

CRISIS NO

Preparation and management of
change and restructuring

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*Federation of Industrial
Workers' Unions*



Funded by the European Union

What is a merger or an acquisition?

- ◉ Mergers and acquisitions and restructuring are phenomena that happen often at a national or transnational level.
- ◉ In most cases these phenomena happen at the same time (a company buys another one, they merge and they undergo restructuring).

What is a merger or an acquisition?

Main points for a merger:

- ⦿ The company disappears in another company
- ⦿ It is a technical term for a legal procedure that may occur in case of an acquisition

What is a merger or an acquisition?

Main points of an acquisition (transfer of ownership):

- ◉ Purchase of assets
- ◉ Purchase of stock
- ◉ Merger with the company bought

Acquisitions may involve control of the company or not

How can a merger or an acquisition be effectuated?

- ◉ Through open call to the shareholders for acquisition through the stock market
- ◉ Through gradually buying in the stock market the majority of shares or a percentage that ensures control of the company
- ◉ Through buying the shares after concluding an agreement with the shareholders
- ◉ Through merging with another company owned by the same owners

What is a merger or an acquisition?

- ◉ A merger or an acquisition in any case produces a serious shock to the company and to its workers/employees.
- ◉ It is designed to have a great beneficial for the company (companies) impact on the market.

Are mergers and acquisitions typical only in periods of economic crisis?

They happen:

- > To strengthen position in transnational or national markets
- > To differentiate products or markets (to enter new markets or to produce new products/ services)

Are mergers and acquisitions typical only in periods of economic crisis?

○ HISTORY

(1898-1902) –monopolies (USA)

(1925-1930) – oligopolies (USA)

(1966-1968) –new markets + new products
big groupings (USA)

(1984-1989) –economies of scale, cross-
border mergers (mainly industries)

(1993-2004)- EU integration (mainly services)

Why mergers and acquisitions do happen?

Advantages

- ◉ To increase the market share
- ◉ To enter new markets
- ◉ To increase control of the market
- ◉ To acquire know how or assets

Why mergers and acquisitions do happen?

- ◉ To decrease costs
- ◉ To produce synergies

Key words: power + control

May there be a negative impact of mergers and acquisitions for the company?

- ◉ There may be negative impact as far as the staff is concerned:
 - > Because the business climate in the two companies may be completely different and this may impede the true fusion of companies
 - > Because there may be produced panic and insecurity from downsizing

May there be a negative impact of mergers and acquisitions for the company?

- > Because there may be cuts in salaries, decrease of the loyalty to the company hence reduction of the productivity
- > Because the employees of two companies may continue to have different salaries and benefits and this may cause irritation and discontent to the staff.

May there be a negative impact of mergers and acquisitions for the company?

- > Because there may be redundancies, mainly of non managerial staff, who have a know-how important for the company
- > Because new recruited staff may not be the most adequate

May there be a negative impact of mergers and acquisitions for the company?

- ◉ There may be negative impact on production :
 - > In the case the two companies were competitors in the past there may be overlapping and surplus of personnel and infrastructures
 - > In the case the staff does not know how to operate the new equipment

May there be a negative impact of mergers and acquisitions for the company?

- > Because the new systems may not be compatible with the skills and the way of work the staff is accustomed to and this may produce low efficiency (under capacity) and may demand more efforts of the management

May there be a negative impact of mergers and acquisitions for the company?

- ◉ There may be negative impact on the costs and expenditure:
 - > In the case there is not good change management costs may arise a lot
 - > As a consequence of the acquisition, staff of the acquired company may require development of new skills

May there be a negative impact of mergers and acquisitions for the company?

- ◉ There may be negative impact as far as industrial relations are concerned:
 - > Usually mergers and acquisitions are resisted by staff, by management and by shareholders of the company acquired..

What is the impact of mergers and acquisitions on the health of employees that preserve their job?

- Stress due to the demand to be adapted to a new business climate and different working systems
 - > stress is more pronounced in the case workers/employees do not participate in decision making as far as they are concerned
 - > in the case there is no adequate stress management, this might destroy staff's moral. Adequate management requires correct, sufficient and on-time information of the personnel about the intentions of the Management.

What is the impact of mergers and acquisitions on the health of employees that preserve their job?

- ◉ Fear and insecurity as far as potential loss of their jobs
 - > Fear and insecurity, which in periods of crisis gets worse, that one may personally remain jobless
 - > Fear that he/she may lose the opportunities for promotion or personal development he/she had before.

What is the impact of stress and fear of the personnel?

- ⦿ In better periods to quit the company
- ⦿ That personal and collective productivity drops
- ⦿ That members of staff affected by stress become competitive and suspicious with their colleagues and that conflicts between staff members arise

How can companies face these problems?

Which are the legislative frameworks regarding mergers and acquisitions for national and multinational companies?

- ◉ There are two groups of legislation:
 - > European law and national Laws concerning competition Law
 - > European Directives and National Laws concerning the protection or worker rights

European law and national Laws concerning competition Law

- ◉ Rationale

There is danger following mergers and acquisitions that the new companies or groupings get **dominant position** in the market and hence harm consumers and/or their competitors by imposing terms of removal or defraud of competition (monopoly or oligopoly conditions)

Definition of dominant condition

- ◉ United Brands case (1978)

Dominant position is the situation of economic power of a company, which gives it the possibility to impede conservation of effective competition in the related market, by giving it also the power of independent up to an important degree compartment as far its competitors, its customers and, ultimately, consumers are concerned.

Is it absolutely forbidden that a company has dominant position in the market?

- No, if it is the result of research, development and healthy competition with other similar companies
- Yes, if it is the result of mergers and measures of abuse of dominant position with the intention to erase competition, to decrease the expenses for research and to impose its prices to the market.

European law and national laws concerning the competition Law

- ◉ For cross border mergers and acquisitions, are applied procedures preview by the European Competition Law
- ◉ For mergers and acquisitions at a national level is used in each country the national Law of the specific country

European law and national laws concerning the competition Law

- ◉ It is applied:
- ◉ in companies registered in an EU country
- ◉ in companies with activities in EU countries

European Competition Law

- ◉ Included in the Treaty for the European Communities (Articles 81-86)
- ◉ European Directives 78/855/EEC and 82/891/EEC
- ◉ Regulation 1/2003 in force since 1.5.2004
- ◉ European Directive 2005/56/EC
- ◉ European Directive 2011/35/EU

European Communities Treaty

- ◉ Article 81 EC. It forbids horizontal and vertical agreements aiming at or resulting in restraining competition. There are exceptions for the cases that:
 - > Improve production or delivery or promote the technological development
 - > Do not completely exclude competition

European Communities Treaty

- ◉ Article 82. Forbids abuse of dominant position by one or more companies.

Examples:

- > Reduction of production in order to technically raise prices
- > Imposing particularly onerous conditions to the consumers
- > Arbitrary discrimination between consumers

Application of European Competition Law

- ◎ Responsible:
 - > The European Commission
 - > National Competition Authorities
 - > National Courts of justice

Application of European Competition Law

◎ Power:

- > Agreements, which infringe Article 81 are void
- > The European Commission and the National Competition Authorities may impose fines in case of violation of Articles 81 and 82.

Current system of European Competition Law

- ◎ Efficiency

- > decentralisation
- > what is not against the European competition rules is automatically considered legal

Current system of European Competition Law

- ◉ Uniform application of rules
 - > Important power of the European Commission for decision making
 - > European Commission competence for on-the-spot checks
 - > systematic collaboration between the National Competition Authorities and the EC

Law for the protection of workers' rights

- Rationale

Merger and in general acquisition of companies creates conditions of intense risk of workers' interests as far as the existence and the content of the individual work contract. The Law for the protection of workers' rights aims at matching the stability of employment with the practice of professional activity

Law for the protection of workers' rights

- ◉ Directive 77/187
- ◉ Directive 75/129
- ◉ Directive 75/129, concerning the transfers of companies and the facing of mass redundancies
- ◉ Directive 94/45 and 2009/38 for the European Works Councils
- ◉ Directive 2002/14 for Information and Consultation

Law for the protection of workers' rights

- ◉ In case of transfer of companies to another owner as a result of a legal change or a merger, the rights and obligations of the old employer that derive from the work contract or the working relation (when the transition takes place) pass over to the new employer. They are both equally responsible for the observance of the collective agreements.

Law for the protection of workers' rights

- ⦿ Attention! Critical time is the time when transition takes place

Law for the protection of workers' rights

- ⦿ Attention! Employer is obliged to inform and consult with workers' representatives in order to omit or to reduce redundancies or consequences for the workers/employees.

Information and consultation

- ◉ Date
- ◉ Reasons for merger or acquisition
- ◉ Economic, legal and social consequences
- ◉ Measures that will have impact on workers/employees

Information and consultation

- When?
- With which representatives?
- All useful information
- At which level is the obligation?

Information and consultation. Mass redundancies

- ⦿ Reasons for mass redundancies
- ⦿ Number and categories of workers/employees to be fired
- ⦿ Workers/employees selection criteria
- ⦿ Period of redundancies
- ⦿ Method of calculation of eventual additional severance

Information and consultation. Effectiveness

- ◉ When respected, they had as result the reduction of negative impacts on workers/employees
- ◉ Community Law does not specify concrete procedure for consultation neither worker representation model
- ◉ There is no obligation that consultation concludes with an agreement
- ◉ There are a lot of issues open to be settled through national Laws

Information and consultation. National Laws

- ◉ Denmark, Germany, UK. Only the merging company has to consult with and inform its workers/employees
- ◉ France. Labour Codex: information and consultation with the committee of workers before the decision of the Managing Board. There is a risk of cancellation of merger

Information and consultation. National Laws

- Germany. In companies with over 20 workers/employees consultation with works council, in companies with over 100 workers/employees consultation with Economic Committee, in which participate workers'/employees' representatives
- Netherlands. Mergers Codex. Timely information of Works Council or trade union about reasons and impact on work relations. Right to appeal to Court

Information and consultation. National Laws

- Italy. Information 25 days before. In 7 days workers may ask for information and consultation with the old and the new employer. In 7 days consultation has to be initiated and in 10 to be concluded.
- Belgium. Especially regulated right to information and consultation

Information and consultation. National Laws

- ◉ Spain. Right to information same as the shareholders 1 month before the General Assembly of shareholders. Right to take a written report on the impact of merger on work relations and to have at least 15 days to study it.

Information and consultation. Role of the state

- ◉ Italy, Finland, France, Netherlands. Right of the governments to react in the case of mergers
- ◉ Spain, Denmark, UK, Ireland. Restricted right to react depending on the size and the importance of the merging.

Information and consultation. European Works Council

- ◉ Usually effort from the employers side to inform EWCs at the last minute
- ◉ Decision in case Renault (1997, Court of Nanterre)