併購契約之侵權行爲責任

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摘　要

雖說企業可以藉由合併及收購的手段去壯大實體規模、順便整合資源，以換取更高的市占率與競爭地位，不諱言此乃成功併購所帶來的利基，蓋透過購買取代創建子公司不僅省時省力，普遍能預期創造一加一大於二的效果。然，併購也可能付出鉅額代價、招致官司災難。二十世紀美國德士古石油（Texaco Oil）收購蓋蒂石油（Getty Oil）導致破產，就是一個血淋淋的失敗案例；而台灣明基併購德國西門子、國巨收購菲利蒲的被動元件部門，也都經驗了慘烈教訓。尤當德士古石油併購案中的目標公司 - 蓋蒂石油因拒絕履行與賓茲石油公司（Pennzoil）的併購契約，而改以接受德士古石油的高價收購後，所引致 Pennzoil 與 Texaco 之間長達四年的一連串訴訟事件。本文爰引介美國德士古石油公司收購蓋蒂石油公司一案，說明併購行為因受到契約法的拘束，而可能產生企業併購倫理、履行契約義務等侵權賠償責任。

A Merger Contract involving Tortious Liabilities

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Abstract

Although companies can expand their entity scales through merger and acquisition (M&A), and by the way accomplish integration of resources, in exchange for greater market share, and obtain a better competitive position, it has no doubt that a successful acquisition will bring a niche instead of establishing subsidiaries, which not only saves time and effort but also expects to create the effect of one plus one greater than two. However, a failed merger may also pay a huge price and result in legal disasters afterwards. For example, in the 20th century, the United States incorporation, *Texaco Oil* filed for bankrupt after acquisition of *Getty Oil*, which was considered a bloody failure. While the Taiwanese *BenQ*, Continental Systems Incorporation, acquired Germany Siemens's passive components department and *Yageo* Corporation acquired *Philippe's* department, have also experienced bitter lessons. In the litigations of *Texaco* merger case, *Getty* as the target company who refused to comply with *Pennzoil* merger contract, turned to accept the Texaco Incorporation's better offers, which later brought about subsequently a series of lawsuits. This paper aims to discuss the case of *Pennzoil v. Texaco*, accounts for how a merger is bound by the contract law, and consequently a merger's acquisition ethics, contractual obligations, as well as tort liability may arise.