
INTERNATIONAL LABOUR ORGANIZATION

The employment effects of mergers and acquisitions in commerce

Report for discussion at the
Tripartite Meeting on the Employment Effects of Mergers and
Acquisitions in Commerce

Geneva, 2003



INTERNATIONAL LABOUR OFFICE GENEVA

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Acknowledgements and sources

The information for this report was derived from a wide range of sources, although it should be emphasized that few statistics are available on the employment impacts of mergers and acquisitions in commerce, or for that matter in other industries. Extensive use has been made of publications, press articles, web sites and “grey literature”. In addition, valuable information on mergers and acquisitions, the evolution in social dialogue, conditions of employment and working conditions in different countries and regions was supplied by a number of employers’ and workers’ organizations. The report was prepared by John Sendanyoye of the Sectoral Activities Department. Thanks go to several ILO colleagues who provided useful comments.

Attempts to identify the precise relationships between employment and mergers and acquisitions is always complicated by other concurrent processes under way in both commerce and the wider economy, especially the effects of globalized competition. It is hoped, nonetheless, that the report will provide a basis for more detailed research and reflection on a phenomenon that, no matter its current decline, is increasingly attracting the attention of policy-makers, employers, workers, researchers and other interested parties in the world of work.

Introduction

This report has been prepared by the International Labour Office as the basis for discussions at the Tripartite Meeting on the Employment Effects of Mergers and Acquisitions in Commerce, to be held at the ILO in Geneva from 7-11 April 2003. The Governing Body of the ILO decided to convene this Meeting at its 279th Session (November 2000), as part of the programme of sectoral meetings for 2002-03.

At its 284th Session (June 2002), the Governing Body decided that the Meeting should be composed of all interested governments, 18 employers' representatives and 18 workers' representatives nominated by their respective groups of the Governing Body.

The Governing Body also decided that the purpose of the Meeting should be to: exchange experience on policies aimed at promoting positive employment outcomes of mergers and acquisitions in commerce, using a report prepared by the Office as the basis for its discussions; review approaches to increased social dialogue and mechanisms for bipartite consultations to avoid or minimize merger-related layoffs and erosion in employment and working conditions in the sector; identify best practice in managing downsizing related to mergers and acquisitions, where this becomes necessary; adopt conclusions that include proposals for action by governments, employers' and workers' organizations and by the ILO, as well as practical guidelines for social dialogue on mergers and acquisitions in commerce; and to adopt a report on its discussions. The Meeting could, in addition, adopt resolutions.

This Meeting is part of the ILO's Sectoral Activities Programme, the aim of which is to assist governments and employers' and workers' organizations to develop their capacities to deal equitably and effectively with the social and labour problems of particular economic sectors. The Programme also alerts the ILO to specific sectoral social and labour issues – primarily through tripartite meetings, which bring together a cross section of government, employers' and workers' representatives from countries that are prominent in a given sector. In line with the reorientation of the ILO around strategic objectives since 1999, these meetings also set out to strengthen tripartism and promote social dialogue at the international level.

1. The commerce sector

1.1. Background

Between 1980 and 1999 the number of worldwide mergers and acquisitions (M&As) grew by 42 per cent annually, as their value rose from 0.3 per cent to 8 per cent of global GDP.¹ Commerce was as affected by this extraordinary wave as the rest of the economy.

Mergers tend to come in waves. By any measure, however, those of the 1990s attained exceptional levels in value and sheer volume of deal transactions. By 1999, completed merger value had reached about US\$2.3 trillion, representing 24,000 deals for the year. Beginning in early 2000, however, both merger volumes and merger values began to decline, reflecting the general worldwide downturn in economic conditions and corresponding erosion in stock valuations. They continued to plummet over the following three years (see below).

M&A patterns differ significantly around the world, but usually require effective capital and financial markets which facilitate the purchase and sale of firms or corporate assets. Not surprisingly, therefore, this report's perspective is predominantly concerned with commerce-sector enterprises in developed countries, which account for the overwhelming bulk of worldwide merger operations. In developing and transition countries, enterprise sales are significantly more important than mergers, mainly reflecting the privatization of state-owned firms. In line with the decline in privatization activity, cross-border company sales for all sectors in developing countries continued to fall after reaching a high of \$64 billion in 1998. The exception was Asia, where enterprise sales continued to grow, reflecting, especially, the fallout of the 1997 financial crisis. However, few, if any, of the companies concerned were in the commerce sector. Similarly, few of the M&A transactions in Central and Eastern Europe related to the commerce sector, where most commerce activity involved greenfield expansion by global retailers.

At the time this report was being written (November 2002), it had become apparent that the value and volume of global M&A deals had fallen very steeply from their highs of two years previously, down to levels last seen in 1997. According to an analysis by the KPMG Corporate Finance based on Dealogic data covering the first half of 2002, global M&A deals had fallen 56 per cent – from \$1,020 billion in the first half of 2001 to \$448 billion for the half year to the date of the analysis: a drop in value below levels last seen in 1997.² The survey showed worldwide deal activity to have been falling since the first half of 2000 when 15,219 deals worth a total of \$1,940 billion were closed, proof that the downward trend has not yet abated. Retail trade was one of the most affected, recording a 40 per cent decline in deal numbers compared with the same period a year before. Among the regions, Asia and the Pacific had the biggest fall in value (76 per cent), followed by the United States (61 per cent) and Western Europe (which saw a 40 per cent decline in deal value). However, the United States, the United Kingdom, Germany and France were still the world's most active merger nations.

¹ UNCTAD: World Investment Report 2000: Cross-border mergers and acquisitions and development, Overview (New York and Geneva, United Nations, 2000).

² KPMG: *Further decline in worldwide M&A activity*, at <http://www.kpmg.com/news/index.asp?cid=626>, visited 27 Nov. 2002.

Other analyses arrive at broadly similar conclusions. According to a Thomson Financial news release of 2 October 2001, global M&A activity in the third quarter of 2001 totalled \$435.5 billion from 6,200 announced deals, a 1.5 per cent drop on the previous quarter and a 45 per cent fall compared to the same period in 2000. The European M&A market had fallen by 39 per cent as compared to the previous quarter to 2,590 deals valued at \$98.2 billion – a 49 per cent drop on volumes during the same period the year before. M&A activity in the United States had bucked the trend, with deal value measured at \$263.3 billion from 1,500 deals, a 47 per cent increase on the previous quarter, but still a very big 46 per cent decrease on the same time the year before.³ The news release confirmed the trend of a stagnant global M&A market in 2001, with the total for the year a staggering \$1.4 trillion short of volumes at the same point the previous year. For the same nine-month period, Europe had experienced a 49 per cent drop to \$423.8 billion, while the United States had seen a fall of 53 per cent to \$637.3.

Despite the current contraction in deal operations in the commerce sector and elsewhere, however, many analysts predict a resumption in M&A growth with economic recovery. Comparisons are made in this regard with the hectic pace of M&As in the 1980s, which, after experiencing a sharp drop at the end of the decade, returned to growth in a much more dramatic fashion as the mega-mergers of the 1990s. Hence the need to understand the reasons for merger waves if important public policy concerns that M&A-driven consolidation raise, especially with respect to cost-cutting redundancies in merging organizations and general changes in quality of employment, are to be addressed.

Few observers contest the right of companies to engage in M&A activity in order to strengthen their market positions. The criticism of mergers and acquisitions rests more with the manner in which they are planned and executed, almost always excluding the most affected group of stakeholders – the employees – although these usually pay the heaviest price: potential job destruction and eroded working conditions with few, if any, compensatory benefits. Trade unions and other critics also note that the high cost in terms of jobs is pointless, since most M&As fail to achieve their stated objectives, and, in fact, destroy shareholder value, the reason most often proffered these days for embarking on M&A transactions.

Opponents of mergers generally concede the difficulty of separating their effects on employment from such other concurrent factors as increased competition, automation or the introduction of new technologies, which similarly push enterprises to restructure, or simple restructuring that can happen with or without M&A-related integration. They contend, however, that mergers usually provide the justification for and facilitate organizational downsizing because combining two enterprises creates overlapping functions that can be compressed, while duplicated operations can be trimmed, resulting in job losses at all levels of the new organization. While downsizing is generally the outcome of mergers and acquisitions in most sectors, this is by no means always the case for commerce, where many mergers are motivated by considerations of market expansion, rather than an opportunity to trim costs. Even when market share is the primary motive, however, overlaps are unavoidable in horizontal mergers of companies operating within the same markets. Thus, while the extent of job losses may not be at the level of such industries as financial services, there are always possibilities of a negative employment impact. In addition, there are indications that in commerce, growing employment in the post-merger organization may often serve to disguise a deterioration in overall working and employment conditions, which heightened merger activity may serve to accelerate.

³ Thomson Financial: *M&A growth slows to a standstill*, news release, 2 Oct. 2001.

The ILO Tripartite Meeting on the Human Resource Implications of Globalization and Restructuring in Commerce, held in October 1999, recognized the profound change commerce had undergone over the previous decade. This change included consolidation of the sector into fewer, bigger operators with better scale advantages, higher purchasing and economic power and retailers better prepared for expanded global competition. The Meeting highlighted, among the consequences of the sector's restructuring, the crowding out of smaller, independent community wholesalers and retailers in some parts of commerce, with attendant job losses and impacts on previously vibrant urban and rural shopping areas. However, recent analysis suggests a revival of inner-city commerce in many parts of Europe, with new-inner city developments of large shopping centres.

Contemporary mergers and acquisitions are an integral part of the processes of globalization, deregulation, market liberalization and economic restructuring. These processes are the main influence behind the situation highlighted by Mr. Juan Somavia, the ILO Director-General, in his Report to the 89th Session of the International Labour Conference in June 2001,⁴ when he noted that:

Both people and enterprises face a lot of uncertainty today. Many enterprises demand flexibility in the search for competitiveness. Many workers regard flexibility as synonymous with insecurity. But workers need a measure of security to be able to work productively and invest in developing their own skills, while enterprises need stable and sustainable labour markets to ensure a supply of skilled and productive labour. If the institutional framework is right, a balance can be found between these different needs. ... Enterprise restructuring ... can also be undertaken in a manner that takes decent work goals into account.

Indeed, mergers and acquisitions – and the enterprise restructuring that invariably follows them – put employment and income security at risk. But they can be planned and implemented in a manner that does take decent work objectives into account. As Mr. Somavia's abovementioned Report states, "Economic realities cannot be ignored and enterprises may need to restructure to survive, but ... Good practice is possible, even in difficult economic circumstances." This report aims at contributing to greater debate on this subject.

1.2. The commerce sector: Characteristics, role and general trends

"Commerce", for the purposes of this report, mainly refers to wholesale and retail trades (also sometimes called distribution services or distributive trades).⁵ Retail trade comprises establishments engaged in retailing merchandise, generally without transformation, and rendering services incidental to the sale of merchandise.⁶ It is the final step in the process of distribution of merchandise, and retailers are therefore organized to

⁴ ILO: *Reducing the decent work deficit: A global challenge*, Report of the Director-General, International Labour Conference, 89th Session, Geneva, 2001, pp. 22-23.

⁵ Comparing commerce sector data from the different regions is hampered by their use of different industrial classification standards. Tabulation category G under ISIC – Rev.3 differs in some important aspects from Sectors 42 (Wholesale trade) and 44-45 (Retail trade) defined under the NAICS system adopted in 1997 by the NAFTA member States, Canada, Mexico and the United States. Similarly, the European Union NACE Section G encompasses economic activities that overlap but are not completely comparable to the other two.

⁶ US Census Bureau: *Establishment and firm size, 1997 Economic Census* (US Department of Commerce, 2000).

sell merchandise in small quantities to the general public. Wholesale trade, on the other hand, comprises establishments engaged in wholesaling merchandise, generally without transformation, and rendering services incidental to the sale of merchandise. The wholesaling process is an intermediate step in the distribution of merchandise. Wholesalers are organized to sell or arrange the purchase or sale of: (a) goods for resale (i.e. goods sold to other wholesalers or retailers); (b) capital or durable non-consumer goods; and (c) raw and intermediate materials and supplies used in production. Wholesalers sell merchandise to other businesses and normally operate from a warehouse or office. These warehouses and offices are characterized by having little or no display of merchandise. In addition, neither the design nor the location of the premises is intended to solicit walk-in traffic. Wholesalers do not normally use advertising directed to the general public.

Commerce is the necessary link between the producers of goods and their consumers. Effective and reliable access to consumers is as vital for manufacturing firms as access to raw materials, and retail trade is essential for households in order to satisfy consumption needs. Because of its vital function as the bridge between production and consumption, retailing in particular is becoming the engine of growth in such diverse sectors as clothing, sound and video recording and entertainment. Decisions on the quantity and quality of goods, location of production and manner of supplying and distributing goods are shifting from manufacturing and raw material companies to retailers. Some become directly involved in marketing, product mix, design and production.

The commerce sector is highly heterogeneous, with considerable differences between wholesale and retail firms. Wide differences similarly exist among retailers, depending on firms' competition strategies and on the subsector within which they operate, for instance, whether they are department stores, specialty, or discount stores. The structure and functioning of the sector vary greatly between countries, according to living standards, consumption and purchasing habits of the population, and legal regulations dealing with the size of firms, shop-opening hours, consumer protection, etc. In general, and particularly in retailing, small firms dominate. However, the past 20 years' trend has been towards consolidation and rationalization, entailing the growth of large companies, and small firms being pushed towards survival strategies, including price-cutting, reducing cost and narrowing product ranges. Table 1.1 provides an indication of the degree of consolidation and concentration in the sector. A full 61 of the world's 500 biggest companies by revenue are commerce multinational enterprises, the majority in retail trade. *Wal-Mart*, with close to \$220 billion in revenue for 2001 and approximately 1.4 million employees during the same period, was the world's largest company. These companies are really global players, operating in very many different national markets around the world, and sourcing their products from a wide range of countries. Not surprisingly, almost all are a result of mergers and acquisitions, and some have gone through several permutations.

Table 1.1. Commerce enterprises in the *Fortune* Global 500, ranked by number of employees

Company	Home country	Number of employees	Revenues \$ millions	% change from 2000
Wal-Mart stores	(US)	1 383 000	219 812.0	13.7
Carrefour	(France)	382 821	62 224.6	3.9
Sears Roebuck	(US)	310 000	41 078.0	0.3
Kroger	(US)	288 000	50 098.0	2.2
Royal Ahold	(NL)	270 739	59 633.9	23
J.C. Penney	(US)	270 000	32 557.0	-1.2
Home Depot	(US)	256 300	53 553.0	17.1

Company	Home country	Number of employees	Revenues \$ millions	% change from 2000
Kmart	(US)	240 525	36 151.0	-2.4
Target	(US)	223 550	39 888.0	8.1
Albertson's	(US)	220 000	37 931.0	3.2
Safeway	(US)	193 000	34 301.0	7.3
Metro	(Ger)	186 814	44 346.8	2.2
Tesco	(UK)	171 794	33 915.5	8.4
Coles Myer	(US)	162 192	12 642.8	-18.3
Delhaize "Le Lion"	(Belgium)	146 785	19 629.3	14.3
Woolworths	(Australia)	140 000	11 502.0	-5.5
Gap	(US)	140 000	13 847.9	1.3
George Weston	(Canada)	139 000	15 923.3	5.8
Groupe Auchan	(France)	136 000	23 449.5	8
May Dept. Stores	(US)	127 000	14 175.0	-2.3
Groupe Pinault-Printemps	(F)	115 935	24 893.5	8.8
Federated Dept. Stores	(US)	115 000	16 895.0	-8.2
Foncière Euris	(F)	113 447	20 489.9	11.1
CVS	(US)	110 000	22 241.4	10.7
J. Sainsbury	(UK)	108 500	24 575.4	-3.7
Lowe's	(US)	108 000	22 111.1	17.7
Walgreen	(US)	106 000	24 623.0	16.1
Ito-Yokado	(Japan)	97 532	26 822.5	-5.5
Publix Supermarkets	(US)	91 150	15 284.2	4.9
KarstadtQuelle	(Ger)	89 379	14 388.1	2.2
TJX	(US)	89 000	10 709.0	11.8
Kingfisher	(UK)	88 416	16 142.1	-11.5
Winn-Dixie stores	(US)	82 500	12 903.4	-5.8
Great Atl. & Pacific Tea	(US)	78 553	10 973.3	3.3
Toys 'R' Us	(US)	76 000	11 019.0	-2.8
Rite Aid	(US)	75 000	15 171.1	-0.8
Best Buy	(US)	72 000	19 597.0	27.9
Costco Wholesale	(US)	64 500	34 797.0	8.2
Migros	(Switz.)	59 731	11 955.2	2.7
Supervalu	(US)	57 800	20 908.5	-9.9
Safeway	(UK)	57 176	12 257.6	1.7
LVMH	(France)	53 795	10 951.0	2.3
Circuit City stores	(US)	52 035	12 791.5	-1.3
Marks & Spencer	(UK)	50 176	11 649.6	-2.5
Otto Versand	(Ger)	50 055	13 564.3	-0.8
Cardinal Health	(US)	48 900	47 947.6	60.5
Office Depot	(US)	48 000	11 154.1	-3.6

Company	Home country	Number of employees	Revenues \$ millions	% change from 2000
Sysco	(US)	43 000	21 784.5	12.9
AEON	(Japan)	41 624	23 620.9	-5.8
Staples	(US)	40 914	10 744.4	0.7
Franz Haniel	(Ger)	38 118	18 212.9	5.2
AutoNation	(US)	31 000	19 989.3	-10.5
Daiei	(Japan)	28 697	20 113.0	-24.6
McKesson	(US)	24 000	50 006.0	19
Fleming	(US)	23 000	15 627.7	8.2
Alliance Unichem	(UK)	21 311	10 533.1	12.2
Ingram Micro	(US)	14 000	25 186.9	-18
Avnet	(US)	13 600	12 814.0	39.7
AmerisourceBergen	(US)	12 950	15 822.6	36.3
Arrow Electronics	(US)	12 400	10 127.6	-21.9
Tech Data	(US)	8 600	17 197.5	-15.8

Source: Compiled by the ILO from the *Fortune* Global 500 lists of top retail and wholesale commerce enterprises, July 2002.

As national markets have become saturated in many developed countries, more and more businesses have looked for new opportunities to expand into less developed markets. The process has been accelerated by new commercial legislation in countries such as France and Spain, which has forced some companies to look outside their home countries. The enlargement of the European Union and the deregulation of the world's economies, together with the creation of other large free trade zones (NAFTA, MERCOSUR, ASEAN), encouraged the globalization of markets, first for the industrial sector and then for retailers. The falling costs of communication and information systems also facilitated the internationalization of retailing activities.⁷

Retail trade, the predominant sector in commerce in terms of overall value added and employment, continues to be an industry dominated by small firms, although, depending on the country, it accounts for approximately 20 per cent of total employment. An enormous process of capital concentration is taking place, which is leading inexorably to a corresponding concentration of employment in an increasingly limited number of firms in many developed and some developing countries.

The relative importance of the different commerce branches in total sectoral employment is directly proportionate to the number of enterprises in the branch. For example, the United States Economic Census for 1997 (figures corresponding to the end of March) shows approximately 453,500 wholesale establishments employing about 5,797,000 people, while the 1,118,500 retail trade establishments accounted for around 14 million jobs. It is important to note that using the Standard Industrial Classification System (SIC) previously applied to United States statistics gives different figures for the same period: 6,599,000 and 21,891,000 million employees respectively for the wholesale and retail trades. Preliminary SIC-based figures show employment in wholesale at 6,681,000 in March 2002, while those for retail for the same period are 23,332,000, an

⁷ European Commission and Eurostat: *Distributive trades in Europe – Data 1995-99*, 2001 ed. (Luxembourg, 2001), p. 167.

increase for both. Nevertheless, the two methodologies provide an adequate understanding of the importance of commerce in employment generation.

In the European Union (EU), the number of retail enterprises was estimated in 1998 to be at around 3 million companies, representing the largest proportion of distributive trades businesses. In most countries more than half of the commerce enterprises – and sometimes even two-thirds – operate in retail. These high proportions are in line with the principal characteristics of the retailing activity itself, which is constituted by a large number of small-sized enterprises. There is a regional variation however, with the northern European countries tending to have lower proportions of enterprises in retailing due to better-developed, large-scale distribution and a more intensive concentration process over time. As with the United States, retail trade dominates also for employment and employs more than half of the workforce in distributive trades in a number of countries; the EU average stands at around 52 per cent. The absolute figure for employment in retailing in the EU was estimated at nearly 11.4 million people in 1999, with Germany's retailing alone employing more than 2.5 million people. The figure was around 1.7 million workers in Italian retail. In all EU countries, both the number of enterprises and level of employment are least important in the motor trade, with proportions ranging from 11 per cent in the Netherlands to 16.5 per cent in Luxembourg. Among the distribution trades at the EU level, retail also accounts for the highest levels of self-employment (27.1 per cent), female employment (58.5 per cent against 32 per cent for wholesale and less than 18 per cent for the motor trade) and part-time employment (30 per cent as compared to 10 per cent for wholesaling and the motor trade).

Two activities clearly dominate in EU retail trade: retail sale in non-specialized stores, which includes large-scale distribution outlets, and other retail sale of new goods in specialized stores, which encompasses retailing with various categories of non-food goods, such as textiles, furniture and household goods. These two groups together accounted for about 75 per cent of employment and for 80 per cent of turnover at the European level in 1999.

A growing economy does not necessarily translate into employment growth in commerce, as reflected in the fact that the share of the sector's employment in total employment has been dropping since the 1990s in most countries, even as the economy and the sector's own value added experienced unprecedented rates of growth. In terms of the actual number of people employed, however, this trend in the industry in many countries is obscured by the soaring rate of part-time and temporary work. If hours worked were converted to full-time equivalent (FTE) posts, the decreasing relative importance of commerce employment, at least for some countries, might be revealed much more dramatically. However, the United Kingdom has bucked this trend, and figures provided showing the evolution of employee job growth in commerce in the country for 2000-02 confirm this (see below in table 2.1).

Technology has played a major role as a driver of consolidation, including through M&As. Information and communication technologies (ICTs) can be seen in various ways, including as "tools" or for "automation", when the product, and often the underlying production process, is left unchanged; also as "control" or "surveillance" technology to monitor and control the work process. Once ICTs become "information technology", collecting, processing and distributing information, however, they become integrated systems spanning the organization; even more so where ICTs are used as "organization" and even "network" technologies.⁸ In retail services, the customer has long been persuaded

⁸ G. Collins, J. Webster, J. Wickham: *Innovations in information society sectors – Implications for women's work, expertise and opportunities in European workplaces*, SERVEMPLOI Final Report,

to undertake much of the work of distribution: in selecting the goods from the shelves, carrying them to the checkout and then transporting them to their final destination. The key technological innovation at the customer interface has involved payments procedures, which speed up the actual payment, transforming payments from debit card scanners and the electronic transfer of funds from one account to another. The SERVEMPLOI report notes that the electronic till does not simply receive money, it means that the transaction is the end point of a data flow that parallels the movement of stock from supplier to customer. The focus of technological innovation has become the “back of store” in the logistics chain.⁹ These ICT-provided possibilities are driving a general trend towards the centralization of warehousing and just-in-time delivery systems embodied in the Efficient Customer Response (ECR), described below. Companies hope to use ICTs to further reduce costs by simplifying the flow of documents; by speeding the flow of goods through the chain the cost of storage and the capital tied up in stock can be reduced, meaning, in turn, that it becomes a priority to develop an information system that looks out beyond the retailing firm to integrate with those of the suppliers.¹⁰

A major part of the cost-cutting procedures adopted by the large retailers, in addition to the widespread introduction of new technologies at all stages of the goods handling process from logistics to check out, has been the drive to achieve “lean” staffing levels. In most large retail companies, the core objective of human resource management is to keep manning levels at the absolute minimum. There must be neither “too many” nor “too few” workers present and being paid at any given point in time. Personnel structures as well as staff deployment over time are being rationalized in a way that leads to fragmentation of employment and working time. The reason for this is the “flexibility” advantage that can be derived from a high part-time rate to increase management’s room for manoeuvre by making it possible to deploy more people during periods of peak activity, which are usually short but vary from day to day. Nevertheless, employment and working time fragmentation in the retail trade have hidden costs for companies. High rates of staff turnover, in particular, make human resource management in large retail trade companies very difficult, the central problem for retailers being the strong link between staff loyalty and commitment, and customer loyalty. Cost-cutting initiatives are usually complemented by retailer strategies aimed at revenue growth, that similarly impact on employment and working conditions. Shops are increasingly open for longer hours, have adopted 24-hour shopping, or extended their business to Sundays and holidays, traditionally seen in many countries as non-opening days. This and the increasingly heterogeneous workforce means that the scheduling of staff becomes increasingly complicated, requiring technological assistance.¹¹

The ILO report for the last tripartite meeting in this sector,¹² highlighted the paucity of accurate, up-to-date statistics to provide a basis for proper analysis. This problem remains a major hurdle in assessing sectoral employment trends in commerce, including those resulting from recent M&A-driven sectoral consolidation and concentration.

Jan. 1999-Dec. 2001, funded under the TSER Programme of the European Commission, presented in May 2002.

⁹ *ibid.*

¹⁰ *ibid.*

¹¹ *ibid.*

¹² ILO: Human resource implications of globalization and restructuring in commerce, (Geneva, doc. TMC/1999).

National statistical data is very deficient in this regard.¹³ Difficulties stem mainly from differences in data-gathering methodologies, coverage, level of aggregation, and the definition of commerce. Analysis is complicated further by the fact that there is little systematic tracking of job losses or job gains from M&As, as existing literature on M&As tends to focus almost exclusively on financial, competitive, consumer and shareholder considerations. Were data available, it would still be extremely difficult to disentangle with any precision the effects of M&As from those of such other processes as the introduction of new technology, or operational rationalization and general restructuring that are unrelated to M&As.

Given the essential role of stock markets in facilitating mergers and acquisitions, coverage in this report will mainly focus on countries with well-functioning financial markets.

The weight of commerce and other sectors in the whole of the economy is measured by means of the respective importance of their value added and employment indicators as a proportion of the total economy. On the basis of these criteria, commerce in 1997 accounted for around 13 per cent of total value added in the European Union, 12 per cent in Japan, with the United States highest at 14 per cent.¹⁴ The sector also accounted for a considerable share of total employment: 16 per cent in the European Union; 19 per cent in the United States; and 18 per cent in Japan. Since 1985 the real growth of value added has been higher in this sector than in the total economy in the United States and in Japan, while it has been slightly lower in the European Union. Between 1985 and 1997, however, sectoral employment in the European Union grew faster than in the total economy, while employment in commerce in the United States grew in line with that of the total economy. In Japan the rate of growth in commerce sector employment was lower than that of the economy as a whole.

Although, as has been stated, retail trade is by far the dominant segment of commerce, turnover per person employed is higher in the wholesale trade, reflecting greater capital utilization, than in retail, with Japan and the United States ahead of the European Union. For retail, however, turnover for the European Union per person employed exceeds that of both the United States and Japan.

Commerce, especially retail trade, employs large numbers of people (accounting for the largest share of service employment). It is also representative of white-collar service work in the lower and intermediate skill segments, where there is considerable potential for the standardization of many tasks, particularly through the introduction of self-service.¹⁵

¹³ Except perhaps for the US Bureau of Labor Statistics whose mass layoff statistics provide some figures in layoffs by industry and by reason of separation, including company restructuring (also covering business ownership change). The utility of even this data is limited, however, as it is compiled from initial claims for unemployment insurance associated with extended mass layoffs of at least 31 days' duration that involve 50 or more individuals from a single establishment filing initial claims for unemployment insurance during a period of five consecutive weeks. Those who may have exhausted their unemployment insurance entitlements and had therefore not applied for benefits, or those who may not have made any claim for whatever reason, and those involved in layoff events covering less than 50 workers from the same establishment would be left out of the data. Also, owing to confidentiality requirements it is not possible to link any layoffs with a particular M&A transaction from the available statistics.

¹⁴ European Commission and Eurostat, *op. cit.*, p. 151.

¹⁵ S. Lehdorff (IAT) and E. Mermet (ETUI) (eds.): *New forms of employment and working time in the service economy (NESY)*, "The case of the retail trade sector", Part III, presented to a conference

This basic feature gives rise to fierce price competition and forces retailers to place savings on personnel costs right at the heart of their corporate strategies, a move that is facilitated by the fact that standardized tasks can be easily automated. Retail trade also serves as a good example of the personal service sector, where personnel assignment is linked specifically to fluctuations in customer flows. New forms of employment and working time in the sector are developing, as firms adopt strategies aimed at increasing labour flexibility while at the same time reducing payroll costs. It is also a highly feminized industry. Research on new forms of employment and working time in retail trade¹⁶ suggests that the majority of retail companies in the major subcategories of the sector face the same basic challenges, as they seek increased market share and reduced personnel costs. However, their strategies, and in particular their personnel practices, are modified by country-specific factors.

Table 1.2. Foreign retail chains in Poland and their parent company

(a) Hypermarkets

Name of Chain	Owner	Number of stores in 2002
Real	Metro AG	26
Hypernova	Ahold	17
Tesco	Tesco	16
Auchan	Auchan	16
Geant	Casino	15
Hit	Dohle, Tesco (since 7/2002)	14
Carrefour	Carrefour	13
Kaufland	Lidl & Schwarz Company	10
Leclerc	Leclerc	9
Jumbo	Jeronimo Martins Distribution, Ahold (since 8/2002)	5
Total	10 chains	141

(b) Supermarkets

Name of chain	Owner	Number of stores in 2002
Albert	Ahold	147
Intermarche	ITM	57
Champion	Carrefour	51

organized by the European Trade Union Institute (ETUI) and the Institut für Arbeit und Technik (IAT), 26-27 Apr. 2001, Brussels, Belgium.

¹⁶ *ibid.*

Name of chain	Owner	Number of stores in 2002
Rema 1000	Rema 1000	45
Savia	Tesco	33
Minimal	REWE	27
Lidl	Lidl & Schwarz Company	20
Billa	Auchan	11
Major Julius Meinl	Julius Meinl	11
Total	9 chains	402

(c) **Discount stores**

Name of chain	Owner	Number of stores in 2002
Biedronka	Jeronimo Martins Distribution	625
Plus Discount	Tengelmann Group	127
Leader Price	Casino	63
Netto	Dansk Supermarket A/S	54
Edeka	Edeka Minden-Hannover	43
Total	5 chains	912

Source: "Consolidation Now", in *Polish Market Review* (Krakow), No. 10(62), Oct. 2002 at <http://www.polishmarket.com/pdf/pmr-62.pdf>, visited 17 Dec. 2002.

Retail trade is increasingly international in scope, with retailers from developed countries expanding in foreign countries, both developed and developing. An example of this trend is given in table 1.2 which describes the situation in Poland. As national markets become steadily saturated, more and more businesses are looking for new opportunities to expand into less developed markets. New commercial legislation, the enlargement of the European Union and the deregulation of the world's economies, together with the creation of other large free trade areas, such as NAFTA, MERCOSUR, ASEAN, etc., are encouraging market globalization. The falling costs of communication and information systems are also facilitating the internationalization of retailing activities.

Competitiveness is an important driver for both the internationalization of businesses and M&A-driven sectoral consolidation, at the national and global levels. Pre-emptive strategies (i.e. anticipating competition) and imitation are steadily becoming more common and are some of the reasons for the rapid acceleration of foreign business operations. An interesting aspect of internationalization is that global retailers from the same home countries tend to expand into the same target countries, thus extending rivalry from their home markets into new ones. This is explained by the fact that, since retailers are better informed about their national rivals, companies from the same country and with the same retail format tend to concentrate on a small number of countries, with consumers having comparable characteristics.

European food retailers, with the possible exception of those from the United Kingdom, have a greater global approach than their North American or Japanese rivals,

with *Carrefour* and *Royal Ahold* leading at the European level. The saturation of their national markets provides a large part of the explanation for the internationalization of European retailers, while their extensive presence in Latin American countries can, in turn, be understood in terms of cultural affinity. Among United Kingdom food retailers, only *Tesco*, at 16th, figures among the world's top 20 food retailers, suggesting that United Kingdom companies have adopted a cautious approach to internationalization.

In the specialist non-food sector, superstores in Europe are beginning to reach saturation point in only a few sectors of the market, such as toys, do-it-yourself, household equipment and office furniture. In these sectors, concentration is becoming common, as are international operations. American players such as *Home Depot* and *Office Depot*, have started activities at international level, with possible merger and acquisition activities in Europe. These new operators are catching up with the traditional market leaders.

Commerce, like many other industries, experienced extensive change during the 1990s. Mergers and acquisitions led to the emergence of huge global and regional retailers and wholesalers. Although small and medium-scale enterprises still employ the majority of commerce workers, they are ceding ground to their bigger and more powerful – most often multinational – competitors. Specialized non-food retailers such as *Ikea*, *Toys 'R Us*, *H&M* and *Blockbuster* have built up their global presence much faster than the food retailers and hypermarket chains. Lately, however, most attention has been focused on these goods and general traders, many of whom are making important inroads in the non-food business.

1.3. Factors behind M&As and industry consolidation

Commerce, especially retailing, continues to be in rapid structural transformation today. Over the 1990s, a large number of industries underwent extensive consolidation, many through mergers and acquisitions. The reports for the ILO Tripartite Meetings on the Human Resource Implications of Globalization and Restructuring in Commerce (TMC/1999), and on the Employment Impact of Mergers and Acquisitions in the Banking and Financial Services Sector (TMBF/2001) explored the reasons for and some of the consequences of these processes. The reports underlined the roles of globalization, itself stemming from deregulation, liberalization and market integration. Globalization and the growing interdependence of markets, as well as the increasing proportion of the world's labour force engaged in activities linked to international trade and capital flows were noted, as were their effects on M&A growth. The internationalization of commercial circuits, the changing face of retailing, mergers and acquisitions, and changing production and supply chain patterns were examined to better understand the reasons for the profound changes affecting the global economy, and to provide an appropriate basis for the ILO's tripartite constituents to develop adequate responses to the social and labour challenges arising from these phenomena.

Different explanations have been advanced for the extraordinary merger waves affecting the global economy over the past few decades, especially during the 1980s and the 1990s.

1.4. Quest for “bigness”

The first relates to the need for size or “bigness”.¹⁷ Dawson notes that in several other sectors the largest five companies accounted for over 50 per cent of global sales, underlining the fact that by this measure even *Wal-Mart* and other retailers have considerable growth potential. He cautions, however, that “bigness”, even by retail standards, raises some substantial managerial challenges. Retailers continue to pursue scale benefits, and the only realistic mode for substantial growth is through mergers and acquisitions. Examples of this strategy include *Laurus*, the new name for the combined *Vendex-De Boer*. The company had made 12 acquisitions in barely a year in 1998-99. *Ahold* had similarly quickened its acquisition activity in the late 1990s in the United States and in Spain.

Difficulties with a merger-based strategy are not only related to integrating acquisitions in other firms with different cultures, such as *Wal-Mart*'s acquisition of *Spar Germany* and the cross-border merger of *ICA* and *Hakon* in late 1998. In a period of high merger activity it becomes increasingly difficult to make acquisitions at realistic prices. As companies get larger, the costs of merging also become higher. The merger of *Promodès* and *Carrefour* announced in August 1999 was estimated to cost FF1,500 million, for cuts in operating costs estimated at FF4,000 million over the three years following the merger. Meantime, one of the important facts claimed to be behind the success of *Ahold* as an international retailer is said to be its ability to integrate new acquisitions quickly. In respect of its acquisition of *Giant* in May 1998 and *Pathmark* in March 1999, the company claims that economies of scale are yielding significant synergy effects in distribution and production, store operation, information technology, buying and merchandising. It also emphasizes the impetus to its globalization process through its acquisition of a very valuable pool of talented retail professionals to populate other sister companies as a result of its takeover of *Giant-Landover*. However, *Ahold* has recently announced restructuring plans, including the divestiture of some of its expensively acquired international operations, notably in Latin America, due to the economic difficulties the region is traversing. In Argentina, for instance, although *Disco (Ahold Group)* acquired *Ekono (Chilean D&S Group)* in 1999, and the September 1999 merger between *Carrefour* and *Promodès* had local ramifications requiring approval of the Argentine Anti-Trust Commission, total retail sales had been decreasing substantially since 1998, making the acquisitions money-losers.

1.5. Governance issues as drivers

Holmstrom and Kaplan link merger waves to changes in corporate governance and the increased size of the financial markets. Corporate governance – the mechanisms by which corporations and their managers are governed – has changed dramatically throughout the 1980s and 1990s, after a period of relative inactivity.¹⁸ Then, the 1980s ushered in a large wave of takeover and restructuring activity, distinguished by its use of leverage and by hostile corporate raiders, such as Carl Icahn and T. Boone Pickens, who became household names. The level of such activity is illustrated by the fact that during the decade nearly half of all major United States corporations received a takeover offer.

¹⁷ J. Dawson: *Retailing at century end: Some challenges for management and research*, Aug. 1999, unpublished paper.

¹⁸ B. Holmstrom and S.N. Kaplan: *Corporate governance and merger activity in the US: Making sense of the 1980s and 1990s*, in National Bureau of Economic Research Working Paper 8220, Apr. 2000 at <http://www.nber.org/papers/w8220>, visited 17 Dec. 2002.

Even those firms that were not taken over restructured in response to hostile pressure to make themselves less attractive targets (this is eerily comparable to the 1999 attempt, ultimately unsuccessful, by *NatWest* to restructure to fend off rival bids from the *Bank of Scotland* and the *Royal Bank of Scotland*).¹⁹ The authors assert that the real drivers behind the increased dominance of capital markets and the attendant rise of shareholder value could be traced to deregulation, national and international, and to new information and communication technologies. As capital markets grew more powerful with increased institutional investments, the potential for improved corporate performance paired with empowered investors to give birth to takeovers.

From 1980 to 1996, large institutional investors nearly doubled their share of ownership of United States corporations, from under 30 per cent to over 50 per cent, while individual ownership declined from 70 per cent in 1970, to 60 per cent in 1980, and even further to 48 per cent in 1994. One of the important effects of greater institutional ownership was on takeovers, as fund managers, who were often the key sellers of larger blocks of shares in takeover battles, were more interested in squeezing out higher returns and less loyal to incumbent management than individual investors. They also supported takeovers by being large investors in the buyout funds and in the market for high-yield, or “junk” bonds. Without the large increase in pension assets, which concentrated financial power, it is less likely that there would have been a willingness and ability to support large multi-billion dollar takeovers. Managers initially fought takeovers with legal manoeuvres and by enlisting political and popular support. However, they, corporate boards, and institutional shareholders had, by the 1990s, come to accept market-driven restructuring because, thanks to generous stock option awards, they too could share in the lucrative market returns from restructuring companies. Shareholder value became an ally rather than an enemy, and management came to endorse shareholder value in the 1990s and pursue it with vigour, which largely explains why restructuring continued at a high rate in the 1990s, but for the most part on amicable terms. Moreover, because deals could be paid for with stock, there was less need for high leverages and thus less worry that managers would abuse this privilege.²⁰

The 2001 ILO report, *The employment impact of mergers and acquisitions in the banking and financial services sector*,²¹ also discussed the different reasons advanced for M&As by proponents, critics and academics. Although these were primarily concerned with M&As in the financial services, many of the arguments are applicable to mergers in general. These reasons include shareholder value maximization, managerial ego, mimicry, the need to reduce uncertainty and defensive considerations, and high levels of corporate reserves and share valuations. Merger proponents argue that M&As facilitate synergies: achieved when two companies with complementary strengths combine forces, generate efficiency improvements and increase competition; by increasing economies of scale and spreading costs over a larger customer base, mergers facilitate the provision of service at lower prices. Furthermore, higher purchasing power derived from combining two big companies also enables the merged company to demand substantial reductions in supplier prices, with the resulting savings passed on to consumers in terms of lower point-of-sale prices.

¹⁹ ILO: *The employment impact of mergers and acquisitions in the banking and financial services sector* (Geneva, doc. TMBF/2001), p. 77.

²⁰ Holmstrom and Kaplan, op. cit.

²¹ ILO: *The employment impact of mergers and acquisitions in the banking and financial services sector*, op. cit., p. 6.

1.6. Efficiency arguments

Many believe that efficiency-based arguments in favour of M&As confuse size, cost-cutting and efficiency. Reductions in operating expenses from consolidating functions and reducing employees do not automatically translate into improvements in efficiency as measured by such ratios as expenses to assets or revenues. Cuts in expenses may simply reflect shrinkage of the firm rather than efficiency improvements, as real efficiency gains from the merger require costs to be reduced by more than any decline in assets and revenues from the combined firm. They similarly point to the post-merger experience of most firms to question synergy as a justifiable basis for M&As, believing instead that dreams of synergy too often lead managers to pay lofty acquisition premiums that are tantamount to making charitable contributions to random passers-by, never to be recouped by the buying company no matter how long the acquisition is held. Experience with merged companies since the end of the 1990s mega-merger wave would seem to support these conclusions, with a number of companies in different sectors trying to sell off at greatly discounted prices, businesses acquired at great expense.

Given their social costs, the efficiency improvement aspects of M&As have become central to making the case for the consumer benefits of mergers. As already noted above, the efficiency argument holds that because mergers improve efficiency, then larger combined firms are able to pass some savings to consumers through lower prices or improved service. Critics say, however, that mergers are primarily cost-cutting exercises involving network rationalizations and job cuts, and that their impact on consumers is most likely to be a lower quantity and quality of services. They contend that M&As only lead to employment losses, a reduction in consumer choice and diminishing access to services as industries consolidate and increase in concentration.

1.7. The Wal-Mart effect and its role in sectoral consolidation

Quite apart from the general factors behind mergers and acquisitions in all sectors discussed above, there is another driver specific to commerce consolidation and standardization: *Wal-Mart*.

The company from Arkansas has, from its inception, exerted an enormous force on the retailing industry through its focus on supply chain efficiencies and the ability to offer heavily discounted prices. The sheer volume of its purchases enables it to negotiate very favourable terms with its suppliers and thus to undercut its competitors on many of its consumer products at the point-of-sale. This is the basis for retailers' quest for size in order to have a chance to compete with the likes of *Wal-Mart*.

Supermarket chains, which operate in an environment of very slim profit margins and high volume turnovers, are one of the retail segments that have been especially affected by what might be termed "the *Wal-Mart* effect". Since it decided to include groceries in its market offering more than a decade ago, the company has eventually become one of the largest grocery retailers in the United States, controlling 33 per cent of grocery sales along with *Safeway*, *Kroger*, *Albertson's* and *Ahold*. Its entry in the grocery business led to a number of convulsions in the supermarket segment, with competitors struggling to cut costs through greater buying power and lower operating costs (merging of distribution operations, cutting administrative and advertising costs, etc.) in order to remain competitive with *Wal-Mart*, a strategy of consolidation to gain competitive size. This need is reflected in various initiatives and actions taken by the industry since the early 1990s. These initiatives, which have come in phases, covered in turn supply chain cooperation, M&As, amalgamation of purchasing power and supply chain standardization and

integration. While the first three phases were a direct response to the *Wal-Mart* threat, the last reflects an industry recognition of the benefits of functioning on standard data formats and transport mechanisms to ensure large-scale cost reductions.

1.8. Supply chain cooperation

The first phase covering supply chain cooperation gave rise to the ECR initiative, started in 1993 and aimed at a system driven by consumer wants rather than by the participants in the supply chain. It adopted four major strategies to create value by satisfying consumers' needs for product, convenience and price through: efficient store assortment to optimize inventories and store space at the consumer interface; effective replenishment based on efficiencies gained by using continuous replenishment programmes, electronic data interchange (EDI), cross docking, computer-assisted ordering and new receiving techniques; effective promotion that maximized the total system efficiency of trade and consumer promotion; and efficient new product introduction aimed at maximizing the effectiveness of new product development and introduction activities, traditionally having high failure rates and thereby bringing extra costs into the system. ECR helped EDI gain acceptability in the industry.

1.9. Some mergers and acquisitions in the United States can be attributed to Wal-Mart

Although ECR promoted cooperation across the supply chain, it did not necessarily lead to a shift in pricing power to the retailers. A flat population growth, a mature industry with a large number of competitors and a lack of organic growth opportunities led to a situation where M&As were seen as the only way to meet growth and bottom line requirements. This trend started off in 1997 and impacted all levels of the food supply chain, peaking in 1998 with over 800 merger deals, and continued into 1999, when there were over 750. Some of the mega-mergers during the period included the following:

- 1998: *Safeways* (1,381 supermarkets) with *Dominick's* (112 supermarkets), resulting in a company with more than \$26.5 billion in annual sales;
- 1998: *Kroger* (1,398 food stores, 802 convenience stores and 34 manufacturing plants) and *Fred Meyer* (800 food and general merchandise stores);
- 1998 annual sales estimated at \$43 billion, with about \$16 billion of this coming from *Fred Meyer*;
- 1999: *Albertson's* (858 supermarkets) and *American Stores* (802 supermarkets and 773 stand-alone pharmacies), creating a combined firm with \$36 billion in annual sales;
- 1999: *Ahold* (858 supermarkets in subsidiary companies in the United States) and *Giant Food* (173 supermarkets), adding \$4.2 billion of retail sales to *Ahold's* \$15.6 billion turnover.²²

²² *Ahold's* United States subsidiary companies had overall 2001 sales of \$35.3 billion. Six of the subsidiaries operate stores under the brand name of *Stop & Shop*, *Giant-Landover*, *Giant-Carlisle*, *Tops*, *BI-LO* and *Bruno's* (acquired in Dec. 2001). *Grand Union* stores have been integrated within *Stop & Shop* and *Tops*, while *US Foodservice* acquired *Alliant Foodservice* in Nov. 2001.

This round of mergers and acquisitions declined in 2000 after the United States Federal Trade Commission (FTC) started to examine their anti-competitive nature more closely. This resulted in the failure of a number of such proposals as the mergers involving *Ahold* and *Pathmark Stores*, *Kroger* and *Winn-Dixie*, etc. Another factor contributing to the slow-down in retail consolidation is that the capital markets stopped rewarding mega-mergers, in light of problems that had become evident in retailers' efforts to integrate acquisitions that were sometimes as big as the acquirers. It was noted that the *Albertson's-American Stores* as well as the *Krogers-Fred Meyer* deals had experienced integrating problems because of the size of the acquired companies, while *Safeway* had had less trouble with its acquisitions, which were small regional chains with fewer stores.

1.10. Amalgamation of purchasing power

The next wave in defensive strategy of the competitors against *Wal-Mart* saw the establishment of B2B (business-to-business) electronic exchanges, whereby the Internet was harnessed as an efficient and economical way of integrating the supply chain. EDI, the precursor of e-business, started in the 1970s and was basically a mainframe technology. While it helped to cut purchase costs by more than 50 per cent, it was adopted primarily by large businesses and was too expensive for small and medium-sized enterprises (SMEs). The Internet helped usher in newer, more flexible standards, which were also very cost-effective: its connection cost of \$1 per hour is dramatically lower than the corresponding rate of \$150 for an EDI link.

Wal-Mart has a tradition of focusing on improving its supply chain efficiencies, and has invested about \$4 billion in building up its Retail Link system, in operation since 1991. Retail Link is used by more than 10,000 of the company's suppliers to monitor sales of their goods at the store level and replenish inventories as needed. The inventory system also integrates into one of the largest data warehouses in existence, with more than 100 terabytes of information, which the firm uses to make daily transaction details available to each of its stores by 4 a.m. the next day.

The advent of the Internet and e-business, promising huge reductions in costs as well as the streamlining of business processes, has led to a number of large retailers coming together to create two major B2B retail exchanges. GlobalNetXchange (GNX) and WorldWideRetailExchange (WWRE) are a response to the *Wal-Mart* challenge.

GNX, promoted by *Sears* and *Carrefour*, currently includes such major retailers as *Carrefour SA*, *Kroger Co.*, *Metro AG*, *J. Sainsbury plc*, *Coles Myer*, *Pinault-Printemps-Redoute SA*, and *Sears, Roebuck & Co.* The exchange's proprietors have been actively promoting its use by retailers worldwide. It also includes *Oracle* as a technological provider and has reached an agreement with *Transora* to build a mega exchange.

WWRE, founded in March 2000, brought together 17 international retailers catering to retailers and suppliers in the food, general merchandise, textile/home and drugstore sectors. Although the combined revenue of its members is larger than that of GNX, their ability to exploit this for leverage is considered low as members come from a wide variety of industries. WWRE aims substantially to reduce costs across product development, procurement and supply chain processes through the simplification, rationalization and automation of processes to eliminate inefficiencies across the supply chain.

Table 1.3. B2B Exchanges comparison: GNX and WWRE against Wal-Mart

	Wal-Mart	GNX	WWRE
Exchange Type	Private	Consortium	Consortium
Number of members	1	8 Partners + other paying members	60
Number of suppliers	10,000	50,000	100,000
Combined revenues	\$220 billion (2002)		\$845 billion
Combined purchasing power		\$400 billion	
No of 2001 transactions		2,600	
Transaction value in 2001		\$2.1 billion	
Savings generated			\$392 million
Technology providers	Home grown/Atlas Commerce (VerticalNet)	Oracle	IBM, Ariba and i2
Focus sectors		Apparel/soft goods, hard goods, food and other consumer products	Food, general merchandise, textile/home and drugstore

Source: Inder Chettri: *Impact of Wal-Mart on retail consolidation and standardization*, 3 May 2002, at <http://www.infosys.com/knowledge-capital/retail-distribution.asp>, visited 17 Dec. 2002.

1.11. Supply chain standardization and integration

As part of the consolidation process, the last phase in the process has involved its rivals joining with *Wal-Mart* to develop industry-wide technical codes that aim at reducing distribution chain costs for the entire sector. The Uniform Code Council (UCC) develops worldwide standards for identification codes, data carriers and electronic commerce across industries, offering a solution for global data synchronization across enterprise, supply chain, and e-commerce systems to facilitative collaborative commerce. The Association for Retail Technology Standards (ARTS), promoted by the National Retail Federation, aims to create an international, barrier-free technology environment for retailers.

2. Effects of M&As in commerce on sectoral employment

2.1. Regional overviews

As has already been stated, the 1990s saw extensive consolidation of the commerce sector at the national and international levels, very frequently through domestic and cross-border mergers and acquisitions. The following overview of merger activity around the world is not meant to be exhaustive; it aims simply to provide an idea of the degree of concentration in the industry.

2.2. Africa: The case of South Africa

Not surprisingly, because of its developed financial markets, which facilitate the sale and purchase of companies and company assets, South Africa is the only country in the region to experience significant merger activity over recent years. Information provided by the South African Commercial, Catering and Allied Workers Union (SACCAWU) suggests that merger activity has been very heavy in South Africa. It is estimated, for instance, that over the first six months of 2002, about 124 deals worth approximately US\$22.6 billion were concluded, as compared with 183 transactions for the whole of 2001.

While retail sales have seen overall growth, profits, especially in apparel, have decreased, resulting in increased competition for turnover. The major food retailers, which have diversified into such products as clothing and durable goods, continue to take market share from smaller retailers. There is consequently a very high concentration in food retailing, with the biggest three (*Pick 'n Pay*, *Shoprite*, and *Spar*) controlling 94 per cent of the market. Some retailers are also diversifying into different services, with most now selling mobile phones and service contracts. Others, such as *Pick 'n Pay*, *JD Group* and *Ellerines*, have linked up with financial services operators to provide a full range of financial services.

Acquisition deals have included that of the *Renaissance Group* by *Relyant*, and that of *Browns*, *Weirs* and *Rebel* stores by *Massmart*. *New Clicks* also acquired *Modisons*, an 11-store chain with a beauty products emphasis aimed at the lower end of the market. However, a proposed merger between *JD Group* and *Ellerines* was blocked on competition grounds. (see below for more on the *Relyant Group* and *JD Group* M&As and their employment effects).

Mergers in South Africa, as indeed elsewhere, are primarily motivated by business considerations, and often take scant account of employment and labour issues. Merger control in South Africa is unique relative to other regimes in developed countries in that it does not limit itself solely to competition issues. The provisions of the Competition Act extend to other aspects of economic concern, such as the resulting levels of employment or unemployment, and the effects on historically disadvantaged persons.

Nevertheless, as elsewhere, post-merger restructuring in commerce tends to shift the bias essentially towards capital, frequently resulting in job shedding. According to SACCAWU, although the South African Labour Relations Amendment Act of 2002 provides for the protection of workers' acquired rights in case of transfer of ownership, whether by merger or acquisition, in practice new employers have been able to obtain indemnity from the previous employer against any employment liability. In other cases, acquirers have conditioned the transaction on the target, first implementing sizeable

retrenchments and outsourcing arrangements for certain – allegedly – “non-core functions”. Despite such pre-transaction reductions, the post-merger restructuring is itself replete with further redundancies.

SACCAWU reports, furthermore, that the concentration of commerce in South Africa has been inimical to consumers’ interests, tending to reduce competition and generate an increase in the prices of foodstuffs and other household items. The end result of the consolidation process has been the emergence of a reduced number of dominant wholesale-retail firms. Little in the way of investment in skills or job creation has resulted from the consolidation, and the overall experience of workers regarding South African M&As was mostly negative. The union highlights a few cases illustrating the negative consequences of M&As in South Africa, including *Relyant Group*, *Joshua Door Group (JDG)*, *Metcash*, *Gallo Music*, and *Phumelela Gaming and Leisure*.

The *Relyant Group* is a result of the combination of two furniture groups, *Beare Group* and *Amrel*. The *Beare Group* closed many of its stores, and retrenched workers prior to notifying the union of its merger plans. Retrenchments predominantly involved female sales consultants and credit controllers. Prior to the merger, *Amrel* was simultaneously cutting jobs and disposing of or outsourcing some of its operations, claiming they no longer formed part of its core business. According to the union both companies failed to inform or to consult the union until their plans had become public knowledge. Post-merger restructuring has led to further massive redundancies and many court cases have resulted from worker grievances related to the merger. The union is concerned that the provisions of the Labour Relations Act are not sufficiently dissuasive.

Metcash has been involved in several M&A transactions, selling *Score* but acquiring *Trader Cash & Carry* and *Price Club*. It has also expanded all over Africa and into Asia, the Middle East and Australia. Parallel to its international expansion, it has gone through a restructuring, closing many of its operations and retrenching workers in the process. Consultations were undertaken with the union and the company agreed to redeploy some of the workers and to put others on a recall list. Nevertheless, the company also attempted to withhold the benefits due to some of the workers it had unilaterally retrenched, and there was a feeling among the workers’ representatives that it was the company’s intention to later rehire some of the same workers, but this time as casuals.

Gallo Music, a producer and distributor of music that had previously acquired a competitor, *Tusk Music*, more recently merged with *Bunker Hills Inc. 590* to form *Music For Pleasure*. Negotiations between the union and the company have resulted in the company providing engagements on employment protection during the restructuring.

SACCAWU reports that, in the period leading up to the company’s merger with *TAB Northwest*, *Phumelela Gaming and Leisure* attempted to convert all its workers into non-salaried commission agents against their will. The legal proceedings resulting from the strike this attempt provoked are still continuing.

In addition to the above domestic mergers, South African firms have been busy international acquirers, or are expanding their global networks through greenfield investments. *Pick ‘n Pay* and *Woolworth’s* have respectively acquired the Australian chains *Franklins* and *Country Road*, while *New Clicks* has acquired another Australian firm, the 66-store franchised housewares retailer *House*. Meanwhile, *JD Group* (mentioned above) and *Steinhoff* have moved into Poland, and *Mr. Price* planned to open four more stores in Chile in 2002 to add to the three it already has there.

2.3. Asia and the Pacific

There have recently been important developments in commerce in Japan. The Government is trying to implement structural reform to help the economy out of its long-term recession and current deflation. The Large-Scale Retail Store Location Law, which came into effect in June 2000, is designed to make it easier to open and operate big stores by removing old restrictions on floor space and shop-opening hours. Although Japanese firms have had to weather an economy that has been stagnating for over a decade some individual firms have managed to continue to grow, and some have expanded into foreign markets. Supermarkets struggling with falling prices and intensifying competition are an exception. Some, like the country's top supermarket operator *Ito-Yokado*, which owns the *Seven-Eleven* convenience stores, are branching out beyond commerce into other activities, such as financial services, providing a practical illustration of sectoral convergence.

As noted in the ILO report on the employment impact of mergers and acquisitions in banking and financial services,¹ until recently, cross-shareholding traditions among friendly Japanese companies discouraged M&As, especially those involving foreign buyers. For many years previously, M&As in Japan simply meant domestic M&As in which large companies and company groups – the *keiretsu* – consolidated business or took over group daughter companies with the aim of rescuing them from financial difficulty. Culture played a paramount role in discouraging M&As, with their negative popular image. In fact the Japanese media has previously equated the word “acquisition” with the Japanese “*nottori*”, meaning “hijacking”.² The widespread negative attitude in Japan towards M&As is therefore unsurprising.

However, with the decade-old financial crisis, banks around which the *keiretsu* have been traditionally organized can no longer afford to maintain weak firms within the group afloat, providing opportunities for outsiders, including foreigners, to take over Japanese firms. It is expected, in fact, that government-mandated financial-sector reforms will mean that many debt-burdened companies (popularly referred to as “zombies” in Japan because they are viewed as the walking dead), including enterprises in commerce, will either go under or be acquired by healthier rivals.

UI Zensen, the Japanese Federation of Textile, Chemical, Food, Commercial, Service and General Workers' Unions, reports significant M&A operations between 1997 and 2001, involving reorganizations and increased stock shares or aimed at business expansion. The information from UI Zensen is summarized in table 2.1.

Table 2.1. Total number of annual M&As by year and purpose, Japan

Year	1997	1998	1999	2000	2001
Reorganization ¹ increased shareholding	248 (77) ²	316 (101)	501 (156)	593 (169)	617 (178)
Expansion of existing business	154 (57)	205 (66)	399 (123)	703 (149)	800 (169)

¹ ILO: *The employment impact of mergers and acquisitions in the banking and financial services sector* (Geneva. doc. TMBF/2001).

² H.R. Nakamura: *Preliminary report on the current state of mergers and acquisitions in Japan*, Working Paper No. 140 (The European Institute of Japanese Studies, Stockholm School of Economics, Jan. 2001).

Year	1997	1998	1999	2000	2001
Entering new business, dissolution of joint venture	123 (15)	116 (25)	70 (8)	48 (5)	31 (2)
Total	524 (149)	637 (192)	970 (287)	1 344 (323)	1 448 (349)

Note: ¹ *Reorganization* refers to mergers and acquisitions with a parent or associated company aimed at reorganization within the company group; *increased shareholding* refers to the taking of up to 50 per cent interest or more in a related or other company; *expansion of existing business* covers operations intended by the acquirer for expansion or the strengthening of its existing sectoral position; and *entering new business* denotes deals intended for diversification into new lines of business in which the acquirer has previously not been engaged. ² Figures in brackets are the corresponding transactions for commerce companies. Source: *Trend of M&A's related to Japan*, provided by UI Zensen, Management Research Department, Nomura Securities Co. Ltd.

Both UI Zensen and the Japan Federation of Service and Distributive Workers Unions (JSD) believe M&As in Japan primarily aim to expand market share in the context of increased competition against a background of deflation, stagnating personal consumption and heightened uncertainty. Mergers, acquisitions, alliances and other partnerships among companies in the same or even different sectors are considered major factors for the future of the retail industry. The JSD considers that quality of business, rather than the number of stores in a given retail network, will be the competitive advantage of the future. Financial considerations that ignore the people dimension in M&As would lead to failure. In addition, UI Zensen highlights and underlines the self-interested role of investment banks and their analysts in pushing M&As.

With regard to the employment impact of post-merger restructuring, the labour-related provisions of the Japanese Commercial Code stipulate that the validity of employment contracts is transferred with a change in enterprise ownership, and that obligations are inherited in their entirety by the successor company. In addition, a company is required to consult its workers at least two weeks prior to submitting any plans for enterprise or asset sales to a shareholders' general meeting for endorsement. Where a collective bargaining agreement covering such sales or transfers has been reached with the representative trade union, the law requires management to notify the trade union in writing as to whether the intention is for the transfer plan to include provisions for the successor company to recognize the collective bargaining agreement.

One specific M&A deal in Japan was the establishment of a joint holding company, *C&S*, by convenience store chain operators *Circle K Japan* and *Sunkus & Associates* in July 2001. However, this was neither a full merger nor an acquisition. The deal was intended simply to allow the two companies to undertake joint purchasing to exploit economies of scale, reduce costs and boost profits. Much more notable than any merger has been the bankruptcy of *Sogo*, one of Japan's oldest department store chains, and an umbrella company comprising 21 group companies. The company filed for bankruptcy protection in 2000 with total debts of 2 trillion yen (\$17 billion). In 2002, *Seibu Department Stores* was considering merging with *Sogo*, via a joint holding company, to create the country's largest department store chain.

Another notable development in Japan's retailing market is *Wal-Mart's* purchase of around 30 stores located in the Tokyo metropolitan area from failed local supermarket operation *Myca*. On top of its recent taking of shareholdings in equally struggling *Daiei*, this may presage the full-blown entry into the Japanese market of the American giant.

Elsewhere in Asia, the Chinese commerce sector remains overwhelmingly domestically owned, with *Shanghai Lianhua Supermarket Group* (2000 sales: \$1.38 billion) the country's largest retailer. Modern retail store formats have only just begun appearing in the country, but entry into the World Trade Organization is expected to

help modernize the industry. Observers expect changes in retail trade over the next decade to be dramatic; as competition begins to heat up, numerous retailers are likely to merge with other local or foreign partners. In order to help their commercial sector's competitiveness, several local governments have drawn up specific programmes to deal with anticipated foreign competition. The Beijing City Government is, for instance, pushing the city's more than 3,000 retailers into about five supermarket groups, while consumer goods retailer, *Guomei*, is reportedly seeking an American partner.

Hong Kong, China, also saw several acquisitions in 2001. *High Fashion* bought apparel retailer *Theme*, *Sa Sa* cosmetics shops purchased Philip Wain, while *Mainland China HK Photo* took over *Fotomax* shops.

Given the economic conditions, competition and low market valuations of some companies, it was only to be expected that sectoral restructuring and consolidation in Singapore would accelerate. The Government, through its Retail Plan 21, actively sought to encourage the restructuring of the highly fragmented small and medium-sized retailers through differentiation and consolidation. Concentration has increased as major retailers expand their presence at the expense of smaller rivals, with nine out of ten Singaporeans shopping at the leading grocer. After its purchase of the *Tops* supermarket chain from *Royal Ahold* and expanding its up-market store at sites vacated by the bankrupt Japanese retailer *Sogo*, *Dairy Farm International*, a group based in Hong Kong, China is now number two in the country, behind the government-owned *NTUC* supermarket chain. *Harvey Norman* of Australia opened its biggest store outside of its home country, and took over the *Electric City* stores from the *Kingfisher Group*, which has left the country because of increased competitive pressures from international and local retailers.

Rather than M&As, the most pressing current issue in commerce in Thailand relates to the operating environment for foreign retailers, and their impact on small and medium-sized, often family-owned, local stores. At the time of writing this report, controversy had broken out regarding the Government's decision to shelve legislation that would have imposed restrictions on foreign-owned superstores.³ Big global retailers, such as Britain's *Tesco Plc*, France's *Carrefour* and Dutch-owned *Siam Makro Plc* – which combined have been the largest foreign investors in the country since Asia's 1997 financial crisis – are caught in the middle of a policy imbroglio. The level of local investment by international retailers in Thailand is reflected in the fact that *Tesco-Lotus*, the market leader and *Tesco's* local subsidiary, has, for instance, invested more than Thai bhat 44 billion to open 41 stores since 1998; representing a huge 5 per cent of all foreign investments in Thailand since 1998. Research indicates that during the same period 200,000 of the country's 500,000 locally-owned retail stores have now been pushed out of business by foreign-led competition.

As in other countries, in the 1990s the Australian retailing industry was characterized by consolidation, although this was in an overall environment of growth. Large and medium-sized companies expanded their holdings and their profits. M&As occurred on a regular basis, generally aimed at consolidation and strengthening market share in a particular sector of the industry or, where foreign companies were concerned, representing an entry mode into the local market. M&A operations during the period included, the acquisition of *Priceline*, a cosmetics retailer, by *New Clicks* of South Africa. In addition to its acquisition of *House*, which has been reported above, the South African company also took over *Price Attack*, another Australian cosmetics retailer, and it plans to expand these

³ "Time will tell if Thaksin is right", in *The Nation* (Bangkok), 21 Nov. 2002.

chains into New Zealand. These acquisitions gave the company over 300 outlets and have made it the predominant speciality retailer in its sector of the market.

Bunnings bought *BBC Hardware House* from the *Howard Smith Group* in 2001. The addition of the target's 50 stores to its own 193 and the combined firm's 15,000 employees give the acquirer the dominant position in that sector of the market. In early 2002, *W.H. Smith*, the largest book and magazine retailer in the United Kingdom acquired Australia's largest similar retailer, *Angus and Robertson*, from the American company *Bluse Star*. The acquisition similarly catapults the new owner to the top of this specialty sector with about 160 outlets and 800 employees who generated revenue of A\$149 million in 2001. Other notable acquisitions include the takeover by the *Brazin Group of Sanity Music, I 2 Music, sanity.com, Bras'n Things, Viva Lingerie, Aztec Rose* and *Gosh Coffee*. The combined company has over 400 outlets, in excess of 2,500 employees, and in 2001 it had a revenue of A\$496 million. *Millers*, one of Australia's largest women's clothing retailers, has grown exponentially over the past decade through the acquisition of a number of small and medium-sized clothing retailers. In 2001, it acquired discount variety stores *Go Lo* and *Crazy Clark's*. It then added *Chickenfeed* in 2002 to give it over 35 per cent of the discount variety store market, making it the predominant speciality retailer in that segment of the market and pushing it into the top 200 Australian retailers with a total revenue of A\$972 million in 2001. Other deals have involved *Freedom Furniture's* acquisition of *Guests Furniture, Andersons, and Captain Snooze Bedding Co.* The company, which has about 140 stores employing about 1,250 employees for A\$358 million annual sales, has also forged an alliance with South Africa's *Steinhoff Group*. During the same period, *Dairy Farm International*, based in Hong Kong, China, sold its *Franklins* supermarket stores to a range of buyers: 68 to *Woolworths Australia*, 20 to *Coles*, 36 to *Foodland*, 60 to a group of independents operating under the *Metcash* (South Africa) banner, while 152 went to another group of independents encompassing another South African firm, *Pick 'n Pay*. In addition to the 56 from *Franklins*, *Pick 'n Pay* also acquired an extra 20 stores from *Fresco* supermarkets. *Woolworths Australia*, the largest supermarket chain and the country's second biggest retailer, has expanded into the electronics sector in recent years, acquiring *Dick Smith Electronics* and *Tandy*, both of which add over 300 outlets and 700 employees to the company's total. Yet another South African company, *Metro Cash and Carry*, took over *Dauids Holdings*, a wholesale/distribution chain.

An interesting feature of the acquisitions by South African retailers in Australia is a human resources approach that seems to differ extensively from that adopted in their home country, even at times by the same companies. Contrary to the practice reported by the South African trade union, SACCAWU, the Shop, Distributive & Allied Employees' Association of Australia (SDA) notes that the many South African retailers that have made acquisitions in Australia have generally melded into the Australian retail environment without seeking to bring about major labour-management relationship upheavals.

The SDA reports that the Australian retail industry was characterized by overall consistent growth and consolidation during the 1990s. Mergers and acquisitions occurred on a regular basis, but rarely led to significant staffing changes or retrenchments. Most large and medium-sized retail companies in Australia operate under an enterprise agreement negotiated with the SDA.⁴ These agreements have redundancy provisions which apply should retrenchments occur. Where enterprise agreements do not apply, industrial awards of the Australian Industrial Relations Commission (AIRC) do apply.⁵

⁴ See Appendix 1 for copies of examples of enterprise agreements with *Bunnings Warehouse* (2000) and *Priceline Retail* (2001).

⁵ See Appendix 2 for an example of an AIRC award covering *National Fast Food Retail* (2000).

Such awards also encompass redundancy provisions. The SDA represents employees before the Commission to ensure that awards provide reasonable wages and working conditions.

Where retrenchments are unavoidable, national standard redundancy provisions are two weeks' pay per year of service to a cap of eight weeks. In recent times some companies have begun to accept a new standard of up to 16 weeks' pay, and the SDA is seeking to negotiate this into all enterprise agreements. The Australian Council of Trade Unions is about to take a test case to the AIRC with the aim of achieving this position as a new national standard across all industries.

2.3. Europe

The European Commission's Directorate-General for Economic and Financial Affairs tracks merger activity, especially that involving the European Union (EU) enterprises. It's publication on economic trends, which draws statistical data from the SDC M&A database, provides a view of the evolution of mergers from 1991 to 2001.⁶

The Commission reports 16,750 M&A transactions involving an EU enterprise during 2000, falling by a quarter the next year, for the first time since 1996. Between 1993 and 1998, M&A operations carried out by EU and American firms both displayed an upward trend, with American firms nevertheless remaining significantly more active than European ones and the gap between them increasing constantly until 1998. After that, M&A activity in the United States began to fall, with a sharp decrease between 2000 and 2001. Operations by EU firms, on the other hand, reached a peak in 2000 before experiencing a similar fall in 2001.

Within the EU, and in respect of all industries, the United Kingdom has accounted for the largest share of M&A activity, followed by Germany, France and the Netherlands. In 2000-01, domestic transactions accounted for 54 per cent of all operations involving EU companies, while operations of a Community character amounted to 15 per cent. International M&As accounted for 25 per cent, indicating a fall in the share of such operations as compared to the 1998-99 period.

A sectoral breakdown indicates that the level of activity over the 2000-01 period was highest for the business services sector, followed, as in previous periods, by wholesale trade. The fact that the sectoral distribution of Community operations is very similar to that of domestic operations indicates that national borders within the EU do not significantly distort the acquisition strategies of European companies. Contrary to the general view, the Directorate-General's analysis indicates that while Economic and Monetary Union (EMU) may have accelerated the pace of restructuring in financial services and the distribution sectors, its impact has been mainly restricted to domestic operations in the euro-zone countries. It has thus far not given any impetus to cross-border integration through M&As. Transaction activity in wholesale and retail distribution services seemed relatively equally high both inside and outside the euro-zone during the period 1997-2000, before the 2001 general drop in merger activity. The only significant difference was the much higher rates of M&A growth in retail trade within the euro-zone (about 89 per cent growth between 1997-2000 compared to a 28 per cent growth outside the euro-zone). Growth rates of M&As in wholesale trade were comparable in the two areas (about 27 per cent during the same period).

⁶ European Commission Directorate-General for Economic and Financial Affairs: *European Economy*, Supplement A, "Economic trends", No. 12. Dec. 2001.

The following are some examples of individual M&A transactions in the European Union. *Royal Ahold* has been the key factor driving further consolidation in the Nordic region since extending its operations into Denmark through the acquisition of the *ISO* chain. This has set off merger talks between many local and regional supermarket operators as they try to defend their turf. *Coop Norden* are merging their buying operations, while Norwegian sports goods retailer *Gresvig ASA* has sold 11 of its 15 shops in Denmark to *Sport Danmark* with plans to sell or close down its remaining four stores. Another notable development in the region relates to the plans for a joint venture between the Scandinavian retail group *ICA Ahold*, also half-owned by *Royal Ahold*, and *Dansk Supermarket* to jointly develop and operate discount stores and hypermarkets in Sweden and Norway. The joint venture would involve discount stores under the *Netto* brand name, and hypermarkets based on *Dansk's Bilka* format. It is worth noting that retail in the Nordic region had already been highly concentrated before this new round of consolidation. From 1982 to 1992, for instance, the total number of shops in Denmark fell by 37 per cent, compared to a European average of 17 per cent, while the four largest actors ended up controlling over 75 per cent of the market. With 10.1 shops per 1,000 inhabitants in 1999, Denmark, however, still had a relatively large number of shops per person in comparison with other countries in Northern Europe (e.g. Germany and Sweden where the corresponding figure was 8.4 shops in the same year).

The environment for commerce in France has been affected by government efforts to have a greater say in controlling the industry. Legislation relevant to these efforts adopted over the 1990s include the Raffarin Law of 1996, which seeks to regulate the building of new stores over 300 square metres; the Galand Law (1997) to ban the sale of goods at lower than their purchase price, and the *Nouvelle Règle Economique* (New Economic Rule, 2000) setting up the Government's position vis-a-vis concentration abuses and balanced relationships between suppliers and retailers. Meantime, France probably saw the most important merger transaction in European commerce with the 2000 integration of *Carrefour* and *Promodès* to create the world's second largest retailer behind *Wal-Mart*. A few years earlier, France had also recorded other commerce mega-mergers with the creation of the *Casino Group* from a combination of *Cora* and *Casino*, and the alliance of *Leclerc* and *Système U*. In the global trend toward international concentration in retailing, French groups have been acquiring foreign companies and opening new stores. *Cora* purchased *Uniwide*, with its ten hypermarkets in the Philippines, while *Promodès-Carrefour* has invested in *Hyparlo* in Italy and Romania. The company's expansion plans include the opening of hypermarkets and supermarkets in Poland and Taiwan, China. Three other French retailers, *Intermarché*, *Leclerc* and *Auchan*, have opened new stores in Argentina, China, Italy, Portugal, Spain and the United States.

In Germany, the retail sector is already highly concentrated, with the top ten companies controlling 84 per cent of the market in 2000. Because the market situation is conducive to horizontal mergers among competitors, observers believe it is set for further consolidation to five key players by 2010 with virtually any combination possible. The 1990s M&A operations included the buyouts of *Allkauf* by *Metro AG* and *Interspar* by *Wal-Mart*, adding that company's 74 supermarkets to the 21 it had earlier acquired with the purchase of *Wertkauf* in 1997. However, the American retailer's 2000 attempt to buy *Metro* failed. There were two other significant acquisitions in 1999: *Karstadt* took over *Quelle* and *REWE* bought *Meinl*. German retailers are also expanding internationally, with *Metro* and *REWE* focusing on south-east Europe, and *Aldi* and *Lidl* opening new stores and seeking to increase market share in Western Europe. *REWE* has also gained a significant foothold in the Italian market by acquiring *Standa*.

The Dutch commerce sector is undergoing extensive consolidation similar to that of Germany and the Nordic region, through both domestic and cross-border M&As. *BelCompany*, a retailer of mobile telephones, has acquired 15 *Maxwell Phone Stores* in

Belgium, while *Carphone Warehouse Group*, a mobile telecommunications retail group in London, acquired *Road Phone Telecom*, Netherlands, an independent business-to-business mobile telecommunications distributor. *Dynabyte*, a computer retailer, has been acquired by *Vendex KBB* while *Sligro Beheer* has acquired *Prisma Holding*, a food wholesaler with several retail formats. These are but examples of a long list of mergers, acquisitions and divestiture involving Dutch enterprises.

In Portugal, major commerce players are expanding organically both domestically and internationally, and there have not been no major mergers or acquisitions over the last few years. There is also talk of *Wal-Mart* investing in the country, which is likely to set off a flurry of consolidation deals. Other M&A transactions were concerned with the divestiture of *Marks & Spencer* stores as part of its plan to retrench from continental Europe.

Over the last three years, retailers in the United Kingdom have experienced poor performance which did not, however, lead to any significant increase in M&A activity, despite the fact that the United Kingdom is the most M&A-friendly market outside the United States. Nevertheless, some sectors of the industry, especially DIY, have experienced consolidation as companies struggled with a weak economy and changing consumer spending patterns. *J. Sainsbury* sold its DIY subsidiary, *Homebase*, while *Focus Do It All* acquired rival DIY chains *Wickes* and *Great Mills*. Other significant M&As have involved the recent £850 million (\$1.3 billion) acquisition of *Arcadia* and its 2,600 stores by the *BHS* owner and retail entrepreneur Philip Green, bringing such major retail businesses as *Top Shop*, *Top Man*, *Miss Selfridge*, *Burton*, *Dorothy Perkins*, *Wallis* and *Evans* within his stable of businesses. *Arcadia*, previously known as the *Burton Group* until it sold off *Debenhams* and changed its name in 1998, had already sold off some of its chains, including *Principles*, *Warehouse*, *Racing Green* and *Hawkshead* to *Rubicon Retail* for £35 million. An earlier company restructuring plan had envisaged the closure of 24 per cent of its shops with a loss of 3,500 jobs for what it hoped would be cost savings of £160 million. Another significant merger involving British commerce entities, and signalling the end of an era, brought together the country's two biggest coops, the *Cooperative Wholesale Society* and the *Cooperative Retail Services* into a combined £4.7 billion enterprise with hundreds of supermarkets across the United Kingdom. The merger, involving about 320 redundancies, both voluntary and compulsory, from a total workforce of over 50,000, was intended to provide a platform for revamping the combined network of 1,100 stores and help them battle bigger rivals such as *J. Sainsbury's* and *Tesco*. It also aims at turning the new company, which will trade as *CWS*, into a major force in a range of sectors that include not only retailing but also banking, insurance, farming, funerals, travel, car sales and the dairy trade.

On the cross-border front, *Kingfisher* bought the rest of the *Castorama* shares it did not already own, with the aim of fully integrating the French DIY with another of its businesses, *B&Q*. *Kingfisher* announced that the takeover would lead to substantial restructuring within the group allowing for reductions in supplier costs, the adoption of common ranges of products, and an overhaul of its pricing policy. As part of the group restructuring, the company would also hive off its electrical goods chains, which consist of *Comet* in the United Kingdom and *Darty* in France, either through a demerger or flotation. However, the landmark commerce sector acquisition in the United Kingdom over the last few years is undoubtedly *Wal-Mart's* takeover of *Asda*. Combined with its takeover of Germany's *Interspar*, the American retailer now has a firm footing in the European market and is likely to be a catalyst in further defensive consolidation by its European competitors. *Wal-Mart*, with a corporate culture which actively tries to foster a feeling that it cares so much for its employees that they do not need to be unionized, has such an anti-union reputation that *Asda's* recognized union, the GMB, sought assurances from the company on such matters as job security and pensions. There were no job losses as a result of the takeover, and thus far there have been no reports of any anti-union initiative from the new

Wal-Mart-owned company, whose most important impact on British retailing is an aggressive supermarket pricing war. In 2002, *Asda* employed about 120,000 people, it had taken on 16,000 new workers in 2001, and announced it intended to create 10,000 more jobs in 2002, with 30 per cent full-time positions.⁷ In the opposite direction, restructuring has put an end to the overseas expansion of *Marks & Spencer*. The company has sold its *Brooks Brothers* clothing division and its *Kings Supermarkets* in the United States and sold off or closed its 38 company-owned stores in continental Europe.

Although M&As in British commerce have not yet generated any substantial job losses, trade unions argue that United Kingdom law on company mergers and takeovers should apply a public interest test rather than simply adopt a narrow competition test. They propose, in addition, that the Transfer of Undertakings (Protection of Employment) Regulations (TUPE), which implement the EU Acquired Rights Directive in the United Kingdom and have been under review by the British Government for some time, should be extended to cover the protection of occupational pension rights. In view of certain decisions from the European Court of Justice, trade unions have also urged that legislation make the regulations clearer by identifying more precisely those transactions which constitute a business transfer.

At the Community level in the EU, the review of mergers and acquisitions is controlled under Council Regulation (EEC) No 4064/89, adopted in December 1989. The principal aim of the Regulation is to restrict large concentrations in one sector, the market impact of which could be presumed to go beyond any single national market; major M&As at the international level should be subject to the Commission's exclusive jurisdiction. The Regulation does not encompass any social impact provisions. In response to a European Commission Green Paper on the review of the merger regulation, European trade unions have submitted comments proposing the inclusion of a social dimension. Unions take issue with the exclusion of the wider social and employment consequences of mergers from the Green Paper, and call on the Commission to include in its review of merger proposals such considerations as redundancies and effects on suppliers that would exacerbate local, regional or national employment problems. In addition, unions contend that they are in a good position to: provide insights into the possible implications of mergers, including their market impact; call into question the source of, and scope for, the synergy gains that are often claimed for bids, but which in practice rarely materialize; identify problems likely to arise from a clash of corporate cultures between prospective merger partners; and provide an appreciation based on experience of where post-merger rationalization of production plants and supply networks may impact most, the implications for an entire workforce, and the social consequences for the wider communities.

Central and Eastern Europe have not experienced many domestic mergers over the last few years, mainly because private-sector commerce is still in relative infancy and highly fragmented. Merger effects overwhelmingly tend to represent the local fallout of international M&As, such as the takeovers of Austria's *Billa* and Belgium's *Globi*, by two French retailers, supermarket chains *Auchan* and *Carrefour*, respectively. However, the industry is developing rapidly towards Western European standards in line with rising incomes. The retail sector in much of the region remains dominated by small family-operated establishments, although large department stores and supermarkets are gaining popularity among consumers. Foreign chains are also increasingly represented, chiefly through the establishment of greenfield operations by such Western European companies as *Globus* from Belgium; *Auchan*, *Carrefour*, *Cora*, *Géant*, *Intermarché*, and *Leclerc* from France; *Ahold*, *Makro Cash and Carry* from the Netherlands; *HIT*, *Metro*, *Penny Market*,

⁷ "Asda set to create 10,000 more jobs", 17 Jan. 2002, at <http://news.bbc.co.uk/2/hi/business/1765748.stm>, visited 3 Jan. 2003.

Tengelmann and *Baumax* from Germany; *Tesco* and *Savia* from the United Kingdom; *Billa*, *Julius Meinl*, *Humanic* and *Michelfeit* from Austria; and *Ikea* from Sweden. The United States is also represented by such companies as *Office Depot*. *Kingfisher* of the United Kingdom is one international retailer that has made an acquisition in the region, taking a 60 per cent majority stake in *Datart*, the market leader in electronics retailing in the Czech Republic and Slovakia. The acquired company already operates large format stores based on a western model similar to those in the *Kingfisher Electronic* sector. *K-Mart*, the first commerce multinational to establish operations in the Czech Republic, sold its chain of stores to *Tesco Stores, a.s.* in 1996.

Given the low frequency of domestic M&As in Central and Eastern Europe, there has as yet been no significant employment impact. As noted above, merger effects tend to reflect the local fallout from operations involving multinational retailers outside the region, or less frequently the transfer of ownership of local businesses between western multinational retailers. Rather than job losses, the Czech Trade Union of Workers in Retail Trade (OSPO) reports that the arrival of global retailers in the country has, in fact, substantially contributed to an increase in job opportunities. At the same time, however, the extremely aggressive price-based competition of many of them is leading to job losses in small shops – especially in food retailing – which have been closing, contributing to the depopulation of city centres and an increase in impersonal service. New alliances of small-scale retail entrepreneurs and the self-employed have sprung up to defend themselves against the onslaught, but they are no match for the multinationals. The same situation is true for the cooperative commerce sector, where most of OSPO's present members work. The shift of employment from the small and medium-scale commerce enterprises and consumer cooperatives to the global retailers is accelerating.

In the Russian Federation, five leading retail chains, owning more than 60 supermarkets in Moscow and with total annual sales estimated at \$400 million in 2001, have combined their resources and experience in a joint marketing and investment project. Cooperation was intended to include joint discount cards, a joint catalogue and two shopping centres. Four other large Russian retailers, with estimated joint annual sales of \$500 million, founded the Russian Retail Alliance in 2001.

2.4. Latin America

The 1999 worldwide merger between *Carrefour* and *Promodès* had a Latin American dimension and required approval from the Argentine Anti-Trust Commission. This case is an excellent illustration of the international dimensions of M&A activity, even when they involve enterprises from the same home country. Increased competitiveness of the Argentine market also pushed the Chilean chains, *Unimarc* and *Ekono*, to exit after selling off their interests to *Disco* of the *Royal Ahold Group*, which is itself considering departing from the market in view of the current economic situation in the country.

A development with important implications for the Argentine commerce sector relates to the passing of several new regulations by national, provincial and district authorities to restrict the opening hours of big stores in order to protect small stores and markets. A code of fair commercial practices was also signed by the biggest chains, suppliers and the Government in 2001. It sets up arrangements prohibiting the sale of supplies at below cost.

Big retailers in Brazil have been taking over national and regional chains to increase market share and enhance operational results by cutting costs. The hypermarket and supermarket/grocery store segment is the largest retail sector, and it is consolidating rapidly. The market share of the largest players is increasing, with the five biggest

supermarket chains controlling over 40 per cent of total segment sales. It is also a highly internationalized segment with 23 foreign retailers involved in the sector by 2000. Consolidation is often with the involvement of foreign participation: of the seven largest chains, six have foreign capital. *Carrefour* acquired *Big Bom*, while *Pão de Açúcar* acquired *Mercadinho São Luiz*, *Paulo J. Reimberg*, *Nagumo*, *Ge-Pires*, *Senff Parati*, *Supermercados Rosado*, *Cibus/Itapema* and *Boa Esperança*. In November 2001, the retailer announced it sought to buy *ABC*, a supermarket chain in the state of Rio de Janeiro. In the meantime, the *Royal Ahold Group* entered Brazil through the acquisition of *Bompreço* and *Pes Mendonça* supermarket chains. *Ponto Frio*, a national retailer, also bought the 81-store, *Disapel*, non-food chain in June 2000, but was rebuffed in its attempt to acquire another non-food retailer, *Brasimac*. One of the biggest wholesaler companies, *JM&Martins*, has merged with *Supermercades Se*, a related supermarket.

Chile, too, has experienced recent M&A activity as the market adjusts to an intensification of competition. The bulk of *Agas*, a medium-sized supermarket chain, was sold to *Santa Isabel*, another supermarket chain that was itself previously acquired by *Disco Ahold*. *Agas'* remaining three stores (out of the previous 17) now operate under the aegis of *Aldi S.A. Salco* and *Brand*, two pharmacy chains, also merged to reach the necessary size to compete with the country's largest chain, *Farmacias Ahumada*.

2.5. North America

The complexion of Canada's distribution services has undergone extensive change as a result of recent major mergers and acquisitions. *Loblaw's* has taken over *Provigo*, while *Sobeys* acquired the *Oshawa Group*. The result is that the top six supermarket companies in Canada now represent over 80 per cent of total market sales, compared, for example, to about 40 per cent for the top six supermarket companies in the United States. Other notable mergers included that of the two largest bookstores, *Chapters* and *Indigo*, in 2001, resulting in the creation of a company that now dominates this market segment. In November 2001, *Best Buy* completed its purchase of *Future Shop*, Canada's largest electronics retailer with 91 stores, and intends to complete the integration process by 2004.

Some M&A activity in the United States was discussed in Chapter 1. In addition to M&As involving *Wal-Mart*, *Safeway* and *Kroger*, the most notable activity has been the continued inroads made by *Royal Ahold*, which has helped turn the Dutch retailer into the second largest food service distributor in the United States, behind *Sysco*. Because *Ahold's* acquisitions in the United States have been motivated mainly by considerations of expanding its market share, the overall employment effects have been positive, as can be seen from the net increase, for the two-year period 2000-01, in the number of locations of its various subsidiary businesses, as illustrated in table 2.2.

Table 2.2. **Royal Ahold: Retail acquisitions in the United States, 2000-01**

Subsidiary company	2001 sales (\$ million)	2000 sales (\$ million)	Growth (%)	2001 locations	2000 locations	2001 net locations growth
Stop & Shop	8 779	6 892	27	321	274	47
Giant (Landover)	5 115	4 780	7	186	183	3
BI-LO	3 619	3 423	6	446	422	24
Tops	3 017	2 807	7	370	342	28
Giant (Carlisle)	2 473	2 214	12	107	96	11
U.S. Foodservice	12 134	5 952	104			

Source: Based on data from *Ahold Annual Report 2001*, at <http://www.ahold.com>, visited 6 Jan. 2003

However, of greater interest and relevance to the consolidation of the retail industry in the country is the dramatic rise in the number of retail bankruptcies and store closings, as a direct consequence of the current difficult economic situation. The International Council of Shopping Centres estimates, for example, that 6,000 store closings had been announced during the first ten months of 2001, with apparel retailers, led by *Bugle Boy*, accounting for about 25 per cent of those closings. Other retailers filing for Chapter 11 bankruptcy protection include: *Furrs Supermarkets* (2001), with *Kroger* buying several of its stores; *Payless Cashways* (June 2001); *Letcher's*; *House2Home*; *HomeLife Furniture*; *Heilig-Meyers*; and *Strouds*.

3. Thematic analysis of the impact of M&As in commerce

It is now widely agreed that M&As generally lead to job losses and that the number of jobs in the merged company will almost invariably be less than the sum of the jobs in its constituent enterprises. These losses, especially from mature industries with little potential for growth, come about as a result of consolidation and the related organizational restructuring and rationalization of operations, which first reduce and then limit the creation of new jobs.

An earlier ILO report,¹ which reviewed the employment impact of M&As on employment in the financial services sector, found that they generally destroyed jobs. The report underlined the fact that because merger effects combined with other processes, such as globalization, non-merger related restructuring and the introduction of new technologies, it was often impossible to disentangle the losses related to M&As from those of other processes. The ILO study concluded, however, that the M&A effects on employment and on working and employment conditions were still negative.

Merger proponents do not, in general, dispute the fact that they directly destroy jobs, but argue, nevertheless that they facilitate synergies between merged organizations, thus generating improvements in efficiency and increasing competitiveness. The larger, combined and more efficient firm contributes to the public good because it can be expected to pass some cost savings to consumers through lower prices. Furthermore, increased efficiency in the utilization of resources eventually translates into economic and employment growth. Short-term job losses should, therefore, be seen as an acceptable price for improved economic health and eventual higher employment growth.

The findings on sectoral employment associated with M&As in commerce seem more ambiguous, despite the fact that negative outcomes have been identified in terms of direct redundancies in merging companies, as seen in South Africa for example. Employment destruction has also been highlighted in Thailand, where research by *JP Morgan Chase* indicates that 200,000 to 500,000 small and medium-sized family-owned stores have gone out of business as a result of foreign-led competition from MNEs such as *Tesco* from Britain, *Carrefour* and *Casino* from France and Dutch-owned *Siam Makro*.² Similar effects are reported in Central and Eastern Europe, where the rapid expansion of the sector since the demise of communism makes the industry roughly comparable to that of Thailand, and susceptible to employment transfer from the small and medium-sized retailers to the sectoral multinational firms.

The ambiguous findings as to the employment destructiveness of M&As in commerce are, perhaps, not all that surprising. The nature and extent of the effects of M&As on employment differ significantly according to the countries concerned, their applicable laws and traditions, the particular sector involved and its employment structure, and the specific merger objectives. Unlike the financial services sector, where the majority of mergers are primarily driven by cost-saving considerations, enterprises in commerce have engaged in M&As mainly to compete for greater market share, to acquire sales know-how unavailable internally, to broaden the company's range of products and services, or to generally

¹ ILO: *The employment impact of mergers and acquisitions in the banking and financial services sector* (Geneva, doc. TMBF/2001).

² "Time will tell if Thaksin in right" in *The Nation* (Bangkok), 21 Nov. 2002.

respond to pressures from increased global competition. Because their mergers are not primarily motivated by cost-cutting, so far greater industry consolidation does not seem to have led to any appreciable direct job losses in merging commerce enterprises over the last decade. Although the direct job losses in the merging enterprises may therefore be relatively minimal, concentration is impacting employment in the wider sector, sometimes very negatively (see also below on direct job losses from M&A-related restructuring in the United States).

Table 3.1. Number of enterprises and employees in commerce in Central European countries, 1997

Country	No. of enterprises ('000)	No. of employees ('000)
Albania	17.0	33.1
Bulgaria (1996 data)	87.4	316.5
Czech Republic	520.2	751.4
Estonia	17.8	n.a.
Hungary (1996 data)	72.2	n.a.
Latvia	15.4	105.4
Lithuania	17.5	246.5
Poland	1 006.7	2 061.0
Romania	226.1	n.a.
Slovakia	81.4	n.a.
Slovenia	23.0	108.0

Note: n.a. = not available.

Source: Eurostat: *Distributive trades in the Central European countries*, Statistics in focus, Theme 4-23/1999, Aug. 1999.

Table 3.1 provides a better understanding of the fragmentation of the Central and Eastern European retail trade. The consolidation associated with the entry of global retailers into the region is likely to push greater numbers of the local operators out of business, with attendant job destruction. Even with increased recruitment by the multinationals of some of those losing their current employment with local retailers factored in, the net job loss is likely to be high.

Table 3.2 shows the evolution in the United Kingdom's commerce sector in employment over the last three years. As already reported in Chapter 2, the United Kingdom has, after the United States, experienced the highest levels of M&A activity in the world in recent years, including in commerce. The figures in the table indicate, however, that employment in the sector continued to grow in 2001 and 2002, by 8.1 and 2.2 per cent, respectively. It is important to note that this growth has occurred during a period of recession, when most of the other sectors have been shedding jobs. Equally relevant is the fact that this job growth does not exclusively or even predominantly relate to part-time or temporary work as might be expected in the context of extensive M&A-related restructuring. Both temporary and full-time jobs seem to have been growing in the wholesale and retail trades during the period.

Table 3.2. Employee jobs in commerce in the United Kingdom: 2000-02

Year	Wholesale full-time	Wholesale part-time	Retail full-time	Retail part-time	All employees	% change year/year
2000	973 100	102 800	1 064 300	1 263 500	3 403 700	
2001	1 005 900	158 200	1 076 800	1 464 700	3 705 600	8.1
2002	1 006 500	153 500	1 135 700	1 491 400	3 787 100	2.2

Note: All data for the month of June.

Source: Supplied by GMB Union on the basis of data from the United Kingdom Office for National Statistics: *Labour Market Trends*.

This is not to say, however, that M&As in commerce do not involve direct redundancies. As the data from the Bureau of Labor Statistics of the United States Department of Labor presented in table 3.3 indicate, there were indeed substantial job losses associated with enterprise ownership change during the mega-merger period of 1990s, including in commerce. It must be noted that the exact number of redundancies for the period is likely to have been much higher than the data indicates, since only information on workers claiming unemployment insurance benefits appears in the table. Layoff events involving less than 50 workers from a single establishment, or those for which a reason other than “business ownership change” was provided by the employer as the primary reason for termination do not appear in the data. Also, recording one primary reason for a mass layoff event does not necessarily preclude the fact that there might have been another primary reason relating to an ownership change. The data must therefore be assumed to understate the extent of terminations related to mergers and acquisitions.

Table 3.3. Extended mass layoff events and separations in the United States commerce sector owing primarily to business ownership change, 1995-2002

Year	Layoff events, commerce	Total layoffs, commerce	Layoff events, private sector	Total layoffs, private sector
Last 3 quarters of 1995	29	11 990	118	27 852
1996	27	15 308	162	44 754
1997	23	5 082	120	24 597
1998	26	7 242	152	36 286
1999	24	7 164	189	56 982
2000	18	3 000	125	32 908
2001	28	7 046	209	55 387
First half of 2002	15	2 536	107	21 038

Note: Commerce refers to wholesale trade (NAICS 42) and retail trade (NAICS 44 and 45).

Source: United States Department of Labor, Bureau of Labor Statistics, Oct. 2002.

Again in the United States, the findings of a study by the Office of Advocacy of the Small Business Administration (SBA) that analyses the employment impact of mergers and acquisitions in the United States between 1990 and 1994, with special reference to

small businesses, provide valuable insights into the job creation and job destruction effects of M&As that remain valid today.³ The main conclusion, not surprisingly, is that employment changed more in acquired establishments than in surviving non-acquired establishments, with the overall result being greater job loss in the acquired establishments. Equally important is the conclusion that the merger of two small firms frequently results in the creation of new jobs, while the merger of two larger firms frequently has the opposite effect. The employment creation, destruction and net change rates were calculated from the appropriate aggregate change in employment divided by the aggregate employment of the establishments in 1990. Because only surviving establishments were examined, start-ups and closures have no impact on these rates of change.

The SBA study reports differing job outcomes for acquired establishments between 1990 and 1994, with gains in some and losses in others. However, the overall result for the acquired establishments for the period was a net loss of 3.3 per cent in employment. The surviving non-acquired establishments, on the other hand, had a small net job increase of 0.7 per cent during the same period. It concludes, furthermore, that acquired establishments had job destruction rates six percentage points higher, on average, than their non-acquired counterparts as against an average job creation rate of only three percentage points. A possible reason given to explain the higher job loss rate is that many establishments were acquired primarily for their physical assets or for some of their skilled labour or management, and were subsequently transferred to other locations of the acquiring firm.

In most M&A transactions, the acquiring firm is larger than the firm from which the acquired establishment came. A full 96.6 per cent of the employment in establishments acquired by firms with fewer than 100 employees in 1994 came from other firms that had fewer than 100 employees in 1990. On the other hand, and as might be expected, large firms acquired most of their establishments from other large firms, with only 20 per cent of their acquired employment coming from establishments that belonged to small firms in the 1990s. Those with 500 to 9,999 employees used smaller firms as the source of acquired establishments for one-third of their acquired employment, while those with at least 10,000 employees obtained more than half of their acquired employment from other firms of similar size. Only 8 per cent of their acquired employment came from establishments that belonged to small firms in 1990. In analysing job change by size of the source firm, the report finds that the distribution of job creation, destruction and net change by firm size varies depending on whether the increase or decrease in jobs in the establishment is attributed to the size of the source firm in 1990 or to the size of the acquiring firm in 1994. When establishments are classified by the size of the source firms, net growth rates decrease systematically in both acquired and non-acquired establishments as firm size increases. Job destruction does not seem to vary greatly by beginning firm size.

Commerce M&A activity has led to greater sectoral consolidation without, it appears, major job destruction. It is not possible to conclude, however, that the effects of greater concentration through future M&As will continue to be as clement if consolidation resumes at the rapid pace and reaches the degree of the 1990s. Greater expansion of western multinational retailers in the candidate countries of Central and Eastern Europe will probably give a clearer answer to the question of the extent of the impact of M&As in commerce on sectoral employment.

³ Office of Advocacy, United States Small Business Administration: *Mergers and acquisitions in the United States, 1990-1994*, Oct. 1998, p. 7 et. seq.

4. Impact of M&As in commerce on conditions of employment and working conditions

One of the basic characteristics of the retail trade sector is its relatively young and highly feminized workforce. It is also a low-paid sector, associated with the relatively lower educational level of its workforce. A considerable proportion of workers are, and remain, on temporary contracts for long periods. A high turnover tends to be the consequence, with workers often rotating from one retail employer to another. In commerce, employment that might be considered non-standard in other industries has attained a certain degree of acceptability.

Academics have underlined the fact that organizations are social structures, held together by an implied contract between individuals focusing on economic and/or social obligations and rewards. A continuum of involvement between the individual and the organization exists, ranging from limited to extensive commitment to organizational goals.¹ Within this context, individuals expect all parties to honour their explicit and implicit obligations and distrust occurs when the obligations are not met or when the parties involved have different expectations regarding the obligations. The ILO report on the employment impact of mergers and acquisitions in the banking and financial services sector,² extensively reviewed this aspect of mergers, noting that a merger or takeover in many ways invalidates the employment contract. The worker is now working for someone else, but without ever having taken any steps to change employers. It underlined the fact that this brings home in the most emphatic manner the one-sidedness of the employment relationship and the fact that workers have no control over the decisions of their employer. M&As, it stated, have sometimes been described as a legitimate means for breaking implicit contracts in order to restructure. These conclusions are as valid for commerce as they were for the financial services.

However, M&A-related impacts on conditions of employment in commerce and in the financial services sector differ in one important respect: the nature of pre-existing employment relations and human resource practices in the two sectors. Financial services employment, more especially in banking, has traditionally been of a permanent, secure nature. Part-time and temporary work, considered non-standard forms of employment, were previously a rarity in the financial services, while they have almost attained a standard status in commerce, especially in retail.

In order to function properly, firms in both finance and retail, still depend on a nexus of implicit and explicit contracts which only work on the basis of trust between managers and workers, undergirded by certain beliefs and assumptions regarding mutual responsibility between employer and employee (the “psychological contract”). A change of management allows alterations in implicit contracts, facilitated by the fact that changes are indeed expected. M&As can thus appear to be a deliberate strategy to violate internal norms and as a brute exercise of power. Most importantly, integrating differing company systems and procedures requires the harmonization of various aspects of terms and conditions of employment: pay scales, job titles, entitlements and other benefits, job

¹ M.A. Feldheim, K.T. Liou: “Downsizing trust” in Jack Rabin (ed.): *Organizational downsizing*, special issue of *Management*, Vol. 2, No. 3, 1999, pp. 55-67, at <http://www.dmsp.dauphine.fr/Management>, visited 7 Jan. 2003.

² ILO: *The employment impact of mergers and acquisitions in the banking and financial services sector* (Geneva, doc. TMBF/2001).

descriptions, reporting and supervisory lines, are all subject to revision to ensure common practice in the newly combined organization.

The report on new forms of employment and working time in the service economy (NESY),³ cited in Chapter 1, draws attention to the trend towards higher part-time rates in the retail industries of the six European countries covered by the study (Denmark, Finland, France, Germany, Portugal and Sweden). The underlying reality of retail labour markets in all the countries studied was one of substantial reorganization, with the big chains trying to shape the structure of their workforces in accordance with their cost-cutting and flexibility priorities. A longstanding tradition in the Nordic countries, particularly in Denmark, holds that the large retail chains could not function (at least in the short term) without high-school and university students: a “leisure-time workforce” of young people studying at high schools or universities. Various problems connected to high rates of personnel turnover in particular, making personnel policy in large retail trade organizations a tightrope act, are highlighted. The core problem is the strong link between staff loyalty and customer loyalty. The case studies provide evidence of various attempts by firms to manage the contradiction between fragmentation and staff loyalty/staff commitment, including the introduction of performance-related pay. Some cases are reported in which firms have stepped back from excessive fragmentation and established a contractual minimum weekly working time in order to stabilize the workforce.

Pay is also a function of the employment structure in the sector, in which a very high proportion of employees work part-time or on a temporary basis. Unions report differing levels of pay among individual companies in the same markets, ranging from only slightly above the minimum wage to levels close to the national average wage.

It would seem, however, that the effects of post-merger restructuring only tend to exacerbate an already existing employment situation, rather than being its primary cause.

4.1. M&As and working time

The link between concentration in any sector and patterns in regular working time is difficult to make because trends in working time depend upon the national context. Retail provides an excellent example of employers’ use of highly complex flexible working time arrangements, of which part-time work is one element. Other forms of work prevalent in commerce include contractual flexibility: full-time and part-time shift work, split shifts and temporary contracts. Moreover, different types of employers require and utilize different types of working time flexibility.⁴ Working time in the retail trade is also particular in view of the high levels of part-time and temporary employment that exists in the sector. Retailers have long adjusted their hours to customer requirements, extending opening hours, sometimes providing 24-hour services, or even opening on traditionally closed days such as Sundays – a trend which is gradually becoming universal, even though it has aroused strong trade union reactions in some countries. It goes without saying that M&As

³ S. Lehdorff (IAT) and E. Mermet (ETUI) (eds.): *New forms of employment and working time in the service economy (NESY)*, “The case of the retail trade sector”, Part III, presented to a conference organized by the European Trade Union Institute (ETUI) and the Institute für Arbeit und Technik (IAT), 26-27 Apr. 2001, Brussels, Belgium.

⁴ G. Collins, J. Webster, J. Wickham: *Innovations in information society sectors – Implications for women’s work, expertise and opportunities in European workplaces*, SERVEMPLOI Final Report, Jan. 1999-Dec. 2001, funded under the TSER Programme of the European Commission, presented in May 2002.

can provide an opportunity for management to opt for more customer-friendly working hours in the integrated enterprise. However, opening hours in commerce are more a function of historical trends than of M&As.

The Czech Trade Union of Workers in Retail Trade (OSPO) considers that one of the negative consequences of the expansion of multinational retailers in the Czech Republic is the trend towards opening on Saturdays, Sundays and holidays and extending opening hours late into the night. Pressure to work overtime has reached levels unacceptable to employees. Demands are made to work overtime without pay, as a “gift” to the company, and pressure is put on workers not to take legal breaks for rest or meals. Another source of resentment relates to the fact that expatriate managers consider it proper not to work on their national holidays, but refuse to give the same consideration to Czech national holidays. The OSPO, consequently, intends to propose the reintroduction of a law forbidding night and holiday opening hours.

Again, however, as in other aspects of conditions of employment, M&As may aggravate existing commerce-specific working time arrangements, without necessarily being the primary cause of such arrangements.

5. Social dialogue in M&As

Merger implementation in commerce, as in other sectors, involves tricky human resource management issues: staff must be integrated, management responsibilities redefined, facilities combined, staff relocated and employment conditions harmonized. Some managers consider that there are legitimate reasons why these issues cannot be completely aired beforehand, including the fact that individuals with the information might try to obstruct such transactions for fear of their jobs. Others have argued that prior disclosure might increase the risk of insider trading and lay the companies concerned open to expensive and time-consuming investigation from the regulatory authorities. Unions and many independent observers contest the validity of these arguments; the right to consultations and information enshrined in legal provisions does not nullify management's decision-making prerogatives; neither has there been any evidence of union representatives breaching confidentiality. Countries where a code exists between the social partners and the stock market authorities, for instance the Netherlands, serve as an example of confidentiality rules and information and consultation rights being balanced in M&As without problem. Also, although the Nordic region has witnessed the most intensive M&A-driven consolidation to be seen in many sectors, workers have generally been more satisfied and cooperative, not least because of the extensive levels of information and consultation that have accompanied the transactions.

Workers and their representatives elsewhere, even in some countries where the legal obligation for information and consultation exists, complain that they are generally not informed or informed only after M&As involving their employers have actually occurred. And yet the examples of the Nordic region and the Netherlands illustrate that worker involvement can contribute decisively to the successful integration and achievement of merger objectives, by providing a cooperative environment for post-integration labour-management relations. Post-merger social dialogue, bringing together management and all the unions in the merging companies, is equally effective in helping to dispel uncertainty and reduce the risks of eroding the industrial relations environment. The opportunity for both sides to get to know each other better and to collaborate on harmonization plans for the integrated organization provides a signal to staff that their interests will receive adequate consideration under the new regime.

The term "social dialogue" as used in this report refers to broad industrial and labour relations and tripartite cooperation on social and economic issues.¹ It covers all types of negotiations and consultations, as well as simply the exchange of information that usually takes place between the representatives of government, employers and workers on issues of common interest relating to economic and social policy. It can also involve employers and workers alone in the context of bipartite relations.

Thus social dialogue encompasses the traditional terrain of industrial relations, including collective bargaining, whether at the level of the individual commercial outlet, the enterprise or the industry. It also extends to tripartite cooperation on labour market issues, and envisages that the scope of discussion, negotiation or other related processes may sometimes go beyond employment and labour questions. This expanded perspective of social dialogue underscores a view that is evident today. Labour market issues, such as the development and application of labour standards, employment and labour relations, are

¹ This chapter borrows substantially from an unpublished paper by Tayo Fashoyin: *Tripartite cooperation, social dialogue and national development*, 2002.

at the forefront of the debate on the impact of globalization on macroeconomic and social policy.

5.1. Purpose of dialogue

The value of social dialogue lies in its critical role to identify, address and distribute the costs and benefits of economic change. This role is now widely accepted, and a large body of literature already exists on the positive effects on company performance, efficiency and productivity of social dialogue and worker participation in the important decisions affecting their enterprises.

Conceptually, the foremost purpose of social dialogue is to contribute to labour peace and social stability, and, in the process, to economic and social development. It can reduce industrial conflict by finding peaceful and orderly procedures for addressing potentially damaging disputes.

At the national level, tripartite consultation and social dialogue can help achieve an acceptable balance between narrow parochial interests and the wider national objectives of growth and development. As negotiating mechanisms, the processes of consultation, discussion and information sharing, or otherwise seeking to achieve consensus on policy options can help to overcome opposition to policy proposals and remove damaging deadlocks.

5.2. Forms and functions

Social dialogue can come in a variety of forms: it can be tripartite, in which the government participates as an official party to the dialogue; or it may involve bipartite interaction between labour and management (or trade unions and employers' organizations), with or without indirect government involvement. The resulting decisions may be reached on the basis of votes, or through consensus.

No matter the form, social dialogue is a mechanism with the following four functions or goals: to share information; to hold consultations; to engage in debate and negotiation; and thereby to promote joint decision-making.

First, as an information-sharing mechanism, the role of social dialogue may appear of little consequence. While basic dialogue involving, for instance, simply passing information to the other party or parties on what action is being contemplated, the exchange of information is in fact a highly valued form of dialogue, and as such is also one of the most indispensable elements of dialogue. Its most important function remains the way it influences the quality of decision-making, promotes mutual understanding, builds trust, reduces conflict, and promotes transparency and good governance. In commerce, more than in many other industries, these can be key factors in successful business, as the workforce is the public image of the firm. In the context of M&As information-sharing also helps subdue damaging rumours that might otherwise fill the vacuum created by an absence of reliable and sufficient information from management. Another important function of information-sharing is that it is an essential ingredient in the next step: the consultative process.

The second function of social dialogue concerns its consultative role, the mechanism for discussion of certain issues of mutual interest relating to a proposed action on which the aim is to seek consensus or a convergence of positions. Consultation is perhaps the form of tripartite relations that most often springs to mind when the term "social dialogue"

is considered. It is a means by which the social partners not only share information, but also engage in more in-depth dialogue around issues. Consultations can be informal or institutionalized, though it is often some combination of the two, and may be tripartite or bipartite. They can be voluntary, or be mandated by legislation or other statutory provisions. Even more than information-sharing, consultation has the capacity to improve the quality of decisions, particularly if through it those who make the decisions gain a better understanding of the concerns of stakeholders and are thus able to make realistic adjustments in those decisions in order to address those concerns. While consultation itself does not carry with it decision-making power, it can take place as part of such a process. Organizations involve employees in consultations that precede the taking of decisions in order to create a subsequent sense of ownership and to ensure that the employees understand the strategic direction of the business, or of the individual sector, or of the economy as a whole, and their role in successfully achieving organizational goals.

The third element of social dialogue relates to negotiation, involving debates and the exchange of positions, intended to bring about agreement, understanding or consensus as to what should be done regarding a particular issue. This may result in a written agreement or memorandum of understanding, but it could equally be informal or unwritten. An agreement arising from this process may include binding or enforceable provisions, or it may be a purely voluntary agreement which has no enforcement mechanism. Nevertheless, the spirit of an agreement is the assumption that the parties will honour it. The collective agreement is the best illustration of this function, but it is by no means the only one.

The last function of social dialogue concerns joint decision-making, which integrates all the previous elements by providing formal and highly structured negotiation and the conclusion of decisions, which may be final or subject to ratification. Such decisions are usually enforceable and their implementation is monitored.

5.3. Institutional arrangements

Strong, independent and responsible social partners, the political will of the partners and public authorities, and concrete economic, social and labour issues to provide the agenda, are all prerequisites for social dialogue.

On the social partners' side, employer participants should include representative organizations of employers in the country, including those of small and medium-sized enterprises. Also included may be chambers of commerce, manufacturers, farmers' associations and other sectoral associations as agreed among the relevant organizations of employers. Often, the employers' organizations responsible for labour market and human resource management issues coordinate employers' and business participation in social dialogue institutions. Similarly, workers' representation should be through national and/or sectoral level organizations, a confederation to which all major federations are affiliated or federations of national unions to which sectoral or enterprise level unions are affiliated.

Notwithstanding the need for structures to be institutionalized, social dialogue may take place within formal machineries or through spontaneously formed informal bodies representing the different parties. In some cases it may take place in the form of workers' participation in the decision-making process within an undertaking to deal with areas not normally covered under collective bargaining. Similarly, it may operate through works councils and workers' representation in management at the establishment or enterprise level, and through various national tripartite consultative bodies. It is important to recognize that social dialogue practices, including industrial relations systems, are not easily transferable from one national setting to another. Good practice from other settings

can, nonetheless, provide a valuable model on which to develop suitably adapted local approaches.

Apart from those processes that take place through ad hoc and informal mechanisms among the social partners, as referred to above, a number of institutional structures are necessary if social dialogue is to be sustained. These usually include secretariats sufficiently technically competent to undertake such functions as servicing meetings, disseminating information to constituent members, conducting research and ensuring follow-up to decisions. Such secretariats also act as repositories for the substantial outputs generated by the social dialogue processes. Viability also requires regular or periodic utilization of this institutional machinery.

The European Union provides one example of the most comprehensive institutional framework for social dialogue in the context of change, and more specifically as it relates to M&As. Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in community-scale undertakings and community-scale groups of undertakings for the purposes of informing and consulting employees applies to all EU member States since 15 December 1997, when it was extended to the United Kingdom. It obliges employers to inform and consult employee representatives over planned collective redundancies and transfers of undertakings. A company European Works Council (EWC) can demand an extraordinary meeting, even if it only hears about a merger involving the company from unofficial sources. Furthermore, article 27 of the European Union Charter of Fundamental Rights expressly emphasizes the right of employees or their representatives to be informed and consulted. The right to information and consultation is similarly contained in Clauses 17 and 18 of the Community Charter of the Fundamental Social Rights of Workers of 9 December 1989.² In addition to this Community-wide framework on information and consultation, a wide body of national laws also exist covering rights to information and consultation in the event of collective redundancies or the transfer of undertakings. But even with such a comprehensive legal framework, the European Trade Union Confederation (ETUC) reports that companies continue to flout their information and consultation responsibilities, and that a social dimension should be incorporated in the merger review processes of the European Commission's Competition Directorate-General.

5.4. Social dialogue in action: Examples from commerce

Examples abound of good practices, initiatives and outcomes at the global, regional and national levels of social dialogue in commerce. Examples supplied by ILO constituents (both employers' and workers' organizations) illustrate the value of social dialogue at both national and regional levels in Europe (the Czech Republic, Denmark, Finland, Germany, Norway, Sweden, and worldwide (Australia, Ghana, Japan and South Africa, to mention but a few). While these examples do not necessarily relate to M&As and restructuring, they do indicate that a high level of dialogue already exists as a conflict management and conflict resolution mechanism in commerce. Building on this foundation, commerce social partners can very easily extend this social dialogue to cope with the upheavals that M&A-related restructuring brings in its wake.

² European Trade Union Confederation (ETUC): *Mergers and restructuring*, ETUC practical guide (Brussels), Nov. 2002.

According to EuroCommerce, the employer counterpart to social dialogue in commerce at the European Union level, it has, together with UNI-Europa Commerce, its trade union counterpart, jointly addressed the European Commission about shared employment concerns. The two have also submitted joint proposals to the Commission suggesting measures to secure a viable future for their industry. The two social partners recognize that it is important to anchor their social dialogue firmly within associated employers' organizations, enterprises and trade unions. They have an active dialogue on general labour relations issues, which seeks to identify common ground where follow-up action is possible. From time to time, a broader group of employer representatives and trade union leaders is brought together to ensure that understanding on dialogue and partnership extends beyond the two umbrella organizations. A conference on employment held in Brussels in November 1998 confirmed the resolve of the two social partners to develop their dialogue and to expand it on more concrete labour issues. That conference was followed by another in Lisbon in April 2000, which focused on the social and employment effects of the structural change in European commerce. The two social partners share a common understanding that employment growth in the sector requires policies which encourage consumption growth, including low interest rates.

EuroCommerce and UNI-Europa Commerce also agree on the importance of ensuring the co-existing and continued development of different kinds of commerce. They recognize, for instance, that public authorities may need to take steps to ensure that small and medium-sized enterprises continue to be viable, and have the possibility of retaining and developing their competitiveness to provide stable and good quality employment. In the context of M&As, this is a very important point given the fact that M&A-led sectoral consolidation is crowding out this subsector of the industry.

Within the framework of their social dialogue, the European social partners have also reached an agreement on fundamental principles and rights at work, formally recognizing the right of workers to join trade unions and their unions' right to negotiate collective agreements. The agreement is based on the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up of 1998. Other initiatives have included carrying out studies on employment developments in Europe, to serve as a basis for formulating joint approaches and for developing various projects. A 1998 study focused on employment development and job design in European commerce. In 1999, they prepared a document setting out support measures needed to promote employment in commerce in various EU member States, highlighting the need for more accurate sectoral statistics for the sector. A new project looks at the trends in sectoral working conditions, an important issue especially in the context of M&As and restructuring. Most of these joint projects have produced preliminary materials for the development of vocational training curricula at different levels for the sector, another issue in restructuring. But perhaps of even greater importance, as a result of these joint efforts, the social partners have been able to create a culture of cooperation between them in many of the countries concerned which has facilitated dialogue and negotiations more generally. Such a relationship should facilitate their dialogue on M&A-related restructuring. Roundtable meetings on vocational training have been organized in Denmark, Greece and Italy, further contributing to cooperation on different levels. Furthermore, the two organizations have responded to the European Commission's challenge to the social partners to take the lead in developing a framework for labour relations based on flexibly functioning enterprises which provide secure and good quality employment. It is in this context that they signed an agreement on guidelines on telework on 26 April 2001, and another on guidelines on age diversity at work on 11 March 2002.

The above are but a few examples of the many varied initiatives and positive outcomes of a complex social dialogue relationship. Outside the current EU-15 countries, the two social partners have organized and delivered technical support to commerce

partners in the candidate countries of Central and Eastern Europe. This action includes high-level round tables involving social partners in the Czech Republic, Estonia, Lithuania, Poland and Slovakia. European social dialogue has been presented at these meetings, and European social partners, including representatives of leading European enterprises, have underlined the importance of the social partners in the future member States being well organized and developing the necessary labour relations structures.

In Germany, the social partners have established special working groups to deal with questions of structural, future-oriented change. The groups are composed of leading management representatives in retail trade and ver.di, itself a product of the merger of various services trade unions. Some of the special subjects covered by these groups are: *The future of collective agreements in retail trade*; *The application of the provisions of a collective agreement at "Wal Mart"*; *Vocational training and continuous enterprise-provided training*; and *Avoiding job losses*. With regard to the first subject, the aim is to adapt collective agreements to economic and technical developments. The working group has not yet reached a result, although the participants are convinced that they have the capacity to reach a consensus to create new orientations on remuneration and working conditions that cannot now be dealt with under the regular collective bargaining framework.

The case of *Wal-Mart's* operations in Germany is, perhaps, the best illustration of how social dialogue can resolve seemingly intractable problems. The American company has always refused to apply collective agreements in its German operations. Dialogue at the highest levels between management and the relevant trade union were initiated to find a mutually acceptable solution: *Wal-Mart* continues not to recognize the collective agreement officially, but applies it!

The issues of vocational training and continuous enterprise-provided training are often not given enough attention in the current collective bargaining process in Germany. It is difficult or even impossible to find solutions appropriate for inclusion in collective agreements, either at the national, enterprise or plant levels. Unconventional ways are therefore found to conclude agreements which, although representing firm commitments, do not always have the quality of a traditional periodic general collective agreement. Despite legislation which requires that workers' views be taken into consideration, in reality works councils and trade unions in Germany find their influence in company restructuring to be very limited, whether or not such restructuring involves job losses. Trade unions have, therefore, found that in such cases it becomes important to use all available communication channels to try to influence decisions in favour of workers. Workers' representatives on supervisory boards, for example, frequently initiate discussions on forthcoming difficulties with shareholder representatives in order to try and exercise some pressure on management.

Greenfield investments, rather than M&As, are the leading driver of commerce sectoral restructuring in the Czech Republic. Their operations have a major impact on the small and medium-sized enterprises that still dominate the sector. Social partners in the Czech commerce sector agree that further improvement of dialogue and cooperation between employers and workers at the industry level is absolutely necessary. At an ILO-sponsored national tripartite seminar in May 2002 to promote social dialogue in the sector, especially with multinational enterprises, the partners resolved to promote good industrial relations by various means. Social dialogue and collective bargaining would be applied to resolve various issues in the country's commerce sector, including: improving tertiary education; eliminating cultural and linguistic obstacles in multinational retailers; and creating an independent and comprehensive system of labour inspection. It was agreed that in the meantime better targeted, more frequent and stricter inspections should be undertaken by the employment offices currently responsible for the task. In dealing with

the most problematic multinational companies in the Czech market, the social partners would increase cooperation with their counterparts at the European level; they would also seek necessary changes in the legislative framework, and a more effective involvement in the legislative process.

Information collectively provided by commerce employers from Denmark (Danish Commerce & Services), Norway (Confederation of Norwegian Commercial and Service Enterprises) and Sweden (Swedish Federation of Trade) underlines the mutual benefit of the social partners as the motive for social dialogue. The issues covered in their dialogue are of primary importance whether or not they are a result of M&A-related restructuring. According to them, dialogue should not be restricted to the hard bargaining issues of working hours and salaries. Once social dialogue encompasses other softer and non-traditional issues, such as conditions for maternity leave, vocational training and other educational questions, then it must be even more trust-based. Mutual benefit exists not only in the relationship between the social partners, but also in respect of the public authorities. In the Nordic region, legislators and other public authorities will usually listen to proposals that the social partners have already agreed upon.

Social dialogue in the region has contributed to the reduction of the incidence and extent of labour conflict over the last 100 years. In the view of the employers' organizations, the mutual recognition of the social partners was in itself of value, as a recognized partner provides someone to go to with questions, problems or plans. The Scandinavian system of industrial relations is built on dialogue. Employers always know exactly who to turn to if an issue requiring a bipartite solution arises. And, most importantly, relations between the social partner organizations are built on personal relations of mutual trust and confidence. In turn, such relations are earned through the results of social dialogue. To be a valid partner requires that in any bargaining situation or dialogue, one focus on the long-term relationship, not just the immediate returns, important though these may be. In resolving sectoral issues, including those involving structural change, it is essential to recognize that the social partners have unique and first-hand knowledge about the sector that legislators do not necessarily have. Solutions to sectoral issues based on this special knowledge ensure that the sector remains competitive and operates smoothly.

Retailers and employers in the commerce sector have a major interest in the sector's image, in ensuring vocational training which reflects and fulfils the current needs of the sector, and ensuring employment equity from gender and age perspectives. Image is important if commerce is to recruit and retain the right employees, especially from the younger generation of workers. Employers and trade unions share the view that commerce must maintain its status as an attractive source of employment. In Denmark, the social partners have, consequently, launched a campaign designed to improve its image, focusing on the values of the retail sector as regards such aspects as: good vocational training; career possibilities; customer relations; and job security.

While vocational training in Denmark is governed by the Vocational Training Act, in practice, implementation of the Act reflects the joint wishes of the social partners and is thus closer to the sector's current needs. In a highly competitive sector, the required qualifications change constantly and the only way the public vocational training programmes can be up to date is by listening closely to the social partners, who are the end-users. Although a substantial proportion of employees in commerce have no formal vocational training, they have gained a great deal of practical on-the-job knowledge relevant to their sector. The social partners have, as a result, initiated a joint project for these skilled employees without formal education, in which their skills are categorized and registered. The employee can have his/her skills documented in order to receive the necessary remaining training and get a formal degree to certify his/her qualifications. The

employers benefit from the project as it provides a systematic roster of employees' knowledge and skills on which informed decisions about the company's skills development requirements can be made.

In Norway, the social partners have collaborated to establish gender equality within enterprises in commerce. The programme, which has used sensitization information material and related activities, is centred on such areas as pay and recruitment into managerial positions. The Norwegian social partners and the Government have also reached an agreement to work towards a more inclusive workplace. On the topical issue of "ethical trade" and corporate social responsibility, the Confederation of Norwegian Commercial and Service Enterprises has established, together with the Norwegian Confederation of Trade Unions and non-government organizations, an institution to make Norwegian imports contribute to positive social and economic developments in the countries of origin, focusing mainly on human and workers' rights.

In Finland, according to Service Union United (PAM), social dialogue is applied to problems at all levels and on all issues: national, regional, local, enterprise and the individual workplace. It was, for instance, the means by which an agreement on union training was reached. The agreement provides the right for shop stewards to participate in union-organized training. A specific agreement, *Shop stewards' rights and cooperation*, provides applicable guidelines on cooperation in the workplace. The agreement provides a framework for dialogue at all levels and protects the right of shop stewards and other employees in union work. The level of collective agreements in Finland also depends on subjects covered. The most important national level collective agreements are on remuneration, working time, employment conditions, annual leave and holiday bonuses, and travel expenses. Because Finland has no minimum wage regime, social dialogue on wages is extremely important, and the social partners have to negotiate and include these in collective agreements.

The Japan Federation of Service and Distributive Workers Unions (JSD) reports active social dialogue in Japan at the national and sectoral levels. Regular dialogue with the Japan Department Stores Association has created better communication between the partners and led to the sharing of information to identify challenges in the sector. Three joint study groups have been set up to continue regular dialogue and to study challenges both labour and management should address to make the department stores sector a more attractive industry. The study groups will focus on reforms of social security for better balanced employer-worker contributions; challenges from more opening days and longer opening hours; and employment and working patterns in an ageing society with fewer children. The objective under the first theme is to draft a proposal to the government on the reform from the viewpoint of business and workers in the sector, emphasizing better childcare and nursing of family members, and a reform in the health insurance scheme. The second is to draft guidelines for nightwork in the sector. The discussions revolve on how to improve business efficiency while maintaining the health of workers and improving working conditions and the working environment. The third goal relates to the future workforce in the sector, with a view to making commerce attractive enough for women and older workers. Human resources development and a wage system suitable for the change in society are also subjects to be addressed by the group. They have taken up the standardization of qualifications in department stores as a first step.

The social partners have made joint representations to public authorities in which they requested that childcare facilities be extended to weekends and public holidays, as well as beyond normal office hours; that competition be introduced among childcare providers, while ensuring that quality is maintained; and that day-care centres, including in-house nursing services, be increased and improved.

Most Japanese unions are enterprise-wide unions. Dialogue between labour and management has been regarded as the main activity of unions, especially at company level. One of the features associated with labour-management relations in Japanese companies is their stability, which is due to a wide variety of channels of communication, such as collective bargaining and joint consultation machinery. This enables the partners to share their respective interests and information on a continuous basis. Regular dialogue and joint consultation machinery plays an important role, together with collective bargaining. Such issues are dealt with as expanding and closing businesses, the company's financial situation, changes in work organization, the introduction of new equipment that might impact working conditions, and welfare provisions. In a nutshell, all the issues related to M&A restructuring. JSD regards M&As as an issue that greatly affects the employment and working conditions of the employees involved, and it has published guidelines for trade union policy on the subject. It identifies the issues that arise from M&As and advises affiliate unions on measures they should take, including general preparatory measures, emergency countermeasures and measures corresponding to the period of the transfer of the undertaking. JSD has also published a standard labour agreement, which includes important matters to be considered in the context of M&As. This stipulates that companies should consult with unions on matters that might affect the livelihood of workers at the stage when corporate plans are still able to be changed. The guidance also stipulates the basic rules, the position of trade unions as a concerned party and matters for labour-management consultation.

As already noted above, most Australian large and medium-sized retail companies operate under an enterprise agreement negotiated with the Shop, Distributive and Allied Employees Association (SDA) trade union, with redundancy provisions which apply should retrenchments occur – whether or not as a result of M&A-related restructuring. However, social dialogue in Australian commerce has a broader scope than this, and a few examples of successful social dialogue will provide a better understanding of its wealth and a demonstration of what can be achieved with employer-union cooperation.

The retail industry in Australia has embraced structured, nationally accredited training, benefiting both employers and workers. Traditionally, training in the retail industry was, as in most countries, unstructured, unaccredited, enterprise-specific, delivered “in-house” or otherwise inexistent. In 1992, the Australian Government adopted a National Training Reform Agenda to: provide a unified national system of training for each industry; build an industry responsive system with national industry standards and competency-based training principles; and increase the rate of participation in entry-level training arrangements. The underlying intent was to provide an educated, skilled and flexible workforce for industry, and to improve the knowledge and skills of workers to enable them to build rewarding careers. A system of industry training councils was intended to facilitate the introduction of this new approach. However, retailers initially saw little merit in embracing the new system, and the Retail Industry Training Council was allowed to become moribund.

In 1995, following extensive discussions between the Australian Retailers Association (ARA) and the SDA, it was agreed that the Retail Industry Training Council would be revamped, with the ARA and the SDA to provide joint chairs for the body. Further, on any matter to be decided by vote, the union would exercise 50 per cent of the total vote and the employers would exercise a similar 50 per cent – this was done deliberately to encourage decision-making by consensus. It was also agreed that national competency standards for the retail industry would be developed. By 1996, an agreed set of national competency standards had been endorsed by the Australian National Training Authority, with the standards setting out the skills and knowledge needed to carry out the various tasks of the retail industry and providing a benchmark against which skills and performance may be measured. The standards subsequently evolved into the National

Retail Training System, this being the first time that the retail industry had ever had one national training system. The system also incorporates the use of objective assessment processes, carried out by qualified assessors. Successful completion of a training programme entitles a person to a government-endorsed qualification and certification, to be nationally recognized. Training programmes have been developed for those wishing to enter the industry (including students still at school), entry-level recruitment, supervisors and managers. Programmes cover all areas of retail such as customer service, merchandising, stock control, operation of equipment, security, marketing, buying administration, etc. A specialized training programme for any company or industry sector may be constructed using the competency standards.

Another example from Australia relates to a “win-win” outcome for the employer and staff in a single company, *Coles Supermarkets*. After the introduction of extended trading hours in Australia (commencing with late-night shopping in the 1970s and followed by Saturday afternoon trading in the 1980s and Sunday trading in parts of Australia in the 1990s), the retail industry employed increased numbers of part-time and casual employees in retail stores to fill the gaps when permanents were unavailable or insufficient to staff stores adequately. This was a concern for the union, particularly with respect to the large numbers of casual employees who had no leave entitlements or security of employment, unlike part-timers and full-timers. From the point of view of the retailer, casual employees provided flexibility, but the lack of security and the limited number of hours of work meant a high turnover with the consequent high cost of labour replacement becoming a significant factor.

Following discussions between the union (SDA) and *Coles Supermarkets*, and the company’s own consideration of the advantages of permanency, the company initiated an experiment whereby it increased the number of full-timers and the number of hours worked by part-timers at the expense of casual employment. Following the initial success of this experiment, it has been extended throughout Australia. As a result, permanent staff (both full-time and part-time) rose from 57.02 per cent of *Coles Supermarkets*’ workforce to 71.19 per cent between 1998 and 2001. More importantly, the increase in permanency has been accompanied by a vast increase in the training of employees – an important issue in enterprise restructuring as it provides staff with the new skills that an integrated company might need. Structured training now takes place at both the entry level and for promotion into managerial classifications. The company intends to continue the drive to raise permanency, and to increase the average number of hours worked per week by part-timers from 14 per week to an ultimate objective of 20 hours per week. Labour turnover has been reduced, with the result that savings in labour replacement go straight to the bottom line, as profit. Better trained and better motivated staff provide improved service to customers, which in turn enhances sales turnover.

In Ghana, the Industrial and Commercial Workers’ Union (ICU) reports that it and its employer counterparts have identified areas for fruitful dialogue and joint action, including joint criteria for restructuring programmes, redundancies and regulations on working conditions. In addition, the union notes that ongoing social dialogue has created an atmosphere of confidence between the social partners, leading to a reduction in disputes. Collective bargaining and social partnerships have helped the partners to solve a multitude of issues without having to resort to open conflict. Problems are now often solved in negotiations between the social partners before they develop into conflicts. Experience so far shows that there is a dynamism in the nature of social dialogue at the enterprise level which should motivate the social partners to continuously talk, especially as regards the twin objectives of promoting secure and decent employment and enterprise growth.

The South African Commercial, Catering and Allied Workers Union (SACCAWU) has highlighted tremendous progress in social dialogue processes both at tripartite and

bipartite levels in South Africa. Social dialogue has resulted in trade-offs between job security and retrenchments under what is called “job mobility flexibility arrangements”. This type of agreement allows workers to be mobile and multi-skilled, moving around stores without risking loss of advancement or incurring extra costs (should such mobility increase travel expenses, etc). In return, there is a guarantee that concerned employees will not face retrenchments should restructuring imperatives require them. The agreement also promotes permanency for casual staff, in accordance with assessments and evaluations by joint trade union-management task forces that are spread throughout the country. In other areas, employers and unions often make joint submissions to the Government to influence laws that seem to have potential to threaten the dynamics and growth of a particular sector, as well as in the macroeconomic arena. The union reports that interaction in social dialogue processes has helped reduce some serious disputes.

5.5. Workers’ strategies

Trade union strategies are evolving in line with developments in the general world of work, and with those specific to commerce. Global alliances and mergers among trade unions have increased with the acceleration in M&As around the world. A good example in this regard is Union Network International (UNI), a global union federation comprising workers’ organizations in commerce, financial services, posts and telecommunications, and media and publishing. This organization, covering a total of more than 900 trade unions, representing over 15 million members in 140 countries, has adopted an active policy to respond to the challenges of a globalized world economy. Similar combinations are developing at the national level as unions seek greater weight to counter increasingly more powerful enterprises that result from M&As.

Among its many initiatives, UNI has engaged European companies, such as *Metro*, *Carrefour* and *Tesco*, in order to seek their assurances that they will fully respect the right of their workers worldwide to join trade unions. UNI has also sought similar assurances on developing and extending dialogue between itself, its affiliates and multinational enterprises.

The union recognizes that many workers in the commerce sector around the world fear being victimized and losing their jobs when they join trade unions. This constitutes a considerable challenge for trade unions in countries where unemployment is high and regulatory controls are weak. It also recognizes the danger of sectoral competition based primarily on price and razor-thin margins because cost-cutting, mainly on the back of workers’ wages and benefits, becomes the first option of many companies, large and small. This fact increases pressure for concession bargaining and further deregulation, and leads to demands from organized employers for trade unions to organize competitors so as to create a level playing field in the marketplace.

Unions are also more cognizant of the need to expand their membership base to become more representative. They note that when the employer is a multinational, the trade union situation also becomes dependent on the situation of trade unions in the same company in other countries. Unions in the home countries of leading multinationals, as well as in other countries where they already have a substantial presence in a company, recognize that they are dependent on how unions in the new markets succeed in their organizing efforts. HBV and DAG, the German commerce trade unions (now combined in ver.di), know, for instance, that their influence in *Metro* is dependent to a large degree on *Solidarnosc*’s ability to organize the company’s approximately 40,000 workers in Poland. The two unions have therefore increased their collaboration with *Solidarnosc*, and UNI on a joint organizing project in Poland. The United Kingdom’s Union of Shop, Distributive

and Allied Workers (USDAW) has similarly joined the project to increase its own clout with *Tesco*.

In dealing with commerce multinationals, trade unions have established a number of priority objectives to guide their action. These include the defence and promotion of a diverse commerce sector, which builds its competitiveness through producing quality services with a well-trained, qualified and engaged personnel, working under secure and favourable employment conditions and earning a proper living. They aim to exert influence on the employment and labour relations effects of structural and technological change; to develop social dialogue in commerce into a regional and global forum where leading employers and trade union representatives seek common ground to protect and promote a competitive sector which provides secure quality employment for its workers. Priority is given to dialogue and cooperation with those employers and companies which share the general objectives of developing the industry on the basis of high qualifications, respect for workers and their unions, and proper regard for labour relations and social dialogue.

Unions are also aware that in order to exert influence they must make greater efforts to raise union rates in leading commerce multinationals, to develop dialogue and, when appropriate, to engage in social partnership agreements with managements. It requires a demonstrated ability for global unions to intervene with the management of multinational retailers at the global level on behalf of affiliates in various countries, hopefully, on the basis of global framework agreements that incorporate the fundamental principles and rights at work enshrined in ILO instruments. They similarly recognize the need to work towards the establishment of the equivalent of global works councils or other structures for dialogue that take into account the greatly globalized nature of many big multinational enterprises.

5.6. International labour standards: Providing a framework for action on M&As

Strong, independent and responsible social partners have already been noted as prerequisites for social dialogue. Freedom of association and the right to collective bargaining are the bedrock on which such social partners can develop. The ILO Tripartite Meeting on the Human Resource Implications of Globalization and Restructuring in Commerce of 1999 recognized the importance of these principles to labour relations, reaffirming the validity of the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up of 1998. The Meeting urged the ILO to promote all the international Conventions relevant to commerce, as well as social dialogue at appropriate levels. It also requested the ILO to develop, in cooperation with the social partners, and widely distribute a manual on social dialogue in commerce to assist the social partners, particularly in countries where the institutional framework for social dialogue is still weak or non-existent. An informal meeting to consider a draft of the manual was organized in November 2001. It is intended to finalize the manual during 2003, and submit it for a final tripartite review before its distribution.

As the report makes clear, M&As in commerce may not bring the same degree of job loss and affect working conditions in quite the same manner as in other sectors, for instance the financial industry. They nevertheless create considerable turmoil in merging enterprises and, because of their role in sectoral concentration, lead to job losses in small and medium-sized commerce enterprises operating in the same markets. The employment role of SMEs is now acknowledged, and a growing number of countries have started to consider ways in which they can increase support to this sector as part of their employment promotion strategies. The Employment Policy Convention, 1964 (No. 122), has many important potential contributions to make to minimize the negative impact of concentration

on employment. The most important feature of the Convention is the stress it places on an integrated approach to developing employment policies. Responsibility for employment extends across all government departments, which are obliged to work together and to ensure that the impact of their respective policies promotes rather than diminishes employment. The Convention also advocates consultation with workers' and employers' organizations, stressing that any policies formulated should be appropriate for all parties concerned.

The ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, adopted by the Governing Body in 1977 (as amended by the Governing Body at its 279th Session in November 2000), is equally relevant in the context of M&As, now increasingly involving global multinationals in commerce. The Declaration urges governments, the MNEs and workers, as equal partners in this relationship, to assume commensurate responsibilities in order to ensure a peaceful industrial relations climate as a foundation for labour and social peace. It further calls upon MNEs, when they are considering changes in operations, including as a result of mergers, which could have major employment effects, to provide reasonable notice of such changes to the appropriate government authorities and workers' representatives so that the implications might be jointly examined to mitigate adverse effects to the greatest extent possible. This is particularly important in the case of M&A-related restructuring resulting in significant changes in employment and working conditions. In addition, the Declaration encourages MNEs to endeavour to increase employment opportunities and standards, employment security and the long-term development of the enterprise, using technologies which generate employment. On equal opportunities (especially important in commerce where women workers predominate, particularly in part-time and temporary jobs) it urges governments and enterprises to promote equality of opportunity and treatment in employment, with a view to eliminating any discrimination based on race, colour, sex, religion, political opinion, national extraction or social origin. The MNE Declaration similarly urges governments to develop policies for vocational training and guidance closely linked to employment, and MNEs to provide training for all levels of staff to develop skills and promote career opportunities. Tripartite cooperation is requested on programmes to encourage skill formation and development, and the provision of vocational guidance.

A number of other international labour Conventions are of similar relevance to restructuring. The Termination of Employment Convention, 1982 (No. 158), covers rights to severance pay, to unemployment, old-age and other benefits, social security, and to the consultation of workers in the event of dismissal for economic, technological or structural reasons. The Part-Time Work Convention, 1994 (No. 175), is particularly relevant to the commerce sector, given the incidence of part-time work in the industry, although it has, unfortunately, had relatively few ratifications. It encourages improvements in pay and social protection for part-time workers. The Human Resources Development Convention, 1975 (No. 142), is especially applicable to commerce, as it focuses on vocational guidance and vocational training, issues on whose importance the social partners generally agree. These standards provide a framework for the social dimension of liberalization, globalization and restructuring in the sector, and ILO constituents have an important role in promoting a people-centred approach that bases itself on the principles enshrined in these instruments.

The ILO role in the context of M&A-related restructuring, as with all other processes of globalization, is reflected in the Organization's Decent Work Agenda, through its standards-related and other activities and its Sectoral Activities Programme, particularly with the development of global consensus that the ILO is the competent body in this area. This role is of greater importance now that states have less influence on the human resources management policies (enterprise, regional or overall levels) of multinational and

private enterprises, which are becoming increasingly active in this sector. The discussion of issues relating to corporate restructuring and employment to be held at the tripartite meeting at the ILO in April 2003 will help to disseminate examples of best practice in specific companies in commerce to other enterprises in the industry around the world.

6. Summary

Mergers and acquisitions (M&As) are driving the commerce sector, particularly retail trade, towards greater concentration. The report examines the key factors and characteristics of this trend: the extent of M&As in various regions; various aspects of their employment effects as well as the effects of parallel drivers of sectoral restructuring; the impact on employment and working conditions; and implications for employee training, motivation and job security in the context of corporate competitiveness. The value, forms, functions and institutional framework of social dialogue and its potential to preserve harmonious industrial relations and advance mutual benefits for the social partners in M&As as well as to serve as a tool for general problem resolution are highlighted, as are the roles of the ILO and international labour standards.

6.1. General trends, characteristics and factors behind M&As and consolidation in commerce

The relative importance of the different commerce branches in total sectoral employment is directly proportionate to the number of enterprises in the branch, a factor which of itself highlights the impact of M&As which result in a diminution in the number of enterprises. For the United States, data show approximately 453,500 wholesale establishments employing about 5.8 million workers at the end of March 1997, while 1.1 million retail trade establishments accounted for around 14 million jobs in the same period (using different statistical standards gives very different figures for both wholesale and retail because of the inclusion of other economic activities). For the European Union (EU), the number of retail enterprises was estimated to be around 3 million companies in 1998 representing the largest proportion of employment in the distributive trades. As with the United States, European retail trade employment of 11.4 million jobs in 1999 dominates at around 52 per cent of the average EU commerce employment. Retail has the highest share of female employment (58.5 per cent against 32 per cent for wholesale and less than 18 per cent for the motor trade) and part-time employment (30 per cent as compared to 10 per cent for wholesaling and the motor trade). Mergers and acquisitions have led to the emergence of huge global and regional retailers and wholesalers. Although small and medium-sized enterprises still employ the majority of commerce workers, they are ceding ground to their bigger and more powerful – most often multinational – competitors, which have in many cases built up size through mergers.

Diverse factors are behind the increase in M&As in commerce, as in other industries. The quest for size in relation to scale benefits and purchasing power, changes in corporate governance that put a premium on shareholder as opposed to stakeholder interests, the role of *Wal-Mart* and its competitive practices, and the notion of supply chain cooperation and standardization covered by the Efficient Consumer Response (ECR) concept have all contributed to increased M&A-led consolidation in commerce.

6.2. Employment effects

Employment in commerce, especially retail trade, continues to grow in tandem with the globalization of trade. Unlike other sectors, where the effect of M&As on employment levels has been mostly negative, consolidation in commerce has not necessarily led to job cuts directly in the merging companies. Sectoral consolidation in many countries has nevertheless had a destructive effect on jobs in small and medium-sized enterprises as they get crowded out of the market by their bigger and better-resourced multinational competitors. Job gains in multinational retailers, while considerable, are usually

insufficient to compensate for the jobs that are lost. However, it must be noted that in many cases this development is more a product of entry through greenfield investments by multinational enterprises. In Australia, where retrenchments as a result of M&As have been rare despite their regular occurrence during the 1990s, enterprise agreements with the sectoral trade union set out redundancy provisions to be applied. Where enterprise agreements do not apply, industrial awards usually do. There are nevertheless other cases where such a benign outcome has not always been obtained, such as in South Africa, where cases of erosion in employment and working conditions have been noted as a result of M&As.

Again unlike other industries, where M&As have often resulted in a drop in the quality of employment and other conditions of work, the effects in commerce simply reinforce pre-existing conditions. Consolidation and restructuring associated with M&As facilitate substantial reorganization, with the big chains trying to shape the structure of their workforces in accordance with their cost-cutting and flexibility priorities. Various problems connected to high rates of personnel turnover in particular, making personnel policy in large retail trade organizations a tightrope act, have been highlighted as a result of the dependency of large retail chains on a “leisure-time workforce”. Enterprises’ human resource management practices are also tempered by the strong link between staff loyalty and customer loyalty, which has led firms to try to improve their management of the contradiction between fragmentation and staff loyalty and commitment, including the introduction of performance-related pay. Cases have been reported of firms stepping back from excessive fragmentation and taking measures to stabilize their workforces. Pay and working time arrangements are similarly more a function of the employment structure in the sector, in which a very high proportion of employees work part time or are on temporary work, rather than a direct effect of M&As.

6.3. Social dialogue

Social dialogue, which can come in different forms, is increasingly accepted as the best means to manage the effects of change and balance the interests of employers for flexible work organization and of workers for job security and stability. The value of social dialogue lies in its role to identify, address and distribute the costs and benefits of change. In this regard, the foremost purpose of social dialogue is to contribute to labour peace and social stability, and, in the process, to economic and social development. There exists a wide range of illustrative examples of the positive use commerce social partners have made of social dialogue to help avoid or resolve issues. The most important issue in the context of M&As relates to the right of workers to be informed and consulted about fundamental changes affecting their employer and thus their employment and working conditions. Workers complain that even where this right is prescribed by law it often remains unfulfilled. Yet examples in some countries, such as the Netherlands and the Nordic region, indicate the way in which the processes of information and consultations have contributed to an organizational environment conducive to labour-management cooperation in the post-merger period. Examples of successful social dialogue in action in commerce are highlighted to show its wide applicability in the sector.

7. Suggested points for discussion

Taking the foregoing report into account, the following list of points is offered as a basis for discussion to enable the Meeting to develop and adopt appropriate conclusions on the matters it considers of primary importance. The Meeting is, of course, free to modify this list as it sees fit.

1. General aspects of M&As

In the context of M&As-related consolidation and other competition-related factors, what measures should governments and social partners adopt to promote employment growth in commerce, including in small and medium-sized commercial enterprises?

2. Employment

- (a) How might M&A and related reorganization be designed to ensure positive outcomes on the levels and quality of employment, including effects on gender, full-time and part-time and temporary employment?
- (b) In the face of increased competition in commerce, how can employment concerns and the need for enterprise restructuring, including through M&As, be reconciled?
- (c) How may the social partners and governments support M&A objectives while also promoting growth in the levels, quality and equity of employment in commerce, including in SMEs?

3. Working and employment conditions

- (a) How might human resources development and planning in commerce enterprises be used to ensure the maximum levels of mutual interest between employee concerns and the corporate objectives that drive M&As?
- (b) How should job security in commerce enterprises be promoted to increase employees' organizational commitment, motivation and performance in the context of M&As?
- (c) How might the minimum working and employment standards of part-time and temporary workers in commerce be improved to increase staff retention and stability as part of commerce enterprises' competitive strategies?
- (d) How should governments and employers' and workers' organizations use training as a tool to ensure that workers' skills in the sector continue to evolve in line with the needs of enterprises in the sector?

4. Social dialogue

- (a) What should be the role of social dialogue in the M&A process, and how should this be used to support both enterprises' and workers' needs and interests?
- (b) How can workers' need for information and consultation in the context of M&As, which is provided for in a number of national laws, be reconciled with employers' interest to maintain pre-merger confidentiality?

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- (c) Where redundancies become unavoidable in the context of merger-related restructuring, what criteria and implementation modalities should be adopted to ensure maximum equity, in accordance with the principles and values of various ILO instruments?

5. ILO action

What priority action should the ILO initiate to assist its constituents in dealing with the effects of M&As in line with the principles of labour standards applicable to restructuring?

Appendix 1

Examples of Australian enterprise agreements to cover redundancies

Bunnings Warehouse Enterprise Agreement 2000

38. Redundancy

- 38.1 In the event of a warehouse team members (other than a casual or limited tenure employee) position becoming redundant, the following procedure shall apply:
- 38.1.1 Bunnings will hold discussions with the SDA about the redundancy;
- 38.1.2 the discussions will take place as soon as is practicable after the redundancy is contemplated by Bunnings and before a final decision is made;
- 38.1.3 the discussions shall deal with:
- 38.1.3.1 the reasons for the redundancy;
- 38.1.3.2 measures to avoid or minimize the terminations;
- 38.1.3.3 measures to minimize adverse effects on individual warehouse team members;
- 38.1.3.4 any other issue which may be relevant to the parties or individual warehouse team members.
- 38.1.4 Prior to the discussions taking place, Bunnings shall provide all relevant information in writing to the SDA. However, Bunnings shall not be required to disclose confidential information which, if disclosed, would or could affect Bunnings' interests.
- 38.1.5 Once a final decision has been made, Bunnings shall consult with the warehouse team members affected. The SDA shall be involved in that consultative process.
- 38.2 In making any warehouse team member (other than a casual or limited tenure employee) redundant Bunnings shall:
- 38.2.1 ensure that the selection of a warehouse team member for redundancy is made according to objective criteria established in advance by Bunnings;
- 38.2.2 give the warehouse team member concerned preference in re-employment if Bunnings re-employs workers with comparable qualifications, skill, attributes and experience.
- 38.3 A warehouse team member (other than a casual or limited tenure employee) who is made redundant shall be given notice in accordance with clause 10.2 of this Agreement.
- 38.4 In addition to the notice prescribed in clause 10.2 each warehouse team member (other than a casual or limited tenure employee) who is made redundant shall receive a severance payment calculated as follows:

Period of service	Severance pay
Less than 1 year	Nil
More than 1 but less than 2 years	4 weeks' pay
More than 2 but less than 3 years	6 weeks' pay
More than 3 but less than 4 years	7 weeks' pay
More than 4 years	8 weeks' pay

- 38.5 For the purposes of this Agreement, “weeks pay” means the ordinary time rate of pay for the warehouse team member’s average weekly ordinary hours of work.
- 38.6 A warehouse team member who has been given notice of termination of employment shall be entitled to take one day off on full pay in order to seek other employment during the notice period. The timing of this day off shall be mutually agreed with the store manager in question.
- 38.7 A warehouse team member may terminate his/her employment during the period of notice. A warehouse team member who does this shall not be entitled to payment in lieu of notice but shall be entitled to severance pay in accordance with 38.4.
- 38.8 The provisions of 38.4 shall not apply to a warehouse team member who is dismissed in terms of the disciplinary procedure during the period of notice.
- 38.9 The parties agree to incorporate into this Agreement any improvement in benefits and conditions determined by any redundancy test case before the Australian Industrial Relations Commission during the term of this Agreement.

Priceline Retail Employees Enterprise Agreement 2001

1. Redundancy

1.1 In the event of a retail employee’s position becoming redundant, the following procedure will apply:

- (a) Priceline will hold discussions with the SDA and retail employee(s) directly affected by the redundancy;
- (b) the discussions will take place as soon as is practicable after the redundancy is contemplated by Priceline and before a final decision is made;
- (c) the discussions will deal with:
 - (i) the reasons for the redundancy;
 - (ii) measures to avoid or minimize the termination;
 - (iii) any other issue which may be relevant.
- (d) prior to the discussions taking place, Priceline will provide all relevant information in writing to the SDA and retail employee(s). However, Priceline will not be required to disclose confidential information which, if disclosed, would or could affect Priceline’s interests;

1.2 A retail employee who is made redundant will be given notice in accordance with sub-clause 37.1 of this Agreement.

1.3 In addition to the notice prescribed in sub-clause 37.1, each retail employee who is made redundant will receive a severance payment calculated as follows:

Years of service	Under 45 years of age entitlement	45 years of age & over entitlement
Less than 1 yr	Nil	Nil
1 yr & less than 2 yrs	4 weeks pay	5 weeks pay
2 yrs & less than 3 yrs	7 weeks pay	8.75 weeks pay
3 yrs & less than 4 yrs	10 weeks pay	12.5 weeks pay
4 yrs & less than 5 years	12 weeks pay	15 weeks pay
5 yrs & less than 6 yrs	14 weeks pay	17.25 weeks pay
6 yrs & over	16 weeks pay	20 weeks pay

1.4 For the purposes of this Agreement, “weeks pay” means the ordinary pay set out in Appendix 1 read with Clause 15.

1.5 A retail employee may terminate his/her employment during the period of notice. A retail employee who does this will not be entitled to payment in lieu of notice but will be entitled to severance pay in accordance with sub-clause 39.3 above.

1.6 The provisions of sub-clause 39.3 do not apply to a retail employee whose conduct during the notice period justifies instant dismissal.

1.7 During the period of notice, a retail employee will, at a time agreed with his/her store manager, be allowed reasonable time off work to attend job interviews.

1.8 A retail employee who is transferred to lower paid duties will be paid at the higher rate of pay for the duration of the period of notice.

Appendix 2

Example of an award by the Australian Industrial Relations Commission in a redundancy case

National Fast Food Retail Award 2000

1. Redundancy

1.1 Employers exempted

Subject to an order of the Commission this clause will not apply to employers who employ less than 15 employees.

1.2 Redundancy occurs when an employer has made a definite decision that the employer no longer wishes the job the employee has been doing to be done by anyone and this is not due to the ordinary and customary turnover of labour.

1.3 Transfer to lower paid duties

Where an employee is transferred to lower paid duties for reasons set out in 13.2 hereof the employee shall be entitled to the same period of notice of transfer as he/she would have been entitled to if his/her employment had been terminated, and the employer may at the employer's option make payment in lieu thereof of an amount equal to the difference between the former ordinary time rate of pay and the new lower ordinary time rates for the number of weeks of notice still owing.

1.4 Transmission of business

1.4.1 Where a business is before, on or after the date of this award, transmitted from an employer (in this subclause called "the transmitter") to another employer (in this subclause called "the transferee") and an employee who at the time of such transmission was an employee of the transmitter in that business becomes an employee of the transferee:

1.4.1(a) the continuity of the employment of the employee shall be deemed not to have been broken by reasons of such transmission; and

1.4.1(b) the period of employment which the employee has had with the transmitter or any prior transmitter shall be deemed to be service of the employee with the transferee.

1.4.2 In this sub-clause "business" includes trade, process, business or occupation and includes part of any such business and "transmission" includes transfer, conveyance, assignment or succession whether by agreement or by operation of law and "transmitted" has a corresponding meaning.

1.5 Time off work during notice period

1.5.1 During the period of notice of termination given by the employer an employee shall be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.

1.5.2 If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee shall, at the request of the employer, be required to produce proof of attendance at an interview or he/she shall not receive payment for the time absent.

For this purpose a statutory declaration will be sufficient.

1.6 Severance pay

1.6.1 In addition to the period of notice prescribed for ordinary termination in 9.2.1 and subject to further order of the Commission, an employee whose employment is terminated for reasons

set out in 13.2 hereof shall be entitled to the following amount of severance pay in respect of a continuous period of service:

Period of continuous service	Severance pay
Less than one year	Nil
1 year but less than 2 years	4 weeks' pay
2 years but less than three years	6 weeks' pay
3 years but less than four years	7 weeks' pay
4 years and over	8 weeks' pay

1.6.2 "Week's pay" means the ordinary time rate of pay for the employee concerned.

1.6.3 Provided that the severance payments shall not exceed the amount which the employee would have earned if employment with the employer had proceeded to the employee's normal retirement date.

1.6.4 For the purpose of this Clause, continuity of service shall be calculated in the manner prescribed by Clause 32 - Annual Leave of this Award.

1.7 Employee leaving during notice period

An employee whose employment is terminated for reasons set out in 13.2 hereof may terminate his/her employment during the period of notice and, if so, shall be entitled to the same benefits and payments under this clause had he/she remained with the employer until the expiry of such notice. Provided that in such circumstances the employee shall not be entitled to payment in lieu of notice.

1.8 Incapacity to pay

An employer, in a particular redundancy case, may make application to the Commission to have the general severance pay prescription varied on the basis of the employer's incapacity to pay.

1.9 Alternative employment

An employer, in a particular redundancy case, may make application to the Commission to have the general severance pay prescription varied if the employer obtains acceptable alternative employment for an employee.

1.10 Employees exempted

This Clause shall not apply where employment is terminated as a consequence of misconduct, or in the case of casual employees, apprentices, or employees engaged for a specific period of time or for a specified task or tasks.