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MERGER AND ACQUISITION: COMPARATIVE ANALYSIS BETWEEN INDIA & USA IN TERMS OF TECHNOLOGY TRANSFER

Abstract:

With the changing economic dimensions and exponential growth in technology the role of the market players is increasing with this coming into the picture, Merger and Acquisition (“M&A”) is now seen as a dynamic tool for technological advancements, monetary gain etc. This paper contains the interplay between M&A in technology transfer with comparative analysis within the ambit of India and USA. First, The Researcher have comparatively analyzed different laws relating to technology transfer via M&A in India and USA with the help of Charts to analyze the current market trends in both the countries. Second, The Researcher did case study of companies which have gone through technology transfer via M&A in the individual countries and underlined the outcomes thereof. At last, The Researcher ha pointed out the potential challenges in the implications of technology in M&A and proposed the conclusion and the suggestions to the problems thereof.

Introduction:

“Did you know maximum times M&A deals in worldwide leads to job losses and dismantling of innovative teams”¹, Mergers and acquisitions (M&A) are a common strategy for companies worldwide to enhance their capabilities, streamline processes, and generate higher value. However, it's noteworthy that a significant number of M&A deals lead to job losses and the dismantling of innovative teams, often diverging from the initial goal of value creation. This paper delves into the intricate interplay of M&A within the realm of technology transfer, where business strategies intersect with intellectual property considerations, reshaping market dynamics and steering the course of industries. While M&A activities are significant globally, the focus here will be on how this dynamic plays out in the United States and India.

In the United States, M&A frequently revolves around tech companies seeking to acquire intellectual property and expertise to bolster their competitiveness. This approach allows them to leapfrog the time-consuming process of in-house R&D, instead opting to absorb innovation through strategic acquisitions.

The technology transfer from academia to the commercial sector is particularly noteworthy, as it bridges the gap between research and real-world applications. However, this also raises national security concerns, especially in tech sectors with implications for defense and sensitive information. Consequently, regulatory frameworks and oversight mechanisms have been established to scrutinize and, if necessary, restrict M&A activities that could compromise national security.

In India, M&A serves as a catalyst for technological growth as companies look to acquire assets, capabilities, and technologies to bolster their positions in a rapidly evolving marketplace. Regulatory approvals from the Competition Commission of India (CCI) and compliance with data privacy regulations are pivotal steps in the M&A process. These measures are in place to ensure that M&A activities do not hinder competition or compromise data security and privacy, both of which are paramount in today's digital age.

Two sectors where technology transfer plays a pivotal role in India are pharmaceuticals and manufacturing. In the pharmaceutical sector, M&A often involves the acquisition of drug formulations, research pipelines, and manufacturing facilities. This technology transfer influences product development, enabling companies to diversify their portfolios and expand into new markets. Similarly, in the manufacturing sector, M&A activities frequently entail the acquisition of advanced manufacturing technologies and automation solutions, which improve operational efficiency and product quality.

The impact of M&A on technology transfer is further shaped by the legal frameworks and cultural contexts of both the United States and India. The intellectual property laws, regulatory approvals, and data protection measures vary from country to country, necessitating careful consideration and compliance by businesses engaged in cross-border M&A activities.

In conclusion, the interplay between M&A activities and technology transfer is a complex and multifaceted phenomenon, significantly influencing the trajectories of industries in both the United States and India. While M&A holds the promise of enhancing competitiveness and driving innovation, it must navigate the intricacies of intellectual property laws, regulatory approvals, and data protection measures. Ultimately, successful and compliant M&A transactions require a nuanced understanding of these dynamics, as they are integral to shaping the future of business in an increasingly interconnected world.

Research Objective:

1. To Assess the Trends and Patterns of M&A Activities:

Investigate the historical trends in M&A activities in India and the USA over the past decade. Identify the industries or sectors where M&A involving technology transfer have been most prominent.

2. To Compare the Legal and Regulatory Frameworks:

Investigate the legal and regulatory frameworks governing M&A and technology transfer in India and the USA. Analyze how differences in regulations impact the strategies and outcomes of technology transfer.

3. How IPMS can be a tool to a successful M&A in technology transfer:

A need for IP Management System and its need in Merger and acquisition.

Investigate how a proper Intellectual Property Management System (IPMS) model can be used as a tool in M&A.

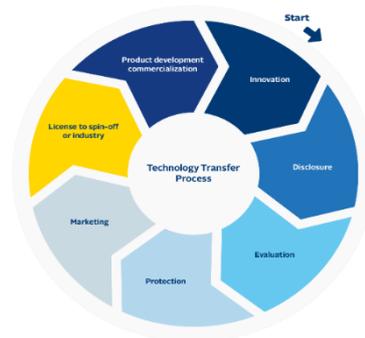
Basic understanding of Merger and acquisition:

Merger: A merger is described as the coming together of two existing companies to form a single, unified entity with the aim of gaining advancements in the market. Under the Companies Act of 2013, a merger is officially defined as the "combination of two or more entities into one, with the desired result not just being the accumulation of assets and liabilities, but the creation of a distinct and unified business." Unlike acquisitions, a merger is typically a mutual decision made by both businesses involved. When companies merge, ownership is retained, but the organizational structure and name may change.

There is also a specific type of merger called a "reverse merger." This occurs when an active private company merges with a dormant public company. In this scenario, the private company acquires the majority of shares of the publicly listed company, resulting in both companies merging.

Acquisition: Acquisition, on the other hand, is a business mechanism through which one company gains control over the affairs of another, typically by acquiring more than 50% of the shares of the target company. In contrast to mergers, acquisitions do not lead to the formation of a new company. The acquiring company remains distinct. During an acquisition, negotiations often revolve primarily around the purchase price. If a company seeks to acquire another business, the selling price can usually be determined by negotiation. The company acquiring the other business accomplishes this by either purchasing its stock or paying in cash. It's worth noting that while "acquisition" and "takeover" are often used interchangeably, they carry slightly different nuances. In general, "acquisition" implies a more cooperative and amicable transaction where both firms work together, while "takeover" suggests that the target company may resist or strongly oppose the purchase. Understanding the distinctions between mergers and acquisitions is crucial for businesses considering these strategies, as they have different implications and outcomes in terms of ownership, organizational structure, and decision-making.

Technology Transfer: It is the process of moving knowledge, ideas, and innovations from one person, organization, or place to another, so that the receiving party can use and apply that knowledge to create



new products, improve processes, or develop new technologies.ⁱⁱ

Source: University of toledo

Comparative Analysis b/w India and USA Laws:

Merger and Acquisition vis-à-vis Indian laws:

In India, mergers and acquisitions (M&A) and technology transfers are subject to a comprehensive regulatory framework overseen by various legislations and regulatory bodies. The key regulatory entities include the Securities and Exchange Board of India (SEBI), which plays a pivotal role in overseeing M&A transactions involving publicly listed companies, and the Competition Commission of India (CCI), responsible for ensuring fair competition and approving M&A transactions that impact competition. Additionally, the Foreign Exchange Management Act (FEMA)ⁱⁱⁱ governs foreign exchange transactions, crucial for regulating cross-border M&A and technology transfers. The Companies Act^{iv} provides the foundational legal framework for M&A activities. India's intellectual property laws, including the Patents Act, Copyright Act, Trademarks Act, and Designs Act, protect intellectual property rights and govern licensing and technology transfer. The Indian Contract Act^v forms the basis for legally enforceable technology transfer agreements, while the Competition Act^{vi} regulates anti-competitive practices in the market. Lastly, the Reserve Bank of India (RBI), as the central bank, issues guidelines under FEMA that impact aspects such as pricing, valuation, and reporting for cross-border transactions related to technology transfer. Collectively, these regulations shape the legal and operational landscape for M&A and technology transfer activities in India.

Merger and Acquisition vis-à-vis USA laws:

Mergers and acquisitions (M&A) in the United States are subject to a dual regulatory framework involving both federal and state jurisdictions, with federal oversight primarily focusing on antitrust and securities regulations. The federal government, through the Securities and Exchange Commission (SEC), regulates sales and transfers of securities, ensuring transparency and compliance with disclosure

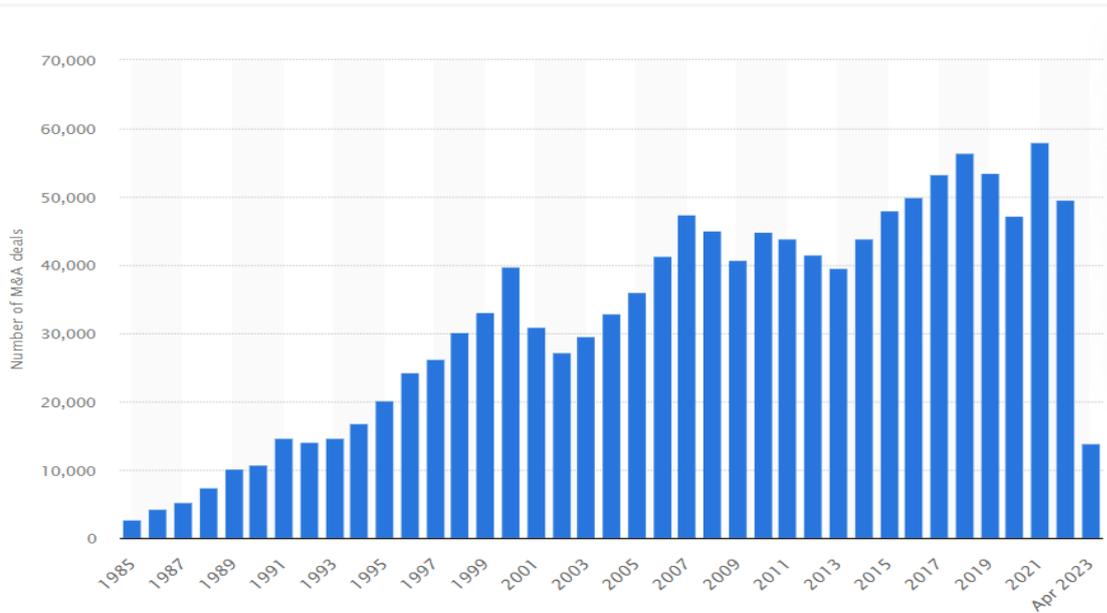
requirements. The Antitrust Division of the Department of Justice (DOJ) and the Federal Trade Commission (FTC) govern competition matters, scrutinizing M&A activities to prevent anticompetitive practices.

Key legislation related to M&A and technology transfer include the Sherman Act, which prohibits anticompetitive agreements and monopolistic practices, and the Clayton Act, addressing anticompetitive practices and mergers. The Hart-Scott-Rodino (HSR) Act mandates pre-merger notifications to the FTC and DOJ for certain large acquisitions, enabling them to assess potential antitrust concerns.

Additionally, the Securities Exchange Act of 1934 regulates securities exchanges and disclosure requirements for publicly traded companies involved in M&A. The Bayh-Dole Act encourages technology transfer by allowing institutions to retain ownership of inventions developed with federal funding and fostering licensing agreements with private companies

Merger and Acquisition trends in India and USA:

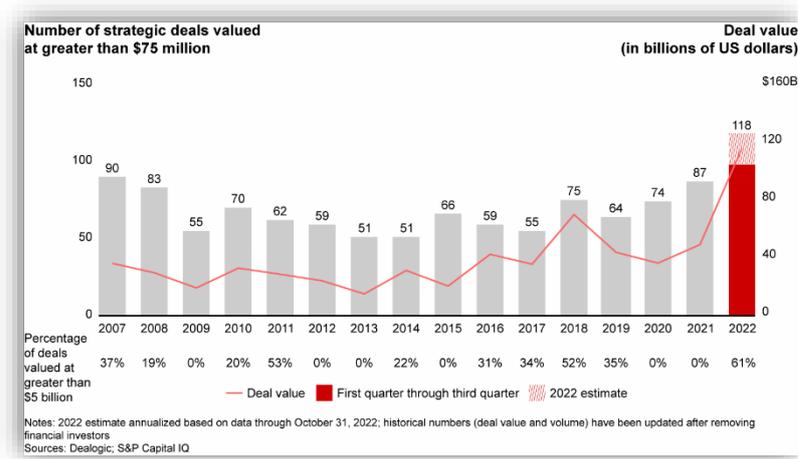
Global Trends:



Source: Statista^{vii}

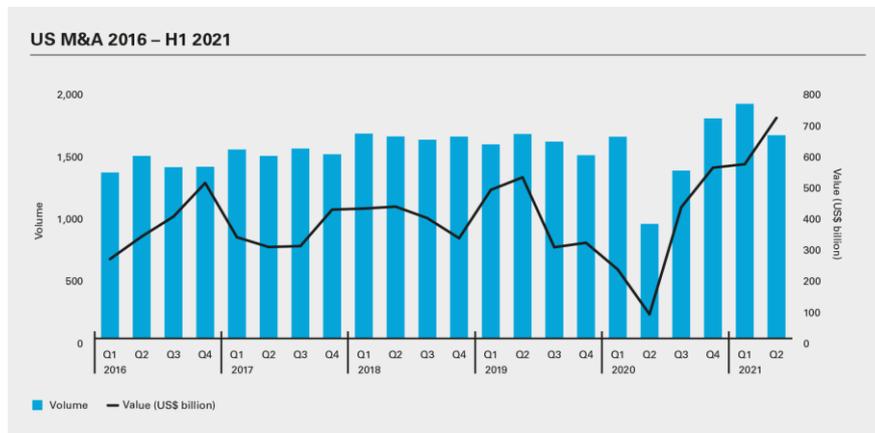
India:

The concept of Mergers and Acquisitions (M&A) has attracted the corporate sphere all over the world. Mergers and acquisitions (M&A) activity in India is no different.^{viii} M&A is gaining popularity over the years with the changing economic dimensions, and it is also seen as a strategic tool, India has emerged as one of the top countries in terms of M&A deals and sector analysis shows the contribution of Pharma and Energy Sector at the top spots with maximum M&A deals^{ix}.



Merger Acquisition trends in India^x.

USA:



Source: White & Case^{xi}

Interplay between IP and merger and Acquisition:

^{xii}In today's dynamic industry, companies use mergers and acquisitions to achieve growth and stability. Intellectual Property (IP) plays a crucial role in these transactions, as it increases the value of the merging entities. IP rights, which include trade secrets, copyrights, and patents, are essential for

companies to innovate and expand their product portfolio. This allows companies to develop better products, increase production efficiency, and create greater cash flow. Obtaining IP assets also gives companies a competitive edge, as ownership gives rise to a monopoly in the market. Additionally, acquiring newer IP assets opens up new avenues for market transactions and new production lines. Due diligence is essential during these transactions to determine the legal status of a company's IP.

Intellectual property (IP) due diligence is a crucial process in mergers and acquisitions (M&A) transactions. It involves analyzing the intangible assets of a business, focusing on assessing their intrinsic value and value addition. The value of an IP asset is determined by its right to exclude competitors and generate measurable economic benefits. IP valuation is a crucial step in the process, and it involves determining the cost of creating and developing the IP. Common methods include market-based, cost-based, and income-based valuations. Neglect in IP due diligence can result in significant losses, as seen in the case of Volkswagen and Rolls-Royce Motor. IP assets are essential for a company's growth, diversification, and market exploration.

Effective intellectual property (IP) management is pivotal in merger and acquisition (M&A) endeavors, particularly when technology transfer is involved. IP management models guide critical aspects of the process.

Initially, they aid in IP due diligence, evaluating target IP portfolios for valuation and risk assessment. During integration, these models facilitate the harmonization of IP assets and practices. In technology transfer agreements, IP management models ensure the creation of legally sound frameworks. Post-M&A, they help protect and manage IP assets.

Aligning IP strategies and navigating complex IP laws are also areas where these models prove invaluable. In summary, they serve as essential tools for enhancing technology transfer's value within M&A deals.

The gap between Intellectual Property (IP) generation and commercialization is a significant concern for organizations, particularly in developing countries. To address this, an IPM model has been developed, which can assist technology and IP managers in developing their own IPMS and self-assessing existing ones. The model consists of 15 major IPM processes, including IP generation, protection, commercialization, acquisition, and enforcement. The model is easy to implement and can be applied to any sector with modifications. It provides guidelines for maintaining IP inventories, helps in evaluating IPMS performance efficiency, and is self-assessment tool for technology and IP managers. The study's findings can be applied to other industry sectors, such as government research institutions, educational organizations, and public R&D centers^{xiii}.

Case study of company M&A in terms of Technology transfer in India and USA:

INDIA:

Case Study: Tata Consultancy Services (TCS) - Acquisition of Citigroup's Global Services

Background:

Tata Consultancy Services (TCS) is an Indian multinational information technology (IT) services and consulting company headquartered in Mumbai, India. TCS is one of the largest IT services firms in the world, offering a wide range of services including software development, consulting, and business process outsourcing.

Acquisition Details: In 2008^{xiv}, TCS made a significant move towards technology transfer through its acquisition of Citigroup's Global Services (CGS) division. This was a strategic acquisition aimed at enhancing TCS's global presence and capabilities in the IT and business process outsourcing (BPO) space. The acquisition involved TCS taking over the management and operations of CGS, which provided a range of services to Citigroup across various domains including banking, finance, and technology.

Technology Transfer and Benefits:

Domain Expertise: The acquisition of CGS brought TCS access to Citigroup's deep domain expertise in financial services. This allowed TCS to expand its offerings and cater to a broader range of clients in the financial industry.

Technology Stack: CGS had developed proprietary technology platforms and systems to support Citigroup's operations. TCS gained access to these technologies, which could be integrated and leveraged across its client base, leading to enhanced service capabilities.

Global Footprint: The acquisition provided TCS with an expanded global footprint, as it gained a significant presence in multiple countries where CGS operated. This allowed TCS to better serve its clients on a global scale and establish stronger client relationships.

Talent Pool: TCS acquired a skilled workforce from CGS, including professionals with specialized knowledge in finance and technology. This talent pool contributed to TCS's ability to offer more specialized solutions to its clients.

Process Efficiency: By incorporating CGS's operational processes and best practices, TCS could improve its own operational efficiency and service delivery mechanisms.

Risk Diversification: With a more diversified portfolio of services, TCS was less dependent on any single industry or domain, reducing risks associated with market fluctuations.

Challenges and Considerations:

Cultural Integration: Managing the integration of two different organizational cultures and work environments was a challenge. Effective communication and collaboration were crucial to ensuring a smooth transition.

Technology Alignment: Integrating the technology platforms of the two companies while ensuring compatibility and seamless operation required careful planning and execution.

Talent Retention: Retaining key talent from CGS was essential to preserving the acquired domain expertise and technology know-how.

Client Transition: Ensuring a seamless transition for CGS's existing clients was critical to maintaining their trust and satisfaction.

Outcome:

The acquisition of Citigroup's Global Services division provided Tata Consultancy Services with a significant boost in its global capabilities, technology portfolio, and domain expertise. TCS was able to leverage the technology transfer to enhance its offerings and expand its client base in the financial services sector. This case demonstrates how a strategic merger and acquisition can facilitate technology transfer and contribute to the growth and transformation of a company's operations and services.

USA:

Case Study: Microsoft - Acquisition of GitHub

Background:

Microsoft Corporation is a leading American multinational technology company headquartered in Redmond, Washington. It is known for developing, licensing, and selling a wide range of software, hardware, and services. Microsoft is a pioneer in the technology industry, with a strong focus on software development, cloud computing, and enterprise solutions.

Acquisition Details:

In 2018, Microsoft announced its acquisition of GitHub, a popular web-based platform for version control and collaboration among software developers. GitHub hosts millions of open-source projects and serves as a hub for developers to collaborate, share code, and contribute to various software projects.^{xv}

Technology Transfer and Benefits:

Developer Community: With the acquisition of GitHub, Microsoft gained access to a vast and highly engaged community of developers from around the world. This allowed Microsoft to tap into the collective expertise and creativity of this community for its own products and services.

Open Source Expertise:

GitHub is closely associated with the open-source software movement. Microsoft's acquisition of GitHub signaled its commitment to open source and its desire to participate more actively in the open-source community. This led to increased collaboration and contributions to open-source projects.

Developer Tools and Services:

Microsoft integrated GitHub with its existing suite of developer tools and services, such as Visual Studio and Azure DevOps. This integration enhanced the capabilities of these tools, making them more accessible and user-friendly for developers.

Innovation and Research:

Through GitHub, Microsoft gained visibility into emerging technologies, trends, and innovation happening in the software development space. This insight contributed to Microsoft's strategic decisions and product development efforts.

Cloud Integration:

GitHub's platform was integrated with Microsoft's cloud computing platform, Azure. This integration allowed developers to seamlessly deploy, manage, and scale applications using Azure services directly from their GitHub repositories.

Challenges and Considerations:

Community Trust: The open-source community was initially cautious about Microsoft's intentions given its history with proprietary software. Microsoft had to work to gain the trust of the GitHub community and assure them of its commitment to open source.

Cultural Alignment: GitHub had a unique culture and ethos that was centered around open source and collaboration. Microsoft needed to ensure that this culture was preserved after the acquisition.

Competition and Regulatory Scrutiny: The acquisition faced regulatory scrutiny due to concerns about potential anti-competitive behavior and the impact on the developer ecosystem.

Balancing Integration and Autonomy: Microsoft had to find the right balance between integrating GitHub's offerings with its own services while also allowing GitHub to operate semi-independently to maintain its developer-friendly environment.

Outcome:

The acquisition of GitHub by Microsoft led to increased collaboration between the two companies and the broader developer community. Microsoft's commitment to open source was reinforced, and the integration of GitHub with Microsoft's developer tools and cloud services created a more seamless and efficient experience for developers. The case demonstrates how a technology-focused merger and acquisition can facilitate knowledge sharing, innovation, and synergies that benefit both the acquiring company and the wider industry ecosystem.

Potential challenges of technology transfer in Merger and Acquisition (India and USA):

With the increasing use of M&A in technology and changing dynamics of the market there are various potential challenges that are to be addressed for efficient technology transfer in the coming years.

Some of the potential challenges are discussed below:

- **1.IP Integration and Ownership:** Consolidating intellectual property (IP) assets, patents, copyrights, and trade secrets from two entities can lead to conflicts over ownership, licensing, and usage rights.
- **2.Regulatory Issues:** Different industries and countries have varying regulatory requirements related to technology transfer, data privacy, and security.
- **3.Unemployment:** Sometimes merger and acquisition leads to job loss as it generates a abundance of labour which consequently result into layoffs.
- **4.Human Resources Issues:** Retaining and managing key technical personnel during the transition is crucial to ensure that valuable technological knowledge is not lost.
- **5.Data Privacy and Security:** Transferring technology often involves sharing sensitive data and information. Ensuring data privacy compliance and protecting against breaches is a significant challenge.

- 6. Dismantling innovative teams: M&A in technology transfer in some case leads to dismantling or loss of potential innovative team due to lack of cultural balance and change in the management.
- 7. Over investment on R&D: Consequently, after merger and acquisition, the companies start investing much on their R&D due to which it leads to economical imbalance for the rest of the departments of the respective company.
- 8. Lack of speedy mechanism: In both the countries the process of m&a with technology transfer leads to delays and legal complications.

Conclusion and Suggestion:

In conclusion, the dynamic landscape of mergers and acquisitions (M&A) in the context of technology transfer has been analyzed within the realms of India and the United States. These M&A activities serve as pivotal mechanisms for technological advancements, growth, and market competitiveness. However, the process is not without its challenges and complexities, which differ between the two nations.

In the United States, M&A often revolves around tech companies seeking to acquire intellectual property and expertise for strategic advantage. This approach expedites innovation absorption but raises national security concerns. Regulatory frameworks have been established to address these issues.

Conversely, India utilizes M&A to catalyze technological growth, especially in sectors like pharmaceuticals and manufacturing. Regulatory approvals, data privacy, and competition are central considerations in Indian M&A endeavors.

To navigate these challenges and enhance the effectiveness of technology transfer through M&A, several suggestions can be considered:

Strengthen Due Diligence: Conduct thorough intellectual property due diligence to assess the quality and potential risks associated with IP portfolios, enabling more informed decision-making during M&A transactions.

Alignment with Regulatory Frameworks: Adhere to country-specific regulations and compliance requirements, understanding that these vary between nations and industries. Ensure timely approvals and transparent reporting.

Cultural Integration: Focus on effective post-M&A integration, preserving the unique cultures and expertise of both entities. Promote communication and collaboration to facilitate a smooth transition.

IP Management Models: Implement robust Intellectual Property Management Systems (IPMS) to safeguard IP assets, streamline technology transfer, and align IP strategies with broader business objectives.

Talent Retention: Prioritize the retention of key talent during M&A transactions, especially those possessing critical technological knowledge, to ensure the continued success of transferred technologies.

Data Privacy and Security: Implement stringent data privacy and security measures to protect sensitive information during technology transfer, reducing the risk of breaches and non-compliance.

Monitoring Trends: Continuously monitor global and sector-specific M&A trends to adapt strategies to changing market dynamics and regulatory environments.

International Collaboration: Foster international collaboration and partnerships to harness global technological advancements and facilitate smoother cross-border technology transfers.

In conclusion, successful technology transfer through M&A is a complex and multifaceted endeavor that requires a deep understanding of the legal, cultural, and strategic nuances in each country. By addressing the potential challenges and adopting strategic measures, businesses can optimize the benefits of technology transfer and contribute to innovation and growth on a global scale.

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