm since they shared more common values in regards to quality, reputation and client base. Such a merger would naturally been approved by the Commission since BMW buying the whole of Rover was, but maybe British Aerospace would not have sold had it know BMW wanted to break up the group and either sell or terminate the Rover production.

6.4.3 Renault-Volvo

Renault-Volvo should never have attempted to become a merged unit, at least not with cars, trucks and buses in the same organisation. It could have attempted to improve the working relationship under the original alliance agreement or it could have decided to divide the interests up with Volvo gaining control of Renault's truck and bus production and Renault being in charge of cars. This is close to today's picture were Volvo has first sold its car division to Ford and later acquired Renault's truck and bus operation. Volvo has long realised it is a too small player in the car market but has been a leader in the truck and bus segment. By focusing on its successes and leaving Renault in control over the cars both companies might have been better off. As proven by the 2000 acquisition by Volvo of Renault V.I. the Commission would not have objected to such a merger taking place earlier, nor is it likely the car section would have raised any serious concerns.

6.4.4 Daimler-Chrysler

DaimlerChrysler should have integrated they way the have done on a technical basis but operated two separate entities in a business sense, through a joint overseeing body with 50-50 control. Since both companies were successful this could have lead to savings and improvement without loosing identity. More key personal would probably have stayed and maybe investor confidence would not have deteriorated as much. The question if the partnership would have been manageable still remains. The alternative of Daimler taking firm control immediately is not viable because under those terms Chrysler's board would not have agreed to the sale.

6.4.5 Nissan-Renault

Nissan-Renault being the most successful alliance analysed and still going strong has done most things right. They should continue operating the alliance in the current form but must be cautious that the two companies do keep their own identities. Maybe a blending of corporations and cultures can successfully occur but it must then be gradual and agreeable to both sides. For now lets see how the new generation of Nissan models are received as they seem to more and more take on the shape of Renaults.

Chapter 7 Conclusion

Successful international growth can be achieved both through alliances and mergers. The two most successful cases in this study where the Daimler-Chrysler merger and the Renault-Nissan alliance. Also the average synergy realisation of the two groups were almost identical, 1,75 versus 1,67. Therefore can this study not claim either option more successful in terms of synergy. However there are some similarities. Both of the two most successful cases did have firm integration plans and followed through, both developed systems which identified best practices and aimed to transfer those to the other partner. They were the two cases that scored highest on the organisational integration. Less successful cases were afraid of sharing too much and becoming too close. Trust is important if you want to work together.

The legal shape of a growth strategy is often not the same as the business shape. The partnership might be labelled one thing but actually be something different. Legally the two most successful were both concentrations (acquisition of control). A partnership can be better off due to tax reasons or competition rules in structuring a particular way. How it is portrayed to the public and between the partners is important. The public opinion, measured by stock value, can be seriously damaged if a false picture is discovered. All involved sides must be in agreement for the partnership to succeed its full potential. If fundamental changes occur this can seriously damage the relationship. Especially with less firm partnerships that alliances represent this relationship of trust and goodwill is important to nurture. Even in M&As where the parties are more locked into each other, unagreed changes can result in potential synergy loss due to personal drain or decreased investor confidence.

To answer this papers aim: M&As and alliances have more common success factors than differences. The average synergy realisation is close to equal in both growth strategies. The legal choice a partnerships makes does not have to be the same as the business. The EU merger regulation and co-operation rules aims to be business friendly but the companies need to carefully consider the options and consequences prior to making an agreement.

7.1 Limitations

This paper only involved 5 cases which is a relative small sample size to draw firm conclusions from. In the database there exists vast more cases but most of these are not coded for all variables yet, but this work has been begun. Also there exist several other case studies within the motor industry that can be suitable for coding.

In adapting the coding schema to be able to incorporate alliances some of the questions were not as suitable for alliances as for mergers. This problem is minor though and can be managed with coder instructions. Also the additional section of trust, added by another researcher in co-operation with the author of the coding schema, resulted in many “insufficient information” answers and therefore limits the usability of the data. That section was not directly related to this study but for future purposes the questions should be looked over if it is proven to be a consistent problem when coding other cases.

The coded cases were from different time periods which meant that the merger regulation had been changed between some mergers. Some of the cases involved markets that where not within the EU territory as the merger took place but has since become. This can make the comparison somewhat difficult. The ever developing of the merger regulation is also a reason this type of study need to be revisited and updated to remain relevant.

7.2 Further studies

To validate the findings in this study more cases need to be analysed, especially more alliances. In the datebase there exists more than 60 M&As but no more alliances. Also this study has only looked at a few of the aspects of the coded cases. There exists several other areas to explore and further study such as employee resistance and trust. One of the reasons the case survey method was chosen is the hope that other researchers one day will be able to use the data provided through this paper and the underlying codings to make future research in his/her chosen field.

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Appendix 1– M&A Case Survey