

Legal Issues Arising from Comcast's Acquisition of DreamWorks and Oriental DreamWorks

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Abstract: Comcast Corporation's acquisition of DreamWorks Animation SKG Inc. in 2016 presents a case study of the legal complexities involved in the merger and acquisition legal framework in the United States and China. This paper explores the different aspects of this acquisition, including antitrust regulations, cross-border legal issues, minority shareholder rights, intellectual property management, and post-acquisition integration. Antitrust concerns and foreign regulations, such as China's Anti-Monopoly Law, play a significant role in this case which highlights the necessity of compliance with regulatory frameworks to avoid penalties and legal disputes. The importance of protecting minority shareholders' rights in an acquisition is demonstrated by the lawsuit filed by AACERS against DreamWorks' CEO Jeffrey Katzenberg. The need for transparency, fairness, and fulfilling fiduciary duties is crucial to mitigate the risk of legal conflicts. This paper also includes the transaction of intellectual property assets. Evaluate the post-acquisition integration procedure, including management restructuring, marketing strategy, and layoffs, with a focus on the necessity of dispute resolution and maintaining compliance with the relevant laws and regulations. Overall, the acquisition of DreamWorks Animation shows some valuable insights and experiences of the legal complexities of an acquisition that involves a cross-border company. Companies can accelerate the acquisition process and integrate smoothly after the acquisition by carefully considering these legal complexities before making the deal.

Keywords: antitrust law, anti-monopoly law, acquisition, cross-border

1. Introduction

The media and entertainment industry has experienced several significant mergers and acquisitions in recent years. One notable example is the acquisition of DreamWorks Animation by Comcast Corporation and the subsequent involvement with Oriental DreamWorks in April 2016. This deal has encountered a number of legal issues worth analyzing. This paper aims to explore the legal issues that arose in Comcast's acquisition of DreamWorks Animation and Oriental DreamWorks, providing a comprehensive understanding of the various aspects of this complex transaction.

Due to the fact that this acquisition involves both a United States company, DreamWorks Animation SKG Inc., and Oriental DreamWorks which is a joint venture between DreamWorks Animation and Chinese corporations, this deal presents a unique case study. This paper will study the legal issues surrounding Comcast's acquisition of DreamWorks and Oriental DreamWorks, examining the merger and acquisition laws, different levels of government interference, cross-border

legal issues, and post-acquisition integration challenges. By evaluating the legal challenges and implications, this paper will provide insights and recommendations for future deals in the entertainment sector that involve cross-border acquisition and intellectual property.

2. Merger and Acquisition Laws

2.1. The Deal

In 2016, Comcast Corporation, a leading telecommunications corporation and the parent company of NBCUniversal acquired DreamWorks Animation SKG Inc., a prominent animation studio known for producing successful franchises such as Shrek, Madagascar, and Kung Fu Panda [1]. The acquisition was valued at approximately \$3.8 billion, but Comcast announced that the acquisition deal is valued at \$4.1 billion, which includes taking on DreamWorks' debt. Despite some underperforming releases like Turbo in 2013 and Mr. Peabody and Sherman in 2014. Turbo had a production budget of \$135 million and grossed over \$282 million worldwide [2]; Mr. Peabody and Sherman made \$275.5 million worldwide [3]. These numbers fell short considering production and promotional costs. As a result of several unsuccessful releases, DreamWorks reduced its workforce and announced plans to release fewer films in the following years [4]. According to Comcast filings, the agreement features a \$200 million reverse breakup fee related to antitrust clearance. This means that if Comcast decided to withdraw from the deal, it would be required to pay DreamWorks \$200 million [5]. DreamWorks has been trying new opportunities such as acquiring a YouTube teen network Awesomeness TV to create a family-themed cable channel. This way, DreamWorks will be less dependent on the box-office result of its movies since the box office of recent films such as How to train your dragon 2, and Turbo has not been ideal [5]. As a result of the acquisition, DreamWorks Animation became a part of the Universal Filmed Entertainment Group, which is a division of Comcasts' NBCUniversal. The primary objective behind the acquisition was to strengthen Comcast's position in the family entertainment segment and expand its market in China [6]. DreamWorks Animation's intellectual properties and creative talent were seen as valuable assets that can help Comcast compete more effectively with other major players in the industry, such as Disney and Warner Bros.

Oriental DreamWorks, now known as Pearl Studio, was established in 2012 as a joint venture between DreamWorks Animation, China Media Capital, Shanghai Media Group, and Shanghai Alliance Oriental DreamWorks Film & Television Technology Co., Ltd [7]. This venture aimed to create high-quality animated content for both Chinese and international audiences. Its most notable production, Kung Fu Panda 3, was released in 2016 and became a major box-office success in China. Oriental DreamWorks operated under its board of directors and focused on appealing to the Chinese market. Comcast sought to further strengthen its global presence and tap into new opportunities in both Asia as well as others [8]. The acquisition of DreamWorks Animation also led to the integration of Oriental DreamWorks into Comcast's NBCUniversal. This deal faced scrutiny from the U.S. competition authorities, including the Federal Trade Commission (FTC) and the Department of Justice (DOJ), which assessed the deals for potential antitrust violations. In 2016, Comcast's acquisition of DreamWorks Animation was the target of an antitrust investigation instructed by China's Ministry of Commerce. The ministry received anonymous complaints that this deal may reduce competition of the film industry in the Chinese market [9].

2.2. The Regulatory Approvals and Antitrust Implications

The regulatory approvals and antitrust implications of Comcast's acquisition of DreamWorks Animation were subject to review by U.S. regulators, including the Federal Trade Commission (FTC) and the Department of Justice (DOJ).

According to the Federal Trade Commission (FTC), through law enforcement, advocacy, research, and education, the FTC's mission is to protect the public from fraudulent or discriminatory business practices and unfair methods of competition. The FTC examines mergers in accordance with the Hart-Scott-Rodino (HSR) Act, which requires companies to provide advance notice to the FTC and the Department of Justice for transactions exceeding \$92 million. Together with the Department of Justice, the FTC has the power to take legal action to block transactions that would "substantially lessen competition".

The 1984 Non-Horizontal Merger Guidelines were used to review and evaluate the transaction. If a merger is found to potentially harm consumers by reducing competition, creating monopolies, or leading to higher prices, it may fail the FTC's review and result in a lawsuit to block the merger. In June, shortly after Comcast announced its intention to acquire DreamWorks Animation for \$3.8 billion through its entertainment subsidiary NBCUniversal, the U.S. Justice Department approved this deal. This approval indicated that the regulators did not foresee any major anticompetitive issues resulting from the merger. As a result, Comcast was able to proceed with the acquisition.

2.3. Minority Shareholders' Rights

A public employees union, Ann Arbor City Employees Retirement System (AACERS) filed a class suit against DreamWorks Animation chief executive and controlling shareholder Jeffery Katzenberg one month prior to the Department of Justice's approval of this deal [10]. AACERS alleged that Katzenberg has breached his fiduciary duties to the company's minority shareholders by establishing a side deal with Comcast and violating the company's articles of incorporation in connection with Comcast Corporation's (Comcast) acquisition of DreamWorks. This side deal was considered "extraordinarily valuable" and was believed to have benefited Katzenberg rather than the shareholders. The lawsuit also investigated Katzenberg's ownership of DreamWorks, which has a dual-class stock structure, which is when a company issues two classes of shares [10], for example, Class A and Class B shares. Voting rights among these classifications may vary. This arrangement allows Katzenberg to maintain control over the company while raising capital by issuing shares with lesser voting rights to other investors. AACERS claimed that instead of serving in the best interests of the shareholders as a whole, Katzenberg has accepted this sale because he was offered a side deal with a 7 percent share of profits from the company's new media business. As part of this transaction, Katzenberg will act as an advisor to NBCUniversal and become chairman of DreamWorks New Media, which controls the business's stake in Awesomeness TV and NOVA. One and half years later, Katzenberg filed a proposed deal in Delaware's Chancery Court, offering \$3.5 million to settle. As the court says: "Defendant is entering into this stipulation solely to eliminate the uncertainty, burden, and expense of further protracted litigation...Defendant denies any wrongdoing, and this stipulation shall in no event be construed or deemed to be evidence of or an admission or concession on the part of Defendant".

To better prevent potential lawsuits like this one in future merger deals, it is best to remain transparency and fairness in negotiations during the merger process. Make sure all terms and conditions are clear and communicated to all relevant parties and avoid making any side deals that put personal interest over shareholders' interest. Moreover, treat employees fairly to minimize potential disputes. Lawsuits during the merging process may potentially cost the stock value of the company to drop which eventually harms the interest of both shareholders and stakeholders.

3. Cross-border Legal Issues

3.1. Foreign Ownership Restrictions and National Security Concerns: Chinese Regulations on Foreign Investment

One week after the deal is closed, China's commerce ministry announced that they will launch an anti-trust investigation into this deal based on anti-monopoly laws in September 2016, because Authorities received complaints that the deal could threaten competition in the Chinese market, said the spokesman of China's commerce ministry [11]. China has the authority to intervene if international transactions pose a threat to the domestic competition which violates the Anti-Monopoly Law. May undermine the fundamental national security and economic interests of China and Chinese companies. In fact, China's Ministry of Commerce (MOFCOM) did interfere with a merger between the world's three largest shipping lines, in spite of the fact that none of the entities involved were Chinese and the agreement had already been authorized by U.S. and European regulators. Under the Anti-Monopoly Law (AML), if an investigation determines a concentration of undertakings, the Ministry of Commerce has the authority to impose fines of up to 500,000 yuan on the entities under investigation. Generally, companies involved in international mergers and acquisitions within industries that have a substantial presence in the Chinese market should notify the Chinese Ministry of Commerce prior to the merger. Neither Comcast nor DreamWorks Animation declared their merger to the MOFCOM.

The Measure on the Review of Concentrations of Business Operators stipulates that in order to eliminate or reduce the exclusionary or restrictive effects on competition that the concentration of operators may have, the operators involved in the concentration can propose restrictive conditions to adjust the concentration transaction plan [12]. Although the cultural and entertainment industry has not been a primary target for antitrust investigations in China, this acquisition which underwent an antitrust investigation by the Ministry of Commerce serves as a cautionary example: it is crucial not to overlook the regulatory policies of the world's second-largest film market.

3.2. Intellectual Properties

Comcast Corporation acquired a majority stake in Illumination Entertainment in 2011. Illumination Entertainment is best known for producing the Despicable Me franchise, the Minions spin-off, Sing, and the films like The Secret Life of Pets. Illumination Entertainment benefits greatly from the resources and distribution networks of Comcast and NBCUniversal, while Comcast gains access to its valuable intellectual property to make toys, clothing, and other consumer products. On top of that, Comcast has integrated Illumination's characters and stories through its Universal Parks and Resorts division. One of the main reasons for Comcast to acquire DreamWorks is Comcast is looking to expand its entertainment portfolio and hoping to compete against companies like Disney. DreamWorks has a valuable library of popular animated characters and franchises such as: "Shrek", "Madagascar", "Kung Fu Panda" and "How to Train Your Dragon". Not only providing Comcast with more animated characters and franchises, DreamWorks also offers consumer products and theme park opportunities on top of the existing franchise with Illumination Entertainment's IP. Comcast managed to utilize DreamWorks Animation's intellectual has broadened their business scope into family entertainment. Share of COMCAST rose 16 cents to \$61.46 at the beginning of this transaction while DreamWorks shares jumped 24% to \$39.90 [13].

Comcast Corp's NBCUniversal operates Universal Studio Theme Parks and Resorts with its headquarters in Florida. One of the most famous themes in Universal Theme Parks is the Wizarding World of Harry Potter. Universal Theme Parks have already used a few DreamWorks characters from Madagascar and Shrek before the acquisition. Universal Studios is slowly integrating new

DreamWorks characters into their theme parks after the deal. In 2021, Universal announced the “DreamWorks Destination”, a new interactive character experience at Universal Orlando Resort, featuring characters from Kung Fu Panda, Trolls, and more [14].

4. Post-Acquisition Integration

4.1. Management Reconstruction, Marketing Strategy, Layoffs

Following Comcast's acquisition of DreamWorks Animation, the company became a part of the Universal Filmed Entertainment Group, which also includes film studio Universal Pictures, online ticketing service Fandango, and NBCUniversal Brand Development. Steve Burk, CEO of NBCUniversal states: “DreamWorks will help us grow our film, television, theme parks, and consumer products businesses for years to come.... We are fortunate to have Illumination founder Chris Meledandri to help guide the growth of the DreamWorks Animation business in the future.” Chris Meledandri the head of Illumination Entertainment will oversee the DreamWorks Animation branch while it continues to exist as a distinct label. Jeffrey Katzenberg, the Chief Executive Officer and Co-Founder of DreamWorks Animation SKG will serve as head of DreamWorks New Media, which will include the company's ownership interests in Awesomeness TV and NOVA. Katzenberg will consult for NBCUniversal as well in accordance with the acquisition arrangement [15]. Illumination makes low-budget animation films while DreamWorks’ focus shifts from producing animated feature films to family-friendly, teenager-oriented Television series spun off from their well know IP: Kungfu Panda, Home, Trolls, etc.

One month after the transaction closes, NBC Universal eliminates approximately 200 jobs at the Glendale office of DreamWorks Animation. These employees have helped DreamWorks SKG transform the animation film business for nearly two decades. Universal Filmed Entertainment Group Chairman Jeff Shell who is overseeing the integration wrote in an email to the employees “These are difficult but necessary moves as we work to integrate our organizations and we will be as generous as possible to those who will be leaving the company” [16]. This layoff is another indication of how NBCUniversal plans to integrate DreamWorks Animation into its entertainment fold, which also includes Universal Pictures and Illumination Entertainment.

Universal inherited a 45% stake in Oriental DreamWorks during the acquisition. In February 2018, CMC Capital Partners announced full ownership of Oriental DreamWorks which will be relaunched as “Pearl Studio”. Meanwhile, Pearl Studio will be co-producing Kungfu Panda 3 with DreamWorks and an upcoming animated feature film Abominable [17]. Glendale-based DreamWorks Animation has been re-evaluating the projects in its own pipeline, canceling The Croods 2 and Larrikins [18]. This reconstruction eventually leads to a massive layoff of almost two third of the production team. And compensate each employee following the Chinese Labor law.

4.2. Potential Legal Challenges and Considerations

The integration in such mergers and acquisitions can involve several legal challenges and considerations such as compliance with relevant laws and regulations, including antitrust laws, industry-specific regulations, and international trade regulations. Managing and integrating the IP portfolios of the merging companies, which may involve transferring or licensing patents, trademarks, copyrights, etc. Make sure all layoffs follow the labor laws to prevent any dispute relate to employee rights. Establishing processes for handling disputes that may arise during the integration process, both internally (e.g., between employees of the merging companies) and externally (e.g., with customers or suppliers). Will help accelerate the post-acquisition integration process.

5. Conclusions

The acquisition of DreamWorks Animation and the Chinese joint venture Oriental DreamWorks by Comcast Corporation illustrates the legal issues and complexities that arise in both domestic and cross-border transactions.

The various aspects of this transaction, including antitrust regulations, cross-border legal issues, minority shareholder rights, intellectual property management, and post-acquisition integration, emphasize the importance of due diligence and strategic planning by the bidder prior to the acquisition. The antitrust concerns surrounding such acquisitions that involve industry titans demonstrate the impact of such laws on market competition and the necessity to abide by them to avoid potential penalties and legal disputes.

On top of that, the cross-border nature of the acquisition underscores the significance of understanding foreign regulations and national security concerns. Companies must be aware of the specific legal frameworks in each country they operate in, such as China's Anti-Monopoly Law. As the tensions between the United States and China escalated in the past few years, China enacted Counteracting Unjustified Extra-territorial Application of Foreign Legislation (Blocking Rules) in 2021 and amended Anti-Monopoly Law in 2022. The new sets of "Blocking Rules" focus on increasing penalties for antitrust violations, and merger control. Complying with foreign regulations can speed up the merger and acquisition process and ensure the transaction goes smoothly without any disputes.

Protecting both shareholders' and stakeholders' rights in an acquisition is crucial. Especially the rights and interests of minority shareholders rights as illustrated by the lawsuit filed by AACERS against DreamWorks' CEO Jeffrey Katzenberg. Companies should avoid making side deals that favor specific individuals and maintain open communication with all parties involved to reduce the risk of legal disputes which ultimately mitigates the risk of legal conflicts and contributes to a successful acquisition outcome and benefits the market.

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