



SCHOOL OF ECONOMICS
AND MANAGEMENT
Lund University

2+2=5: Pursuing M&A Synergy Realization in China

Tutors: Prof. Rikard Larsson

Jur. LLD Cécile Brokelind

By

Min Hang

MEA 130

Department of Business Administration

May, 2002

Abstract

Gone are the days when foreign companies wishing to invest in China were limited to Greenfield Investments. They may now purchase operating Chinese business and may restructure their existing investments in China through Merger and Acquisition (M&A), which was impossible only a few years ago. The result of these developments is a rapid expanding M&A surge in China.

Along with these torrential M&A waves, many problems also arouse from the Chinese practices, such as how to improve the integration level in the M&A and etc. There has already been some research on international M&A integration in general, but still no sufficient studies on the specific Chinese problems. So the primary question to be discussed in this thesis is *how to address the M&A integration issues in the Chinese practice and pursue synergy realization with efforts made both from managerial and legal perspectives*. The purpose of the thesis is to combine the business & law-related issues together and incorporate empirical cases, so as to explore an effective Chinese way to realize M&A synergy. Furthermore, the thesis is also aiming at providing the foreign investors, especial the EU Multinational Corporations (EU MNCs) with implications for their future business operations in China. To achieving these goals, a mixed-methodology of both quantitative and qualitative approaches is adopted, namely, on the basis of both case study and questionnaire survey. Meanwhile, many literatures and secondary materials have been quoted and utilized as well to prove the study.

Chapter 1 is the introductory part of the thesis, in which, background information on the M&A in China, purposes of study, demarcations and methodology are presented. An overview that gives brief account to the M&A synergy realization is illustrated in Chapter 2, and more theoretically important, the “2+2=5” effects are also outlined.

Chapter 3, 4, 5, 6, and 7 form the core of this thesis, in which the author makes analyses in great details on the M&A integration in five areas of strategy, organization, assets, business operation and human resources. A number of practical suggestions and proposals are put forward inside these parts. The viewpoints and suggestions are further supported as true and improved as applicable in Chapter 8, in which an empirical comparison on the case study and questionnaire survey is carried out.

The M&A issues are studied in a legal perspective in Chapters 9 and 10, in which the applicability of laws in the international M&A and the legal considerations on the employees’ rights protection are illustrated and analyzed.

Having specialized in the European Study, the author has naturally paid special attention to the EU MNCs. In Chapter 11, the situation of their M&A practices in China is examined in quite detailed manner and furthermore, a few implications for their future operations are proposed. Through these efforts, the author hopes to link the M&A study in this thesis more closely with the EU international business operations and, as a Chinese student who has benefited from the EU studies, contribute something helpful to the EU MNCs.

In the concluding part, the author emphasizes that, if always keeping in mind the good integration in the aspects of strategy, organization, assets, business and human resources and taking full considerations on the relevant legal issues, companies will be more likely to have excellent chances of achieving the synergy realization with a value-added effect of “2+2=5”.

Contents

Abstract	1
Contents	2
List of Tables	4
List of Graphs	5
List of Abbreviations	6
1. Introduction	7
1.1 Background	9
1.2 Problems Discussion	12
1.3 Purpose of Study	13
1.4 Demarcations	13
1.5 Methodology	14
2. M&A Synergy Realization: An Overview	25
2.1 Four Phases of M&A	25
2.2 Synergy in the Execution Phase: 2+2=5 Effect	26
2.3 How to Pursue M&A Synergy Realization in China	27
3. Strategy Integration	29
3.1 Changes in the Internal and External Environments	29
3.2 Realization of Strategy Adjustments through M&A	32
3.3 Strategy Integration in the Chinese Practice	32
4. Organization Integration	34
4.1 Integration of Organizational Structure	34
4.2 Integration of Management Schemes	37
4.3 Organization Integration in the Chinese Practice	38
5. Assets Integration	40
5.1 General Views on Assets Integration	40
5.2 Principles of the Assets Integration	42
5.3 Integration of Tangible and Intangible Assets	43
5.4 Assets Integration in the Chinese Practice	43
6. Business Integration	46
6.1 Integration of Business Operation	46

6.2 Integration of Production and Integration of Technology	47
6.3 Business Integration in the Chinese Practice	48
7. Human Resources Integration	49
7.1 Selection, Retaining and Allocation of Human Resources	49
7.2 Accelerating the Cultural Integration	51
7.3 Developing Communication.....	53
7.4 Application of the Decision Style Model and Career Concept Model.....	53
7.5 Human Resources Integration in the Chinese Practice	56
8. Empirical Comparison	58
8.1 Empirical Comparison on the Quantitative Study.....	58
8.1 Empirical Comparison on the Qualitative Study	60
8.3 Conclusion of the Empirical Study	61
9. Legal Problems Relating to the M&A.....	62
9.1 Questions to be Answered	62
9.2. Applicability of Laws in the International M&A	63
10. Specific Legal Considerations on Safeguarding the Employees' Rights.	66
10.1 Ensuring the Rights of Information and Consultation.....	66
10.2 Protecting the Employees' Rights as Creditors	68
10.3 Attaching Importance to the Transferring of the Labor Contracts	69
10.4 Being Careful to the Termination of Labor Contracts and Paying the Economic Compensation	70
10.5 Conclusion of the Discussion on the Legal Issues.....	72
11. Implications to EU MNCs' M&A Operations in China	73
11.1 General Situation of M&A by EU Companies in China.....	73
11.2 Implications to EU MNCs' M&A Operations in China.....	74
Conclusion	78
References	79
Appendix 1 Questionnaire	
Merger and Acquisition (M&A) Integration Investigation in China.....	82
Appendix 2 List of the Sample Companies in the Questionnaire Survey	84
Appendix 3 Persons Have Been Interviewed.....	85

List of Tables

Table 1: Companies that Responded to the Questionnaire Survey	19
Table 2. Comparison on the Chinese, French and German Cultures	52
Table 3: Decision Style Matrix.....	54
Table 4. Co-Competence and Motivational Division of Integration Work.....	55
Table 5. Comparison on the Case Study.....	60

List of Graphs

Graph 1: Four Phases of M&A.....	25
Graph 2: Allocation of Synergistic Benefits	26
Graph 3: Main Managerial Factors Determining M&A Synergy Realization	27
Graph 4: Strategy Integration in China	33
Graph 5: Organization Integration in China.....	39
Graph 6: Assets Integration in China	44
Graph 7: Business Integration in China.....	48
Graph 8: Human Resources Integration in China	57
Graph 9: General Situation of the M&A Synergy Realization in China.....	58
Graph 10. Comparison among the Integrations in Different Aspects	59

List of Abbreviations

ABB	Asea Brown Boveri
M&A	Merger and Acquisition
EU	European Union
MNC	Multinational Corporation
SOEs	State-owned Enterprises
FIEs	Foreign-invested Enterprises
UNCTAD	United Nations Conference on Trade and Development
WTO	World Trade Organization
MOFTEC	Ministry of Foreign Trade and Economic Cooperation of the P.R.C
AS(or ASB)	Alcatel Corp.(Shanghai) Bell Corp.
LC(or LCG)	Lufthansa China Group Co Ltd.
PC	Philip CDMA Shanghai
KC	Koinic Corp.
VS	Volkswagen Shanghai Corp.
CC	Ciliwallon Corp.
HP	HSBC Holdings Plc.
AG	Alberler GmbH
TC	Toshiba Ltd. Corp.
NBS	National Statistics Bureau of the P.R.C
SW	Strength and Weakness
OT	Opportunity and Threaten
PMC	Philip Mores Corp.
GFC	General Food Corp.
SSC	Silicon System Corporation
ECMR	European Community Merger Regulation
JSC	Joint Stock Company
LLC	Limited Liability Company

Chapter I Introduction

“China will give green lights to foreign businesses to conduct merger and acquisition (M&A) transactions over the Chinese state-owned enterprises (SOEs).”¹ This news was released on September 12, 2001 during the Fifth China International Fair for Investment and Trade held in Xiamen, China. On the same day, ABB, a world-renowned manufacturing giant in electrical equipment, announced to the public that it would take over the equity of the Xiamen Electric Control Equipment Factory, a still Chinese SOE then, to establish the Xiamen-ABB Electric Control Equipment Co. Ltd.

Much wide attention was immediately aroused by the above two pieces of news, which was believed to indicate that, on one hand, the foreign businesses, especially these multinationals, are getting easier to enter China through merger and acquisition on the larger scope of Chinese enterprises, not only limited in the Foreign Investment Enterprises (FIEs); on the other hand, the ways for China to introduce foreign capital is shifting from the conventional forms of Joint Venture and Greenfield Investments to the M&A with an even bigger pace than ever.

In China, the number of foreign-funded enterprises had exceeded 378,000 by 2000, with contractual foreign capital already surpassing US\$700 billion and foreign capital actually used being US\$370 billion. However, more than 90% of the foreign capital was introduced by means of Joint Venture, or Greenfield Investments, while these entering China through M&A accounted for just a very small proportion, and merely involved in some restricted companies recommended by the Chinese Government.²

In the global environment however, the international M&A has become the main trend of foreign investment. The statistics recently released by the United Nations Conference on Trade and Development (UNCTAD) showed that M&A carried out by the multinationals in 2000 alone involved more than US\$1.14 trillion, a nearly 50 % increase over that in 1999. Also according to UNCTAD, the volume involved in M&A in 1995 accounted for 69.7% of the total global direct investment in the same year, which had roared up to 83.2 %t in 1999.³

¹ “China Daily”, September, 2001

² “China Investment”, December , 2001

³ “United Nation Conference on Trade and Development”, <http://www.unctad.org/>

Under such circumstances, especially after its formal accession to the World Trade Organization (WTO) in December 2001, China has become much more aware of the importance and necessity of shifting its mode for utilizing FDI to M&A, the main form of foreign investment already in place in the world. In the “Tenth Five-Year Plan (2001- 2005) for National Economy and Social Development of China”, it is drawn up that the country will expand the scale of and enhance the level of foreign investment introduction during this period, with the M&A being an emphasized area.⁴

With such a national policy available as supporting pillar, a lot of specific measures have been taken to encourage international M&A in China. Mr. Shi Guangsheng, Chinese Minister of Foreign Trade and Economic Cooperation (MOFTEC), noted that, over the past several years, the international merger frenzy had triggered a new round of industrial restructuring in the developed countries. By taking this opportunity, he said, China should devote its efforts to the promoting of cooperation between Chinese enterprises and the multinationals worldwide, thus facilitating the participation of foreign businesses in Chinese enterprises’ reorganization and transformation.⁵

During the present market-oriented economy transition period, many Chinese companies are facing a series of problems, such as inefficiency and debt-ridden dilemma, which urgently require reconstruction and strategic readjustments to meet international competition. The introducing of foreign investments through M&A on the Chinese companies can provide an impetus to accelerate the development and improvement of those companies’ efficiency and revitalize the “dead” capitals for the healthy operation.

On the other hand, transaction through M&A on the Chinese companies is also a shortcut for the foreign businesses to enter the Chinese market, a market that boasts of a quite good rate of returns on investment thanks to its lower labor costs and bigger consumption potentials. The M&A would thus be beneficial to both sides of the deals.

China is now standing on the forefront of the continuing wave of global M&A transactions. With the external stimulation to compete within the international business environment and the internal motivation to restructure its own national economy, it is deemed that China will soon have a booming international M&A spreading over the country. And the M&A will, as already prevailing and going on in the Europe and other developed areas in the world, become a buzzword in this developing state which has embarked on an accelerated speed course.

⁴ “China Country Report” March, 2001

⁵ “Economic and Business Development of the P.R.C”, December, 2001

1.1 Background

- **What's M&A?**

What exactly is M&A? The term "M&A" refers generically to any combination of two or more business enterprises.⁶ However, a "merger" and an "acquisition" are two distinctly different legal transactions in many jurisdictions. An "acquisition" ("shougou" in Chinese) can be defined as the purchase by one economic entity of all or part of the shares or assets of another economic entity, while both economic entities survive after the purchase. A "merger" ("hebing or jianbing" in Chinese), on the other hand, is the legal combination of two discrete economic entities, in which only one entity survives by operation of law, all the assets and liabilities of both entities.⁷

In the developed economies, M&A transactions can assume myriad forms. In Europe, for example, an acquisition could take the form of a purchase of a target company's assets with either cashes or shares; a cash purchase of shares in the target; a purchase of shares in the target with the purchaser's shares; or some combination of these forms. Mergers, like acquisitions, can be effected with shares or cash. The transaction can leave the purchaser in place, in the case of a forward merger; leave the target in place, in the case of a reverse merger; or involve a subsidiary of the purchaser merging with the target, in the case of a triangular merger.⁸

- **Recent History of M&A in China**

Before the year 1985, China did not allow any of these M&A structures. With its market becoming more mature afterwards, it gradually allowed foreign investment to take some acquisition-like forms, but only by the foreign-invested enterprises (FIEs). Those acquisitions were conducted by purchasing shares in a listed Chinese company from the stock market; or purchasing, from other foreign investors, their existing shares in the Chinese entities.⁹

⁶ *Merger and Acquisition in China Stock Market*: <http://www.cata.ca/china/documents/MandAinChina.pdf>

⁷ "Merger and Acquisition Study", Martin Laubstein, 1990

⁸ "Corporate Mergers and Security Returns", Dennis, Debra K. and John J. McConnell, *Journal of Finance Economics*, Vol.8, 1993

⁹ "China M&A Net", <http://comm.mergers-china.com/>

Share purchases surfaced in the first half of 1990s as an option for foreigners seeking to acquire an interest in a Chinese company. Foreign investors had been permitted to acquire B shares in the listed companies. In the years that followed, however, an avenue had emerged for private equity deals, in which foreigners can purchase shares through a private placement in an unlisted company, and for strategic investment by share acquisitions in the listed companies.¹⁰

Since the second half of 1990s, Chinese authorities started to officially bless the increased use of western-style, share-issuing corporate vehicle, known as a joint stock limited company to hold State-owned assets. Many non-share issuing SOEs were likely to convert into joint stock limited companies, providing foreign investors with opportunities to buy directly the shares of a going concern.¹¹

The last few years have witnessed the emergence of a secondary market for investments in existing FIEs established by early investors in China. Some take the form of purchasing an interest by one foreign party from another, or by the foreign party from the original Chinese party, or a sale from a foreign party back to either the Chinese party or a third party. Increasingly, the purchase and sale of such interests take place through transactions involving the transfer of shares held by a Hong Kong or other "offshore" holding company. However, during all these cases, the percentages of the assets or shares for which the foreign business can hold are still restricted by the country authorities.¹²

Like acquisitions, mergers among domestic Chinese companies had become commonplace since 1990s. Such mergers attempted both to rescue failing SOEs by combining them with healthy enterprises, and to create conglomerates. Although mergers directly between foreign companies and Chinese entities are not yet possible to all the SOEs in China, as foreign investors seek to restructure their existing Chinese holdings, there have been increasing numbers of mergers between FIEs during last several years.

¹⁰ "Listed Company", Shanghai Stock Exchange, 1998

¹¹ "Listed Company", Shanghai Stock Exchange, 1999

¹² "China M&A Net", <http://comm.mergers-china.com/>

- **Current situation of international M&A in China**

There is a rapid surge in the growth of M&A transactions in China currently due to restructuring of Chinese industry structures and promoting of national economic developments. The entry into WTO last year had also spurred a rise in China on the international M&A transactions. Lots of measures have been taken to attract and encourage foreign investors, such as:

- De-regulation in areas of energy, telecommunications, financial services, automotives manufacturing and service sectors;
- Privatization of state-owned companies;
- Rich supply of venture capital funds to fuel higher-growth investments;
- Consolidation of industry as a defensive strategy to gain further market shares;
- Growing trend towards technology convergence; and
- Reduction of duplicated functions to increase efficiency.¹³

The legal and regulatory frameworks safeguarding the international M&A have also been put into further construction. The “*FIE Equity Change Provisions*” was promulgated in 1997, and the “*FIE Investment Regulations*” & the “*Rules for International Acquisition on the Chinese Enterprises*” were stipulated last year.¹⁴

According to the statistics from the MOFTEC, the number of international M&A transactions in 2000 had increased about 30% over that in 1999.¹⁵ With the economic environment getting mature and regulatory framework taking shape, it is also evident that there will be more international M&As conducted in China within the years to come.

¹³ “*MOFTEC News*”, March, 2002, <http://www.moftec.gov.cn>

¹⁴ “*M&A in the P.R.C*”, MOFTEC Press, 2002

¹⁵ “*MOFTEC Statistics, 2002*”, <http://www.moftec.gov.cn>

1.2 Problems Discussion

Although M&A is booming nowadays, there are still some foreign businesses reluctant to conduct merger and acquisition in China. They stated frankly that, though they know well the rate of returns on investment in China is much higher than that in Europe and other regions, they are still feeling dithery, for they are worried about “uncertainties” caused by the M&A in a country claiming socialist economy. And they assume that these ‘uncertainties’ will be more likely to constitute obstacles to the good integration and healthy operation of the M&A companies.¹⁶

In fact, other than sophisticated economic problems relating to the M&A, how to manage the M&A companies in China is also a new challenge for many foreign investors. Even in the developed countries, despite the enormous volume of mergers and acquisitions, studies also suggest that more than 50% of all mergers and acquisitions fail to create value for the acquirers.¹⁷ Furthermore, it was pointed out that the failure was mostly attributed to difficulties in M&A integration phase.¹⁸

Therefore, the integration phase is crucially important, and the problems therein should be earnestly examined and settled if pursuing the M&A success.

The integration problems in the M&A vary from strategy formulating, organization restructuring, assets evaluating, business recomposing to human resources relocating. In addition, how to apply the proper laws in the M&A and how to safeguard the employees’ rights are also vital concerns closely linked with the integration issues.

In western countries, these problems have already attracted many research and studies. For example, in Europe, there are a good few theories and writings devoting to the M&A integrations, among them the “synergy realization” parlance is very commonly used.¹⁹ The synergy, known as the “2+2=5”²⁰ in many previous studies, is referring to a value-added effect led by the satisfactory M&A integration.

¹⁶ “Be Aware of Doing Business in China”, *Journal of Foreign Investments*, 1999

¹⁷ “Deliverable synergy: Winning in the Global M&A Market”, Amity Forrest, Partner, CEO, 2001

¹⁸ “Survey on Recent Mergers”, McKinsey Consulting Corp.,
http://careers.mckinsey.com/app004/careersnew.nsf/keyview/sho_page_home

¹⁹ “Synergistic Gains from Corporate Acquisitions”, Bradley M., Anand Desai and E.Han.Kim, *Journal of Financial Economics*, 1988

²⁰ “M&A Operations”, Michael. S. Finn, University of Michigan Press, 1971

However, despite these research on the M&A integration in general, there is still no sufficient studies on the specific Chinese problems, so the primary question to be discussed in this thesis is *how to address the M&A integration issues in the Chinese practice and pursue synergy realization with efforts made both from managerial and legal perspectives.*

1.3 Purpose of Study

The purpose of this thesis is to combine the business & law-related issues together and incorporate empirical cases, so as to explore an effective Chinese way realizing M&A synergy.

As Europe has undergone a “paradigm” M&A practices in the last century, some references will be taken from the European experiences in this thesis, and furthermore, the selected sample companies for the empirical study are most the EU MNCs.

In addition, as a Chinese student who has benefited from the EU studies, the author hopes to contribute something helpful to the EU-China business. Hence, this thesis is also for the purpose of providing foreign investors, especially the EU MNCs some implications for their future M&A operations in China.

1.4 Demarcations

A general M&A study covers wide range of scopes, various from managerial, economical to legal and even political areas²¹. This thesis, restricted by time, is merely focused on the managerial issues regarding the M&A integration and some of the legal issues safeguarding this integration.

Specifically, in the business perspective, the author discusses the M&A integration in the aspects of strategy, organization, assets, business and human resources. And in the legal perspective, the applicability of laws for the international M&A is studied in general, and the employees’ rights protection is illustrated in particular.

Meanwhile, as the author wishes that the readers of this thesis will not only be the

²¹ “*M&A Analysis*”, Liu Changju, People’s Press, 2001

researchers with high expertise, but also the operational managers conducting M&A practices through their “minds and hands” in China, the analysis in the thesis is hence carried out in a more explanatory manner rather than in a deeply argumentative fashion.

1.5 Methodology

To answer the above-mentioned questions and materialize the purposes determined, the author applies a mixed methodology in writing this thesis, which is characterized by the following:

1.5.1 Choice of Literatures

The author has searched for the literatures mainly in the LOVISA²², EC Competition DG²³ and China M&A databases²⁴. Diverse other databases at the university library and the Chinese professional online libraries are also efficient helping to supply relevant journals, magazines and books for the study.

In addition, the author has taken full advantages of the course literatures relating to the Competition Law, Merger Regulation, Dynamic Decision Maker, Cultural Model, International Strategy, Organization Structure and etc., all of which provide direct guidance in the research properly.

Meanwhile, during the discussion on the problems, the author’s tutors were very kind and helpful in supplying and indicating literatures with both the theoretical and empirical approaches to the problem.

The research, however, was limited to the sources in English and Chinese. The searching key words focused mainly on the “M&A”, “synergy”, “integration”, “in China”, “competition”, “merger regulation”, and etc. These and many other searching routines were used together to search via Internet. Among those, the very sophisticated and less linked information was filtered out and rejected. The focus was merely on business and law related sources.

²² <http://lovisa.lub.lu.se/cgi-bin/webgw/chameleon?lng=en>

²³ http://europa.eu.int/comm/competition/index_en.html

²⁴ <http://comm.mergers-china.com/>

In the same way, magazines and journals that fit specially to the M&A issues were located as well. And furthermore, the case-study companies had also supplied sufficient literatures in the relevant aspects.

1.5.2 Empirical Study

1) A Mixed-Methodology of Quantitative and Qualitative Approach

- **Quantitative Approach**

The quantitative approach does have strengths for the research in this thesis. These may be summarized as follows:

- The quantitative approach is appropriate to measure the general behaviors on the overall pictures of the M&A in China.
- It is also strong in measuring descriptive aspects in strategy, organization, assets, business, human resources and law.
- It allows comparison and replication among different companies.
- Reliability and validity may be determined more objectively than qualitative techniques.²⁵

In general, the quantitative research is strong in measuring different indexes and having a collective picture²⁶. But it is still far from ideal to support all the studies in this thesis. The weaknesses of such quantitative research design lie mainly in its failure to ascertain deeper underlying meanings and explanations of the specific M&A problems in China. Although the quantitative method can be used to measure the factors of strategy, organization, assets, business, human resources and law, its appropriateness in explaining them in depth is more limited. A further weakness of this approach lies in its tendencies to take a "snapshot" of a situation, that is to measure variables at a specific moment in time. M&A integration may be affected by temporal changes, such as the short-time external environmental influences, organization' performance, or the quality of opposition, which cannot always be identified within a single quantitative study.²⁷

²⁵ "Quantitative methodology and feminist research", Jayaratne, T. (1993). In M. Hammersley (Ed.), *Social research: Philosophy, politics and practice* London: Sage

²⁶ "Mixing Methodologies: Can Bimodal Research be a Viable Post-Positivist Tool? The Qualitative Report", [On-line serial], 2 (3), Nau, D. (1995, December), Available: <http://www.nova.edu/ssss/QR/QR2-3/nau.html>

²⁷ "Research design: Qualitative and quantitative approaches", Creswell, J. (1994). London: Sage.

In view of these, it is necessary to consider in parallel the qualitative approach for the study in this thesis.

- **Qualitative Approach**

The qualitative approach is strong in the areas that are weak within the quantitative approach, e.g. the use of interviews and observations to provide a deep, rather than broad, set of knowledge about the M&A integrations, and the appropriateness to investigate cognitive and affective aspects of M&A transactions. This depth allows the author to achieve an embedded understanding, which acquired from the informants point of view.

The advantages of a qualitative approach can be concluded as below:

- Qualitative approach in this thesis allows the cognitive and affective components of the M&A to be explored in greater depth than the quantitative approach.
- It encourages the informants to introduce concepts of importance from the emic aspects, rather than adhering to subject areas that have been pre-determined by the researchers²⁸. As the researches on the integration phase of M&A in China is rare, thus the flexibility of the qualitative methodologies is appropriate for the study that may be exploratory in nature.
- It permits the identification of longitudinal changes in M&A issues, whereas quantitative approaches just tend to take a "snapshot" of behavior, cognition or affect at the one time the research is conducted.

However, objections to the qualitative approach do exist. The main argument against is the concept of validity, in that it is difficult to determine the truthfulness of findings, e.g. the results are concluded from the specific interviews. Meanwhile, the relatively low sample numbers,(which is “two” in this case), often lead to claims of findings being unrepresentative of the population.²⁹ Whilst full of information on the two companies, the findings fail to give any clear indication as to extent of such phenomena among the larger amount of M&A transactions.

Therefore, due to not argue for a hierarchy of research methods, the author suggested that a third way, the mixed methodology of quantitative and qualitative approach to be used in this thesis, which can provide even greater strengths to the studies, and may enhance both the depth and scope of the research.

²⁸ “*How to use qualitative methods in evaluation*”. Patton, M. (1987). London: Sage Publications.

²⁹ “*The rules of disorder*”. Marsh, P., Rosser, E., & Harre, R. 1978 London: Routledge and Kegan Paul

- A Mixed-Methodology of Quantitative and Qualitative Approach

In this thesis, the author has conducted both the questionnaire survey and the cases study. The crucial aspect in justifying this mixed methodology research design is that both single methodology approaches (qualitative only and quantitative only) have strengths and weaknesses, as stated above. The combination of approaches can make it possible to focus on their relevant strengths. The author is therefore able to aim at achieving the situation where "blending qualitative and quantitative methods of research produces a final product which can highlight the significant contributions of both"³⁰ and where "qualitative data support and explicate the meaning of quantitative research".³¹ Furthermore, by adopting the following assumptions, the author ensures that the final product will maximize the strengths of a mixed methodology approach.³²

- Quantitative analysis may be more appropriate to assess behavioral or descriptive components of the M&A.
- The M&A involves cognitive and affective characteristics, as well as overt behavioral aspects. Thus a qualitative "core" is appropriate to investigate these aspects, by examining the informants point of view.
- Much M&A researches are still largely exploratory. The use of qualitative methods allows for unexpected developments that may arise as part of such research.
- Quantitative analysis may complement the findings of qualitative methods by indicating their extent within the M&A integrations.
- Quantitative analysis may confirm or disconfirm any apparently significant data that emerge from the study.
- Qualitative method is stronger in explaining the information. It may assist to understand the underlying explanations of significance.
- The inclusion of quantitative methods and analysis within the research may increase the likelihood of publication, especially within those journals with a strong positivist tradition.³³

Of course, the purpose of this thesis is not to suggest that a mixed methodology is the only suitable research design for all authors, rather that it is an appropriate, and desirable design for this topic in this very thesis. The overall choice needs to be the most suitable one to achieve the objectives of different specific researches. However, a mixed methodology has a number of advantages within the study on the M&A in

³⁰ "Mixing Methodologies: Can Bimodal Research be a Viable Post-Positivist Tool? The Qualitative Report", [On-line serial], 2 (3), Available: <http://www.nova.edu/ssss/QR/QR2-3/nau.html>,

³¹ "Quantitative methodology and feminist research", Jayaratne, T. (1993).. In M. Hammersley (Ed.), *Social research: Philosophy, politics and practice* (pp. 109-123). London: Sage.)

³² "The rules of disorder", Marsh, P., Rosser, E., & Harre, R. (1978). London: Routledge and Kegan Paul)

³³ "The rules of disorder", Marsh, P., Rosser, E., & Harre, R. (1978). London: Routledge and Kegan Paul.

China, and may be able to enhance the quality of such work in such ways as have been outlined above.

2) About the Questionnaire Survey

- **What contents?**

The questionnaire in the survey is entitled as the “Merger and Acquisition (M&A) Integration Investigation in China”³⁴. It is composed of 7 questions, covering the contents of the “main managerial factors determining the M&A synergy realization in China”, “the sample companies’ M&A integration levels in general and in the aspects of Strategy, Organization, Assets, Business and Human Resources respectively”, the “legal problems regarding the M&A.” and etc.

- **What companies?**

The author has chosen 30 sample companies to deliver this questionnaire via Internet. Most of these 30 companies are the EU MNCs, such as Philip Shanghai Corp., Shell Corp. and so on.

The list of these sample companies is attached as Appendix 2.

- **Why to choose?**

The reason why to choose these sample companies lies in that they are all the MNCs which had set up FIEs in China since early 1990s,³⁵ thus enjoying a comparatively long history and rich experiences in running business in China. Besides, they had participated actively in the first wave of China’s M&A tide. Hence, they carry great meaning of being typical representatives of the foreign investors who have conducted international M&As in China.

Besides, as stated previously in the “Purposes” section, being specialized in the European Study, the author hopes to provide some implications to the EU MNCs for their M&A operations in China. This is also a reason supporting the selections of the sample companies.

- **How about the responses?**

Among the 30 companies, 9 responded to the questionnaire investigation, which

³⁴ See Appendix 1.

³⁵ “MOFTEC Web—FIEs in China”: <http://www.moftec.gov.cn>

indicates a response rate of 30%. A list of the responded companies is shown below:

Table 1. *Companies that responded to the questionnaire Survey*

No.	Companies that Responded to the Questionnaire	Abbreviated names in this thesis
1	Alcatel Corp.(Shanghai) Bell Corp.	AS
2	Lufthansa China Group Co Ltd.	LC
3	Philip CDMA Shanghai	PC
4	Koinic Corp.	KC
5	Volkswagen Shanghai Corp.	VS
6	Ciliwallon Corp.	CC
7	HSBC Holdings Plc	HP
8	Alberler GmbH	AG
9	Toshiba Ltd. Corp.	TC

(* For facilitating the figure illustration in the following parts, the author puts the companies' names in an abbreviated way in the right column of the table.)

The detailed information of the survey results will be presented and analyzed in the coming chapters.

- **Why to respond or not respond?**

After the first glance of the survey results, the author got a skin-deep impression that the overall M&A synergy realization situation in these responded companies is OK, and therefore assumed that the companies that replied are those who almost achieved expected synergy, while the companies without reply might be those who encountered problems in their M&A integrations.

However, with the deeper study on survey results and information provided by the secondary materials, the author started to know that there are still many companies "uncooperative in the survey", which have already gained satisfactory synergy realization, and even those companies offering answers still have various problems in different aspects of their M&A integration.

So, the previous assumption can not be justified, and the reasons for responding or not responding might be incidental, which may be merely caused by the lack of time, inefficient correspondence and other unknown reasons.

On the other hand, excluding the possibility of that assumption, the author has got much more believes on the objectiveness and representativeness of survey.

- **What limitations?**

The limitations of this survey exist in the less quantity of the sample companies, which is owing to the constraints in the communications vehicles. Meanwhile, the contents of the questionnaire should be further amended and polished if a more concrete and comprehensive picture needs to be pursued.

3) About the Case Study

- **What kind of case study?**

In designing a case study, one has to define whether tends to do in a “single” or “multiple” way. Both designs allow for a holistic or embedded approach.³⁶

In this thesis, the case study is in a “multiple” way, namely, two M&As have been examined therein.

- **Why two?**

The reason for choosing two cases is attributed to the author’s intention to make a comparison in different aspects and units of the cases.

Wherefore not study more than two cases is just owing to the time limitation. Thus, there is still further space left to the author’s future research.

- **What cases?**

One chosen case is the France-based Alcatel Corp. ’s merger case, which happened not long ago. In October 2001, Alcatel merged with Shanghai Bell to form a new company, which was renamed Alcatel Shanghai Bell (ASB). In this new company, Alcatel Corp. holds the majority shares (50% + 1 share), and the Chinese entities take the remaining shares.

The other is the Lufthansa Group Co. Ltd. Case. Beijing Lufthansa Group Co. Ltd, owner of the Lufthansa Center and Kempinski Hotel, merged with Beijing Food Service Group Co. Ltd to reshape the New Lufthansa (Holdings) Group Co Ltd in

³⁶ “*Case Study Research*”, Yin, Robert K, SAGE Publications, 1984

China in 1999.

- **Why to choose?**

Both these two cases are important and influential in the Chinese M&A markets. The Alcatel case was for the first time that an international telecom equipment supplier set up a company limited by shares in China. Shanghai Bell was China's largest manufacturer of networks, switching systems and multimedia terminals with approximately 4,500 employees and sales of \$1.3 billion in 2000. After the merger was completed in the spring of this year, ASB had benefited from the marriage of Alcatel's leading-edge technologies with Shanghai Bell's strong positions in China, and had immediately moved into second place in China's telecom equipment market with revenues of around \$2 billion. Till now, this newly established company is operating in a satisfied manner with an expected synergy to be achieved. Owing to the scale and significant meaning of this merger, the author regards it very necessary to explore a study in this very case, so as to gain some practical evidences to prove the M&A integration analysis in this thesis.³⁷

Whilst in the Lufthansa case, although Lufthansa Group Co. Ltd. merged with a big company-Beijing Food Service Group's, which assets include Maxim's, the Chongwenmen Hotel and Fangshan Restaurant with total assets of over 600 million Yuan (US\$72 million) and annual sales of 300 million Yuan (US\$36 million), the synergy realization situation is not satisfactory.³⁸ The new company has encountered some problems in the M&A management. However, it has always been trying to seek a way out. Through study on this case, the author hopes to find out the reasons caused their problems, and arouse the others' attentions.

- **What questions?**

The questions designed for the case study are as follows:

- Has your company achieved the expected M&A synergy realization?
- Does your company integrate well in the aspects of strategy, organization, assets, business and human resource?
- If yes, do you think the success of the integration in the above aspects led to your win in the synergy realization?

³⁷ http://www.alcatel.com/newslink/0104/whats_new.html

³⁸ <http://comm.mergers-china.com/wmweb/media/english/EN0012.htm>

- If no, do you think the failure of the integration in the above aspects caused your loss in the synergy realization? Can you specify in which aspects you failed?

- In general, do you agree that: “*from the managerial point of view, the M&A synergy could be realized through the satisfactory integrations in the aspects of Strategy, Organization, Assets, Business and Human Resources*”?

- In addition, can you specify some legal problems relating to the M&A synergy realization?

- **How to get answers to these questions?**

To get the answers to these questions, the author has adopted the following methods:

- Having interviews with key persons

The interviews with the managerial staffs from both companies have been conducted mainly by email corresponding. Mr. Shi Yong and Mr. Luo Xiping, from the China Corporation of the Lufthansa (Holding) Group Co. Ltd and from the Alcatel Shanghai Bell are the informants in these cases.

- Consulting the companies’ published materials

In addition, both companies have provided the author with their published materials, such as their *News Letters*, *What’ Up* and etc.. So, there are also some answers to the questions be found in these materials.

- **What limitations?**

The limitations of this case study are brought by the restricted number of the chosen cases and the bias on the interview informants.

As already pointed out by the author’s tutor, if the case study can be conducted not only on the Chinese managerial staffs, but also the European side managers, the result would be more significant and objective.

4) Data Collection

- **Secondary data**

By searching via the official websites of the MOFTEC ³⁹, UNCTAD ⁴⁰ and the Chinese National Statistics Bureau (NBS) ⁴¹, the author has collected various secondary data relating to the study in the thesis. These official data has provided reliable and convictive evidences to the macro-situation of the M&A transactions in China.

There are also some data collected from the Internet articles or the journals from the libraries.

- **Primary data**

The quantitative data was restricted by means of the questionnaire survey. By conducting this survey, the author had collected data from 9 companies giving replies regarding their general synergy realization situation and their integration levels in the different aspects of strategy, organization, asset, business and human resources.

Qualitative data was collected by means of interviews and information processing in the case study. In answering the questions raised by the author, the informants indicated some data to prove their respective views. Furthermore, there are also some data obtained from the published materials of the two companies.

- **Data from Interviews**

Besides, the author had interviews with staff from different sectors. These persons are varying from the government officials to the academic researches.

The name list of the persons who have been interviewed is attached as the Appendix 3.

Among those peoples, there are Ms. Chen Wanfang, senior official of the MOFTEC, and Mr. Li Weiping, Project Officer in charge of the international M&A affairs in the same ministry. They are both directly managing the M&A affairs from the government side, so the data from their sources is highly authoritative and convincing.

5) Data Analysis

For the secondary data, the author merely adopted them in the explanatory analysis.

As to the data from interviews, it is mainly used in the Chapter 1 and Chapter 11.

³⁹ <http://www.moftec.gov.cn>

⁴⁰ <http://www.unctad.org/>

⁴¹ <http://www.stats.gov.cn/english/>

The foremost data analysis is the approximation of the primary data. To justify the “main managerial factors determine the M&A synergy realization”, the author has utilized and analyzed the quantitative data from the survey to form a graph first in the Chapter 2, which assumed that “from the managerial point of view, the M&A synergy could be realized by the effective integration in the strategy, organization, assets, business and human resources”. Then, five more graphs made from the quantitative data are presented in Chapter 3, 4, 5, 6 and 7, which concern the integration in different aspects.

In Chapter 8, a part of summary on the case study and questionnaire survey, both the quantitative and qualitative data are analyzed to further compare and illustrate the authors’ views. Consequently, an answer to the main question of the thesis is deduced based on the above mentioned empirical studies.

Chapter 2 M&A Synergy Realization: An Overview

2.1 Four Phases of M&A

In this fast advancing e-world, attaining growth by M&A has become a key part of company strategy. For those MNCs in particular, M&A is vitally important for them to expand their business internationally.

M&A provides the promise of meeting shareholders' expectations at a stroke, a short cut to the long term and often incremental growth which comes from organically improving the sales and profit line. The illusive ingredient of successful M&A is the generation of major additional shareholders' values.

Generally speaking, there are four phases included in the M&A transaction, namely:

- M&A Strategy, in which a strategy consistent with business direction is developed,
- Target Screening, where M&A candidates based on specific criteria are identified,
- Transaction Mechanics, which master the details of transaction, make use of transaction “experts” to incorporated organizational and cultural fit into financial picture, and
- Integration, while plan and manage the integration process and capture the anticipated synergy value.

These four phases are illustrated in the Graph 1:⁴²



⁴² “Solving the Merger Mystery”, Deloitte Consulting, <http://www.deloitte.ca/en/Pubs/Manufacturing/Solving>

2.2 Synergy in the Execution Phase: “2+2=5” Effect

Among the above four phases, the first three are identified as the approaches to the pre-transaction of M&A, while the last one is the execution, which is focused on the integration. It is where the synergy is created, and most substantial change processes take place. During this phase, the company is integrated with the single-minded goal of capturing the value identified in the target screening phase, and the synergy is expected to realize.

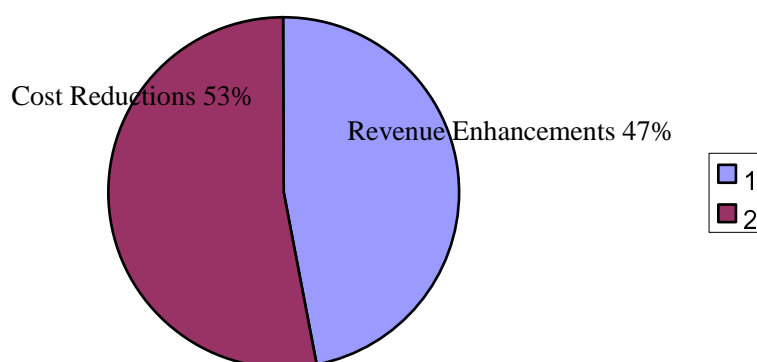
While clicking on the latest merger and acquisition news, it is easy to find that, when the CEO of the acquiring company is interviewed, he or she will talk about synergy. Relevant survey results from the Deloitte Consulting on over 100 M&A companies indicate that nearly two-thirds of companies – about 63 percent – say that achieving synergies between the two companies is an important element in the M&A.⁴³

What’s the synergy in M&A then?

In its most basic form, synergy is a concept of value added creation, which is most often expressed as “2+2=5”⁴⁴, or known as “2+2=4+/- 1” or “(-2) + (-2) = (-3 at best)”. For many executives, synergy also means reducing costs and eliminating redundancies.

Graph 2 is presented by the *Deloitte Consulting* from its survey to show the allocation of synergy benefits.⁴⁵

Graph 2.: *Allocation of Synergistic Benefits (Successful Companies)*



⁴³ “Solving the Merger Mystery”, Deloitte Consulting, <http://www.deloitte.ca/en/Pubs/Manufacturing/Solving.pdf>

⁴⁴ “M&A Operations”, Michael. S. Finn, 1971

⁴⁵ “Solving the Merger Mystery”, Deloitte Consulting, <http://www.deloitte.ca/en/Pubs/Manufacturing/Solving>

2.3 How to Pursue M&A Synergy Realization in China

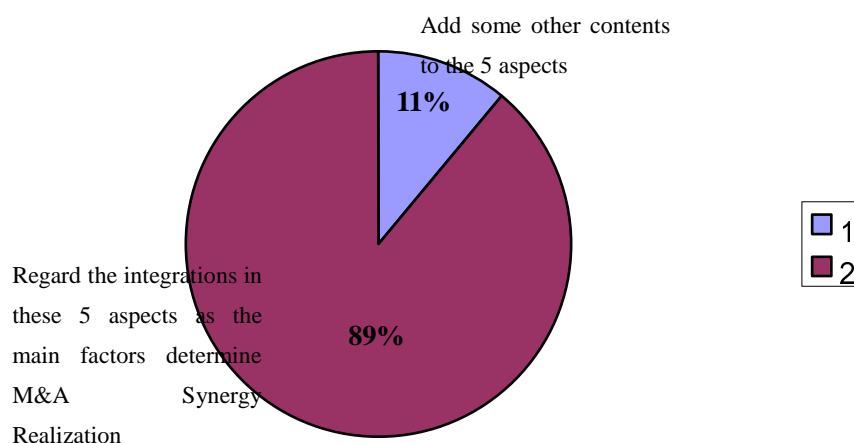
The synergy is the main source of the value increase. As the foreign capitals are seeking for the profits maximization while entering into the Chinese market, how to realize M&A synergy in China thus becomes an important question both for foreign investors and Chinese managers. How to pursue the synergy realization in Chinese practice is also the main question to be answered in this thesis.

To seek for the answer to this question, the author has conducted a questionnaire survey on 30 M&A transactions in China.⁴⁶ A total of 9 companies responded to the survey.

According to that result, 8 of the 9 companies (at the ratio of 89% of the all) regarded that the main managerial factors determining the M&A synergy realization were the integrations in the aspects of Structure, Organization, Assets, Business Operation and Human Resources, while the other one company (at the ratio of 11%) added some other factors to that 5 aspects, such as the Due Diligence, Chartering a transition team, Clarifying top management roles & responsibilities, and etc.

See details from the Graph 3:

Graph 3. *Main Managerial Factors Determining the M&A Synergy Realization*



⁴⁶ The questionnaire is attached as the Appendix 1.

Based on these, the author thus assumes an answer to the main question of the thesis as:

From the managerial point of view, the M&A synergy could be realized through the satisfactory integrations in the aspects of Strategy, Organization, Assets, Business and Human Resources.

This assumption will be further illustrated and proved ***theoretically*** and ***empirically*** in the following chapters.

Chapter 3 Strategy Integration

※ Good strategy integration is a vital precondition to pursue M&A synergy realization.

The strategy of the M&A company should be integrated according to its development orientation and future environment it will be confronted with after such M&A. As the operating capabilities and outside environment of the company are changing from time to time, many uncertain factors may occur to the company's M&A integration phase, so the strategy integration must be adjusted accordingly.

3.1 Changes in the Internal and External Environments

The changes in the internal and external environments are decided by dynamism of the strategy, so the strategy integration should begin with the internal changes within the M&A company. The analysis of the internal factors within the company may be made in the "SW (Strength and Weakness) Analysis". The advantages of the company are strengths which the company relies on for its success, while its disadvantages are shortcomings and weaknesses that need to be improved and overcome. In making such a SW analysis, we must take into consideration various methods of the M&A, study on the advantages brought about by the company scale economy, scope economy, the reduction of transaction costs and other factors, as well as on weakness existing compared with its competitors. Through M&A, a company may obtain benefits from the economy of scale, reduce transaction costs and, by sharing common technology, marketing channels and stabilizing supply sources, can raise competitiveness of its products and reduce production cost as a whole.

As for the external environment of the M&A company, the "OT (Opportunity and Threaten) Analysis" can be used. Specifically, this approach of analysis focuses on the changes of the competitive positions and the market rights. Therefore, the strategy changes will be finalized.

(1) Companies can be classified as four categories in terms of their competitive positions held in the market, namely, "leaders in the market", "challengers in the

market”, “followers in the market” and “alternates in the market”.⁴⁷ From an industrial perspective, they are occupying such positions as being leading, favorable, defensive and weak respectively. As a result, companies holding various competitive positions in the market should pursue different development strategies.

For the “leaders” in the market, their development strategies are focused on three aspects: first, they must be devoted into the expansion of demand for their products; second, they must maintain and protect their market sharing rates by taking good preventive and aggressive actions; third, even with the aggregate market scale remains unchanged, these companies must strive to expand their shares in the market.

For the “challengers” in the market, they may have two options to take in their development strategy. They may accomplish more market sharing by waging “attacks” to the “leaders” in the market and other market role players. Alternatively, they may participate in the competition, but at the same time, do not disturb the existing market order.

For the “followers” in the market, they are accustomed to following suits of the “leaders” in the market, supplying similar products to the buyers and stabilizing their market-sharing ratio. The emphasis of their development strategies is lying on how to maintain the existing market share and open up new areas. A company as a “follower” in the market must rely on its unique products and services and, in addition, must take paths that will not arouse revenge from the competitors. To this end, it has to take approaches as either following tightly behind, following with a certain distance apart or following its desired ones. Generally speaking, the “followers” in the market pay close attention to how much profits they make rather than what a market-sharing ratio is really like.

The “alternates” in the market are always providing specialized services to some given customers. Their development strategy is mainly on the provision of effective services to a portion of the market which is usually neglected by those huge-sized companies.

⁴⁷ “*Competitive Positions in the Market*”, Liu Chengong, Renmin Press, 1998

(2) A company created by M&A should make an assessment on whether it has changed its position in the market through such M&A process, and whether it has achieved more market sharing already. It may grow into an even stronger challenger from just a “follower” before. With the changes of its market sharing, this company may stand itself as the leader in a certain sector. Correspondingly, it should make due adjustments in its development strategy so as to quickly respond to the changes of its state in the market.⁴⁸

(3) In addition to the changes of its position in the market, a company will, by conducting M&A, always strength its monopoly capability and its control over the market. The increased market sharing will enable it to monopoly in some certain forms. “Horizontal M&A” usually leads to reduction of the number of the competitors, but brings no impacts on the balance between supply and demand within a sector internally. By such M&A, a company will have less pressure in competition and maintain a relatively high profit-making rate. At this time, the strategy integration of that company is centered by expansion of its market-sharing rate in a sector and accomplishes complimentary benefits by combination of the resources of both parties of the M&A. The “Vertical M&A”, however, effectively links the raw material supply, marketing channels, customers, etc., and reduce the transition costs by the integration of “upstream” and “downstream” companies. Therefore, the ability to control the market of the new company will be raised to higher degree finally. In such circumstances, improving the company’s ability to negotiate prices should be a priority task so that it may earn more benefit from the previous main market. Alternatively, such integration may be completed by controlling the key raw materials and main sale channels, a “train reaction” which can better control the competition rivals in the market. Apart from reducing transaction costs, the strategy integration shall also include the restructuring of the management schemes so as to minimize the increased cost in management arising from the scale expansion.

⁴⁸ “*Readings in Mergers and Acquisitions*”, Gaughan, Patrick A., Blackwell, 1994

3.2. Realization of Strategy Adjustments Through M&A

Due to the emerging technologies, the industry where a company belongs to may evolve from a “sunrise industry” to a “sunset industry”. Products may step into declining phase from “phase of maturity”⁴⁹ and the competitive environment of this industry gets deteriorated. In these circumstances, a company would always consider to quit from one industry and transfer to a new industry. The straight and short path for this company to get into the new industry is purely by means of M&A. In that case, the company after such M&A practice will focus its emphasis on transferring the sources of the emerged and acquired company to the target one.

On the other hand, if two big companies merged to pursue a more competitive position in the market, their separate strategies should be adjusted and unified accordingly.

The Alcatel Shanghai Bell Corp. (ASB) is a successful example of the strategy integration. After the merger transacted, ASB integrated the strategy of all its business operations as a whole, it combined its telecom joint ventures and other business activities in China into the new established company, which company is aiming at a unified goal with an integrated strategy. This has helped to accelerate the company’s growth in the Chinese market, and take it closer to its goal of becoming a leader in the fast-growing Asia-Pacific Region.

3.3 Strategy Integration in the Chinese Practice

China has been embarking on the course of market-oriented economy since 1992. In corporate governance, the mature theory on development strategy was introduced increasingly from the western countries. People could often see that piles of books on the M&A practices and experiences in Europe or other developed countries, either translated Chinese versions or in their original language, are displayed in the bookshops in big cities in China. Undoubtedly, they are quite attractive to and welcomed by the Chinese readers, particularly the Chinese managers, who are trying to or learning to put these theories into practice of establishing their companies’ own development strategies or of carrying out strategy integration in case of M&A.

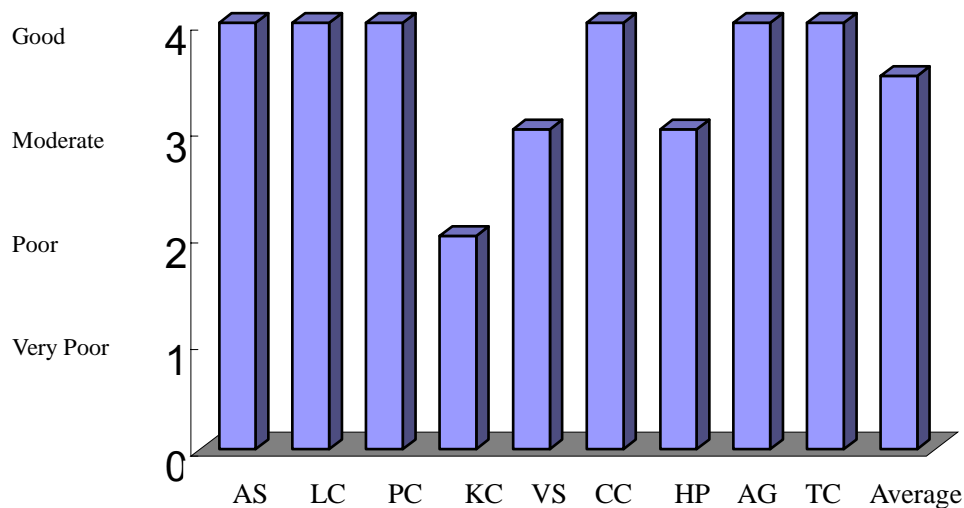
⁴⁹ “*Causes and Consequences of Takeover*”, Jensen M.C., *Journal of Economic Perspectives* (Winter 1992)

What is the general actual picture of strategy integration really like in China? With the development of corporate management and governance over the past years, have the business managers, either from foreign nations or the locally resident Chinese ones, paid enough attention to the M&A strategy integration?

Part of the answers could be found from the survey conducted by the author. Although not covering large quantity of dealers that have M&A operations in China, the 30 (9 responded) representative sample companies can still help us to make some sense.

See the following Graph 4.

Graph 4. *Strategy Integration in China*



(Indicators: 1: Very Poor, 2: Poor, 3: Moderate, 4: Good, 5: Very Good)

From the above graph, it is demonstrated that 6 out of the total 9 companies marked their strategy integration levels as “good”, and 2 are “moderate”. Only 1 stands at “poor” level. The average strategy integration level is calculated at about 3.5, which is in the middle range between the “good” and “moderate”. From this survey result, we can find that the overall M&A strategy integration in China is fairly OK now. The representing companies have basically achieved their objectives and unified their strategies in the M&A integrating process.

Chapter 4 Organizational Integration

※ Well-integrated organization has a crucial influence on the final synergy realization of the M&A.

The integration of the company's organizational structure after M&A is closely linked with its development strategy, M&A scheme and M&A delivery approaches.⁵⁰ Meanwhile, such integration has been linked with the integration of assets, business operation and human resources as well. The organizational integration generally covers two aspects, namely, the integration of organizational structure and the integration of management schemes. As backbones and lifelines of a company, the organizational structure and management scheme form the foundation for its safe and smooth operation. So the organizational integration has a crucial influence on the final synergy realization of the M&A.

4.1 Integration of Organizational Structure

As a result of the M&A, a company would have larger scale, more business to cope with and need to make its organization and management as scientific and reasonable as possible. In such circumstances, the following aims must be attained through the integration.⁵¹

- An organizational system of combination of openness and self-discipline have taken shape so that the production elements and resources within a company could be combined more naturally and effectively;
- The expansion and shrinking of the organizational system are relatively flexible to enable the company adapting to the changes in the outside environment;
- A network structure has taken shape with smooth flow of products, capital and information internally in that company;
- Subordinate departments of the company have clear-cut responsibilities and duties, which ensure both mutual coordination and mutual constraints;

⁵⁰ "Restructuring Through Mergers and Acquisitions", Cusatis, P.j., James A.Miles, and J.Randall Woolridge, Journal Of Financial Economics, Vol.33, 1993

⁵¹ "Organization Restructuring", Wang Jiqi, Huaxia Press, 1998

- The structure is streamlined and has high efficiency without undue duplication.

According to the development strategy and comparative merits of the parties involving M&A, the organizational integration will start with the adoption of what organizational structure forms (e.g. shareholding by mother company and subsidiary or vertical structure form of general company and branches) and what management models (centralized model or decentralized model). Afterwards, the integration would come to the phase of integration of internal functional departments and of the rebuilding and transplanting of management schemes.

4.1.1 Integration in centralized management model

By “centralized management model”⁵² we mean that a company to take merger and acquisition carry out uniform operation and management on all the resources of the target company. This model generally applies to “horizontal merger and acquisition”. In these cases, it is in the familiar sectors that the merging or acquisition company carries out such M&A practice. The company has already accumulated rich experiences in operation and management. For a uniform management on personnel, assets, commodities, production, supply and sales, both the parties would always adopt the centralized management. After the M&A, the development strategy is to be defined by the M&A doer instead of the other party. The decision-making and financial administration rights often fall into the company carrying out the M&A, while the target companies are usually regarded as sub-factories, branches or subordinate departments. Such integration is aimed at adding the resources of the target companies up to the master design of the M&A company, thus avoiding the duplication of departments settings, utilizing the unified raw materials sources and distribution channels and realizing harmonized management. The organizational integration through centralized management model generally involves four steps:

- First, to determine the key business departments suitable for the company’s development strategy;
- Second, to decide at which level the decisions could be made in the most efficient and effective manner;
- Third, to consider the nature and positions of the auxiliary organizations required;
- Fourth, to make partial adjustments so as to establish the best organizational structure of the new company.⁵³

⁵² “*Organization Restructuring*”, Wang Jiqi, Huaxia Press, 1998

⁵³ “*Restructuring Through Mergers and Acquisitions*”, Cusatis, P.j., James A. Miles, and J. Randall Woolridge,

The above-mentioned steps are the main factors that should be taken into consideration while conducting the organizational integration after the M&A. In order to design a really feasible organizational structure, some other features are also to be considered, such as the range of the management and the parallel departments. If the M&A doer has had remarkable advantages and established reasonable organizational structure, the organizational integration of the target company does not mean substantial changes. Instead, it only needs to make sure that the emphasis of the integration is laid on the reorganizing of the target company, which will contribute to the unified and effective management performed by the M&A maker.⁵⁴

4.1.2 Integration in Decentralized Management Model

Due to different sectors and varying geographic locations, many companies grant the target companies more independence after the M&A, thus making them self-governed to a greater extent and administered by decentralized management. This is a frequent practice prevailing in the trans-sectoral vertical M&A. Generally speaking, the integration by decentralized management model refers to that the target company is changed into subsidiary predominated by the M&A doer or into the wholly controlled subsidiary, by which the target company maintains relatively independence at least in law. This kind of model is characterized by the extent to which the mother company implements operation and control of the target company (subsidiary). To what extent the target company is to be decentralized should be determined by several factors:

- First, how difficult or how easy both parties of the M&A control the decision-making and facts-finding;
- Second, how capable they can make right decisions;
- Third, whether there exist a large number of possibilities of making in-time decision suitable for the local market conditions;
- Fourth, to what extent the managers of the subsidiaries can make decision and the mother company can trust him;
- Fifth, whether the decentralization can encourage the staffs of that company.

The decentralized management of the target company as the subsidiary is relative

Journal Of Financial Economics, Vol.33, 1993

⁵⁴ “*Organization Restructuring*”, Wang Jiqi, Huanxia Press, 1998

against the centralized management of the mother company, and there does not exist entirely decentralized self-rule. Even in the highly decentralized management scheme, the mother company would reserve decision-making rights over some issues. These rights may include: the right to formulate strategy for the subsidiaries to follow; the right to determine the long-term objectives and annual targets of all the subsidiaries; the right to appoint the senior managing staff of the subsidiaries; the right to approve the business development plans of important significance; and the right to recheck and audit each and every transaction that may bring huge impacts on the profit-making of the subsidiaries.⁵⁵

Furthermore, a mother company may gather together the finance, personnel and procurement in some certain forms so as to ensure the harmonization with the operation strategies or the whole company system.

4.2 Integration of Management Schemes

For the purpose of facilitating exchanges and more effectively controlling the target companies, the M&A conducting companies generally transplant their own good management schemes to the target companies. For these target companies with complete and perfect organization structure, sound achievements and good financial record, the M&A company will not change their management scheme but maintain the stability and continuity of such scheme as they have already been. However, in many cases, particular in the practices of M&A in China, the target companies are those with mal-practice in management, backward management schemes and out-of-date mechanism.⁵⁶ So it is quite imperative and necessary to transplant the sound management systems of the M&A practicing company up to the target companies. In the target companies, many difficulties will come up with the introduction to the new management schemes, which is surely a long-term process. At the very beginning since the M&A transaction, the staffs of the target company are always lacking sense of identity recognition and take passive attitudes towards the transplanted management schemes. Therefore, in introducing the new management system, it should be aware that the previous management systems of the target company be deeply understood and that the management systems of the M&A company be introduced on a gradual basis. The integration of management schemes are concerned with many aspects which include the systems of salary, financing,

⁵⁵ “*Organization Restructuring*”, Wang Jiqi, Huanxia Press, 1998

⁵⁶ “*M&A Analysis*”, Liu Changju, People’s Press, 2001

marketing, personnel, equipment, goods and production, etc. It needs to emphasize that the new financial administration system must be consistent with the old one.⁵⁷

4.3 Organization Integration in the Chinese Practice

The organizational integration involves a very large scope of elements and factors. It is both complicated and basic in the M&A activities.

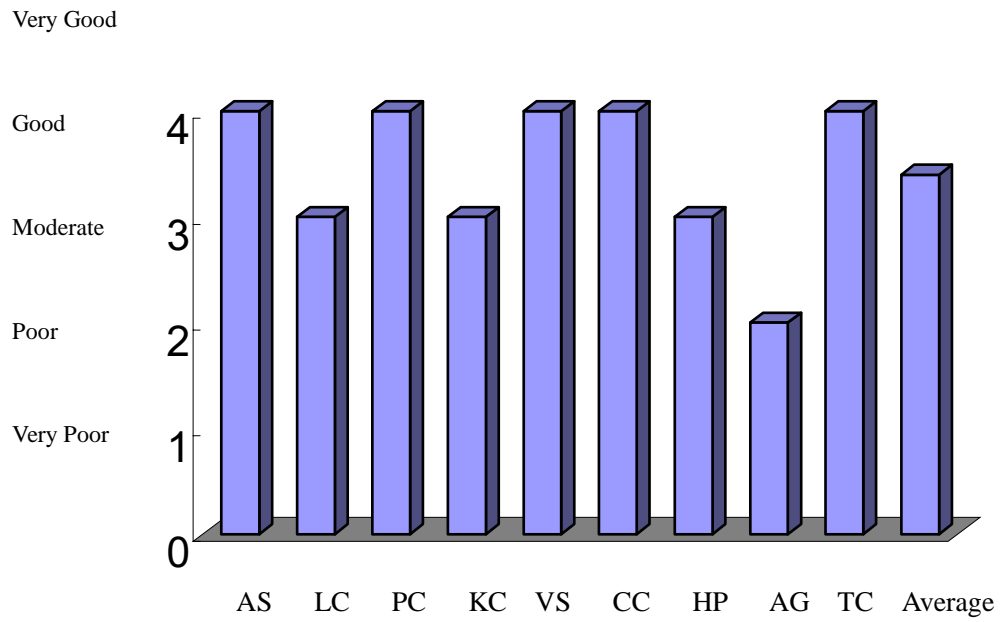
In China, the planned-economy system had existed for more than 40 years. Economic entities have been heavily influenced by that all the resources were allocated through the planning by the governments at various levels. As a result, it made the organizational structures of the Chinese enterprises differ a lot from those of the western countries where the free market economy prevails. Even till today, some big Chinese companies and their leaders and managers are still shadowed by an invisible huge “planning palm”.

However, things are changing to the better direction as people have long expected. Having undergone more than 2 decades of experiences in setting up and developing Joint Ventures, China has made it that the business environment and organizational structure are getting more mature and reasonable. Statistics from the replies to the questionnaire survey have been summarized as in Graph 5, which could prove such maturity and reasonability to a great extent. It is indicated that the average index of the organizational integration is counted as 3.4, which means the average level of integration of organizational structure in China is staying beyond the level of “moderate”, yet still not “good”.

(See Graph 5 on the next page.)

⁵⁷ “*Organization Restructuring*”, Wang Jiqi, Huanxia Press, 1998

Graph 5: *Organization Integration in China*



(Indicators: 1: Very Poor, 2: Poor, 3: Moderate, 4: Good, 5: Very Good)

Chapter 5 Assets Integration

※ **The integration of assets is crucially decisive to the M&A synergy realization.**

Generally speaking, the motivation of company M&A is either because the acquirer company desires to obtain the useful assets of the target company or because the target company attempts to step out of its hard situation in operation, adjust its assets structure and alleviate its debt burdens.⁵⁸ Therefore, the integration of assets of both parties of the M&A transaction forms an important part of the whole integration after the M&A.

5.1 General Views on Assets Integration

By “assets integration” we refer to the activities of optimization and reorganization of assets within both M&A parties⁵⁹, (mainly the target company, though). Assets integration represents the core part of the whole integration after the M&A. The assets of a company may be divided into floating assets, long-term assets, fixed assets, intangible assets and other types of assets. When making a study on the practices of company M&A in China, we find that the assets integration have been focused on the integration of fixed assets, long-term assets and intangible assets, whereas the integration of floating assets, and most of the other assets is carried out just through the commonly-used financial way.⁶⁰

The integration of fixed assets is the crucial segment of the entire integration process. The M&A conducting company has to, in accordance with its own development strategy and objectives, make in-depth analysis of the fixed assets and carry out specific operations of either absorbing into or sorting out the assets. To incorporate the fixed assets of the target company, people should keep in mind several important factors.

⁵⁸ “*Mergers and the Market for Corporate Control*”, Manne H.G., *Journal of Political Economy*, 1975

⁵⁹ “*M&A Analysis*”, Liu Changju, People's Press, 2001

⁶⁰ “*M&A Analysis*”, Liu Changju, People's Press, 2001

- The first one is the entirety of the production and operation system. It is required that the company, after the M&A, should be centered around its main business, while the raw materials procurement, production and sales and research should serve as supporting pillars of the entire system of operation and organization.
- The second factor to be considered is the development strategy of the company. It must be ensured that the capital already integrated be in consistence with the development strategy of that company.
- The third factor is benefit, namely, it must ensure that, on the short-term basis, benefits should be brought to the company at a level no less than expected.⁶¹

On the basis of the above, all the other types of assets should be sorted out and sold out, which include the assets that have not generated benefits for a long time, the operational fixed assets that cannot meet the requirements for the strategy of the M&A conducting company, the extra productive and administrative assets (such as office equipments) and other assets that are quite difficult for the company to use in an efficient manner. As for the large scale of non-operational assets within the target company, they should also be integrated into the corresponding departments. If not integrated, they shall be separated from other types of assets as well.

The integration of intangible assets also has important bearing. The intangible assets during the M&A process may include the patents, know-hows, trademarks, franchise rights and land-use rights.⁶² During the M&A process, the current values of these intangible assets shall be reviewed and assessed. Then, after considering the concrete business activities of the M&A conducting company as well as the applicability of the intangible assets, the decision will be made as to whether they are still retained or transferred. Trademarks with good images, high quality, good services and high values should be retained for the storage of trademarks. Generally, the franchise rights cannot be transferred, but due to their inadequateness, they should also be accepted into the new company system.

⁶¹ "Asset Selection and Evaluation in the Enterprises' Restructuring", Cusatis, P.j. James, Journal of Economics and Management Strategy, 1998

⁶² "M&A Analysis", Liu Changju, People's Press, 2001

5.2 Principles for the Assets Integration

- *Principle of Applicability*⁶³

With this principle, the assets of a M&A company can be reviewed as to whether they are in conformity with its development strategy. In accordance with this principle, the assets still having applicability can be retained and integrated, while those without applicability should be sold out. In this way can the company allocate its resources to the departments with best benefits and outputs.

- *Principle of Cost and Benefit.*

Under this principle, people should consider the costs for and benefits from the operation and use of assets. Only when the benefits surpass the costs can the integration be reasonable and rational.

- *Principle of Harmonization*

It should be considered whether the assets have been kept in a harmonization during the process of the integrated production and operation.

- *Principle of In-time Sale*

Complementary to the principle of applicability, this principle requires that the assets without applicability should be sold out in time so as to get back some capital and put it into the production. Otherwise, these assets would cause losses to the company for being left unused or damaged.

⁶³ “*M&A Analysis*”, Liu Changju, People's Press, 2001

5.3. Integration of Tangible and Intangible Assets

- **Tangible Assets**

- **Integration of Fixed Assets**

Fixed assets include physical buildings, machines, transport facilities, office equipments, etc.⁶⁴ These assets can be used on a long run for the production and operation of a company. Handling them should be subject to the consideration of their current values, life spans, technical features, production efficiency and possibility of being abandoned under the condition of technological improvement. On such basis the integration and separation could be undertaken.

- **Integration of floating Assets**

The floating assets include cashes, bonds, money to be duly returned and commodities already in storage. Cashes can be dealt with in relatively flexible ways.

- **Intangible Assets**

The intangible assets mainly include patents, franchises, trademarks, know-hows, land use rights and commercial reputation, which are often easily be neglected. Although they have no tangible physical dimensions, they are greatly significant and valuable to the company in nature. So, after the M&A operation, companies should pay as much attention as possible to the utilization and integration of these intangible assets.

5.4 Assets Integration in the Chinese Practice

In China, the assets integration is quite sophisticated for the foreign investors who conducted M&A transactions.⁶⁵ In the previous state-planned economy, all the assets of the Chinese enterprises belonged to the state, which represented partial reasons for the inefficient operations of the state-owned enterprises and the severe loss of the state owned assets. After the foreign investments entering into China, the

⁶⁴ “*M&A Analysis*”, Liu Changju, People's Press, 2001

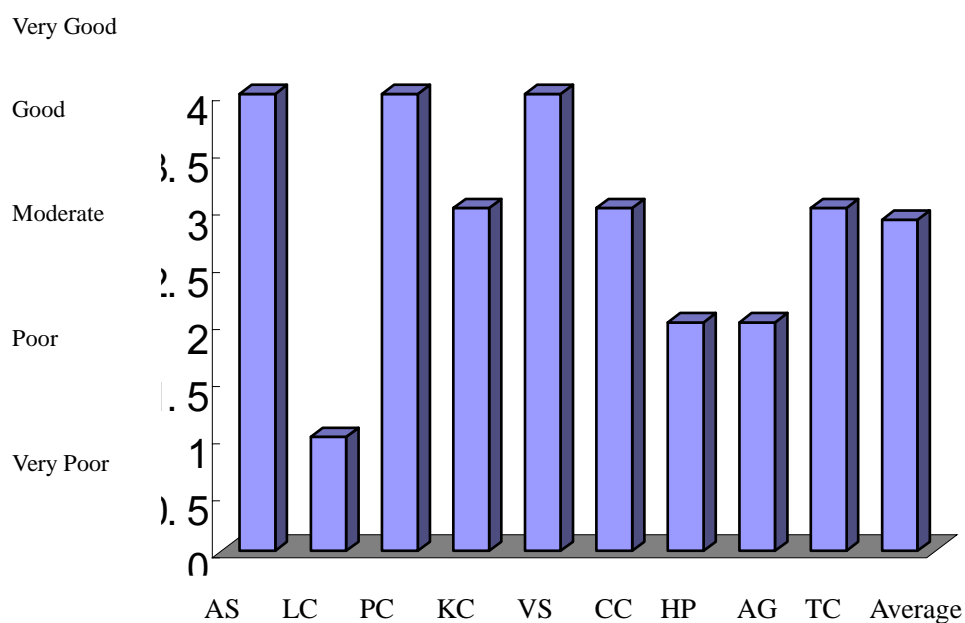
⁶⁵ “*Merger and Acquisition activity in China*”, Claudio D Milman, Multinational Business Review Detroit Fall 1999.

State-owned enterprises began to seek international cooperation so as to restructure their assets and improve the effective usage of the state assets.⁶⁶

Cooperation through M&A with foreign investment has provided both the Chinese enterprises and foreign businesses with great opportunities to develop themselves. However, how to integrate efficiently the assets of the post M&A enterprises is still a problem to be addressed.

From the case survey on the Lufthansa China Group Co. Ltd., the author has found that the assets integration level therein is far from expectation. The newly established company had encountered a series of problems caused by the asset integration conflicts. Even in the questionnaire survey, the overall assets integration level is also not so satisfying; the average point is only counted as 2.9, which means a “poor” situation. See details from the Graph 6.

Graph 6: *Assets Integration in China*



(Indicators: 1:Very Poor, 2: Poor, 3:Moderate, 4:Good, 5: Very Good)

⁶⁶ “*Management of Sino-Foreign Joint Ventures*” Sing Keow Hoon-Kalbauer, Lund University Press, 1994

To solve these problems, some managerial staff and researchers have proposed possible solutions by conducting a qualified asset selection and evaluation before the M&A. Assets should be evaluated in terms of their quality and assurance. And also, attentions should be paid to the ease usage of the assets both from the end user's and a reuser's perspective.⁶⁷

⁶⁷ "Asset Selection and Evaluation in the Enterprises' Restructuring", Cusatis, P.j. James, Journal of Economics and Management Strategy, 1998

Chapter 6 Business Integration

※ The successful business integration provides a reliable guarantee to the M&A synergy realization.

6.1 Integration of Business Operation

Whatever roles a M&A conducting company plays in participating in business operation of the target company, it is always necessary to make more or less adjustments in the business of the target company.⁶⁸ In some cases, they are only general integration of business policies, while in other cases, they may involve the fundamental transformation of the business strategy of the target company. In the actual practice, the integration of business operation after M&A is quite frequent and popular. For instance, some certain production line is not in conformity with the overall development needs of the company after M&A, or the equipments of both parties concerned in the M&A are overlapping and need to be gathered – all these are concerned with the integration of business operation.

In China, many companies to be merged or acquired are suffering from severe losses and heavy debts. So the integration of business operation after a M&A deal often begins with the products adjustment.⁶⁹ The production line or varieties of products that bring no profits would be abandoned, whereas these profit-making parts will be enlarged and increased. In that case, the product structures will be adjusted and optimized and the profit-making capabilities improved. For the purpose of making a full use of interacting role in business operation, integration shall be carried out in the areas of procurement and sales in the target companies, for example, procurement and sales in a unified manner.

⁶⁸ “*Merger and Acquisition activity in China*”, Claudio D Milman, *Multinational Business Review* Detroit Fall 1999.

⁶⁹ “*M&A Analysis*”, Liu Changju, People’s Press, 2001

6.2 Integration of Production and Integration of Technology

As for the intensive development strategy-oriented companies which seek economy of scale, the integration of their production after the M&A transaction is very important. Integration of production refers to the integration of completely the same or similar products during the process in which they are produced. If the two parties involved in the M&A have similarities in terms of technology, production equipment, production procedures or qualities of the staff, then the integration of production may be conducted in a relatively simpler way. Such integration will optimize the production organization and bring about “values of M&A” to the companies⁷⁰.

The world economic competition today is of the kind in technology and skilled personnel rather than in others.⁷¹ In the past, when a company intended to obtain the advanced technology from other companies, it could realize such objectives mainly by buying patents and know-hows. But with the much tougher competition, the getting of new technologies is not an easy thing any more. Under this situation, more and more companies pose control over the target companies through M&A and then control advanced technologies in the hands of these target companies. The science and technology are advancing over time, new technologies and techniques are emerging and updating.⁷²

With the constant advance of science and technology, more technologies and techniques are emerging. A company cannot easily master all these advanced technologies. The only way to access to these technologies and to these people who have them available is through M&A, by which the company may push forward the integration of technologies and improve itself comprehensively. Since the 1980s, many M&A cases are aiming at obtaining advanced high technologies, which also has become the basic motivation of the trans-national M&A deals.⁷³

⁷⁰ “*Merger and Acquisition activity in China*”, Claudio D Milman, Multinational Business Review Detroit Fall 1999.

⁷¹ “*Now, it’s reform or busting Beijing*”, Dexter Roberts, Joyce Barnathan, Robert J. Dowling, Business week, April 6, 1998

⁷² “*M&A Analysis*”, Liu Changju, People’s Press, 2001

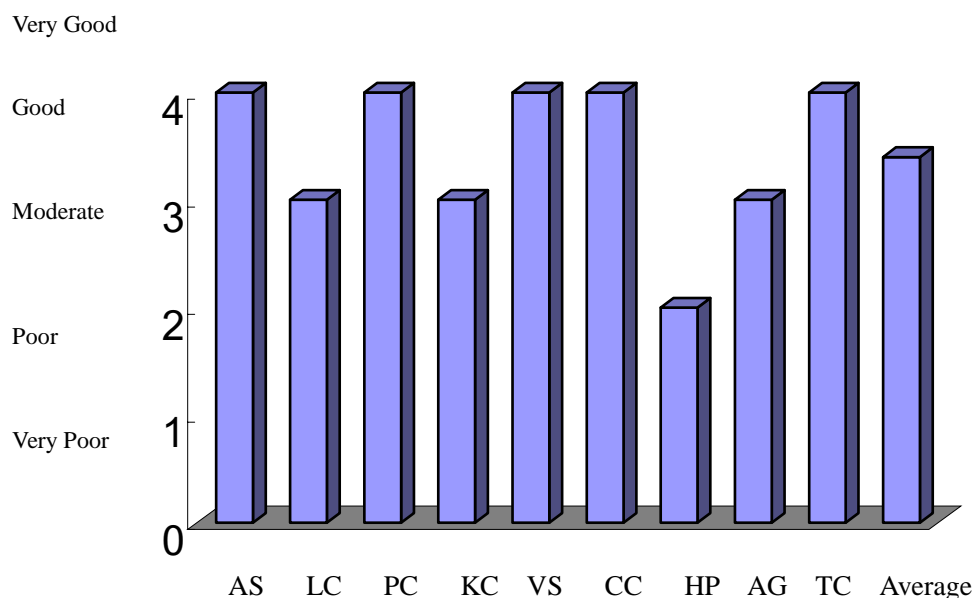
⁷³ “*M&A Analysis*”, Liu Changju, People’s Press, 2001

6.3 Business Operation Integration in the Chinese Practice

Just as mentioned earlier in Part 3, a great deal of western theories were introduced to the Chinese business circle. Maybe the most popular ones are about how to effectively operate businesses. In reality, the western philosophy in business management has strongly affect the Chinese managers not only during their routine business administration but also when they together with their foreign partners deal with M&A affairs, especially the business operation integration activities.

In order to illustrate the specific situation about the above issues, similarly as in the previous segments describing the Chinese practices, the author has another graph available. The business integration situation in the investigated companies is shown in Graph 7 below.

Graph 7. *Business Operation Integration in China*



(Indicators: 1: Very Poor, 2: Poor, 3: Moderate, 4: Good, 5: Very Good)

The result from the graph shows that the business integration index is counted as 3.4 in average in the 9 companies surveyed, which indicates a situation little bit higher than the “moderate” level.

Chapter 7 Human Resources Integration

※ **Human resources integration is the paramount part to ensure M&A synergy realization.**

Human elements are principal part of the business activity.⁷⁴ By the similar token, the human resources factor is vitally important to the ultimate result of the M&A. Different from the integration of other production elements, the integration of human resources involves more numerous and complicated problems. So the human resources integration shall be carried out in an extremely prudent manner.

7.1 Selection, Retaining and Allocation of Human Resources

7.1.1 Selection of the Senior Managers

To select professionally capable senior managers who are loyal to the company is an effective way to make integration and improve economic benefits. If selected not properly, it would cause the leaving of skilled personnel, reduction of customers, chaos in the business administration, and the distortion of final objectives of M&A. If the M&A is of the mixed type, the M&A conducting company is not familiar with the business of the target company and appropriate senior managers cannot be found elsewhere, then the previous senior managers of the target company should be retained. A survey conducted by McKinsey Corp.⁷⁵ showed that, for 80% of the M&A deals, the managerial staff were still retained afterwards.

In China, because of the special situation of company system, the selection of, or more exactly, the appointing of, the senior managers of a company is significantly influenced by the government. The entrepreneurs market is far from coming into being. So among the practical M&A cases, most belongs to those in which the previous managerial staffs are retained. Although the managerial staffs retained from the target company are helpful to the business operation of the new company, there do still exist a number of problems. For instance, it is not easy for the M&A conducting

⁷⁴ “*The Human Side of Merger and Acquisitions: Managing Collisions Between People, Cultures, and Organizations*”, Anthony F. Buono & James L. Bowditch, Josseybass Publisher, 1989

⁷⁵ http://careers.mckinsey.com/app004/careersnew.nsf/keyview/sho_page_home

company to post control over the latter. Getting support from the local government leaders, the managers of some target companies are not completely obedient to the leaders of the post M&A company. Therefore, it must be ensured that the control of the target company is still in position and the most suitable personnel shall be selected to be the senior managers.

7.1.2 Retaining of skilled personnel

Studies have shown that, after a M&A transaction, most of the people choosing to leave for elsewhere are technically professional, managerially capable and practically experienced.⁷⁶ Generally, if the M&A dealer has a good reputation and successful operation record, the skilled persons of the target company are often willing to continue their tenure. Of course, the M&A itself provides a very good opportunity for attracting more skilled persons for the development and prosperity of the target company. The measures to make skilled person to continue working in the post M&A company have been adopted, which include providing better working conditions, increasing salaries, promoting them to higher posts, granting high-ranking managers “stock shares and forward securities”, increasing bonus and interests, etc..

7.1.3 Allocation of workers

Companies shall push forward the reforming of labour and personnel at the opportune time of M&A process. All the various departments and production systems of the company should be more open to all the workers and staff for their getting new careers. In China, a M&A deal may provide very good opportunity for optimisation of the human resources of the company. The worker of the target company, mostly in possession of practical operating abilities and experiences, can be quite compatible with the M&A conducting company. They should be continuously utilized, thus the production cost will be reduced naturally.

⁷⁶ “*M&A Analysis*”, Liu Changju, People’s Press, 2001

7.2 Accelerating the Cultural Integration

One human resources issue that plays a central role in the success or the failure of a merger is culture, an aspect that is vastly underrated in many M&As.

Tom Davenport defines culture as "the DNA of an organization-invisible to the naked eye, but critical in shaping the character of the workplace."⁷⁷ Commonly, culture refers to the norms, values, and beliefs the members of an organization maintain about the purpose of work and how they are expected to go about doing their work.⁷⁸ Whereas most integration efforts focus on an organization's formal systems and processes, cultural integration refers to its informal systems and processes. However, the latter can have a highly insidious impact on the melding of the two organizations.

In the international M&A, it involves two national cultures, two different markets with two different shareholder bases, and two different business cultures-one very strong, scientific and academic; the other, more commercially oriented. The senior managers and the integration team should manage the integration of the two organizations' cultures in two major ways: First, the team draws upon cultural artifacts to create the blended culture. A powerful artifact is the use of symbols (e.g., logos, slogans, pictures, signs, uniforms) to convey an image and then the use of a variety of activities (e.g., storytelling, rites, rituals, ceremonies) to reinforce that image. For example, the ASB has successfully adopted a new culture for their post-merger company, their artifacts include slogans, signs, team T-shirts and etc.

A second way to manage the culture is by collaborating with managers throughout the organization to leverage the consolidated organization's strengths in the face of the disruption caused by the union. One way to get both sets of employees on board while maintaining productivity and preventing slippage is to set a super-ordinate goal, one that can only be achieved by both organizations working together effectively.⁷⁹

As referring to the culture integration, it is also important to get aware of cultural differences. Greet Hofstede had brought forward a cultural model to measure the

⁷⁷ "Management Review", Tom Davenport, January 1998

⁷⁸ "Beating the Odds of Merger & Acquisition Failure: Seven Key Practices That Improve the Chance for Expected Integration and Synergies", TOBY J. TETENBAUM, Organizational Dynamics Autumn 1999 p22

⁷⁹ "Beating the Odds of Merger & Acquisition Failure: Seven Key Practices That Improve the Chance for Expected Integration and Synergies", TOBY J. TETENBAUM, Organizational Dynamics Autumn 1999

different cultural dimensions.⁸⁰ “The nature of management skills is such that they are culturally specific: a management technique or philosophy that is appropriate in one national culture is not necessarily appropriate in another”, he said. Therefore, the cultural model was designed to measure the scope of cultural differences around the world. In the model, the value differences between countries can be explained by four dimensions:

- Power Distance –“PDI”
- Individualism –“IDV”
- Masculinity –“MAS”
- Uncertainty Avoidance –“UAI”

As the author has conducted case study on the Alcatel and Lufthansa, here thus sets an example to compare the Chinese culture with the French and German cultures based on the above dimensions.

Table 2. Comparison on the Chinese, French and German Cultures

	China	France	Germany
PDI	80 (high)	71(high)	67(comparatively high)
IDV	15 (low)	68(high)	35(comparatively low)
MAS	50 (moderate)	86(high)	65(comparatively high)
UAI	40 (moderate)	43(moderate)	66(comparatively high)

Generally, the Chinese cultural is distinguished with its long power distance and strong sense in the collectivism, while the French culture differs the Chinese with its individualism and femininity, and the German culture is characterized by its comparatively high UAI. So special attentions should be paid to these different characteristics while integrating the cultures.

⁸⁰ “*Cultural Dimensions in Management and Planning*”, Greet Hofstede, Asia Pacific Journal of Management, January, 81-99

7.3 Developing the Communication

Communications is another important issue that needs to be reinforced in the M&A. Wherever possible, communication should be face-to-face and provide opportunity for an open dialogue. When the face-to-face approach is simply impossible, communications need to be content rich, address stakeholder concerns, and be targeted specifically for each key audience – whether it's employees, customers, suppliers or analysts.⁸¹

In the international M&A, language is an obvious point in the communication, but some barriers are more subtle. Communication is too often assumed to be a matter of translation. In reality, it opens up a whole array of issues over meaning and expectations. Different societies have many subtle differences in how meaning is communicated, this is also what the M&A management team and senior managers should think much of.

Besides, in the M&A, each layer of organization has its own specific concerns about the merger. Members of the board of directors, for example, may have concerns about its effect on the stock price, while employees will focus on downsizing decisions. Generally, there are few organizations that customize merger messages below the top layers of the company. 57% of those surveyed highly customize merger communications for the board of directors; 48% do so for top management. But less than 30% customize merger information for middle management and other lower levels of employees.⁸² These less communications between different layers may also cause the loss of a merger. Hence, this point should arouse more attention from the senior staffs and the merger managerial team as well.

7.4 Application of the Decision Style Model and Career Concept Model

In M&A, recruitment is dramatically different from the regular means. “Companies may be spending more than 90% of their purchased selection services on relatively simple regular recruitment that make up perhaps 10% of their total number of

⁸¹ “*The Human Side of Merger and Acquisitions: Managing Collisions Between People, Cultures, and Organizations*”, Anthony F. Buono & James L. Bowditch, Jossey-Bass Publisher, 1989

⁸² “*Strong Employee Communications can Smooth Mergers*”,
<http://www.conference-board.org/search/dpress.cfm?pressid=4576>

recruited employees, while spending less than 10% on the more difficult recruitment by M&A that make up maybe 90% of the total number of recruited employees.” In this circumstance, the Decision Style and Career Concept model can work integratively and give some light in the human resource selection tunnel of the M&A.⁸³

The Decision Style model (see from Table 3) is based on how people differ when processing information. It is a conceptual, assessment, communication, and team-building tool that is helpful to recruiting talents, avoiding common misunderstandings and increasing the precision of two-way VIP communication approach in M&A, it can help to interact person thus let them understand themselves and others in more constructive ways.⁸⁴

Table 3: *Decision Style Matrix*

		Information Use	
		Satisficer	Maximizer
Solution Focus	Unifocus	Decisive Fast, action-oriented Loyal Efficient	Hierarchic Analytic Logical Aquality-oriented
	Multifocus	Flexible Fast, action-oriented Social Adaptable	Integrative Analytic Team-oriented Creative

- *From Driver, M. J. Brousseau, The Dynamic Decision Maker*

In M&A, it is also very important to increase the motivational precision of integration efforts. To better understand the individual motivation difference, the Career Concept Model is a suitable framework for doing so. It distinguishes between four major career and motivational patterns, namely, Expert, Linear, Spiral and Transitory:⁸⁵

⁸³ “The Secrets of Merger & Acquisition Success: A Co-Competence & Motivational Approach to Synergy Realization”, Rikard Larsson

⁸⁴ “The Dynamic Decision Maker”, Driver, Brousseau & Hunsaker, 1993

⁸⁵ “The Dynamic Decision Maker”, Driver, Brousseau & Hunsaker, 1993

- Expert that strives to remain within one occupation and become as good as possible at this during the whole work life. Expert motives include security, being allowed to refine one's expertise and being recognized for this expertise.
- Linear that strives to climb upward on the corporate ladder towards positions of higher authority. Linear motives include power and achievement.
- Spiral that periodically (every 5-10 years) moves laterally to related occupations where previous experience can be applied in new ways. Spiral motives include creatively and personal growth.
- Transitory that frequently (every 2-4 years) changes to new and unrelated occupations. Transitory motives include variety and independence.

This Career Concept model offers an effective basis for precise division of the broad array of needed integration activities according to the individuals' different motivational profiles. (As illustrated in the Table 3) ⁸⁶

Table 4. Co-Competence and Motivational Division of Integration Work

	Expert	Linear	Spiral	Tranistory
<u>Focus</u>	+islands of stability +true security +maintaining existing value creation +corporate memory	opportunities for: +corporate growth +leadership +efficiency improvements +promotion +achievement/ winning	+applying existing competencies in new areas +integrating new and existing operations +strategic renewal +long-term creative teamwork +personal growth	+network with many new people +fast and novel action +short-term transition teams/projects +travel +quick learning
<u>Avoid</u>	-uncertainty -insecurity -turbulence	-relative demotion -delaying -downsizing	-non-involvement	-non-involvement -long-term commitment

* From Rikard Larsson: "The Secrets of Merger & Acquisition Success: A Co-Competence & Motivational Approach to Synergy Realization"

⁸⁶ "The Secrets of Merger & Acquisition Success: A Co-Competence & Motivational Approach to Synergy

Nowadays, both the Decision Style Model and Career Concept Model have been applied by many western companies in their management practices. Furthermore, with the Internet as a cost-efficient vehicle, these two models have assessed up to more than 500, 000 persons on line.⁸⁷ They have already been proved by the management practices and academic studies to be a fair sufficient solution to the human resources problems in general, and to the M&A matters in particular.

7.5 Human Resources Integration in the Chinese Practice

As somebody says in a joking way, what China lacks are not persons – China has the biggest population in this planet; what China really lacks are well-skilled and well-educated men and women. The fact that China is the most populous country is a double-edge sword: it can benefit a lot in its competition with other countries because of its huge but cheap labor; nevertheless, the relatively low level of education of the Chinese people by and large is a concrete constraint in the economic development, particularly in the knowledge-based economy era. In a very narrower framework, the issued of human resources integration in M&A are complicated accordingly.

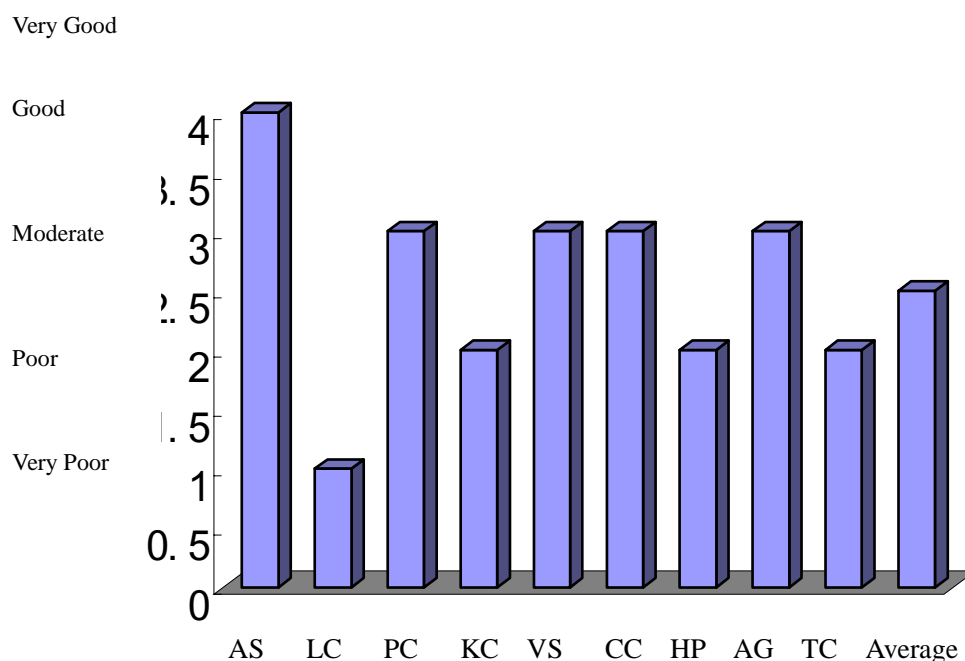
The case study and the concentrated questionnaire survey conducted by the author show that the reality of the human resources integration situation in China is not as satisfactory as found in the other areas, such as strategy, organization and business. The average index of the human resources integration stands only at 2.5, which implies a moderate level of such integration.

The indicators are shown in Graph 8.

Realization”, Rikard Larsson

⁸⁷ See www.DicisionDynamics.se

Graph 8: *Human Resources Integration in China*



(Indicators: 1: Very Poor, 2: Poor, 3: Moderate, 4: Good, 5: Very Good)

Furthermore, take the Lufthansa (China) Group Co. Ltd. as an example. During the integration process, a number of clashes in values, ways of thinking and approaches to doing things had come up with actions taken for that purpose. The managerial staffs and the merger managerial team have always been trying to find ways out, but the process is continuing till now. That case has proved, on the other hand, the importance of the human resources integration in the final success of the M&A transaction.

Chapter 8 Empirical Comparison

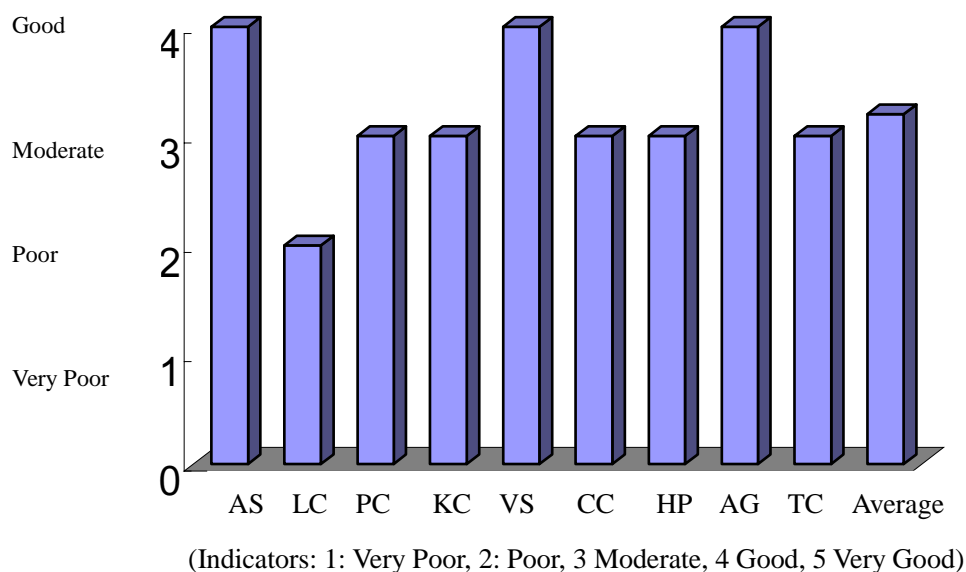
In Chapter 3, 4, 5, 6 and 7, the M&A integration of Strategy, Organization, Asset, Business and Human Resources have been illustrated in a theoretical way. This chapter, presenting as a conclusion of the case study and questionnaire survey, will further analyze the M&A integrations in an empirical way.

8.1 Empirical Comparison on the Quantitative Study

The quantitative study is conducted by means of questionnaire survey. A questionnaire entitled ““Merger and Acquisition (M&A) Integration Investigation in China”⁸⁸ was distributed to 30 international companies, and there are 9 companies that have responded to this survey. As the 9 are most foreign companies which have run business for a long time in China, and as the 9 are composed of both the winners and losers in achieving the M&A synergy, the author thus believes that the result of this survey should be comparatively objective and representative.

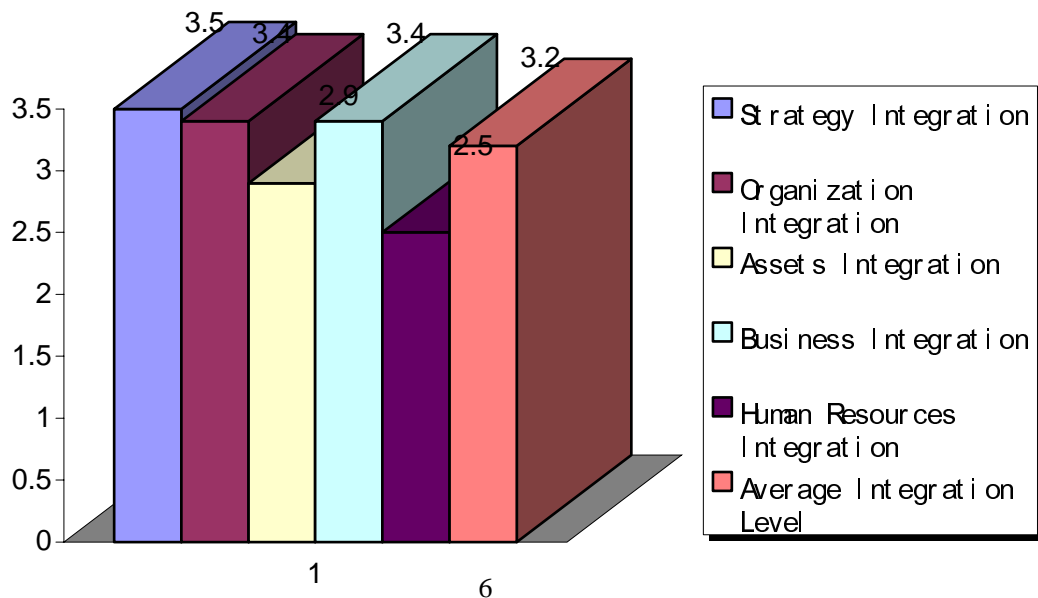
In answering the general question in the questionnaire, which is: “To what extent does your company realize the M&A synergy?”, 1 company replied that their synergy realization situation is “poor”, 5 regarded them in a “moderate” situation, and the other 3 stated that their integration are “good”, so the average integration level among the 9 companies is calculated as 3.2, which is a little bit beyond the moderate level. See details from the Graph 9.

Graph 9: General Situation of the M&A Synergy Realization in China



As already described in the preceding chapters, the average levels of the integration in different aspects of strategy, organization, assets, business and human resources are demonstrated by the concrete figures 3.5, 3.4, 2.9, 3.4 and 3.5 respectively. If these five figures are put together, then we can have the following new graph available, which shows a comparison among the integrations in five different aspects (See from Graph 10). Furthermore, a new average figure on all the five aspects' integration levels is calculated out, which is 3.2. (Shown as the sixth pink column)

Graph 10. Comparison Among the Integrations in Different Aspects



(Indicators: 1: Very Poor, 2: Poor, 3 Moderate, 4 Good, 5 Very Good)

Does this new figure carry any meaning? Sure. First, the figure “3.2” implies that the overall integration level in the aspects of strategy, organization, assets, business and human resources is just between “good” and “moderate”; Second, and more important, this figure is *as same as* what we obtained from the companies’ answers to the general question, which is: “To what extent does your company realize the M&A synergy?” (See from the previous page.) So, the author regards that the equivalence of these two figures has effectively proved that *the average integration levels in the above mentioned five aspects are equal to the general synergy realization level*. In another word, it could mean that *it is the integration in these 5 aspects which decides the final synergy realization*.

⁸⁸ See from Appendix 1.

Is this deduction right? Or is the equivalence of two average figures just an accidentally coincidence?

To give a more accurate answer, the author turns to examine the results from the case study.

8.2 Empirical Comparison on the Qualitative Study

After interviewing the informants from Alcatel Shanghai Bell (ASB) and Lufthansa China Group Co. Ltd (LCG), and consulting the companies' published materials, the author has collected the following information: (See Table 5)

Table 5 Comparison on the Case Study

Questions	Answers from ASB	Answers from LCG
- Has your company achieved the expected M&A synergy realization?	Yes	No
- Does your company integrate well in the aspects of strategy, organization, assets, business and human resource?	Yes	No
- If yes, do you think the success of the integration in the above aspects led to your win in the synergy realization? - If no, do you think the failure of the integration in the above aspects causes your loss in the synergy realization? Can you specify in which aspects you failed?	Yes	Yes. The integrations in the assets and human resources sides are not satisfied yet.
- In general, do you agree that: <i>“From the managerial point of view, the M&A synergy could be realized through the satisfactory integrations in the aspects of Strategy, Organization, Assets, Business and Human Resources”</i> ?	Yes	Yes
- In addition, can you specify some legal problems relating to the M&A synergy realization?	Employees' rights protection, Shareholder's rights protection, Stakeholders' rights protection and etc.	Assets Evaluation, Labor Relocation and etc.

From the above comparison, it is very clear that the ASB's success contributes to its satisfactory integration, and the LCG's failure was caused mainly by the inefficiency in the assets and human resources sides. Furthermore, both the two companies have definitely proved the importance and necessity of the integration in the 5 aspects.

8.3 Conclusion of the Empirical Study

Till now, a double-proved conclusion can be drawn based on the case study and questionnaire survey. Moreover, the author's assumption proposed in the Chapter 2.3. can be also justified. They both reach a same point that:

From the managerial point of view, the M&A synergy could be realized through the satisfactory integrations in the aspects of Strategy, Organization, Assets, Business and Human Resources.

Chapter 9 Legal Problems Relating to the M&A

There has been much strength put on the discussion and analysis of the managerial aspects of M&A in the above chapters. In fact, dealing with legal affairs is equally important as the managerial operations in the M&A. Therefore, this chapter and the next will be focusing on the relevant legal studies as required by the M&A.

9.1 Questions to be Answered

As legal matters exist in the whole M&A process, the vital importance of conducting M&A through legal mechanism may decisively affect the final success of the M&A deals. It is very necessary for the business managers to be fully conscious of the legal questions relating to M&A, and pursue a satisfactory synergy realization under the safeguard of the legal contexts.

Among all the legal questions, those concerning the applicability of laws are crucial and always served as the precondition to the merger success. What laws can apply and how to apply are the common concern both for Chinese and foreign investors. Although there have already been some studies conducted on such questions, but very few is carried out in a joint manner from the Chinese and European perspectives. Therefore, benefiting from the EU business law study, the author tends to stress the work in this chapter on the applicability of laws of China and EU in the event of M&A.

The following specific questions will be answered:

- What legal texts apply to the international M&A in China? To be detailed, in this thesis, when Alcatel Corp. and Lufthansa Co. merged their Chinese targets, what rules applied? How about the applicability of the EC Merger Regulation (ECMR)⁸⁹ in these cases?
- On the other hand, suppose a Chinese company conducts M&A in the EU market, can ECMR apply vice versa?

⁸⁹ Council Regulation (EEC) No. 4064/89 of 21 December 1989 on the control of concentrations between undertakings amended by COUNCIL REGULATION (EC) NO. 1310/97 of 30 JUNE 1997

9.2 Applicability of Laws in the International M&A

In China, the “1999 Merger and Division Regulations”⁹⁰ apply to all mergers involving the Chinese companies, either purely Chinese-funded enterprises or foreign-invested entities like Sino-foreign joint venture. . Mergers are defined in these Merger Regulations as a complete amalgamation of share capital between two or more entities, followed by the dissolution of one or both of the original entities. A premise for both mergers and corporate divisions is that all of the participating entities must be incorporated either as joint stock company (JSCs) or as limited liability companies ("LLCs") and their respective capital contributions must be fully paid up.

Transactions in which the assets and/or equity of one entity are merely transferred to another without amalgamation, are defined as "Acquisitions". Acquisitions involving foreign investors are primarily governed by the “1997 Foreign Invested Enterprise(FIE) Equity Change Provisions” and the “FIE Investment Regulations” promulgated last year.⁹¹

Apart from these two legal instruments, other relevant Chinese laws are also applicable to the international M&A conducted in China, such as the “Company Law”, “Labor Law”, “Tax Law”,⁹² etc.

As regards the merger deals of Alcatel and Lufthansa, all the above laws can apply. However, since both Alcatel and Lufthansa are the EU-based companies, does the EC laws also apply to their merger transactions in China? More specifically, as the ECMR is the principle rule to control mergers in the common market, does it also apply to Alcatel and Lufthansa’s mergers in China?

Although a senior Chinese official expressed her doubts over the applicability of the ECMR to such deals in China during her interview with the author. With a deep-up study on the EC law, especially the ECMR, the author gradually comes to a different view from hers.

⁹⁰ “M&A in the P.R.C”, MOFTEC Press, 2002

⁹¹ “M&A in the P.R.C”, MOFTEC Press, 2002

⁹² <http://www.lawinfochina.com/DataBase/LawRegulation>

Of course, it is quite true that all the M&A deals which are occurring in the territory of China should be under China's jurisdiction with the Chinese laws and regulations. But the author argues that, if a EU company conducts a merger in Chinese market which indirectly leads to a consequence of distorting the fair competition in the common market, the ECMR will be very likely to be applied to the this transaction.

As the backbone legal instrument guiding the mergers in EU, the ECMR sets out that its fundamental purpose is to “ensure that competition in the common market is not distorted”. It gives the European Commission exclusive jurisdiction over mergers, acquisitions, and similar transactions with a “Community dimension”. Such transactions must be notified to the Commission for clearance before they are put into operation. It is also stipulated that Mergers which create or enhance a dominant position and significantly impede effective competition in the European Union should be blocked, and fines and other sanctions can be imposed on those companies that do not comply.

The ECMR identifies a “concentrations” as “a merger, an acquisition or full-function joint venture”. The definition of concentration is set as “to 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.”⁹³

Whether or not a concentration has a Community dimension depends on the turnovers of the undertakings concerned. A concentration has a Community dimension if: 1) “the combined aggregate worldwide turnover of all the undertakings concerned is more than ECU 500- millions; and 2) the aggregate Community-wide turnover of each of at least two of the undertakings concerned is more than ECU 250 million, unless each of the undertakings concerned achieves more than two-thirds of its aggregate Community-wide turnover within on and the same MS.”⁹⁴

In general, the Commission assesses a concentration on the basis of the effect on competition. A concentration which “creates or strengthens a dominant position as a result of which effective competition would be significantly impeded in the common market or a substantial part of it shall be declared incompatible with the common market”.⁹⁵ Besides, technical and economic progress can be taken into account so

⁹³ Article 3 of the Council Regulation no. 4064/89

⁹⁴ Article 1 of the Council Regulation no. 4064/89

⁹⁵ Article 2 of the Council Regulation no. 4064/89

long as it is to the consumers' advantage and does not pose an obstacle to competition.

Based on the above, we can assume that if EU MNC intends to acquire a big Chinese company, and as a result, this acquisition might make the EU MNCs attain that all its aggregate worldwide turnover exceeds far more than 5,000 ECU million, for example. The acquisition might also lead to its absolutely dominant position in a certain market, thus indirectly effect the common market and distort the competition therein. Under such circumstance, the ECMU is well-founded to apply to the merger and deny the transaction. In that case, the ECMR would function even though the merger happens geographically in China.

In summary, as for a M&A that an EU MNC conducts over a Chinese company, it is for sure that the relevant Chinese laws regulate the deal; at the same time, the deal may get regulated, as appropriate, by the European Union Laws as well. In other words, so long as the M&A transactions simultaneously involving the companies of the EU members and these of non-EU members have reached the dimensions of concentration specified in the ECMR, this legal document may well play its due roles even beyond the EU members' territories.

By the same token, if a Chinese company conducts M&A in a certain member state of EU and this transaction only bring limited impacts to this country's market instead of, in a wider range, the EU common market, then the EU laws on Merger Control should not apply. As long as the transaction is doomed to meet the dimensions of a concentration according to the ECMR, then it is no doubt that the EU laws will be governing, controlling and supervising the deal conducted by the Chinese company.

Chapter 10 Specific Legal Considerations

On Safeguarding the Employees' Rights

As elaborated in Part 7, human resources are crucially important elements to safeguard the M&A synergy. When a M&A deal happens, it usually causes substantial changes in human resources relocation, so one of the most frequent happenings is the resistance from the employees over the M&A, as the employees hope to safeguard their rights in the event of the employers' changes.

How to safeguard the employees' rights so as to reduce their resistances and guarantee an expected human resources synergy?

This is the key question to be answered in this chapter. To properly deal with this issue, a thought-provoking way is to take out what contents are contained in the employees' rights protection.

Generally speaking, the employees' rights protection could be composed of 4 aspects, namely, Rights of Information and Consultation, Transferring of Employees' Rights as Creditors, Transferring of Labor Contract and Termination of Labor Contracts and Economic Compensation.⁹⁶

10.1 Ensuring the Rights of Information and Consultation

In China, there are no specific provisions concerning the Rights of Information and Consultation yet.

In the case of EU, the story is entirely different. "To provide for the protection of employees in the event of the change of employer, in particular, to ensure that the employees' rights are safeguarded"⁹⁷, the EU has promulgated a **Council Directive 2001/23/EC** in March 2001 on "*the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, business or parts of undertakings of business.*" This Directive is aiming

⁹⁶ "Study on the Legal Issues concerning the M&As", Chen Lijie, Law Press, 2001

⁹⁷ Council Directive 2001/23/EC, http://europa.eu.int/eur-lex/en/lif/dat/2001/en_301L0023.html

at harmonizing Member State laws, safeguarding employees' rights in cases of transfers of undertakings, imposing duties of information and consultation on transferors and transferees.

Furthermore, “to strengthen dialogue and promote mutual trust within undertakings in order to improve risk anticipation, make work organization more flexible..., in particular, to promote and enhance information and consultation on the situation and likely development of employment with the undertaking...”⁹⁸, another Council *Directive 2002/14/EC* “on the establishing a general framework for informing and consulting employees in the European Community” was released on 11 March 2002.

In view of the above, the author here hence uses some of the contents in these Directives as reference to study the Rights of Information and Consultation in China. Because in fact, many Chinese laws had ever taken references from western laws before they were drawn up, and these western laws, had for sure guided the Chinese law stipulation effectively.

In the EU *Directive 2002/14/EC*, the term “Information” and “Consultation” are defined as:

- *Information: referring the transmission by the employer to the employees' representatives of data in order to enable them to acquaint themselves with the subject matter and to examine it;*
- *Consultation: referring the exchange of views and establishment of dialogue between the employees' representatives and the employer.*

And the following contents shall be informed to the representatives of their respective employees affected by the M&A according to the *Directive 2002/14/EC*:

- *the date or proposed date of the transaction,*
- *the reasons for the transaction,*
- *the legal, economic and social implications of such transactions for the employees,*
- *any measures envisaged in relation to the employees.*

⁹⁸ *Directive 2002/14/EC*,
http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=32002L0014&model=guichett

Besides, the information should be given to the representatives of his employees in good time, before the M&A is carried out. Additionally, the merger or the acquirer should envisage measures in relations to his employees, he shall consult the representatives of this employees in good time on such measures with a view to reaching an agreement. Furthermore, these information and consultation shall cover at least the measures envisaged in relation to the employees.

In the post M&A entity, there is an increasing need for strengthening dialogues and promoting mutual trust between the employers and employees. Timely information and consultation can help make the employees aware of adaptation needs, increase employees' availability to undertake measures and activities to increase their employability, promote employee involvement in the operation and future of the undertaking and increase its competitiveness.

Therefore, ensuring the rights of information and consultation can be regarded as the first point to safeguard the employees' rights. It is very important for the success of the restructuring and adaptation of undertakings to the new conditions, particularly after the activities of M&A.

10.2 Protecting the Employees' Rights as Creditors

Protecting the employees' rights as creditor is the second point to safeguard their rights.

“Credit rights of the employees” means the credit rights of the employees over their company, in which the creditors are employees while the debtor is the company. Such rights belong to the category of property rights⁹⁹.

Compared with the credit rights of other creditors over the company, the employees' credit rights have the following two characteristics:

- The employees' credit rights always come up with their labor relations with the company because, say, the delay in salary delivery, the failure to have the warfare benefits specified in the labor contracts;

⁹⁹ “*Labor Law of China*”, <http://www.lawinfochina.com/DataBase/LawRegulatio>

- In the employees' credit rights, there exists relationship of hiring labor between the creditors and the company, which also forms the foundation of the labor credit rights.

In the case of the Chinese practice, the employees' credit rights fall into the following forms:

- The salaries and labor insurance that the company have owed to its employees;
- The debts caused by the company through raising funds from the employees;
- The warfare grants delayed by the company, such as the medical fees owed by the company to the employees;
- Other credits, including the compensation for the injury of the employees in the company's business activities.

For most M&A deals in China, according to the "*Labor Law of China*", the above-mentioned credit rights of the employees must be transferred to the new companies.

10.3 Attaching Importance to the Transferring of the Labor Contracts

Attaching importance to the transferring of the labor contracts is the third point to safeguard the employees' rights.

The transferring of labor contracts means that, during the M&A process, the labor relations between the employees and the dismantled company shall be transferred to the merger or acquirer company. Many countries have such stipulation in their labor and company legislation with a view to protecting the employees' interests. There are existing two models for such stipulations: one is *direct transferring*, namely, the law directly requires that, after the M&A transaction, the new company shall take over the labor contracts of its predecessor; the other is *indirect transferring*, namely, the law does not specify the transferring of labor contracts but poses restrictions on termination of the labor contracts, whereby the protection of the employees' interests is guaranteed.

- ***Direct Transferring***

In legislation of the *direct transferring* model, the core content is that the relationship in labor contracts between the employees and their previous companies shall be transferred to the post M&A companies and the new companies shall fulfill obligations toward the employees. Such legislation is typically practiced by the countries like Bulgaria, Vietnam, France and the Former Soviet Union in their Codes of Labor. The Code of Civil Law of Italia also has the similar inclusions.¹⁰⁰

In summary, the *direct transferring* is characterized by that the post M&A companies shall take over the labor contracts concluded between the former companies, and their employees and the legal stipulations in this respect are statutory.

- ***Indirect Transferring***

Under *indirect transferring* model, the laws and regulations on labor and social security do not directly require that, after M&A, the heritage companies should continue the labor relations and fulfill labor contracts between the former companies and their employees, but stipulate that M&A cannot serve as a condition for the termination of the relevant labor contracts. Therefore in such model, whether the previous labor relations are taken over is up to the post M&A companies. The Russian Federation is a typical example in its legislation having the same stipulations. Quite unlike the *direct transferring* model, the stipulations of *indirect transferring* model fully reflects the voluntaries in making changes in the labor relations.

In China, in most M&A cases, the direct transferring model is suggested by the government authorities to those M&A conductors, and the relevant legal items can be find in the “*Labor Law of China*”.

10.4 Being Careful to the Termination of Labor Contracts and Paying Economic Compensation

Being careful to the termination of the labor contracts and paying the economic compensation is the fourth point to safeguard the employees’ rights.

Termination of labor contracts refers to a legal conduct in which one party or both

¹⁰⁰ “*Study on the Legal Issues concerning the M&As*”, Chen Lijie, Law Press, 2001

parties of a labor contract cease the labor relations therein due to some reasons before the complete fulfillment of the whole contract. Can a labor contract be terminated due to the M&A transaction? The aforesaid legislation cases have shown that many countries adopt the approaches of direct transferring or indirect transferring the labor contract instead of terminating the contracts, which basically aims at protecting the interests of the employees. This is helpful to the M&A implementation. The *Company Law of China* and the *Enterprises Law of China*¹⁰¹ do not have definite stipulations in this regard, but some regulations regarding the M&A have relevant stipulations. These stipulations can be divided into two types of circumstances:

First, before the entry into force of the *Labor Law of China*, if the M&A of State-Owned Enterprises involves the labor relations, then the legislation documents generally stipulate that, after the M&A, the merger or acquirer enterprises should take over and be responsible for settling the employers of the companies that have been merged or acquired.

Second, according to the *Labor Law of China*, the labor contracts are neither taken over directly nor indirectly in a M&A case, but instead, the post M&A companies should have re-consultations with the employees so as to change, terminate or renew the labor contracts. In other words, the labor contracts concluded between the former companies and the employees are not binding to the new companies.

When a company terminates its labor contract with its employees, it shall offer a certain quantity of economic compensation. After the promulgation of the *Labor Law*, the Ministry of Labor issued the *Regulations on Economic Compensation for Violation and Termination of Labor Contracts*.¹⁰² In this document, specific economic compensations were clearly prescribed so as to address issues arising from the violation and termination of labor contracts.

In summary, to safeguard the employees' rights, it is crucial to look at the above four points, say, ensuring the rights of information and consultation, protecting the employees' rights as creditors, attaching importance to the transferring of the labor contracts, and being careful to the termination of labor contracts and paying the economic compensation. Having made the above in place, the employees' rights could be guaranteed in case of M&A, a satisfactory integration would be ensured, and an expected synergy be achieved ultimately.

¹⁰¹ <http://www.lawinfochina.com/DataBase/LawRegulation>

¹⁰² <http://www.lawinfochina.com/DataBase/LawRegulation>

10.5 Conclusion of the Discussion on the Legal Issues

In this chapter and the last, legal issues of the applicability of laws in the international M&A in general, and the employees' rights protection in particular have been discussed and analyzed. Of course, there are still other issues in legal areas that have important bearing on the M&A handling and are necessary to review. But to avoid a lengthy paper, the author merely selects and focuses the above two issues which are most significant and necessary to the proper topic. However, it is no doubt that there is still further space left to the author's future research.

All in all, base on the discussion on these two chapters, it can be concluded that, due to their great importance, legal issues of M&A should be carefully studied and appropriately addressed. The application of laws to M&A operation, especially these regulations on protecting employees' rights, decisively affects the final success of the M&A deals.

Furthermore, to answer the main question of the thesis, it should be pointed out that, to pursue the M&A synergy realization in China, the business leaders must take full considerations the relevant legal issues, whilst paying attention to the ample integration in different managerial aspects though.

Chapter 11 Implications to EU MNCs' M&A Operations in China

European Union is one of the important polars of the present multi-polar world. Its relations with China, either politically or economically, are getting increasingly significant to both sides. Particularly over the last couple of years, China and EU have accomplished substantial developments in their economic cooperation. The investments in China made by the multinational corporations (MNCs) of the EU is on the rise. The accession into WTO by China has also provided the EU MNCs with excellent opportunities for doing business there. As a predetermined result, the M&A operations will be expected to happen and even boom in such circumstances.

11.1 General Situation of M&A by EU Companies in China

The European Union companies were among the earliest investors who made the foreign direct investment in China. Over the last more than 20 years, the EU countries have become tremendously important in terms of their FDI in China. After its establishment of common market, the EU underwent internally a dramatic wave of M&A of companies. At the same time, the big companies from US and Japan entered the European market, which made the existing competition there much tougher. Many of the EU MNCs, already having grown into big sizes by M&A within Europe, then transferred their capital and funds to the Asian area, where they could make more profits as expected. China was an ideal country where they kept their eyes on in particular. In 1995, the European Commission formulated *the Long-Term Policy for Relationship between EU and China*¹⁰³. One of the key actions to take for implementation of this policy document was to encourage the EU companies to further access the Chinese market and participate in the economic reform of China.

In the meantime, starting from the second half of 1990s, the Chinese Government began to allow the M&A between and among the Foreign Invested Enterprises (FIEs). Then more EU MNCs went into the Chinese market and more M&A transactions occurred in these EU FIEs.

¹⁰³ “*EU and China Business Relationship*”, Robert Lim, Huaxia Press, 1999

According to statistics provided by the Department of Foreign Investment Administration of the Ministry of Foreign Trade and Economic Cooperation (MOFTEC), in the year 2000 alone, the total volume of FDI in China by the 15 EU member countries was USD126 billion, among which 1.8 billion was generated from the M&A dealing. The major EU countries with large investment in China are UK, Germany, France, Italia, Netherlands, Belgium, Denmark and Sweden.¹⁰⁴

The M&As conducted by the EU MNCs in China had the following features¹⁰⁵:

- Firstly, the investments involved are relatively huge in quantity, and most the M&A companies are capital-intensive. On an average, the scale of investment from the EU MNCs stayed at USD 10-20 million every case.
- Secondly, the investments from the EU MNCS are centralized in some certain sectors like energy, raw materials, chemical, petroleum, automotive, telecommunications, medicaments, etc. Among them, the investment items of car manufacturing, medicaments and telecom held very outstanding positions.
- Thirdly, the economic benefits of the EU MNCs-invested companies were comparatively good. The cheap labor and preferential treatment had made it possible for the EU investors to gain high returns. Through M&A transactions, the EU companies could avoid the high import taxation and reduce the production costs, thus making their products more competitive both in the Chinese and European markets.

11.2 Implications to the EU MNCs for their M&A Operations in China

As there are increasingly M&As conducted by the EU MNCs in China nowadays, the author, as a Chinese student specializing in the European study, hence attempts to bridge her knowledge of business and law both in European and Chinese perspectives, and proposes some implications to the EU MNCs for their M&A operations in China :

(1) Harmonized Objectives for Strategy

¹⁰⁴ “*Newsletter of the Ministry of Foreign Trade and Economic Cooperation of the P.R.C* in December, 2001”

¹⁰⁵ “*EU and China Business Relationship*”, Robert Lim, Huaxia Press, 1999

The M&A transactions conducted by the EU MNCs in China have been only confined to be among the FIEs and, in many circumstances, they have to choose the Chinese partners. Thus, the two parties involved often have different strategic thinking. The EU MNCs with investments in China are mostly giants rich in capital in the operation, so the EU side aims at occupying market in a M&A transaction instead of making profits in the short run. But for the Chinese companies concerned, due to the policy of strict loan adopted since 1992, they have difficulties in obtaining financial support in full swing. So the Chinese companies often hope to promote the products to the market in a short period of time and get the return right away. Therefore, strategically, the EU MNCs should try to find harmonized and balanced fashion for conducting together with their Chinese partners.

(2) Right Stresses in Assets Integration

The Chinese enterprises have long been suffering from unclear property relations and that the value of the assets was always overlooked. In particular, little importance has been attached to the products trademarks, land, patents, and other intangible assets of the enterprises. In this connection, the EU MNCs should pay close attention to the issues evaluation and value of assets.

(3) Cultural Integration as a Clue

Europe and China are geographically far apart. Many differences exist between them in terms of values and cultures. The Chinese culture, of the Oriental scope, cherishes modesty and self-control, and is different from the openness and frankness valued by the westerners. During the M&A process, integration in various specific areas is, fundamentally, linked with cultural elements. So an effective way to conduct integration is to provide any and all resources necessary to accomplish complete and appropriate cultural integration. Put the integration measures together in a whole instead of taking them separately.

(4) Legal Concerns Regarding the Employees' Rights Protection

For the senior officers of the EU MNCs, who conduct M&A in China, there are several concerns regarding the employees' rights protection they should bear in mind, as suggested by the Ministry of Labor of China:¹⁰⁶

¹⁰⁶ "Newsletter of the Ministry of Labor of the P.R.China", March 2001

- a) The employees of the companies being merged and acquired shall, in principle, be taken over by the companies conducting M&A. At present, the social security systems have not taken complete shape in China. So the employees working at their previous companies, including fulltime employees, contractual employees and retired employees, shall be transferred to the post M&A companies as a principle. This factor shall be taken into account when defining the price for assets transferring.
- b) If the employees of the companies that have been merger and acquired are laid off by the post M&A companies, they should be arranged into the reemployment centers of the post M&A companies, where they can get basic living allowances for laid-off employees and enjoy the relevant benefits as well.
- c) As for the employees whose labor contracting relations have been demolished unilaterally by the companies that have been merged or acquired, they should get necessary economic compensations.
- d) During the M&A process, legal measures shall be taken to protect the employees' credit rights. The state-owned assets cannot be dealt with before such legal measures are taken.

(5) Acquaintance with Basic Political and Economic Environment: Still Not All Permitted to Transacted by M&A

While answering a question raised by the CEO of *Leaders* Magazine, who asked “will China develop private enterprises of a truly Western style? In other words, will individuals be allowed to own the lion’s share of the stocks of a company and of the wealth of the state?”, Mr. Zhu Rongji, the Chinese Premier gave the following reply:¹⁰⁷

“China is a socialist country, so it is only natural that the public sector should serve as the mainstay of its national economy. The public sector not only includes the state and collectively owned economies, but the state and collectively owned elements of the mixed ownership sector. At the same time, we encourage and guide the non-public sector, including the private, overseas-funded, and joint ventures, along

¹⁰⁷ “*Leaders*” Magazine, January 2001

the line of healthy economic development and protect its lawful operation and legitimate income. However, the SOEs must occupy a dominant position in the important trades and key fields that have a bearing on the national economic lifelines. We also stand for diversified forms of public ownership. That is, the SOEs may adopt a joint stock system and have their stocks listed in the market, and individuals, too, may hold shares. But the state or collectives must control the share-holding of the important enterprises.”

It is obvious that China does not and will not allow the key enterprises to be controlled either by the individuals, Chinese or foreign, or by the economic entities, domestic or overseas, in any forms. Just because of this, every MNC from EU should keep in mind that its targets companies for M&A, if belonging to the Chinese SOEs, should exclude these that serve as the lifelines of the Chinese economy and China itself. Otherwise, the mistakes would be made at the very beginning. This is the last implication, but not the least, of course.

Conclusion

Mergers and acquisitions are on the rise with the size and scope of deals escalating in China. More foreign and domestic investors seek to reduce expenses by M&A while creating ever more powerful operating and strategic synergies. Nevertheless, as consolidations have increased in volume, so too have the failures. Observations by academic studies and practical surveys have found that these failures are attributed primarily to mal-practices in the integration.

However, this situation is remediable after all. If good philosophy and effective ways to improve all aspects of the integration to ideal levels can be figured out, opportunities of realizing satisfactory M&A synergy will more likely to be available. The discussion, analysis and justification in this very thesis have illustrated such availability because:

From the managerial point of view,

- good strategy integration is a vital precondition for pursuing M&A synergy realization;
- well-integrated organization has a substantial influence on the final synergy realization of the M&A;
- integration of assets is crucially decisive to the M&A synergy realization;
- successful business operation integration provides a reliable guarantee to the M&A synergy realization; and
- human resources integration is the paramount part to ensure M&A synergy realization;

And from the legal point of view,

- application of laws to M&A operation, regulations on protecting employees' rights and other related issues, decisively affects the final success of the M&A deals.

Therefore, business managers, officials and other people concerned should bear in mind that, to achieve all the desired objectives in M&A, particularly when doing so in the after-WTO China, great importance should be attached to the combination of integration of management elements and legal consideration of key issues. With the proposals, suggestions and implications contained in this paper put into practice, the M&A in China will be more likely to stand a good chance of synergy realization with the expected effect of "2+2=5".

References

1. “*M&A Operations*”, Michael. S. Finn, University of Michigan Press, 1971
2. “*M&A Analysis*”, Liu Changju, People’s Press, 2001
3. “*Studies on the Legal Issues concerning the M&As*”, Chen Lijie, Law Press, 2001
4. “*Quantitative methodology and feminist research*”. Jayaratne, T. (1993).In M. Hammersley (Ed.), *Social research: Philosophy, politics and practice* London: Sage
5. “*Mixing Methodologies: Can Bimodal Research be a Viable Post-Positivist Tool? The Qualitative Report*” [On-line serial], 2 (3), Nau, D. (1995, December), Available: <http://www.nova.edu/ssss/QR/QR2-3/nau.html> Creswell, J. (1994).
6. “*Research design: Qualitative and quantitative approaches*”, Creswell, J. (1994). London: Sage.
7. “*How to use qualitative methods in evaluation. Patton*”, M. (1987). London: Sage Publications.
8. “*The Rules of Disorder*”. Marsh, P., Rosser, E., & Harre, R. 1978 London: Routledge and Kegan Paul
9. “*Case Study Research*”, Yin, Robert K, SAGE Publications, 1984
10. “*Solving the Merger Mystery*”, Deloitte Consulting, <http://www.deloitte.ca/en/Pubs/Manufacturing/Solving>
11. “*M&A Operations*”, Michael. S. Finn, 1971
12. “*Theory of the Firm: Managerial Behaviour*”, Jensen.C and W.Meckling, *Journal of Financial Economics*, 1976
13. “*Competitive Positions in the Market*”, Liu Chengonng, Renmin Press, 1998
14. “*Readings in Mergers and Acquisitions*”, Gaughan, Patrick A., Blackwell, 1994
15. “*Corporate Performance, Corporate Takeovers and Management Turnover*”, Martin K. and John McConnell, *Journal of Finance*, 1991
16. “*Causes and Consequences of Takeover*”, Jensen M.C., *Journal of Economic Perspectives* (Winter 1992)
17. “*China Investments*”, December, 2001
18. “*Restructuring Through Mergers and Acquisitions*”, Cusatis, P.j.,James A.Miles, and J.Randall Woolridge, *Journal Of Financial Economics*, 1993

19. *“Organization Restructuring”*, Wang Jiqi, Huaxia Press, 1998
20. *“M&A Analysis”*, Liu Changju, People’s Press, 2001
21. *“Asset Selection and Evaluation in the Enterprises’ Restructuring”*, Cusatis, P.j. James, Journal of Economics and Management Strategy, 1998
22. *“Merger and Acquisition activity in China”*, Claudio D Milman, Multinational Business Review Detroit Fall 1999.
23. *“Management of Sino-Foreign Joint Ventures”*, Sing Keow Hoon-Kalbauer, Lund University Press, 1994
24. *“Now, it’s reform or busting Beijing”*, Dexter Roberts, Joyce Barnathan, Robert J. Dowling, Business week, April 6, 1998
25. *“The Human Side of Merger and Acquisitions: Managing Collisions Between People, Cultures, and Organizations”*, Anthony F. Buono & James L. Bowditch, Josseybass Publisher, 1989
26. *“Management Review”*, Tom Daveport, January 1998
27. *“Beating the Odds of Merger & Acquisition Failure: Seven Key Practices That Improve the Chance for Expected Integration and Synergies”*, TOBY J. TETENBAUM, Organizational Dynamics Autumn 1999
28. *“Cultural Dimensions in Management and Planning”*, Greet Hofstede, Asia Pacific Journal of Management, January, 81-99
29. *“Strong Employee Communications can Smooth Mergers”*,
<http://www.conference-board.org/search/dpress.cfm?pressid=4576>
30. *“The Secrets of Merger & Acquisition Success: A Co-Competence & Motivational Approach to Synergy Realization”*, Rikard Larsson
31. *“The Dynamic Decision Maker”*, Driver, Brousseau & Hunsaker, 1993
32. *Council Regulation (EEC) No. 4064/89* of 21 December 1989 on the control of concentrations between undertakings amended by COUNCIL REGULATION (EC) NO. 1310/97 of 30 JUNE 1997
33. *“M&A in the P.R.C”*, MOFTEC Press, 2002
34. *“Chinese Company Law”*,
<http://www.lawinfochina.com/DataBase/LawRegulation>
35. *“Study on the Legal Issues concerning the M&As”*, Chen Lijie, Law Press, 2001
36. *Council Directive 2001/23/EC*,
http://europa.eu.int/eur-lex/en/lif/dat/2001/en_301L0023.html

37. *Council Directive 2002/14/EC*,
http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=32002L0014&model=guichett
38. “*Labor Law of China*”, <http://www.lawinfochina.com/DataBase/LawRegulatio>
39. “*EU and China Business Relationship*”, Robert Lim, Huaxia Press, 1999
40. “*Newsletter of the Ministry of Foreign Trade and Economic Cooperation of the P.R.C* in December, 2001”
41. “*Newsletter of the Ministry of Labor of the P.R.China*”, March 2001
42. “*Leaders*” Magazine, January 2001
43. “*China Country Report*”, March, 2001
44. “*Economic and Business Development of the P.R.C*”, December, 2001
45. “*Merger and Acquisition in China Stock Market*”, Decai Fu, ADM 6490 MBA Project,, 2001-01-08, <http://www.cata.ca/china/documents/MandAinChina.pdf>
46. “*China M&A Net*”, <http://comm.mergers-china.com/>
47. “*Listed Company of China*”, Shanghai Stock Exchange, 1998
48. “*MOFTEC News*”, March,21, 2002, <http://www.moftec.gov.cn>
49. “*MOFTEC Statistics,2002*”, <http://www.moftec.gov.cn>
50. LOVISA: <http://lovisa.lub.lu.se/cgi-bin/webgw/chameleon?lng=en>
51. EC Competition DG: http://europa.eu.int/comm/competition/index_en.html
52. UNCTAD: <http://www.unctad.org/>
53. NBS (China National Statistic Bureau): <http://www.stats.gov.cn/english/>

Appendix 1:

**Merger and Acquisition (M&A) Integration
Investigation in China**

Company Name: _____

Questionnaire:

1. General Information of the M&A

1.1 Has your company transacted M&A in recent years? Yes () No ()

If yes,

1.2 The name of the acquirer company: _____

1.3 The name of company being acquired: _____

1.4 Time of M&A transaction: _____

2. Main Managerial Factors M&A Synergy Realization

Do you think a successful M&A synergy realization can be pursued by an effective integration of Strategy, Organization, Assets, Business, and Human Resources?

Yes () No ()

Other factors determine the M&A synergy realization:

3. To what extent does your company create M&A integration in different aspects?

	Very poor	Poor	Moderate	Good	Very Good
Strategy Integration	1 ()	2 ()	3 ()	4 ()	5 ()
Organization Integration	1 ()	2 ()	3 ()	4 ()	5 ()
Assets Integration	1 ()	2 ()	3 ()	4 ()	5 ()
Business Integration	1 ()	2 ()	3 ()	4 ()	5 ()
Human Resources Integration	1 ()	2 ()	3 ()	4 ()	5 ()

Appendix 2:

List of the Sample Companies in the Questionnaire Survey

(Total No. 30)

The companies that responded to the survey: (9)

1. Alcatel Corp.(France) Shanghai Bell Corp.
2. Lufthansa China Group Co Ltd.
3. Philip CDMA Shanghai
4. Koinic Corp.
5. Volkswagen Shanghai Corp.
6. Ciliwallon Corp.
7. HSBC Holdings Plc
8. Alberler GmbH
9. Toshiba Ltd. Corp.

The companies that didn't respond to the survey: (21)

1. ABB China Limited
2. Alfa Laval (China) Ltd.
3. Carlsberg Brewery (Shanghai) Ltd.
4. Maersk (China) Shipping Co.
5. Siemens Shanghai Corp.
6. Ericsson China Corp.
7. Volvo Shanghai Corp.
8. Novo Nordisk (Tianjin) Biotechnology Co., Ltd.
9. Eircon Nanjing Company
10. Shanghai Tetra - Pak Hoyer Ice - Cream Machinery Co., Ltd.
11. Shell Corp.
12. Bayer Group China
13. Henkel China Corp.
14. Bossch GmbH China Branch
15. Remi-Martin Beijing Corp.
16. Nokia Co.
17. Xian Yanssen Corp.
18. Mannesmann China Branch
19. Renault Wuhan Corp.
20. CMA-CGM Shanghai Office
21. SAS China Branch

Appendix 3:

Persons have been interviewed

1. Ms. Chen Wanfang, Senior Official of the Ministry of Foreign Trade and Economic Cooperation, P. R. China

- 5 Mr. Li Weiping, Project Official, Ministry of Foreign Trade and Economic Cooperation, P. R. China

- 6 Mr. Luo Xiping from Alcatel Shanghai Bell

- 7 Mr. Shi Yong from China Corporation and Lufthansa (Holdings) Group Co Ltd.

- 8 Mr. Xu Yingbin, Vice president of Shanghai Siemens.

- 9 Prof. He Silong, Hohai University, Nanjing, China