## Corporate Finance/M&A - India

Bharti-MTN deal: two missed calls

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In the last two years, Indian telecommunications giant Bharti Airtel has twice attempted to acquire South African telecommunications service provider MTN. However, Bharti failed on both accounts - each time for a different reason. Had the deal gone through, it would have resulted in the third-largest telecommunications company in the world, with combined annual revenues of over $20 billion and a subscriber base of over 200 million.

**Merger attempts**

In 2008, Bharti proposed to acquire an approximate 40% stake in MTN. The companies reached an in-principle agreement and executed a term sheet. Thereafter, MTN proposed an alternate structure which contemplated the acquisition of the majority of Bharti's shares, thereby making Bharti a subsidiary of MTN. The modified deal structure was unacceptable to Bharti, as it was not in favour of compromising the interests of its shareholders. As a result, the deal was aborted.

In 2009, against the backdrop of a completely different global economic market, the two companies recommenced their merger talks. According to media reports, the complex transaction structure envisaged that Bharti would acquire a 49% stake in MTN and, in turn, MTN and its shareholders would respectively acquire a 25% and 11% economic interest in Bharti, amounting to a total of 36%. The term 'economic interest' implies that the shareholders have no voting rights, but are entitled to receive dividends and enjoy pecuniary benefits. The MTN shareholders would have acquired the stake through the issue of global depositary receipts by Bharti. A global depositary receipt is effectively a depositary receipt which represents the underlying equity shares of a company, which in this case would have been Bharti. MTN shares would have traded on the Johannesburg Stock Exchange.

**Alleged deal breakers**

The closure of the deal was greatly anticipated and the overall perception was tilted in favour of its completion. However, it fell through, allegedly due to regulatory issues. According to speculation, the principal reasons were the prohibitions on dual listing and capital account convertibility. MTN was keen to retain its independent identity and insisted on dual listing. However, in India, dual listing is not permitted. Dual listing is the process by which a company can be listed and traded on the stock exchanges of two countries. Thus, it allows companies to retain their separate legal identities. Shareholders can buy and sell the companies' shares on the stock exchanges of the countries in which their shares are listed. Consequently, there is no legal merger.

In the Bharti-MTN case, dual listing would have meant the existence of two separate entities under a common management. However, despite talks at the highest level to introduce the dual listing concept, the Indian government did not rush to take any action in this respect. In order to allow dual listing, numerous existing laws would require major amendments, including the Companies Act 1956, the Foreign Exchange Management Act 1999, the Securities Contracts (Regulation) Act 1956, the Listing Agreement and the Takeover Code. Dual listing would also require capital account convertibility, which at present is not permitted in India. The Indian regulatory regime allows current account convertibility, but is not yet completely open to capital account convertibility. Once permitted, it will allow the easy exchange of local currency for foreign currency for the acquisition of capital assets abroad. Therefore, the prerequisite for dual listing (ie, capital account convertibility) will enable investors to buy shares of a dual-listed company in one country and sell them in an overseas market. It will give investors the ability to move freely from local currency to foreign currency and *vice versa*.

These two regulatory hurdles turned out to be the eventual deal breakers.

**Comment**

The Bharti-MTN deal would have been one of India's largest cross-border transactions. Bharti would have had a tremendous opportunity to tap into MTN's market presence and increase its network base in the African continent. However, regulatory hurdles and nationalistic pride came in the way of the mega-deal. The only positive fallout is that the Indian legislature is now working towards removing the legal stumbling blocks to make way for future transactions which tow a similar line to that of Bharti-MTN.

Bharti nonetheless continued with its African safari and eventually MTN's loss turned out to be Zain's gain. Bharti has now directly acquired 100% shares in Zain Africa. The transaction structure was different from the Bharti-MTN arrangement: Bharti established two special purpose vehicles in Singapore and the Netherlands and acquired Zain for $10.7 billion by way of a leveraged buy-out. In the end, Bharti did manage to connect with the African continent, albeit with a different caller.

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