Analysis of Chinese Semiconductor Companies' Cross-border Mergers and Acquisitions Encountering Political Resistance

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Abstract: Against the background of cross-border mergers and acquisitions, semiconductor companies have a strong momentum of overseas mergers and acquisitions. As a technology-intensive and knowledge-intensive industry, semiconductor companies are the best springboard for acquiring foreign advanced technology and knowledge reserves and realizing industrial upgrading. However, in recent years, Chinese semiconductor companies have been blocked by mergers and acquisitions, and the problem of censorship failure has become particularly prominent. Against this background, this article takes the 2008-2018 semiconductor industry M & A obstruction incident as a sample, explores the reasons for semiconductor companies' cross-border M & A obstructions from the perspective of political factors, and gives some reasonable suggestions.

1. Introduction

As the core of high-tech enterprises, the semiconductor industry is highly innovative and integrated. It is the basic, strategic and pioneering industry of China's national economy. It has penetrated into all areas of national life, production, and national security. Take the semiconductor industry as a key pillar industry for national development. Driven by the rapid development of demand in emerging markets such as cloud computing, big data, mobile Internet, and the Internet of Things in 2018, the global semiconductor market continues to maintain rapid growth. The market size is expected to reach USD 477.94 billion, a year-on-year increase of 15.9%. The domestic market still maintained rapid growth, but the growth rate slowed to 21.5%. The output value of China's semiconductor industry is still low. Chips rely heavily on imports, technology lags behind international advanced levels, and production capacity is insufficient to meet growing market needs. As a knowledge-intensive industry, overseas mergers and acquisitions are the best springboard for industrial transformation and technological upgrading. However, due to the rise of the anti-globalization wave and the "China threat theory", the overseas investment of Chinese semiconductor companies has been frequently blocked, making it difficult for them to make cross-border mergers and acquisitions more difficult.

2. The Time Course and Overall Characteristics of Chinese Semiconductor Companies' Cross-border Mergers and Acquisitions

2.1. Cross-border Mergers and Acquisitions of China's Semiconductor Companies Are Characterized By Three Stages.

(1) In the initial stage of 2008-2014, fluctuations increased. The US subprime crisis occurred in 2008, and the global semiconductor industry was in a downturn. At this stage, domestic enterprises such as Huawei and Ziguang took the lead in seeking out technology acquisitions. (2) The rapid development in 2014-2016 set off a wave. In 2014, the State Council of China issued the Outline for the Promotion of Integrated Circuits to focus on supporting the semiconductor industry and set up the National Integrated Circuit Industry Investment Fund, which plans to invest 120 billion yuan between 2014 and 2017. With the support of a new round of government policies and large funds,

the domestic semiconductor industry has completed dozens of large-scale acquisitions, such as Qingxin Huachuang, CITIC Capital, and Jinshi Investment acquired Howe Technology for $ 1.9 billion, and Beijing Jianguang acquired $ 1.8 billion. In 2015, the RF power division of NXP Semiconductors in the Netherlands, and other aspects of China's semiconductor industry, saw M & A peaks in 2015. (3) M & A has cooled in 2016-2018, tending to be rational. The M & A boom in 2016 has cooled down. Due to the tightening of M & A policies, the increase in the scope of overseas security reviews, and the decline in macroeconomic growth, the amount of overseas investment in China's industry has fallen for the first time in 2017. Cross-border M & A by semiconductor companies has also fallen into the dilemma of purchase restrictions.

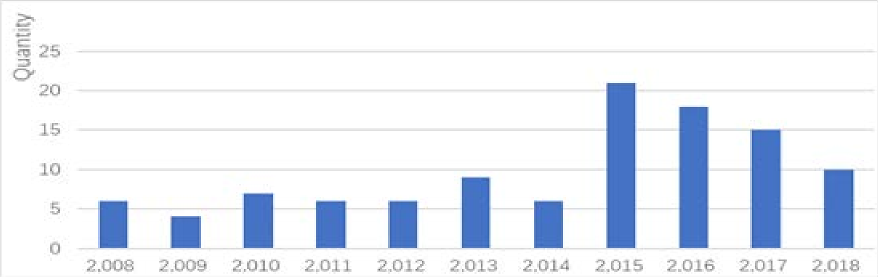

Fig. 1 Cases of semiconductor companies facing political resistance in recent years

2.2. The United States Is The largest Target Country For Mergers and Acquisitions, But Also The Main Source of Political Resistance.

In the past ten years, the United States has ranked first in cross-border M & A investment by Chinese semiconductor companies, accounting for about 50% of the total target countries, followed by developed countries such as Germany, the United Kingdom, and Singapore. The important town of the global semiconductor industry is in the United States. The United States semiconductor industry mainly relies on technological innovation and technological leadership, that is, the mode of technological innovation driving. China's semiconductor industry relies on the semiconductor foundry model to start and gradually enters the correct development track. Technological innovation is a key issue facing the upgrading of the semiconductor industry. Therefore, Chinese semiconductor companies are aggressively entering the US market. At the same time, the CFIUS review in the United States is also a major source of political resistance in cross-border mergers and acquisitions in China's semiconductor industry. Especially after Trump took office, Sino-US trade frictions escalated. In October 2018, new U.S. regulations were issued, requiring foreign investors to report to a commission led by the U.S. Treasury Department on all transactions that may expose foreign investors to key U.S. technologies, including aviation, telecommunications, computers, semiconductors, and batteries Waiting for 27 industries.

3. Types of Resistance In Corporate Cross-border Mergers And Acquisitions

3.1. National Security

From the perspective of international political economy, economic security is an important part of national security. The interdependence of the international economy makes a country's economic development strategy closely related to its national security strategy. With the continuous opening of the economy and the influx of foreign capital, the host government usually chooses to maintain national security by political means. One of the contents of the CFIUS review is "Does it harm the national security of the United States?" However, in reality, national security is a very broad and vague concept. The review standards are generalized and the host government enjoys greater discretion. The United States is the hardest hit area for national security review during cross-border mergers and acquisitions of Chinese semiconductor companies, with 22 cases of blocked mergers and acquisitions due to "CFIUS rejection".

The United States mainly regulates foreign investment in three ways. One is to restrict foreign investment access to specific industries, the other is to directly restrict foreign investment through the introduction of a bill, and the third is to monitor foreign investment by the US Foreign Investment Commission (CFIUS). Foreign investment conducts security review. Compared with the explicit regulations on foreign investment restrictions in the first two methods, the third method, CFIUS's foreign investment security review, has brought significant uncertainty to foreign investors' investment decision choices and success or failure. From the failure of Huawei to enter the U.S. market four times in the early period to the recent years CFIUS has successively prevented Canyon Bridge from acquiring Lattice Semiconductor and Hubei Xinyan ’s equity acquisition of Xcerra. Censorship is becoming more cautious and tough. Especially after Trump came to power, the Sino-U.S. Trade war broke out, not only the semiconductor industry, but even (Greater North Farmers) could not escape national security censorship.

3.2. Interest Groups

Interest groups refer to social members with common political, ruling, and social goals. They are social groups formed based on the requirements of common interests. The purpose is to protect their own interests. Based on the specific factor model of international trade theory, the increase in the international flow of specific capital will affect the distribution effect of trade and cause different interest groups to seek protection. Foreign direct investment will have a favorable impact on the employment, social welfare, and economic development of the host country, but because foreign capital seeks to maximize profits, this investment may harm the interests of the industrial structure and other related enterprises. In this case, interest groups that represent the interests of relevant companies will resort to political channels.

High-tech interest groups try to shape a more favorable internal and external environment for their subsequent development through a series of policy demands and political opinions. Some have been directly raised by non-governmental organizations such as the United States or major US technology giants, while others have been reflected in the lobbying of Congress and the government by high-tech companies. In terms of external relations, high-tech interest groups' main appeals include attaching great importance to intellectual property protection and trade secrets, and on the basis of strict protection of intellectual property and trade secrets, to promote the opening of the information industry market to the United States by developing countries. Because the main competitiveness of the high-tech industry is its unique design and technology, both of which are vital to the survival and development of high-tech companies, and they are almost always reflected in publicly available intellectual property and confidential trade secrets.

3.3. Strategic Industry Protection

Strategic industries refer to industries that occupy an important position in the national economic system and have a significant impact on national economy, people's livelihood, national economic security, and military security. In the 21st century, the overall deepening of economic globalization is an indisputable fact. However, there has been a clear "anti-globalization" trend in the strategic industry field, and major countries have become increasingly stricter in controlling foreign investment into their strategic industries. The traditional argument of protectionism is that overseas competitors enjoy some form of unfair competitive advantage, which also justifies trade and investment restrictions in strategic industries such as armaments, aviation and the media. In addition, this is also a manifestation of technological hegemony. As a high-tech core industry, semiconductors are the focus of supervision in various countries around the world. The United States, Australia, Germany, and the European Union have clearly listed the semiconductor industry as a key technology. The obvious manifestation of technological hegemony in the field of international investment is that government agencies of developed countries have imposed various obstacles on the merger of companies in developing countries, and have invested in companies with high-tech production components, and even adopted various measures to interfere.

3.4. Background of State-owned Enterprises.

In 2017, when Ottaner Technology acquired the ITF, Kent, a Canadian Conservative foreign affairs commentator, said in an interview earlier this month: "Even if the Chinese government has a minority stake, it is controlled by China. If a Canadian company is acquired by it, it will be China Its control. "State-owned enterprises would more easily make M&A transactions subject to government intervention. There are three reasons: First, the host country is worried that the merger and acquisition of state-owned enterprises is usually not promoted for economic purposes but promoted by political interests, which will further threaten national security or transfer business assets. Second, state-owned enterprises usually receive government subsidies from their home countries, which violates the principle of free markets and leads to unfair competition. In addition, the confidentiality or lack of transparency of state-owned enterprises is also one of the reasons why host countries worry about the identity of state-owned enterprises. The lack of transparency makes it difficult for stakeholders to accurately estimate whether a corporate entity has fulfilled various agreements, and entities that do business with Chinese companies in the host country may suffer unexpected economic losses. It can be seen that many problems brought about by transnational acquisitions of state-owned enterprises are likely to cause controversy by local regulators. For example, regulators intervening in the name of national security and technology leaks may make acquisitions inappropriate, thereby delaying or rejecting them. Therefore, compared with other enterprises, the probability of successful cross-border acquisition of state-owned enterprises will be lower, and even if the acquisition is announced, it will take longer.

4. In-depth Analysis of Chinese Semiconductor Companies Encountering Political Resistance.

4.1. International Environment: The Wave of Counter-globalization Is Gradually Emerging.

The expansion of international economic activities, including foreign direct investment, offshore outsourcing, and even migration, is a feature of globalization. Counter-globalization and globalization are a corresponding concept. Counter-globalization refers to the phenomenon of market re-segmentation in different forms and forms that occurs when economic globalization progresses to a certain degree. It includes the market from full opening to conditionalization. The process of opening up or even being fully closed is embodied in various explicit and implicit restrictions on the flow of funds, labor, and commodities. In fact, protectionism has gradually increased in recent years, and the trend of counter-globalization has emerged. Since 2005, many EU member states have turned to preventing cross-border mergers and acquisitions. This protectionism is not new, but has a long and controversial history. When the benefits brought by international trade are enhanced by specialization, the development of comparative advantages, and the achievement of economic scale, which are well understood, there will be some restrictions on strategic industries. Since 2006, at least eight developed, developing and transition economies have developed foreign investment review laws based on national security considerations (for example, Canada (2009), China (2011 and 2015), Finland (2012), Germany (2009) , Italy (2012), South Korea (2006), Poland (2015), and Russian Federation (2008). During the same period, many countries adjusted their foreign-funded national security-related review mechanisms by adding new departments, guidelines, and thresholds. Most adjustments tend to impose more restrictions on investment.

4.2. China: The Overall National Strength Is Increasing Day By Day.

In recent years, China's economic strength and industrial competitiveness have risen significantly as emerging countries. Technologies in high-speed rail, quantum communication, 5G and other fields have approached or even surpassed the West. Chinese companies have formed direct competition with European and American companies in the international market. The West ’s vigilance against China ’s economic development is increasing unprecedentedly, launching a new and aggressive version of the “China Threat Theory”, in the “Made in China 2025”, “Belt and Road” initiatives, overcapacity, foreign investment, trade surplus, knowledge Criticism in the field of property rights has prevented China's escalating doors from rising. In particular, China ’s overseas investment strategic intention is over-interpreted and exaggerated and distorted. It is believed that there are “invisible hands” behind China ’s overseas mergers and acquisitions. It has densely woven a large network of overseas interests covering the world, forming a high-quality European and American The strategic chess game of cutting-edge technology and control infrastructure poses a huge threat to its economic interests and national security. Based on such understanding and consideration, the United States and the United States have joined forces to tighten the foreign investment security review system and adopt the principle of non-discrimination on the surface.

4.3. Developed Countries: Safeguard The Sci-tech Hegemony of Large Countries.

Technological hegemony means that the overwhelming political, economic, military, and technological strength of a technological hegemonic country dominates the international technology market and enforces its will, principles, or rules throughout the market to obtain hegemonic power. Scientific and technological hegemony is not only the foundation of economic hegemony and military hegemony, but also an extension of both. The benefits that cannot be obtained by risk of force can be obtained through non-violent market competition on the technology trading market. The international technology market is a public product produced by a hegemonic country. If other countries want to use this product, they must pay for it, not just by taking a "free ride". Such fees are collected by technological hegemonies by exploiting other countries, especially developing countries. Specifically, this exploitation is achieved by forcing the implementation of its technical specifications to open the technology markets of other countries, and then using its technical advantages to conduct unequal transactions and the relative depreciation of technological progress in technology transactions. China's semiconductor companies hope to acquire the latest high-tech and cutting-edge technologies through mergers and acquisitions, and try to change the passive relationship between dependence and dominance, which will inevitably be opposed by the interests of developed countries.

5. Countermeasures and Suggestions For Chinese Semiconductor Companies Going Global

5.1. At The Government Level: China Will Further Improve The National Security Review System For Foreign Mergers And Acquisitions In China, And Counteract The US Security Review.

Because China ’s national security review laws are not comprehensive and systematic, while Chinese companies have undergone stringent scrutiny of U.S. investment, the Chinese government has difficulty countering American companies, resulting in unequal status between Chinese and American companies. In April 2015, the State Council promulgated the "Trial Measures for the National Security Review of Foreign Investment in Pilot Free Trade Pilot Areas", and implemented the national security review measures for foreign investment in the China Free Trade Pilot Area in accordance with the negative list management model to guide the orderly development of foreign investment To maintain national security. However, compared with the United States and other countries, this method is only implemented on a trial basis. There is no dedicated national-level review agency. The security review process is not systematic. The Chinese government should try out the free trade pilot zone first, and gradually improve China's foreign security national security review mechanism, including the definition of national security, the definition of foreign investment, the establishment of review institutions, and the design of national security review procedures. Form a systematic and reproducible experience and gradually promote it nationwide.

5.2. Enterprise Level:

5.2.1. Choose The Right Time To Start A Merger.

If the M & A deal coincides with the presidential election, competitors in the election are likely to use political means to crowd out Chinese companies, and national security is undoubtedly the most appropriate reason. Therefore, Chinese companies can consider avoiding large-scale investments in politically sensitive periods to avoid the risk of becoming a political game piece.

5.2.2. Semiconductor Companies Should Be Prepared To Respond To U.S. National Security Reviews.

Although the number of CFIUS reviews of Chinese companies is increasing every year, most companies have finally passed the review process or found a solution. In semiconductor companies that have failed, mainly censorship is automatically abandoned. When Huawei acquired 3Leaf, it underestimated the sensitivity of the semiconductor transaction and did not take the initiative to report to CFIUS in a timely manner, which caused the concern of the United States and eventually forced it to abandon the transaction. When responding to the CFIUS review, semiconductor companies, especially state-owned companies, should abandon the negotiation approach and actively set up a professional consulting team to cooperate with the submission of review materials to eliminate CFIUS 'concerns about national security, especially to make CFIUS convinced that the products and Services can continue to be provided for normal government use.

5.2.3. Take Advantage of The Domestic Suitability of The US National Security Review.

When it is difficult to resolve disputes over foreign direct investment through consultations, it is possible to resort to judicial channels, that is, through the US judicial channels, to bring a lawsuit against a decision made by the US government. In 2012, Sany Heavy Industry v. CFIUS and US President Barack Obama was a typical case in which judicial procedures were used to resolve related disputes. Although U.S. law stipulates that the president's suspension or prohibition of transactions is subject to judicial review exemption, Sany Heavy Industry Co., Ltd. has filed a lawsuit with a presidential decree exceeding the authority conferred by Article 721 of the Federal Rules of Civil Procedure, deeming its conduct to be incompatible with procedural justice, Violates the US Constitution. In 2015, a U.S. court ruled that Rawls prevailed, stating that the company had a property right in the BC project that was protected by constitutional justice. Although the case is tortuous, it shows that Chinese companies have learned to use the suitability of the US national security review to safeguard their legitimate interests and no longer remain silent on discriminatory treatment in the United States.

5.2.4. Tell A Good Chinese Story and Dispel Doubts About The "China Threat Theory"

Facing the tide of mergers and acquisitions of Chinese semiconductor companies in the United States, the US government's suspicions are increasing. The US government suspects that Chinese companies are trying to acquire more strategically important technology companies or utility companies, and it is likely that the Chinese government is behind these mergers and acquisitions. They worry that "China uses investment as a weapon, trying to absorb their advanced technology, and at the same time destroying their defense industry foundation." In essence, the US government's doubts about Chinese corporate mergers and acquisitions are a haunting new version of the "China threat theory." In his first National Security Strategy Report, the Trump administration defined China as a "revisionist" country and regarded China as a "strategic competitor." In the face of increasingly stringent security reviews, Chinese companies must not only carry out targeted responses on the review process, but also be good at telling Chinese companies' own stories, establish a sense of social responsibility, and enhance brand influence.

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