

SECTORAL ACTIVITIES PROGRAMME

Working Paper

**Competition policy and international labour and
social relations (postal and telecommunications
services, water, gas, electricity)**

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*Working papers are preliminary documents circulated
to stimulate discussion and obtain comments*



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Preface

This publication is part of the research studies undertaken by the Sectoral Activities Programme of the ILO. The working paper focuses on two sectors which have been rapidly opening up to competition: postal and telecommunications services, on the one hand, water, gas and electricity services, on the other. The study starts from the premise that there are several common traits among these network services, where the pace of withdrawal of the State and other public bodies is accelerating, in tandem with movements towards liberalization, privatization and globalization.

The links between competition policy and international labour and social relations have rarely been the object of research. An examination of the issues in the aforementioned sectors is based on the growing number of private sector enterprises which coexist with public sector operators, and the fact that private sector employees work alongside (sometimes in the same enterprises) civil servants and public employees.

The social impact of competition policy is examined in this working paper from two perspectives: the opening up of the sectors to competition and the structural links between enterprises. This working paper therefore considers the question of mergers and acquisitions in the sectors under review. It describes the manner in which merger control can provide the opportunity to enrich social dialogue. A strengthening of social dialogue in turn would facilitate taking into account employees' interests when mergers and acquisitions occur, in particular making the processes more transparent for all parties concerned. From this perspective, the study is intended as a preliminary reflection for the basic report of the Tripartite Meeting on the Employment Impact of Mergers and Acquisitions in the Banking and Financial Services Sector, to be held in Geneva, 5-9 February 2001.

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1. Introduction

The worldwide phenomenon of opening up of large public utilities to competition, the new modalities of sectoral and intersectoral regulation, as well as the various structural links among operators have significant social repercussions in the area of employment, human resource management, working conditions or labour relations. It is therefore natural that competition issues have become a priority area for action by the international social actors. The latter's interest is also related to the fact that, at the national as well as the international level, competition policy is one of the means to counterbalance the power of multinational enterprises.

The present study describes the impact of competition policy – at least regarding two of the major aspects (opening up of public utilities to competition and the mergers) – on social (labour) relations worldwide. This subject is approached through the study of utility sectors which are currently experiencing active liberalization in various regions of the world: postal and communications services; water, gas and electricity services.

The internationalization and diversification of public service enterprises tend to deprive the social partners of their traditional means of information, consultation and negotiation. Indeed, up until recently, the modalities of social dialogue were often applicable, either to a public sector dominated by a social culture of public service (if not civil service) or a private sector which was consumer-oriented and market-driven. In the wake of the general trend towards liberalization, public and private operators are rapidly restructuring by attenuating, indeed in certain enterprises eliminating, the dividing line between commercial management and the principles of public service. Strengthened by a spate of mergers and acquisitions worldwide, these developments modify considerably the organization of work and the status of employees in the enterprises concerned.¹

The opening up of utilities to competition is taking place at three levels: national, regional and global. In the majority of countries, the national level is historically the first stage of action because it is in this framework that the utilities under review have been organized – in the form of public monopolies (national, regional, municipal) – and this has of course determined the nature of the social and labour relations in those sectors.

¹ For an analysis of the social implications of structural and regulatory changes for employment, working conditions and labour relations in the sectors under review, please consult the following documents:

- ILO: *Structural and regulatory changes and globalization in postal and telecommunications services: The human resources dimension* – Report for discussion at the Tripartite Meeting on the Human Resources Dimension of Structural and Regulatory Changes and Globalization in Postal and Telecommunications Services (Geneva, 1998);
- ILO: *Managing the privatization and restructuring of public utilities (water, gas and electricity)* – Report for discussion at the Tripartite Meeting on Managing the Privatization and Restructuring of Public Utilities (Geneva, 1999).

With regard to local distribution networks (water, gas, electricity), the concession of public utilities to enterprises is now a global phenomenon. In principle, this technique results in upstream competition (possibility to choose from among several operators) and downstream competition (renewal or non-renewal of contracts upon expiry). It often leads to the transfer of personnel from the public sector to private enterprises.

Regional level networks have been growing, notably in Europe since the 1980s, as evidenced by the protracted negotiations on the liberalization of communications services, as well as of electricity services. Finally, the international level increasingly plays a role, with the expansion of multinational enterprises, the creation of strategic alliance among operators active in the various markets or even the conclusion, in February 1997, of the agreement on the liberalization of telecommunications services, in the framework of the World Trade Organization (WTO). These actions tending towards liberalization, diversification and mergers are complementary and define a new distribution of economic and social functions between public authorities and enterprises.

With differing scope, depending on the country or sector, the social partners have attempted to orient or shape these structural or regulatory transformations, in themselves a source of conflict in the workplace but equally an opportunity for enriching the social dialogue.

2. Competition policy and international labour standards

Although they may not specifically aim to do so, some international labour standards are applicable to liberalization and structural links between enterprises. This is the case, for example, of the following ILO Conventions: the Collective Bargaining Convention, 1981 (No. 154), the Workers' Representatives Convention, 1971 (No. 135) and the Workers' Representatives Recommendation, 1971 (No. 143), the Termination of Employment Convention, 1982 (No. 158) and the Termination of Employment Recommendation, 1982 (No. 166) or even the Labour Relations (Public Service) Convention, 1978 (No. 151).

The Labour Clauses (Public Contracts) Convention, 1949 (No. 94) and the accompanying Labour Clauses (Public Contracts) Recommendation, 1949 (No. 84) concern public sector/private sector partnerships put in place particularly in the framework of the creation of distribution networks for water, gas and electricity and relating to contracts which envisage expenditures being met by a public authority and the workers' employment being the responsibility of another party. The contracts to which this instrument is applicable must contain clauses which guarantee the workers' remuneration, working time and other conditions of work which may not be less favourable than conditions established for comparable work. Measures must be taken to ensure that enterprises which bid for contracts are informed of those clauses and sanctions are applicable (by means of refusal to enter into contract or any other means) should there be violation of the labour clauses inserted in the public contracts. According to the Recommendation, when private employers have been granted subsidies or authorization to provide a public utility service, labour clauses substantively similar to those foreseen for public contracts should apply.

As regards the social implications of liberalization, it should be kept in mind that in the area of utilities, rights and obligations of workers and their organizations are not always identical to those applied in other sectors of the economy. Freedom of association is one of the pillars of the ILO. The Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), are the two Conventions which have received most ratifications. In the context of implementation of these instruments, the ILO supervisory mechanisms have explicitly stated that workers in the postal and telecommunications services ought not to be excluded from the guarantees provided by Convention No. 98. The majority of difficulties identified in those sectors relate to the principles enunciated in Convention No. 87 – in particular the right to strike. The ILO's supervisory bodies have recognized the right to strike as a legitimate and vital means needed by workers and their organizations to defend their economic and social interests. However, this right may be restricted or even prohibited, in the case of civil servants engaged in state administration and workers employed in the "essential services", i. e. services whose interruption would endanger the life, personal safety or health, of the whole or part of the population.² Regarding the postal and telecommunications sector, where these services are part of the public service, workers are not considered to be operating as part of state administration; therefore, they cannot be limited in or prohibited from the exercise of the right to strike. In

² ILO: *Digest of decisions and principles of the Freedom of Association Committee*, 4th [revised] edition (Geneva, 1996), p. 112, ss. 542.

examining the question of essential services, the supervisory bodies have nevertheless made a distinction between postal and telecommunications services – the latter being considered essential services in respect of which restrictions may be placed on the exercise of the right to strike. On the contrary, the postal services have not been considered essential services and workers in this sector ought to be able to exercise the right to strike.³

The speed with which liberalization is progressing in the field of telecommunications may lead to a re-examination of the nature of these services in order to determine whether it is fitting to still consider them essential services. Once competition prevails and it is possible to have access to other services comparable to those offered by the traditional operator, one ought indeed to address the question as to whether interruption of the services offered by the latter is susceptible of endangering the life, safety or health of the population.⁴

With respect to public utilities in the area of water, gas and electricity, the ILO's supervisory bodies are of the view that electricity services and water supply can be considered essential services, but not so the distribution of gas.

Regarding the undertaking to respect the most fundamental international labour standards – universal undertaking reinforced in 1998 by the adoption of the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up⁵ – mention must be made of the proliferation of “codes of conduct”⁶ issued in recent years by multinational enterprises now present on various public utilities markets.

For example, the Group *Vivendi* has adopted a charter of fundamental social rights which encompasses the basic ILO principles in regard to child labour, prohibition of forced labour and freedom of association. The obligations envisaged by the charter in the various areas are addressed to enterprise personnel as well as to suppliers and subcontractors, and include an annual report thereon to be submitted to the Group's European Works Council.

³ *ibid.*, pp. 112-113, ss. 544-545.

⁴ ILO: *Note on the proceedings*, Tripartite Meeting on the Human Resources Dimension of Structural and Regulatory Changes and Globalization in Postal and Telecommunications Services (Geneva, 1998), p. 35.

⁵ Hilary Kellerson: “The ILO Declaration of 1998 on fundamental principles and rights: A challenge for the future”, in *International Labour Review*, Vol. 137, No. 2 (Geneva, 1998), pp. 223-227 and Appendix IV, pp. 253-257.

⁶ On this question of codes of conduct and other initiatives in the social sphere see, for example: ILO: Working Party on the Social Dimensions of the Liberalization of International Trade, doc. GB.274/WP/SDL/1, 274th Session of the Governing Body (Geneva, Mar. 1999). See also Janelle Diller: “A social conscience in the global marketplace? Labour dimensions of codes of conduct, social labelling and investor incentives”, in *International Labour Review*, Vol. 138, No. 2 (Geneva, 1999), p. 99 s.

3. Strategic alliances and trade union mergers

Trade unions, from their inception, have been an internationalist movement and cooperation among trade unions beyond national boundaries is not a novelty.⁷ Globalization of markets in the areas of communications and utilities distribution networks, however, has led the trade union movement to strengthen its regional and global scope of action. The increasing international dimension of competition law and policy has certainly contributed to this development: strategic alliances between operators have given rise to parallel alliances between trade union organizations.

The planned merger between *British Telecom* and *MCI* (replaced in 1998 by the *WorldCom-MCI* merger) exerted pressure on two British trade unions – Society of Telecom Executives (STE) and Communication Workers Union (CWU) – to conclude an alliance, named *Atlantic*, with the American trade union CWA (Communications Workers of America) which represents about 600,000 workers in the United States. One of the objectives was to identify complementary approaches to social policy and regulatory frameworks and to promote a coherent industrial relations policy for enterprises of the telecommunications sector operating on a global scale as a result of mergers and acquisitions. From the perspective of creation of a joint venture between *AT&T* and *British Telecom*, the *Atlantic* alliance focused its attention, at the end of 1998, on the continued provision of high-quality universal service as well as on staff recruitment and personnel deployment. Other cross-border trade union alliances (for example, *Cable & Wireless*, *Telefonica*)⁸ have been encouraged by the trade union movement.

In the same vein, an international campaign has been organized by several trade unions in the telecommunications industry against *Sprint*, an American long-distance operator which dismissed Hispanic workers in San Francisco, following attempts by the said workers to organize a trade union affiliate. Communications International (now Union Network International – UNI) as well as members of the German, French, Mexican and Nicaraguan trade unions have taken part in the campaign and put pressure on their respective employers to have labour standard clauses feature in contracts signed with *Sprint*.⁹

“Multimedia convergence”¹⁰ and the structural synergies which it implies has resulted in several national trade unions, historically representative in the postal and telecommunications spheres, being transformed into communications and information

⁷ ILO: *World Labour Report 1997-98* (Geneva, 1997), p. 37; cf also: Andreas Breitenfellner: “Global unionism: A potential player”, in *International Labour Review*, Vol. 136, No. 4 (Geneva, 1997), pp. 543 s.

⁸ *Nouvelles de l’Internationale des communications* (Genève) No. 9, Sep. 1998, p. 7.

⁹ Andreas Breitenfellner, op. cit., p. 545.

¹⁰ This expression indicates the convergence of technologies in the fields of informatics, telecommunications and audiovisual, enhanced by digital technique; on this point, see: ILO: *Symposium on multimedia convergence*, Final Report, doc. SMC/97/6 (Geneva, 1997).

technology trade unions. The Independent Association of Publishers' Employees (IAPE) – a trade union which represents workers responsible for *Dow Jones* stock operations in the United States and Canada – opted to be represented by the American trade union Communications Workers of America (CWA). In this latter's structure, the information technology sector has been continuously expanding and now encompasses, among others, the *Newspaper Guild*, employees in radio and television, publishing, computer services and other information media. In Germany, the PTT trade union (DPG) and the trade union for employees in the media industry (IG Medien) announced, in 1997, a plan of cooperation – with the example of digitized television illustrating the overlap between the traditional spheres of competence of the two organizations. In Switzerland, the opening up of the communications sector to competition has had as a direct result the announced merger of five trade unions which represent postal and telecommunication workers – giving rise to a large communications trade union. The new organization should be representing federal civil servants (who retain that status at least until the end of the year 2000) as well as employees whose status is precarious, e. g. those employed in the parcels and express delivery services.¹¹

The growing presence of multinational enterprises in utilities has upset the power balance between labour and capital. Industrial relations and investment decisions are increasingly subjected to a comparison of working conditions and social practices in the host countries, just when the services which depend on infrastructure networks on a regional or national scale are not apt to be relocated. The creation of enterprises which offer multi-services (*multi-utilities*), active simultaneously in the communications and in the water, gas and electricity utilities, leads naturally to intersectoral mergers among trade unions.

Trade unions therefore tend to enter into alliances or to merge, with a view to achieving that “critical mass” which permits them to face up to employers, who are more and more powerful, and to influence decision-making at the international level. As happened in the communications sector, the presence of multinational enterprises in the water and electricity services – formerly the domain of public monopolies – has helped trade unions evaluate the true scope of globalization and liberalization. Faced with new and powerful interlocutors when negotiating, they have understood that it is indispensable to have information about corporate strategy and to forge cross-national alliances with trade unions in other countries. The International Federation of Chemical, Energy, Mine and General Workers' Unions (ICEM) considers it fitting to put in place global networks grouping trade unions from several countries in order to ensure similarity of approach on all the work sites of enterprises concerned.¹²

It is more frequently the case that trade unions are disposed to engage in cross-border consultations in the event of a “buyout”. In 1996, when *Electricité de France* and two United States corporations became the principal shareholders in the electricity company *Light* in Rio de Janeiro, the Brazilian Federation of Urban Workers (FNU-CUT), representing the workers of the latter company, liaised with the regional office of the International Federation of Public Service Unions to coordinate positions with the French trade unions.

¹¹ *L'événement syndical* (Zurich), No. 19, 20 Oct. 1998, p. 1.

¹² *ICEM Info* (Brussels), 2-1998, pp. 7 and 8.

For its part, the ex-Communications International has established close collaboration with other internationals concerned by the information society and multimedia convergence. It has become a member of the International Committee of Entertainment and Media Unions (ICEMU) and merged with the International Federation of Commercial, Clerical, Professional and Technical Employees (FIET), the Media and Entertainment International (MEI) and the International Graphical Federation (IGF). The new Union Network International (UNI) brings together 800 trade unions encompassing 15 million employees of information-communications enterprises.

If all these alliances and mergers serve to strengthen the position of trade unions and favour synergies resulting from intersectoral linkages, they also can be justified by the fall in revenue experienced by each of these organizations.¹³

¹³ Andreas Breitenfellner, *op. cit.*, pp. 548-549.

4. Competition policy and social dialogue

Information, consultation and worker participation are appraised from two perspectives: (1) involvement of employees and their representatives in the process of opening up to competition; (2) consultation of workers and their representatives when the rules of competition policy are applied to enterprises. The question of information and consumer consultation will also be raised.

4.1. The issue of opening up to competition

In order to prevent opening up to competition leading to disruption of social dialogue, it is necessary to involve the parties concerned, as early as possible, in the process of liberalization.

Competition policy affects industrial relations differently, depending on the sector and the country. Indeed, labour relations are a function of practices regarding freedom of association, collective bargaining, the restrictions affecting the right to strike in the public service, the employment impact of opening up to competition, remuneration and social benefits, or even the importance that workers and their representatives attach to the public status of operators and their staff.

One of the initial effects of liberalization has been to bring about coexistence, in the same sector of traditional operators (with numerous staff and a strong social tradition) with an increasing number of new entrants (where labour relations are individualized). In contrast to the traditional operators, new entrants are characterized by a “personalized” management of human resources, in tandem with their flexible structures and entry into emerging markets or very lucrative segments – and trade unions are often absent from these enterprises. As regards the large international operators – private, public or semi-public – which invest beyond their traditional frontiers, they exhibit a capacity to adapt to competition and social conditions, be it in respect of legislation or current business practice.

4.1.1. *Employment and workers' status*

Even when, in the long term, liberalization leads to the creation of more jobs (in new entrant enterprises, in the sectors of new services, in certain subsidiaries of traditional operators and especially in the economy as a whole) than are eliminated in the framework of traditional operators and in less dynamic enterprises, retrenchment is the principal cause of deterioration of the social climate. For the same reasons, the announcement of a merger or of privatization is often the source of social tension.

Many trade unions claim, and often rightly so, that employment and conditions of work are a temporary adjustment variable, indeed are the principal structural shock absorber when financial objectives are the priority concerns of employers and

governments. In the United States, for example, local private sector monopolies in the gas and electricity utilities have been restructured in the 1970s and 1980s (mergers, acquisitions, unbundling of different functions).

This process has led to a 25 per cent reduction of the workforce in electricity and gas, including employees and management staff.¹⁴ On the contrary, in this same country, the liberalization of telecommunications services and the process of restructuring have certainly translated into significant loss of jobs in the longer established operators (*AT&T, MCI, Sprint, Regional Bells*). But the appearance of new entrants (and new occupations), the reduction in utility service rates and the accelerated development of new services (Internet, mobile telephones, call-centres) compensate for the negative effects on employment of productivity gains (occasioned by widespread communication possibilities) and liberalization (on the traditional operators).¹⁵

The liberalization of telecommunications has led to job creation in new “start-up” enterprises, often exhibiting strong employment growth potential. There has been increasing recourse to call-centres and this development has given rise to first attempts to regulate at company-level (*British Telecom*) or sector-wide (Netherlands, Sweden). At the European level, the Federation of European Direct Marketing (FEDMA), which encompasses 17 national associations and 500 enterprises, has won the support of the European Commission for negotiation between the social partners in the call-centre sector, particularly with a view to reducing staff turn-over.

Less directly linked to the new economy, utility services still frequently belong to the public sphere and in many countries this sector has a higher unionization rate than in other sectors. Moreover, in various regions of the world (especially in Europe), public service enterprises are, or have served as, laboratories for innovative social policies.¹⁶ This situation partly explains the scope of resistance to liberalization as well as to mergers and acquisitions, with the trade unions present in public enterprises inclined to exert pressure on the public authorities as well as on management. From the workers’ point of view, one of the most important consequences of liberalization, in several countries, is the workers’ loss of the status of civil servant or public employee.¹⁷

This “privatization” of status and human resource management techniques has had an impact on social dialogue in the course of the 1990s. Several scenarios are possible: abrupt replacement of public sector status by private sector work contracts, or the programmed progressive elimination of public sector status; or even the coexistence of civil servants or

¹⁴ ILO: *Managing the privatization and restructuring of public utilities (water, gas and electricity)*, op. cit., p. 48.

¹⁵ ILO: *Structural and regulatory changes and globalization in postal and telecommunications services: The human resources dimension*, op. cit., pp. 30-59.

¹⁶ For a study of social relations in European public utility enterprises, see: Yannick Moreau and Bruno Maquart: *Entreprises de service public européennes et relations sociales* (Paris, Aspe Europe, 1996). For recent aspects of social dialogue in Europe, see: Hedva Sarfati: *Flexibilité et création d’emplois: un défi pour le dialogue social en Europe* (Paris, L’Harmattan, 1999).

¹⁷ On the question of erosion of the status of civil (public) servant, see: *Au-delà de l’emploi, transformations du travail et devenir du droit du travail en Europe*, Report to the European Commission, under the direction of Alain Supiot, pp. 224-227, Paris, Flammarion, 1999.

staff enjoying a special status alongside employees subject to common law and workers whose employment status is precarious.

Unlike *France Telecom*, where the trade unions have negotiated that civil servants, up until the year 2002, will be recruited alongside contract workers, *Deutsche Telekom*, since 1995, has stopped the recruitment of staff with civil servant status. But, unlike *British Telecom*, where all employees are subject to private law, *Deutsche Telekom* employees with a civil servant status (54 per cent of the total workforce in 1997) have been able to opt either to remain civil servants or become contract workers. In Sweden, since July 1993, all staff at *Telia*, a traditional operator, are employees subject to private law and faced with the following alternative: renounce their civil servant status (condition for maintaining their job in the enterprise) or retain the civil servant status but be redeployed to another public utility. A similar trend (but at a slower pace) has been observed in several postal services.

Following the example of the process of liberalization, the acquisition of companies by operators of recently privatized public utilities (or in the course of being privatized) gives rise to a complex management structure, by virtue of the differing status and employee contracts. The trade unions fear, over and above staff reductions, a progressively downward adjustment of the rules applicable to the new entity created by the merger, or a “transplanting” of the social practices of the new affiliates onto the traditional operators or the parent company. It is opportune to mention the acquisition by the German postal services (which, in 1998, still had a majority civil servant staff) of almost one quarter of the capital of the parcel service *DHL*, accompanied in that same year by the purchase of *Danzas*, *Ducros Services Rapides* and *Securicor*. Between February 1998 and February 2000, the German postal services have spent 5 billion euros in acquisitions of this type. In 1997, eight out of 15 national postal services in the European Union no longer had, or had ceased to recruit, workers with a civil servant status.

The international social partners have recently affirmed that:

... the coexistence of civil servants and public and private contractual employees within the postal and telecommunications sectors or within the same enterprise creates delicate management problems, particularly as regards the rights of salaried workers and the public financing of pensions. The transition from public service status, of which a large group of telecommunications staff and even more postal staff are still beneficiaries, towards a private law employment contract regime requires a thorough reflection by the social partners and governments to find innovative and appropriate solutions.¹⁸

4. 1. 2. *Fading of frontiers between public sector and private sector*

This fading of frontiers, to which general competition policy greatly contributes, strongly influences the positions of the social partners. The appearance of large private

¹⁸ *Note on the proceedings*, Tripartite Meeting on the Human Resources Dimension of Structural and Regulatory Changes and Globalization in Postal and Telecommunications Services, op. cit., Conclusion No. 20, p. 23.

operators on the markets of postal and telecommunications services and in water, gas and electricity distribution, has led ILO's Governing Body to transform sectoral meetings in these areas to tripartite meetings (bringing together governments, workers and employers). The "bipartite exception", which up until the mid-1980s limited full participation in sectoral meetings regarding public utilities only to governments and workers, has faded in the wake of reform or disappearance of public monopolies, privatization and redefinition of the regulatory framework and the role of the State. This development is under way also, but at a slower pace, in the fields of health¹⁹ and education.

The partnerships between public and private enterprises result in social tensions when the competition landscape changes rapidly. Government, trade unions and the local authorities in South Africa signed in December 1998 an agreement on the modalities of private sector involvement in the municipal distribution services for water and electricity. The basic principle was that the private sector should not take over operations where municipalities were deemed capable of quality service delivery. Partnerships can be agreed with the private sector in cases where the municipality was genuinely incapable of service delivery, because of financial, technical or other reasons. The private company is then held up to various standards – environment, health and safety, protection of workers' service conditions – and would be responsible for managing contracts. The agreement also sets basic tariffs, ceilings on tariff increases and the rates of return. In the United States, the postal service (*United States Postal Service – USPS*) has since 1995 signed various transport contracts with the private company, *Emery Worldwide*. In the Spring of 1997, *USPS* entrusted this company with putting in place, during a four-year period, ten centres for the processing and distribution of priority mail. These centres were to be located in the large agglomerations on the East Coast, such as New York, Miami and Boston. This agreement generated protests on the part of the postal trade unions, who were of the view that the creation of such mail distribution centres by a private operator were motivated by financial concerns and not out of concern to improve service quality. *Emery*, which in 1997 had, in 98 countries, a workforce of 15,000 employees – of whom 20 per cent were unionized – represents the typical case of a transport company capable of provoking, in partnership with a utility for postal services, the progressive elimination of services reserved for the latter.

4. 1. 3. Liberalization and participation

Liberalization and the restructuring it implies are often a "fait accompli" rather than "co-determined" by the workers' representatives, and worker participation in the process of transformation is still very seldom the practice in various parts of the world. However, worker participation is of general public interest, since the social cost of a strike, or of liberalization or an ill-prepared delegation of authority to provide a utility service, can be enormous.

Because of the traditional practice of consensus in industrial relations, the Scandinavian countries provide successful examples of participation during the process of liberalization, as much in the communications sector as in electricity distribution networks. In Sweden, the communications and services sector trade union (SEKO) negotiated with

¹⁹ cf. ILO: *Terms of employment and working conditions in health sector reforms* – Report for discussion at the Joint Meeting on terms of employment and working conditions in health sector reforms (Geneva, 1998).

management the change in the status of the telecommunication operator *Televerket* (now *Telia*) as well as the new collective agreements applicable to employees recruited after the change in status of the company. Management accepted several demands of the trade union in the matter of severance payments, early retirement and training. Also, without wishing to revert to the monopolistic situation which prevailed before liberalization of the postal services, SEKO argued in favour of a system of fees with a view to maintaining basic postal service throughout the country. In Norway, the liberalization of electricity production proceeded with staff participation and, according to the trade union for electricians and electricity power workers (NEKF), the majority of staff benefited from the reforms.

In the United States, the trade unions have attempted to attenuate the lack of consultation with employers on the question of the deregulation process in the water and energy sectors by launching campaigns in the workplace, or targeting the political arena or public opinion. The new regulatory framework and the composition of the regulatory organs increasingly give trade unions and citizens' groups the opportunity to make their voice heard. The American trade union for workers in utilities distribution (Utility Workers Union of America) has vigorously opposed the restructuring of the electricity and gas industries and, in coalition with other unions, local consumer protection organizations and individuals, has succeeded in preventing the adoption of federal legislation and slow down the application of deregulation legislation at the state level.²⁰

In like manner, European trade unions in the electricity and gas sectors, grouped together in the Federation of European Utilities Trade Unions (FSESP), opposed the initial proposals of the European Commission which they deemed to favour total liberalization. In November 1996, under the aegis of the European Commission, a consultative European Committee on Energy was created. Trade unions participate in this Committee. Since 1995, social dialogue was established with *Eurelectric*, the European umbrella organization of electricity companies. Both parties study questions relating to health and safety as well as the impact of restructuring on employment.

It is frequently the case that, in the same country, opening up to competition gives rise to negotiations crowned with success as well as to periods of serious conflict. The announcement of liberalization of a sector, of a merger or privatization of a public service operator often provokes negative reactions on the part of workers and their organizations. The ILO's *World Labour Report 1997-98* underscored that:

... privatizations, opening up to competition (for instance, in telecommunications), and budget-cutting policies obviously do not foster a sense of impunity among public sector employees (...). The higher level of mobilization in the public sector is in fact the result of some of its particular features, [notably] the centrality of the idea of public service in employer-employee relations, which serves to strengthen solidarity.²¹

²⁰ ILO: *Managing the privatization and restructuring of public utilities (water, gas and electricity)*, op. cit., pp. 87 and 92.

²¹ ILO: *World Labour Report 1997-98*, op. cit., p. 136.

At the European level, UNI dialogues with employers in the joint committees for the postal and telecommunication fields, with a view to arriving at common positions, especially as regards opening up to competition or universal service. This institutional dialogue is complementary to the European Council Directive adopted in 1994,²² which makes provision for establishment of a European works council in large enterprises. The Directive distinguishes the right to information and consultation from the right to collective bargaining, thereby reflecting the basic distinction in several European countries between consultation structures on the basis of representation by elected officials, as against negotiation structures on the basis of trade union representation. Many companies in the water and energy sectors, as well as large European telecommunication enterprises, have set up such works councils. In November 1998, the European Commission proposed a new Directive which makes it mandatory, subject to sanctions, for companies with more than 50 employees to inform and consult employees early in the decision-making process relating to mergers and acquisitions. In France, draft legislation submitted in March 2000 provides that enterprises involved in acquisitions are expected to inform, in the course of a special meeting, the works council of the targeted company, under penalty of having shares acquired by virtue of stock operations voided of their voting rights.²³

Finally, the participation of workers and their representatives in the process of opening up to competition, and more generally of regulation of the economy, increasingly takes place via the Internet. Indeed, the global network permits the creation of new forms of cross-border solidarity. For the trade unions, coordinating international action by electronic mail is faster and less costly than using the traditional means of communication. Beyond employers, employees and the self-employed, civil society is becoming involved in a new type of participatory activity. Ad hoc virtual trade unions can come to life and be rapidly transformed. By facilitating the spread of new technologies and lowering the cost of access, the opening up to competition in the communications sector contributes to this fundamental evolution in social relations.

4. 1. 4. Competition and collective bargaining

Even when it is not the objective, liberalization of network services in the world tend to reinforce the general trends observed regarding collective bargaining:

- emergence of new bargaining subjects, such as salaries (when these are no longer fixed by the public authorities);
- decentralization of negotiation from the enterprise level to that of the unit or profit centre;
- weakening of trade unions as a result of the multiplicity of new entrants and the process of unbundling of functions;

²² Directive 94/45/EC of the Council of 22 September 1994 on the establishment of a European Works Council, *Official Journal* (Luxembourg), No. L254/64, 30 Sep. 1994.

²³ *Le Monde*, 16 Mar. 2000, p. 20.

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- employers have retaken the initiative on such subjects as the flexibilization of management, the annualization of working time, individualization of salary structures, share distribution or stock options for staff;
 - replacement of centralized negotiation (former monopolies) with fragmentation of negotiation but also trade union pressure for sector negotiation, as in the postal sector in Germany or in the context of the opening up to competition of the electricity services in France. Also, the Italian Confederation of Trade Unions has asked its membership to agree to improving utility services through collective bargaining, notably by the negotiation of collective agreements in respect of sectors open to competition.

In Germany, although they are opposed to the privatization trend in the postal services, the trade unions have campaigned in favour of opening up to competition which respects the principles of a social market economy and the public service. In view of the consequences of privatization, the German postal workers' union (DPG) demanded guarantees with respect to remuneration, the maintenance of the influence of workers' representation in the enterprise and the social services and benefits specific to the postal sector. But it was only after the largest strike in the history of the German postal service, in 1994, that collective agreements to this effect could be concluded. In 1997, the trade unions succeeded in having the new postal services legislation impose minimum social requirements as a condition for issuing a license for mail delivery.

The disappearance or reform of local or national monopolies for the supply of water, gas and electricity can imply the coexistence of public mechanisms (establishing service conditions of public employees via legislation or regulations) and cases of unilateral action on the part of employers and consultation and negotiation techniques encountered in the private sector.²⁴ This complexity and diversification of the patterns of social dialogue renders it difficult to harmonize conditions of work in the absence of agreements or legal provisions applicable to all employees of a sector. Moreover, delivery of gas and electricity services are often provided by vertically integrated enterprises, and the conditions of work considered adequate in a production unit may prove to be unsuitable in a distribution unit. Finally, mergers and acquisitions which accompany the process of liberalization make even more complex the modalities of collective bargaining (which can be even protracted in the case of a buyout) in the enterprises concerned.

4. 1. 5. *Public interest and universal service: Important determinants of social dialogue*

As defenders of their members' interests, trade unions are considered in many countries to be entitled to hold forth on their idea of public interest or "economic law and order". An increasing number of trade unions seek to promote or reinforce the most disadvantaged against the interruption of essential services, considered as cutting the social link, or even tariff moderation for the benefit of a captive clientele, as well as service quality or production and organizational efficiency.

²⁴ cf ILO: *Employment and working conditions in water, gas and electricity services* (Geneva, 1987), pp. 52-61/66.

The concept of “universal service”, at least in the post and telecommunications sector (increasingly extended to include the Internet), is one of the forms of social cohesion. The concept is used worldwide to describe certain obligations (reviewable) addressed to providers of communications services. At the meeting in 1998 on the subject of structural and regulatory changes and globalization in postal and telecommunications services, the international social partners stated: “It is the responsibility of governments and regulatory authorities to ensure a framework for the provision and funding of a universal service, whether through government or private funding. The provision of the universal service should be periodically reviewed to take account of new services.”²⁵

The originality of the European Directive for the internal market in electricity²⁶ stems from the importance attached to the concept of public service. Judging from its mention of security of supply, consumer and environmental protection as well as long-term planning, that directive does not limit public economic interest solely to the concept of “universal service”, as was the case regarding telecommunications.²⁷

Competition policy, therefore, can serve several social objectives. In the area of network industries which concerns us here, the social dimension of the new forms of sectoral regulation is also taken into account through the rate policy. In an increasing number of countries, there are specialized regulators, by sector or multi-sector, whose mission is obviously varied but who have as objective, inter alia, limiting abrupt rate increases and encouraging price reduction for basic services, to make them accessible to a larger number of households.²⁸

Finally, the principle of economic and social cohesion is foreseen in the founding treaties and the European Commission must reconcile this objective with the rules of competition, as much in the context of liberalization as when examining agreements, government assistance or mergers and acquisitions. In these diverse fields, employment has become an important parameter for European competition policy.²⁹

²⁵ ILO: *Note on the proceedings*, Tripartite Meeting on the Human Resources Dimension of Structural and Regulatory Changes and Globalization in Postal and Telecommunications Services, op. cit., Conclusion No. 9, p. 22.

²⁶ Directive 96/92/EC of the European Parliament and of the Council of 19 December 1996 concerning common rules for the internal market in electricity, *Official Journal* (Luxembourg), No. L27/20 of 30 Jan. 1997.

²⁷ ILO: *Structural and regulatory changes and globalization in postal and telecommunications services: The human resources dimension*, op. cit., pp. 23-29.

²⁸ Regarding the social aspects of the regulation of markets, cf *Structural and regulatory changes and globalization in postal and telecommunications services: The human resources dimension*, op. cit., pp. 21-29; and *Managing the privatization and restructuring of public utilities (water, gas and electricity)*, op. cit., pp. 33-37 and 99-104.

²⁹ Eric Cuziat: “La politique de concurrence, une politique en faveur de l’emploi”, in *EC Competition Policy Newsletter* (Brussels), No. 2, June 1998, pp. 29s; and Madeleine Tilmans: “La Commission autorise un régime d’aides à l’emploi en Sicile favorisant la transformation d’emplois précaires en emplois stable”, in *EC Competition Policy Newsletter* (Brussels), No. 2, June 1998, p. 83.

4. 2. Applying competition rules to enterprises

The monitoring of mergers, as of other areas of competition policy, could lead trade unions, if the law permits, to develop their arguments, especially in the course of hearings conducted before competition authorities.³⁰ A merger translates, in effect, into a rationalization of structures in the enterprises concerned, staff redeployment and/or reduction, and changes in working conditions and labour relations.

The telecommunications sector offers some recent examples of international action by trade unions when confronted with such mergers.

In Europe, the ex-Communications International took part in the hearing organized in May 1998 by the European Commission regarding the planned merger *WorldCom/MCI*. According to this international federation, *MCI* itself recognized that it practised an “environment without trade unions”.³¹ Moreover, the trade unions requested the Commission to take into consideration the principle of universal service. The new enterprise created through the merger *WorldCom/MCI* could in fact have focused solely on the market of corporate clients, which would translate into higher costs for smaller companies and private consumers. The ex-Communications International therefore opposed the planned merger which also would have placed the new entity in a dominant position on the Internet market, to the detriment of workers and users, not only in Europe but globally. But this line of reasoning, developed also by the competition authorities, has as its background a different reality: several employers in other economic sectors attempted to prevent the utilization of the Internet in the workplace for trade union purposes.

In the United States, the federation of American trade union organizations (AFL-CIO) and the communications workers’ trade union (CWA) have intervened in diverse ways to stop this same plan for the acquisition of the operator *MCI* by *WorldCom*. These trade unions invoked not only the principles of the antitrust legislation,³² but also the impact of that operation on employment and the provision of universal service in the telecommunications sector.

Concretely, the proposed merger obstructed the United States in the realization of an advanced universal service, with the new entity concentrating on the Internet market and on a privileged clientele, to the detriment of individual consumers – which would have been contrary to a vital objective of the 1996 law on telecommunications, which favours the access of all Americans to the information highway. In the United States, among the

³⁰ Article 18(4) of Council Regulation (EEC) No. 4064/89 of 21 December 1989 on the control of concentrations between undertakings provides thus: “Natural or legal persons showing a legitimate interest and especially members of the administrative or management organs of the undertakings concerned or recognized workers’ representatives of those undertakings shall be entitled, upon application, to be heard.” *Official Journal*, No. L395/10, of 30 December 1989.

³¹ *Nouvelles de l’Internationale des communications* (Genève), No. 5, May 1998, p. 1; and *Un manuel d’antisyndicalisme aux Etats-Unis*, FO-PTT syndicaliste (Paris), No. 507, Nov. 1998, p. 12.

³² In particular, the initial project would have led to *WorldCom* controlling more than 63 per cent of the United States Internet infrastructure, with *Sprint* in a distant second place.

criteria for examining a merger from the perspective of public interest is that of the impact of the merger on the objective of maintaining and expanding universal service, in particular the access of all, at affordable prices, to advanced telecommunications and information services.

According to the AFL-CIO and the trade union CWA, the plan for the merger *WorldCom/MCI* would have resulted in the immediate loss of jobs, linked to synergies resulting from the operation. In AFL-CIO's estimation, reduction of investments in networks, sales and marketing staff would have represented the non-creation of at least 75,000 jobs up to the year 2002.³³ The trade unions also argued that the plan would have led in the long run to a sizeable reduction in employment in the economy as a whole.

In the final analysis, although it is difficult to ascertain the impact of trade union actions in this affair, it is a fact that the conditions imposed by the European and American competition authorities reflected the claims of the trade unions. The latter have undeniably contributed to the taking into account of criteria which are not exclusively competition-related and played a role in sensitizing international civil society.

Consumers increasingly play this role, especially when it is a matter of defining a new regulatory framework or control of tariffs.

³³ *Proposed WorldCom-MCI merger*, AFL-CIO Executive Council Statement, 30 Jan. 1998. In fact, already in Dec. 1998, the new group *MCI WorldCom* announced about 2,000 redundancies (of the group's global workforce of 75,000 employees). These redundancies concerned principally merger-related elimination of jobs.

5. Information and consumer consultation

Parallel to the involvement of workers and their organizations in different places of liberalization and at certain stages of competition procedures, consultation of the consumers of utility services is increasingly a *sine qua non* of successful enterprise reform. This consultation can be very broad in scope: in the course of the antitrust litigation brought against *Microsoft* in the United States, the Department of Justice invited every citizen to react through the medium of a telephone number placed at their disposal.³⁴ Moreover, the fact that the Internet facilitates the diffusion to all interested third parties of decisions, intentions or projects of the competition authorities serves to widen the canvas of information, in the direction of all economic and social actors interested in the outcome of certain competition procedures. In the same spirit, consumer monitoring of the delegated management of public utilities can facilitate the diffusion via the Internet of documents issued by regulators or supervisory mechanisms.³⁵

Consumer opinion, from the point of view of customers and citizens, increasingly influences the action of governments and the social partners. For example, the liberalization policy in the United Kingdom could not be understood without recalling the long strikes and electricity cuts which, already in the 1960s, made users hostile to the monopolies.

In the same manner as governments and the social partners, consumers generally wish to ensure that liberalization, while improving service quality, does not entail sudden increases in the cost of services, which would run counter to one of the generally recognized benefits of competition policy.³⁶ This implies not only effective competition on the markets considered here but, also, as was earlier underscored, a complex and direct mechanism for the monitoring of tariffs. This is not an objective which is easily attained, particularly in certain countries in transition or in Asian countries recently in the grips of an economic and financial crisis – fall in revenue at the same time as there is a crucial need of foreign investment – or in Africa, where water is still often considered a free item, not an economic good.³⁷

The United Nations Development Programme and the World Bank recently attempted to promote, working together with the “Prince of Wales Business Leaders Forum” (which encompasses large enterprises), the concept of “social value-added”, in order to demonstrate how private investment, especially as regards networks infrastructure, could contribute to the sustainable development of societies. It is true that one of the principal

³⁴ *L'Express*, Paris, 17 Sep. 1998, p. 42.

³⁵ In France, the Court of Auditors has created a website with a view to assisting the public at large from a perspective of democracy, transparency and pre-empting irregularities, especially in the area of delegated management of public utilities.

³⁶ On this question, cf Alexander Schaub: “Les effets de la concurrence dans la vie quotidienne des citoyens”, in *EC Competition Policy Newsletter* (Brussels), No. 3, Oct. 1998, pp. 1-6.

³⁷ Jean-Yves Lesueur and Patrick Plane: “Les services publics africains à l'épreuve de l'assainissement: une évaluation économique et sociale”, *L'Harmattan* (Paris, 1994).

criticisms addressed to multinational enterprises active in the public utilities sector is the priority they place on client capacity to pay in the developing countries, with universal access only being in many countries a long-term objective.

Trade unions in certain African countries play a traditional consumer protection role.³⁸ Consumer groups are powerful and structured and nothing prevents them from being consulted prior to decisions pertaining to liberalization of a sector or change in the status of operators. The European Commission involves consumer representatives in the elaboration of community legislation relating to liberalization of services of public interest, notably the European Bureau of Consumer Groups. European consumers are especially vigilant that liberalization should not entail a reform of tariff structures to the benefit of business circles. These fears were manifest at the time of the opening up of the telecommunications and energy markets. Consumers International is equally on guard that the application of competition rules is realized everywhere in the interest of consumers. It has in fact drafted a "Consumers' Charter" relating to global enterprises. This charter identifies antitrust behaviour which is contrary to consumer interests in the different countries and underscores the interest, for consumers, in the existence of a corpus of minimum international competition rules which are recognized and applied.³⁹

As in many other economic sectors, the oligopolistic character of the world markets for communications and other networks services has been reinforced. This consolidation of globalization, led by a restricted number of operators, but which affects more and more workers and consumers, leads one to query the links between competition policy and economic democracy on the national and international levels. The question is posed, as much within enterprises as when defining the regulatory environment in which enterprises operate.

³⁸ Lesueur and Plane, op. cit., p. 244.

³⁹ *Consumer Charter for Global Business*, Consumers International, 1997, London.