Arbitration in merger and acquisition transactions: problem of consent in parallel proceedings and in the transfer of arbitration agreements in merger and acquisition arbitration

Abstract
Merger and acquisition (M&A) transactions have increased dramatically both in number and volume around the world in the last decades. Further to these increases, disputes regarding M&A transactions are often referred to arbitration as a consensual and private mechanism which is flexible, given the freedom of the parties to select arbitrators and to adjust the process according to their needs. This study undertakes to address and examine the long and complex processes in merger and acquisition transactions in light of the emerging preference for utilising arbitration in disputes arising therein. Therefore, M&A arbitration faces certain difficulties in coping with every dispute during the transaction, a number of which the author seeks to underline. In the thesis, two main problems of arbitration in M&A Transactions have been covered. Firstly, the problem of consent in consolidation of parallel proceedings during M&A transactions, and, secondly, parties consent validating arbitration agreements/clauses in “assignment” or “succession” after M&A transactions have been completed. The very approach of the thesis proposes whether academic analysis of the subject matter can be best conducted by separation along the many phases of the long and complex process of M&A and whether it is fruitful to examine these phases individually to obtain the greatest insight. Following the dissection of the different phases of M&A transactions, the nature and operation of arbitration in possible disputes arising out of different phases of M&A has been studied. It is also argued that the utilisation of arbitration will and should provide some ideas toward clarifying the content of consent of parties to a transaction. In demarcating the phases and critical stages in M&A transactions, perspective of the problems posed by parallel proceedings is enhanced. Developing on this rich background, argument develops the idea that the logic of consolidation in arbitration and can have pragmatic application to different alternative dispute resolution (ADR) clauses too. The expansive application of consent in M&A arbitration will be tested against those different ADR methods which do not have a binding effect. On the subject of consolidation in M&A transactions, it will be argued that it is necessary not only to focus on the intention of parties, but it is also unavoidable to concentrate on surrounding relevant facts arising in different phases of M&A transactions, given the recent doctrinal developments in academia and practice. Diverging views which have emerged in order to determine consent are explored alongside their respective theories of consent. The specific importance of consent in the transfer of arbitration agreements has been examined in respect of assignment and succession. The existing rules and approaches outlined in many publications will be challenged, and arguments against their automatic application in M&A transactions will be presented in favour of an expansive approach paying attention to the fluency of facts, similar to that employed in consolidation of parallel proceedings. In examining whether current regulation is suitable given the popular emergence of M&A arbitration, the author will propose how deficiencies and inconsistencies in the area can be rectified looking forward in the form of guidelines.
The merger can take the form of acquisition by one party of the business and assets of the other party in return for a cash payment or an issue of shares or an acquisition by one party of the shares of the company being acquired in return for a cash payment or an issue of shares. (a) Asset Acquisition. With such transactions the vendor’s business name may or may not be included in the sale, and the licenses, contracts and employees may or may not be transferred to the investor depending on the terms agreed. Investors are likely to opt for an asset sale enabling the investor to agree on the assets to acquire and exclude certain liabilities as well as reduce the level of tax payment especially in relation to stamp duties and investment taxes. Mergers & Acquisitions in USA covering issues of Relevant Authorities and Legislation, Mechanics of Acquisition, Friendly or Hostile, Information, Stakebuilding. In a typical merger transaction, the acquiring company forms a new acquisition subsidiary to effect the merger. The target company is merged with the new acquisition subsidiary, and either the target company or the acquisition subsidiary will survive the merger as a wholly owned subsidiary of the acquiring company. To receive the merger consideration (subject to any state law appraisal rights, as described in the response to question 2.5). 2.2 What advisers do the parties need? The parties in a public company acquisition transaction generally retain legal and financial advisers. 2. Parallel Proceedings in Merger and Acquisition Arbitration. A. Assignment. B. Parallel Proceeding Depending on The Same Dispute. 142. a. Buenaventura Case 148. III. Consent on the Transfer of the Arbitration Agreement After Merger and Acquisition Transactions 232. A. Assignment 233. 1. ICC Case No. 12745 242.