

## **FINAL REPORT**

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**Title:**

**European Mergers and Employees' Participation:  
Industrial Economic and Anthropological Study  
of Franco-German Cases**

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## Executive Summary

### 1. Motivation and Research Objectives

- A European research project EMEP - Key Action Improving the Socio-economic Knowledge Base - research conducted by Cerna, Paris and WZB, Berlin.
- Objective: to analyze how transnational mergers in Europe impact employees' participation in the firms.
- Subsidiary discussion: the merger paradox and the role of culture in the merger outcome. Obj. 2: Understand the reasons for success or failures of transnational mergers, based on the role played by employees in the merger process.
- Approach based on the stakeholder approach of firm corporate governance combining bibliographic research with a simultaneous industrial economic and anthropological investigation of four case studies in France and Germany
- Interest of Franco-German cases: these mergers confront two different employees' representation framework (standard opposition between the French model of workers representation and negotiation with the German 'co-determination' model)
- Scope of the study: links between corporate governance, mergers and workers participation. Two questions:
  - What is the role of employees' participation in the final merger's outcome?
  - Does international mergers' experience in Europe allows identifying a model for employees' participation in the future European firm?

### 2. Approach and Method

- Few literature references on the specific topic of trans-national mergers and employee participation. Two main reasons:
  - Large trans-national mergers are a relatively recent phenomenon

- Mergers are usually discussed and evaluated along a financial perspective ("shareholder value"). The employee variable is rarely considered, or only as a cost that should to be reduced to increase the efficiency of the future joint company.
- A preliminary empirical survey (70 cases during the 1990s) raises an important distinction between two types of operations:
  - The merger of two medium-sized companies sharing the same product, market or sector specialization
  - The merger in a single company (joint venture, subsidiary) of the current activities or divisions of two large diversified industrial conglomerates.
- Different economic rationale and objectives of the merger in each case
  - external growth: search for the efficient size imposed by the worldwide competition and the creation of a single unified European market.
  - market focus management: strategy of globalized companies to focus their activities on a limited number of businesses (spin-offs and divestiture of non-related activities)
- Relevance for the issue of employees' participation and industrial relations' models
  - in the first type of mergers, one company plays a dominant and leading role, enabling her to shape the organisation, the structure and the working rules of the integrated firm (acquisition process)
  - in the second scenario, both divisions are on an equal ground since they must equally cut their former relationship with their parent company and create a new integrated company
  - a very radical step given the institutional environment usually provided by large firms, regarding working rules, holiday duration, social relations, wages, employee evaluation and career progression...
- Our working assumption: the merger corresponds to the creation of a single firm out of two distinct entities. This shift requires a 'destructive creation' process, into which the effective participation of employees is a critical factor for successful implementation.
- Scope of the fieldwork investigation:

- How the formerly separate institutional patterns of employees' participation are transformed by the merger of the companies?
- the possible implication of employees in the merger process. We study here three strategic decisions of a merger: i) production internal re-organisation, ii) industrial and geographic relocation of the firm's activities, iii) workforce adjustment (volume, flexibility and working time, wages).

### 3. Cross-border mergers in Europe: the empirical picture

- The 1990s wave: an unprecedented rise in the number of mergers and their value.
- Main features: a trend towards larger (mega-deals), sector-based and increasingly international deals.
- European Union plays a dominant role in world cross-border merger activity: accounting on average for 36% and 47% of all inward and outward mergers between 1991 and 1998.
- This trend accelerates in 1998-2000 concentrating in a small number of countries (UK, France, Germany) and sectors (financial services, telecom, energy)
- Legal forms of employee participation now exist at European level (European Work Council, 1994 directive)
- But existing studies and survey of their past activities display no significant evidence of a collective approach by the different national union representatives strategy to defend European employees' rights.

### 4. Key results from the case studies

- 4 case studies: Europipe, 1991; V& M Tubes, 1997; Aventis, 1998; Quante Pouyet, 1998
- Expected or anticipated output: if cross-border mergers correspond to the very creation of new firms of European dimension, we should witness the progressive disappearance of national challenges (at least for some issues), and some emerging European features.
- Main results from the interviews and our fieldwork research: the massive persistence of the national issue after the merger

- o This can be presented along three main dimensions :
  - i. the fair balance of the work load among different national territories;
  - ii. 'social' issues (wages, working time, holiday, pensions...) are clearly differently managed within the firm and linked to national territories;
  - iii. there is almost no dialog among different national employee representatives within the trans-national firms we examined.

#### 5. The national fair balance rule

- o Evidence of a specific rationale for work load distribution between the plants and units:
  - “There has been no change concerning physical flows. In case of low loading we tried to have a fair distribution of the orders, except in case of absolute specialisation”.
  - (xx, 02. 2001)
  - “The production planning committee makes sure of a fair distribution of the work load between France and Germany, partly based on costs and competencies, but not only”.
  - (yy, 11. 2000)
- o Production decisions are not entirely de-territorialized (a kind of "political" governance to avoid costly tensions). This logic remains however bounded by economic and cost issues (specific case of low work load and overall surcapacity)
- o The fair balance rule results in two additional constraints: i) the initial number of production sites in each country should not change, ii) new orders and production are on average shared equally between the countries.
- o Economic viability of such a rule? (role of shareholders' evolution, demand external shocks)

#### 6. The 'social issue': partition and differentiation

- o The 'social' topics remain absolutely separated among territories and ultimately determined (embedded) at the national level.
- o One of the major areas in which the firm is confronted to the national State: the law on the one hand and social partners of the other hand

- o No real effective internal discussions on those topics: national sector-based comparison. Also lack of internal communication (e.g. working time reduction)
- o Often a result of weak shareholder control (e.g. in 50%-50% merger)
- o This point constitutes a key specificity of a cross-border merger. In national mergers, harmonization of wages, working time, holidays, or pensions actually leads to controversial discussions or conflicts between management, employees and their representatives.

“Social issues are very specific. Social issues are strictly a national problem, it’s the specificity of social issues to be national, because of the legislation on the one hand and of the social practices [social partners] on the other hand”.

(xx, 02. 2001)

### 7. The employee factor in the merger outcome

- o The previous points demonstrate the limitations associated with a cross-border merger in terms of production consolidation and wages coordination.
- o Synergies: changes in the internal organization of each former company (sales, marketing, R&D, accounting, finance, management control, computer system)
- o In such a process implying intangible and information assets, employees are likely to play a major role (driving force or powerful source of opposition.)
- o Implementation of organizational changes? Insights from the case studies: first the unifying of the two existing systems is not considered as a credible solution.
- o Alternative means: 1) common adoption of one national system or 2) creation of a new one. 1 applies in cases with a strong commitment from the management to implement one solution or when the system in one company emerges as indisputably superior.
- o In some cases, status quo is the only reasonable and feasible solution (until a technological innovation or a generation change)
- o The four cases underline the importance of three decisive organizational changes in three functional divisions of the merged company: sales, accounting&finance, computer systems.

## 8. Unions and the national issue

- Unions have a non-neutral relation to the national issue. They implement and/or support a national, even sometimes nationalist logic, whose effects can be substantial.
- Little (if any) exchanges and discussions among employee representatives coming from the different national territories on which the firm operates
- Supra-national representation structures, such as European Works Councils (EWCs) exist, but no real relations and coordination between the national groups of employee representatives
- Explanation: the national dimension of unions (institutional player with the State in national social bargaining processes)

## 9. Conclusion: where is the European playing field?

- Our case studies demonstrate the remarkable presence of national issues in trans-national firms (results aligned with studies on multinational firms and the EWCs)
- An interesting phenomenon: the national fair balance rule, that is a very specific mobilization of the national issue under the fairness principle.
- Why do firms submit, even temporarily, to this logic? Suggestions:
  - the involvement of national industrial shareholders linked with the trans-national firm (e.g. as input suppliers)
  - the threat of employee mass protest in case of substantial reduction of the work load, especially in countries such as Germany where unions are strong.
  - the need and the will of the firm's management to get labour's support
- Regarding social and unions issues: national persistent differentiation
- This points to the core problem of European employees' representation: national unions still embedded in the State's framework, but no European state, nor institutions handling the social issues. Second paradox of the European structures: created without any labour action, hence little historical or political legitimacy.

## 1. Background and objectives of the project

### **2.1 Motivation**

The recent past years have experienced a dramatic succession of mergers, which number and financial magnitude have continuously kept on growing. One might consider that this phenomenon constitutes today the major industrial dynamics transforming the structures of contemporary economies. These mergers are traditionally pictured out as the direct effect of the growing influence of the financial constraints and the dominance of 'corporate governance' in the firms. An increased profitability and shareholder value are actually the motives usually put forward to justify and motivate a merger. This perspective focuses on the relationship between management and shareholders, and employees are either not considered at all, or as a cost to reduce through restructuring and massive layoffs when firms face financial difficulties. In the literature, however, a larger approach of the firm has developed, bringing into the scope of corporate governance issues the firm's employees, its suppliers and customers, the State of the country in which it is located. This 'stakeholder' framework allows new research and studies of the industrial structural changes and their socio-economic consequences.

The objective of EMEP research is to analyse how transnational mergers in Europe impact employees' participation in the firms. The analysis combines bibliographic research with a simultaneous industrial economic and anthropological investigation of case studies in France and Germany. To analyse the links between corporate governance, mergers and workers participation, two questions will be addressed: what is the role of employees' participation in the final merger's outcome? does international mergers' experience in Europe allow to identify a model for employees' participation in the future European firm?

The expected results of this work are the following: i) to build up and validate a general analytic framework and methodology that could be later enlarged to other European countries, ii) to produce a first set of results on national employees participation comparison and the complex issues raised by their integration after the mergers, iii) to contribute to the policy debate on the European mergers' rules and the

on-going definition of the legal frame for the European company. Regarding the second point, the objective is to develop an original evaluation of the reasons for success or failures of the transnational mergers based on the role played by employees' participation in the merger implementation. To disseminate the results, enlarge the scope of the research to the European level, and tackle the mergers policy issues and the design of the legal frame for the European Company, a conference is scheduled between European researchers, enlarged to other countries and other fields (management, sociology, work and business law...).

## **2.2 Approach and Methodology**

Most comparative research on corporate governance, whether centred on shareholders and financial markets, or whether based on a broader idea of the firm including employees, has been embodied in the debate over varieties of capitalism. Consequently most of the comparative work has focused on the differences between the Anglo-Saxon type of corporate governance and the continental European one, discussing their possible convergence under financial markets' pressure. Few researchers have eventually been comparing different systems of corporate governance within 'one type of capitalism'. Considering the current construction of the European Union, it is however essential and urgent to start focusing on different forms of corporate governance within continental Europe, and especially comparing France and Germany. The shape of the future European model of corporate governance is actually still an open question: domination of one national model at the European level, new configuration resuming the benefits of several national models, or original processes carried out by the firms themselves?

A transnational merger challenges traditional employees' participation models in two ways. First of all, by bringing together within a single structure different national systems of employees' participation, which provides a unique empirical ground for comparing them. Secondly, every merger poses difficult organisation and restructuring problems, with major social consequences. Employees are clearly a key variable of these strategic decisions. Our central working assumption is that a merger in fact corresponds to the creation of a single firm out of two distinct entities. This shift from two to one firm requires a 'destructive creation' process, into which the effective participation of employees is a critical factor for successful implementation.

To carry out efficient and comprehensive case studies with a limited amount of resources, we chose to focus our empirical research on Franco-German mergers. Franco-German mergers turn out to be quite relevant for our approach because German and French companies first differ, not by their respective ownership structure, but by the role of the banks and above all the relations between the firms and their employees. A Franco-German merger then confronts the French model of workers participation, representation and negotiation with the German 'co-determination' model.

The analysis of the role of workers participation in transnational mergers is based on a joint industrial economy and industrial anthropology fieldwork research on four Franco-German cases with in-depth interviews of managers, workers and social partners. This investigation aims at assessing and evaluating the role of employees participation in the merger implementation and final outcome. The economic analysis actually faces great difficulties to identify and specify criteria explaining the success or the failure of a merger. Since classic economic factors such as scale and scope economies, overhead cuts or technical, commercial and financial 'synergies' cannot be statistically demonstrated, one then evokes cultural incompatibilities, management mistakes, which are concepts hardly defined nor easy to rigorously compare.

Our objective is on the contrary to develop an explanation model of the reasons for success or failures of the transnational mergers, based on the role played by employees' participation in the merger implementation. The central working assumption of our work is that a merger in fact corresponds to the creation of a single firm out of two distinct entities. This shift from two to one firm requires a 'destructive creation' process, into which the effective participation of employees is a critical factor for successful implementation. The destruction of the former structures and the building up of new ones require strategic decisions in three key areas of the firm : production organisation, industrial and geographic location of its activities, workforce adjustment. The employees are clearly a decisive variable of these choices, that will eventually define the economic model of the merged company. Their support and effective involvement in the merger implementation will largely depend on the participation and negotiation processes set up by the firms for the merger.

During the fieldwork investigation, two dimensions of each merger will therefore be assessed: i) how the formerly separate institutional patterns of employees participation are transformed by the merger of the companies? ii) the direct negotiations set up with the employees to efficiently implement the merger. On this last point, three strategic issues of a merger are considered: production internal re-organisation, industrial and geographic relocation of the firm's activities, workforce adjustment (volume, flexibility and working time, wages).

### **2.3 Overview of the project progress**

The research was composed of three successive phases. First of all, a locating period in order to conduct a critical bibliographic review of research on employees participation, to identify the cases of French-German mergers and to prepare the detailed methodology and questionnaire for the on-site interviews. Secondly, empirical case studies are jointly conducted by the two research centres. Meanwhile the program and the content of the final conference is defined and advertised. The project finally ends with a period devoted to the valorization of results through the European interdisciplinary conference to be held in Paris, and various presentation of the research results with companies' representatives and academic arenas.

#### **Bibliographic Survey**

First, the team has carried out a systematic and in-depth bibliographic and data research on mergers, with an emphasis on transactions between German and French companies. The results are detailed in section 3.1. In academic resources, we surveyed the main publications in industrial relations, labour economics and labour sociology since 1993 (the integration of the European dimension in industrial relations' articles actually dates back to this period, and the European directive on European works councils was adopted in 1994). The most useful ones regarding our topic were: *Industrial Relations Review*, *European Journal of Industrial Relations*, *Economy and Society*, *Personnel*, *Transfer* *European Review of Labour Research*, *Industrial Relations Quarterly*, *Labour* : review of labour economics and industrial relations.

However, this extensive bibliographic research led us to conclude that there is almost no literature references on the specific topic of trans-national mergers and employee

participation (except two isolated contributions). One can explain such situation by two factors:

- Large trans-national mergers are a relatively recent phenomenon and there's not been enough time yet to rigorously assess what long-term effects might be.
- Mergers are usually discussed and evaluated along a financial perspective, in the light of the "shareholder value". In such approach, the employee variable is not considered, or only as a cost that should be reduced to increase the efficiency of the future joint company.

In the economic field, mergers have always caught researchers' attention, both in a theoretical and empirical perspective. But, formal models, econometrics investigations and applied papers have focused on two main issues:

- the financial rationale of mergers (their stock & market evaluation, the corporate finance engineering of such operations)
- their impact on competition and market structure, from an antitrust point of view (what are the likely effects on price, quantity and quality of a merger?, what should be the relevant rules for approving or banning a proposed merger?)

The merger process itself, and its ex post efficiency, has been seldom studied, with the notable exception of the IT (Information Technology) systems. Given the high degree of firm-specificity of these assets, their successful integration crucially affects the overall efficiency of the common company. This evaluation led us to the following conclusions: first of all, the problematic of employees' role in international mergers is not well defined yet. Since this topic does not directly infer from an existing mature research field, we have then to develop entirely the relevant analytic framework, by borrowing the appropriate questions, concepts or insights from various disciplines. To this respect, the vast literature we surveyed on employees' participation in industrial relations, and mergers in economic theory, albeit without interactive links, proved to be very useful to precise our research questions, the issues at stake and the methodology for the empirical case studies.

#### Selection of the mergers' case studies

After a comprehensive investigation of business records of magazines and commercial or industrial institutions in France and Germany, we have built up a database of 70

Franco-German mergers (in industrial as well as services sectors) achieved since 1990. We actually chose completed or in progress mergers to pass the media hype surrounding merger announcements and to focus on the effective process of the merger. But, we must also only consider recent operations so that the record of the difficulties experienced, the strategic decisions taken, and their rationale is still in the employees and managers' minds. We then selected four cases that cover and illustrate the different questions we intend to study and discuss during the on-site investigation. The analysis of the initial database of Franco-German mergers during the last ten years allowed us to introduce an important distinction between two types of operations:

- The complete merger of two medium-sized companies sharing the same product, market or sector specialization,
- The merger in a single company (joint venture, subsidiary) of the current activities or divisions of two large diversified industrial conglomerates.

It is quite clear that the economic rationale as well as the objectives of the merger largely differ in each case. In the first one, the goal is actually to grow to the efficient size imposed by the worldwide competition and the creation of a single unified European market. The second form of mergers instead results from the on-going strategy of globalized companies to focus their activities on a limited number – one or two – of businesses (market focus management). This implies spin-offs and divestiture of non-related activities. One simple way to achieve that is to set up a common Joint Venture with a former partner or competitor and transfer the workforce, the assets and technology in the new company. This distinction has strong implications for our research, since it raises in a different manner the issue of employees' participation and industrial relations' models. In the first type of mergers, it is very likely that one of the companies will play a dominant and leading role, enabling her to shape the organisation, the structure and the working rules of the future integrated firm. It therefore corresponds to an acquisition process, into which the acquired company has to adapt to a different framework, imported from another firm. The associated difficulties are often exacerbated by the fact that the latter was a direct and fierce competitor. On the opposite, in the second merger scenario, both divisions are on an equal ground since they must equally cut their former close relationship with their parent company and create a brand new work structure in the integrated company. This corresponds to a very radical step given the comprehensive and specific

institutional environment usually provided by large firms (regarding working rules, holiday duration, social relations, wages, employee evaluation and career progression...).

Working on this distinction, we have finalized our questionnaire for the interviews with the firms and selected the four final cases: VM Tubes, Europipe, Quante Pouyet, and Aventis. Case studies are analyzed in section 3.2. Of course, given the resources available, it should in no way be considered as a sample. Our objective was rather :

- 1) to combine mergers completed quite a long time ago (1991, 1992) with more recent ones (1997, 1998);
- 2) to include examples of both merger rationale distinguished above (VM Tubes, Europipe and Aventis fall in the second scenario and Quante Pouyet in the first one);
- 3) to mix deals of different scale (including small, medium and very large deals);
- 4) to consider various sectors (here steel, electronics and pharmaceuticals) where mergers are the dominant factor driving structural changes in the industry;
- 4) to balance cases where the German firm has the leading role in the merger process and its implementation with opposite situations. To this respect, the parallel study of VM Tubes and Europipe is particularly instructive since it confronts two mergers from the same mother companies (Mannesmann and Usinor) with an opposite control given to the French and German management.

#### Conference

A Call for papers for the Conference was written by the team and advertised in Summer-Autumn 2000. The conference was finally held in Paris (School of Mines) on March 9<sup>th</sup>, 2001. The different contributions and summary of the discussions are presented in annex.

### 3. Scientific description of the project results and methodology

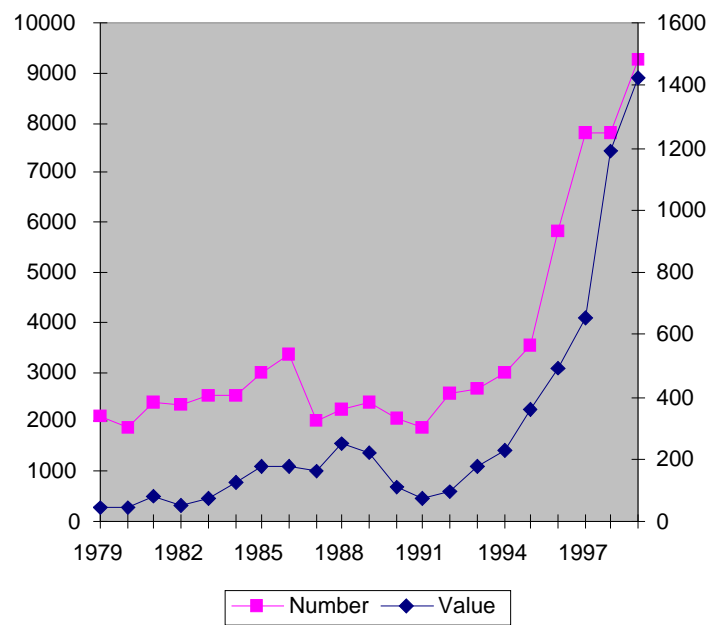
#### 3.1 Bibliographic review

##### 3.1.1 The 1990s boom: main empirical facts and recent trends in cross-borders mergers

The 1990s experienced a merger and acquisition (M&A) wave with unprecedented levels in the number of deals and their value. We will first present the main stylized facts and characteristics of recent merger activity. A simple way to do that is to compare the current wave with the previous ones over the last fifty years. One of the most consistent features of the huge empirical literature on mergers is actually that mergers occur in waves. One can then point five historical peaks in merger activity during the 20<sup>th</sup> century: 1900, 1920, 1960, 1980, and 1990 decades. While the first two waves are almost exclusively US-centric events, an increasing international dimension (mostly in Western Europe and Japan) marks the following ones. But the recent merger wave also exhibits the following specific features:

- first, its exceptional magnitude (see figure 1),
- the increasing number of very large so-called “mega” deals,
- a strong clustering of mergers within industries and sectors,
- the increasing fraction of cross-border mergers.

Figure 1. Aggregate Merger Activity (US companies)



Source: Weston et al., 2001, p. 2, data from Mergerstat Review

The two following sections document these key trends.

#### 3.1.1.1 The worldwide picture

Because of the lack of overall available, reliable and homogeneous data, most of the empirical studies only consider the merger activity in the United States and use US databases. An interesting contribution to broaden this perspective is provided by Pryor (2001). Using the Thomson Financial Securities Data base, he presents the main trends in worldwide mergers and acquisitions activity by considering the change between three discrete points: 1985, 1992 and 1999. The main results are:

- The total volume of M&As has increased dramatically, rising at an average annual rate of 21% from 1985 to 1999.
- The increasing internationalization of M&As: while deals between US firms or with a US buying companies amounted to 75% of the total number of mergers in 1985, they only represent 41% of the total in 1999.
- The financial average size of merger deals increased by 50% over the period, reflecting the growing weight of mega-deals between very large global companies.

- Mergers increasingly involve firms within the same four-digit industries (account for between two-thirds and three-fourths of all mergers).
- The geographical distribution of merger activity shows a substantial decrease in US and Canada's share but it remains highly localized within OECD nations (less than 10% of merger deals involve outside companies).
- The impact on firm's sizes is ambiguous; there is no clear evidence that increased merger activity also increased the average firm's size (one immediate reason is that an acquisition is often linked with a business refocusing and restructuring, implying some assets sales or spun-off).

The two major trends noted by Pryor - industry consolidation through very large mergers - are confirmed and well illustrated in the following table, which lists the largest mergers completed since 1998.

Table 1. Largest merger deals 1998-2000

Year	Companies	Deal value	Industry
2000	America Online / Time-Warner	€ 220 billion	Telecom
2000	Vodafone Air Touch / Mannesmann	€ 210 billion	Telecom
2000	Pfizer / Warner-Lambert	€ 107 billion	Pharmaceuticals
1998	Exxon / Mobil	€ 92 billion	Oil
2000	SmithKline Beecham / Glaxo Welcome	€ 88 billion	Pharmaceuticals
1998	Travelers Group / Citicorp	€ 85 billion	Financial services
1998	SBC / Ameritech	€ 73 billion	Telecom
1998	NationsBank / BankAmerica	€ 72 billion	Financial Services
1998	British Petroleum / Amoco	€ 71 billion	Oil

Though widely publicized, prominent transatlantic transactions like Vivendi Seagram (to form Vivendi Universal) and the much debated Daimler-Benz / Chrysler deal do not appear in this ranking because the amounts involved (respectively € 34 billion and € 45 billion) were slightly smaller than these top-ten records.

The structural characteristics of the 1990s merger wave listed above can also be linked with the financing of the transactions. These deals were actually massively carried out through stock, at a time where stock market valuations reach an all-time high. This clearly contrasts with the previous merger wave just five-seven years earlier, driven by hostile takeovers in cash in a depressed stock market. Table 2 summarizes all these elements to pin down the distinct nature of the present merger intense activity.

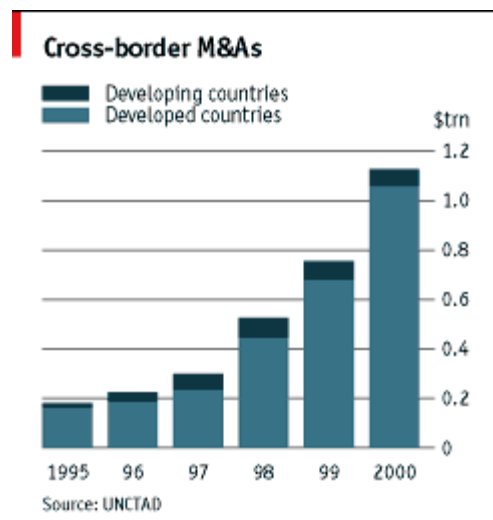
Table 2. Characteristics of the last three merger waves

Period	Wave name	Rationale	Payment medium	Stock market valuation
1960s	Conglomerate	Build-up large diversified groups	Stock	Very high
1980s	Bust-up "hostile" takeovers	Financial raiders acquire and split-up conglomerates	Cash	Low
1990s	Global	World or regional consolidation among major industries	Stock	Very High

### 3.1.1.2 Cross-border mergers: key trends

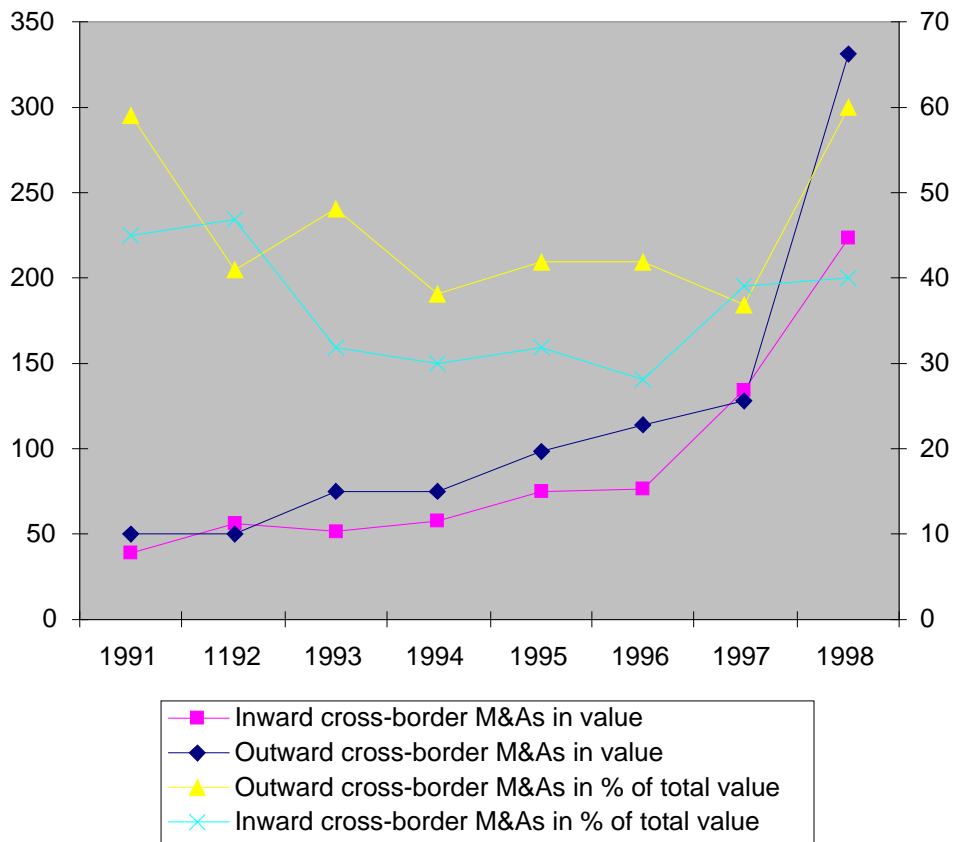
But the main point for our discussion is the impressive rise in cross-border mergers. As figure 2 illustrates, the pace even tends to accelerate as the value of cross-border mergers and acquisitions completed in 2000 reached € 1.2 trillion, nearly 50% higher than in 1999. As a result, cross-border M&As must be considered as a fundamental mechanism of industrial globalization. In particular, this is now the major component and the driving force in foreign direct investment (FDI). However, this phenomenon remains highly localized within the OECD area and affects only marginally developing countries and North/South investment flows.

Figure 2. Value of cross-border mergers 1995-2000



For geographical statistical purposes, it is common to classify cross-border mergers as inward or outward, depending whether it consists in the sale of a domestic firm to a foreign acquirer or the purchase by a domestic firm of a foreign company. The next figure pictures the weight of European Union in inward and outward cross-border mergers and acquisitions during the period 1991-1998, both in absolute and relative terms. EU figures add up the national inward and outward volume for each of the member states. It shows that the European Union played a dominant role in worldwide cross-border merger activity, accounting on average for 36% and 47% of all inward and outward mergers during that period. It is interesting to note that the United States shares respectively amount to 27% and 23%. Given the dominance of the US in overall mergers - mergers between only US companies account for 47% of the value of all worldwide merger deals (Pryor 2001)-, this means Europe is the indisputable center of cross-border merger activity.

Figure 3. European Union Cross-border M&amp;As (aggregate value and worldwide share)



The major role played by the European Union is underlined when we get into the detailed picture of cross-border deals by country (KPMG, 2000; Kang, Johansson, 2000; Mueller, 2000). The UK tops the charts in 2000, fuelled by Vodafone-Mannesman, the largest deal completed in the year at € 210 billion. Total UK acquisitions amount to the value of € 390 bn, a 120% increase from 1999. The next most acquisitive nations in 2000 are France (€ 160 bn), US (€ 159 bn) and Germany (€ 72 bn). In 2000, Germany led the way in inward investment to the tune of € 276 bn, a huge growth from the previous year (€ 65 bn), mainly due to the Vodafone-Mannesman giant takeover. Other main target countries were the US, which attracted € 262 bn worth of inward investment, followed by the UK (€ 231 bn). The largest sector involved in global M&A activity unsurprisingly has been the telecommunications and broadcasting sector, which was the target in over a third of all deals. For example, the outward spend in 2000 by France Telecom in cross-border international acquisitions (€ 65 bn) is greater than the total inward investment by all countries into France (€ 55 bn)! The financial sector was the second major target attracting € 183 bn worth of bids. However, it was the computers/electronic sector which took the biggest leap from € 51 bn last year to € 135 bn in 2000, whilst activity by traditional manufacturing businesses climbed by 22 % to

€ 118 bn. Chemicals and pharmaceuticals saw the biggest drop (-67 % down to € 42 bn), as the big deals of 1999, such as Zeneca Group-Astra and Rhone Poulenc-Hoechst, were not replicated.

A recent OECD survey (Kang, Johanson, 2000) provided interesting statistics of worldwide M&A activity:

- The value of cross-border mergers worldwide grew more than six-fold between 1991 and 1998.
- This trend even accelerates in recent years. In 2000 alone, outward investment by Western European countries alone increased by 40% to reach a record high of € 370 billion, driven mainly by transatlantic takeovers (453 acquisitions of North American companies).
- As a result, cross-border deals represent a growing part of the total M&A picture in Europe far exceeding (1.5 ratio) domestic deals in terms of average value. It also represents an increasing proportion of the total value of all deals across the world (41 percent in 2000 compared to 24 percent in 1996).
- The total number of cross-border mergers also increases rapidly from 2900 deals completed in 1996 to 7300 in 2000.
- Between 1991 and 1998, the average size of cross-border deals increased about five-fold (to € 120 million), drawn by the growing importance of very large-scale mergers. In 1998 and 1999, the first five deals made up more than 30% of global transaction values.

Another key feature of cross-border mergers is that they take place across all sectors, manufacturing as well as services industries. At the same time, empirical research evidence that most of the transactions involve firms from the same sector. Cross-border takeovers then appear as a major instrument of industry consolidation within increasingly globalized markets. Depending on the sector and countries involved, this consolidation and concentration process might be triggered by a number of reasons: increased competition, technological change, worldwide or regional excess capacity, concentration among clients or suppliers, regulatory reforms, investment liberalisation... We find here again the main driving forces behind mergers worldwide, that we will discuss more extensively in the next part of the paper. What are then the

specific reasons pushing firms to engage in cross-border mergers? Based on empirical evidence and existing business surveys, one can suggest that three factors, out of the usual merger's explanations, play here a particularly decisive role:

- 1 Cross-border mergers are first of all an efficient and quick entry mode in foreign markets. The time factor is especially important for entering domestic markets recently opened up to competition, where the number of potential entrants is large and establishing a critical mass gives a strong competitive advantage. In such case, a merger clearly appears as a superior strategy to greenfield investment, since it allows to immediately (after the average six-months delays for sorting the financial arrangement and the regulatory clearance) seize the new market opportunity.
- 2 Domestic government policies are a second fundamental factor determining cross-border mergers. More precisely, trade policies (elimination of trade barriers and customs distortions, liberalisation of capital movements and investments), regulatory reform (in telecom, electricity, finance) and privatisation programs have contributed a lot during the last decade to cross-border merger activity, by creating new major growth opportunities for foreign companies. The continuous economic expansion between 1995 and 2000 also worked in favour of cross-border mergers, especially in the United States and in Europe. On the one hand, prolonged economic growth increases the financial resources at the disposal of domestic firms considering takeovers abroad (either through accumulated profits or by a favourable stock market environment pushing equity prices and available capital). On the other hand, favourable macro-economic forecasts contribute to secure the short-term profitability of the acquisition of the target firm.
- 3 Regional integration policy. This was indubitably a key driving force behind cross-border mergers between European firms. The unification of domestic markets into a single one, the imminent prospect of a common currency, the definition of long-term credible public policies and targets (in the field of utilities regulation, competition and trade policy, budgetary and monetary restrictions) implemented across the entire continent (European directives mechanisms) promote and facilitate cross-border mergers.

### 3.1.1.3 Discussion

It is likely that the economic slowdown in the US and Europe during the year 2000 will have a negative impact on merger activity. This will affect in particular cross-border mergers since these transactions are widely considered as the most hazardous investment for companies, and therefore the first to be cancelled or postponed when economic conditions deteriorate. Moreover, the current crisis in the telecom and high-tech industries, which have been so far major fields for cross-border mergers, is another strong adverse factor. Indications that the pace of worldwide mergers is slowing down emerge by the end of 2000, which last quarter recorded a 33% drop in announced cross-border deals compared to levels in each of the first two quarters for the year according to Computasoft Research (CommScan). As a result, the total value of cross-border and domestic deals within the European Union will decrease for the first time in 2000, reaching € 940 billion down from € 1 170 billion in 1999 (Thomson Financial Securities Data). There is also a growing concern among economists and business circles that the weak euro against the dollar, and the successive setbacks in the harmonization of national takeover codes and the legal definition of a European company, prompt capital flows to the US rather than within the EU. As the previous figures shows, the former have in 2000 exceeded the later on aggregate volume and in many individual countries (UK, France, Germany).

### 3.1.2 [The economic analysis of mergers](#)

The dramatic increase in the total value of mergers since 1995-96 has led many observers to talk about a 'merger mania'. Economists have not ignored this spectacular trend. Their interest in mergers, which dates back to the early days of industrial economics and competition policy, found there a new force and motivation. The structural transformation of the industry and the firms brought about by mergers actually raises a number of interesting issues. The first of them is without doubt: why?; in other words, what is the rationale and the motivation in merging two or more companies? Then one might wonder: will the operation be beneficial to society or not? Should the government interfere with the process to clear or forbid the transaction? If so, on which legal justification and based on what kind of economic evidence and argument? Here, the main concern is that mergers could be used as an instrument to create legal cartels, since the merged firms will now be able to coordinate their actions

and legally achieve joint-profit maximisation. These public policy implications have given birth to a vast theoretical and empirical literature. The nature of competitive threats raised by mergers, the relevant distinction between mergers that are harmful for other firms and consumers and those that are not, the adequate antitrust policy with respect to mergers are issues widely debated amongst financial, industrial organization and public economists. On all these points, there are no agreed-upon answers. The aim of this section is not to review systematically the existing theoretical and empirical economic literatures on the causes and consequences of mergers<sup>1</sup>. Rather, we suggest to investigate how the various existing economic models try to figure out the unique feature of a merger, in other words, what fundamentally changes when two formerly separate firms are joined into a single one? Therefore, we concentrate on the assumptions and the main hypothesis of the models, and leave aside their results and predictions. We will argue that the merger mechanism still remains to a large extent a black box for economic analysis. Most of the models actually clarify the motivation of a merger and display their predictable effects by assuming that the joint company get a new or superior capacity the merging firms did not enjoy separately before (increased market power, leadership role in the industry, scope economies etc.). This new feature is central to the model resolution (price, quantities, corporate profits, social welfare compared prior and after the merger). However, these models give us very little clue on why and how the merger confers to the joint firm such ability and feature. To sum up, the problem is simply shifted one step further but remains basically unresolved. The following brief review of the main merger models will help us illustrate this point and collect on our way the different assumptions used to capture the changes brought by a merger.

The first step of the analysis is to define exactly the nature of the transaction involved in a merger. Does the literature provide a useful and efficient classification of merger types? The basic approach consists in considering the nature of the relations that existed previously between the merging firms. This allows distinguishing three different kinds of mergers:

- between formerly competitors in the same product market: horizontal mergers (e.g. two food retail chains or two long distance telecommunications providers),

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<sup>1</sup> for comprehensive survey see Scherer, 1980; Mueller, 1989, 1997; Meschi, 1997 among others.

- between firms involved at different stages of one vertical production chain: vertical mergers (e.g. an oil producer and a refiner, a car manufacturer and an engine designer and producer). This category also extends beyond strict hierarchical links to include consolidation of complementary goods producers.
- between firms without a clear substitute or complementary relationship: conglomerate mergers (creating a diversified industrial group).

Economic theory lists many possible reasons for mergers:

- efficiency gains (as a result of scale economies or overall synergies between the merged companies),
- market power (to reach a monopoly position or form an oligopoly),
- market discipline (replace an incompetent management, and an inefficient firm),
- acquirer management will to grow (agency relation with shareholders),
- diversification (to exploit internal capital markets).

We could add many items to that list. The problem with this compilation of factors is their extreme heterogeneity and different relevant scope. The basic reason for that is that they have many different origins (theoretical, empirical or case studies research, IO, public economics, competition law, regulation economics, political or international economics and so on). To survey this vast existing literature on mergers, we then suggest to sort out the main contributions, arguments and models along two groups. The first one will consider the question: why do firms merge? It is useful to split it again between two different approaches of the determinants of mergers. A first approach interprets mergers as a reaction to exogenous shock to the industry structure (2.1.1). Contrasting with this somehow passive interpretation, the alternative view develops the strategic nature of mergers for competing firms (2.1.2). We have gathered in the second group of references, all the research and studies analysing how firms may benefit from merging. Again a double perspective can be considered. The consequences of a merger can first be assessed in a welfare cost/benefit analysis (2.2.1). This is the point of view of competition regulators charged to clear or to block the proposed transaction. The key variables to consider here are changes in market

concentration, price, and innovation incentives. But another conceivable approach will focus on the firm level, the measure of merger's performance, trying to figure out the possible sources of total value increase (2.2.2).

In the following sections, we will also discuss how this literature can explain and justify the two main features of merger activity over the 20<sup>th</sup> century:

- the fact that mergers occur in waves,
- the empirical evidence documented by most performance studies that profitability, productivity, as well as market share growth, whatever the industry and the indicator considered, have not improved and sometimes even deteriorated after the merger.

#### 3.1.2.1 Merger as an answer to exogenous industrial shocks

From the mergers' "waves" observation comes the idea that mergers are first of all a reaction to sudden shocks to the industry structure (Mitchell, Mulherin, 1996). In this perspective, a merger is a favored instrument to restructure and to consolidate industries without prior notice and in a short period of time (3-8 years). The nature of the exogenous shocks varies over time and between industries (which might explain the waves and the industry-level concentration of mergers documented by empirical studies): technological innovation (e.g. textile, semiconductors), supply (oil) or demand (defense) shock, deregulation (airlines, telecom, utilities, banking), globalization and freer trade. In the case of Europe, this last factor obviously plays a decisive role with the completion of the European Union and the consolidation of a single unified European market.

To these traditional explanations, Andrade et al. (2001) considering the merger activity in the 1990s add the deregulation factor. They claim that as a major source of unexpected shock to the industry structure, it accounts for nearly half the mergers of the last decade. A complementary explanation of merger waves involves endogenous effects, where an initial merger in an industry triggers a chain of successive mergers. Such events are more likely to occur in already concentrated industries (oligopolies) where the benefits from an increased level of concentration exceed the free-riding effect described before (gained by non-merging firms by increasing output). In this case, the gains from a merger between two firms increase when their rivals merge and this

might start a merger wave in the industry. Of course, in real-world examples, both external shock and endogenous effects are combined. Consider for example the case of defense and telecom in the US, where to cope with a radical change in the environment (1996 Telecom Act, massive cuts in weapons procurement) one pioneer firm (Worldcom, Martin Marietta) chose and quickly embarked on an innovative merger strategy, triggering similar moves in the whole industry through some sort of race for assets and target companies.

Another distinct but connected exogenous theory builds on the role of the large disparity in economic forecasts and evaluations, due to uncertainty, information asymmetries and difference in risk aversion. Shleifer and Vishny, who in a recent paper (2001) develop a model based on stock market misvaluations of the combining firms, give an example of this approach. Their theory is that the stock market may misvalue firms, potential acquirers as well as potential targets. They then propose a "stock market driven merger model" based solely on the knowledge of relative valuations of the participant firms. This allows them to interpret convincingly some key empirical evidence (such as the relative weight and performance of acquisitions in cash vs. in stock), and in particular several anomalies unsolved in the finance literature on M&As (such as the reason for diversification, i.e. acquisition in a different industry or of smaller firms with no perceived synergies). Extending the same line of reasoning, Holmstrom and Kaplan (2001) argue that the recent increase in take-over activity is closely linked with developments in corporate governance and regulation that increases capital markets' efficiency.

### 3.1.2.2 Merger as firm's competitive strategy

We will here consider how mergers can also be used by firms to alter the industry structure, improve their competitive position, increase their market power, and ultimately their profitability. The case of horizontal, vertical and conglomerate mergers is successively investigated.

#### Horizontal Mergers

In horizontal mergers, the reduction in the number of firms operating in the market is seen as the main motivation for merging companies (increased market power, larger

size) as well as the most visible threat to competition. It is quite interesting to see how economists try to model this effect and the specific problems they had to cope with. We will see that the core issue is how to define the changes brought by the merger to the initial companies compared to the competitors who remain the same.

To begin with, consider an homogeneous product market with firms engaged in Cournot (quantity) competition. What happens if two of these firms merge? From an overall point of view, total output is reduced, industry price and total profit go up. However, the merged firm is not more profitable. The reason is that the two firms will jointly produce a smaller fraction of the smaller industry output than they did prior to the merger. And the increase in the margin is insufficient to compensate for that fall in the output. Therefore the merger creates no additional profit for the two firms. This result is called the "merger paradox" (Salant, Switzer, Reynolds, 1983). The paradox also lies in the fact that, if a merger takes place, then it will directly benefit to the non-participating firms, who without having to incur any costs see the elimination of one competitor. Their automatic relative share increase will dominate the fall in the total output, creating a clear gain. In a sort of free-riding on the output reduction and price increase initiated by the merging firms, nonmerging companies are the main unexpected beneficiaries of the merger. With a standard Cournot-Nash competition model, most of horizontal mergers are then unprofitable. Note here that in Bertrand price competition models, the same paradox occurs.

The flaw here is quite obvious: in this model, the merged firm becomes just like any of the other firms in the industry. This means that all of the firms (the merged as well as the non-merged) have the same costs and will in equilibrium produce the same output and get the same profit. In such a setting, no firms will merge because it is not profitable. The missing element in the Cournot model is a way to capture how the new firm takes in some sense advantage of its larger size. We must ask what sort of model could help to capture this advantage of the merged firm over its former rivals that did not merge.

A logical proposition is the Stackelberg leader model, where one firm (the leader) benefits from an advantage over its rivals, its ability to commit to an output before the other (follower) firms take their output decision. This leadership role allows the firm to take into account in its strategy and output choice the reactions of the followers.

Considering the merged firm as a Stackelberg leader seems a reasonable assumption (it has twice the capacity of its rivals in the former setting) and helps resolving the "merger paradox". The approach here is similar to the Selten model of cartel (1973) with the difference that with a merger case, cheating from a member of the cartel is no longer a concern. The analysis shows that, in a Stackelberg competition game, a two-firm merger will increase their profits (compared with the combined profit of the merged firms in the premerger setting) and decrease the profit of the firms that have not merged (provided that there are more than four firms in the industry). The merging of two firms to play the role of an industry leader is then a profitable strategy.

However, this model is still not entirely satisfactory. It actually leaves open the question of the welfare impact of the merger, which is as we noted before a major concern for policy makers. This model indeed implies that any two-firm merger results in lower prices and therefore benefits consumers. However, the threat of higher prices following a merger is well documented on an empirical ground. It is then necessary to move further and look at some aspects of mergers that are still not captured by the Stackelberg model. One obvious limitation is that the follower firms passively consider the merger that will dent their profits. By relaxing this assumption, we allow other firms and mergers to take place after the initial one. To develop this idea, we can move to an enlarged Stackelberg model with several industry leaders and followers. There is now a leadership group that includes the merged firms. In this group, firms play the usual Cournot competition game. Then in a second stage, the followers take the outcome of that competition and the collective output obtained as given and respond to it as in the simple Stackelberg model. In this new model, one can demonstrate that starting with any configuration of leaders and followers, any two-firm merger is profitable for the merging firms. To examine the impact on social welfare and economic overall efficiency, it is useful to consider the price-cost margin, which accurately indicates the distortion from the competitive environment. One might intuitively expect that the leaders group should not be too large, and that beyond a certain point having more leaders is not desirable. More precisely, a new merger will increase the industry output and decrease price, provided that the group of leaders contains fewer than a third of the total number of firms in the industry.

While this new model at first suggests at the same time the motivation for mergers and how some of them are not in the public interest, our initial problem is in fact just

replaced with another. The above discussion actually shows that if a merger gives the firms leadership advantages such as these at work in a Stackelberg competition model, then it will always be a profitable strategy. Yet, the precise mechanism by which firms get this strong leadership positions through the merger are unclear and not specified.

Note that in the previous discussion, the costs savings possibly brought by the merger have been intentionally omitted to focus on the effects on price-quantity competition and the issue of market power. They are however often mentioned as the main justification and rationale for a merger.

A key related missing element is then synergies, such as in particular cost efficiencies. In the previous discussion, the fixed and marginal cost is actually unchanged in the merged firm. However, public statements after mergers announcement mentioning the importance of synergies and setting quantitative objective for costs savings in the coming years suggest this assumption should be reconsidered. The expected cost reductions result primarily from avoiding duplication of fixed costs (production facilities, R&D and advertising spendings).

We have also considered so far very crude models of competition with a single product. Yet the economic literature and business observations indicate that firms try hard to avoid frontal competition by differentiating their products from their competitors'. How does that impact on the incentives for mergers? One of the most common model of competition with product differentiation is the spatial model (often mentioned as the Hotelling 1929 model) where the variety of products is translated into different geographical locations, and consumers are represented with different spatial locations, according to their preferences. In the consumer purchase decision, a transport cost is introduced, that can be interpreted as a real transport cost, or the loss of utility for the customer in buying a product that is not ideal (i.e. at some distance from preferred location). The sources of profit increase through the merger are twofold: better coordination of the prices of the different product lines, and coordination of product design and location choices. In such context, how does a merger modify the market outcome? If two neighbouring firms merge, they will eliminate wasteful competition between them and will set prices that maximize their joint profits. They have clear incentive to raise the price of their products: they will lose a few customers on their market boundaries that will go to cheaper neighbour

producers but the increased profits on their common captive customers will outweigh that loss (provided the price rise is not too large). Note that in this spatial model, there is no more merger paradox, contrary to the case with homogeneous products and firms competing à la Cournot. The reason for that is quite interesting for our discussion since it takes us further inside merger economic mechanism. The key issue is in fact the extent to which the merged company can credibly commit to produce a quantity or variety of products. This is the essential condition to the merger's profitability. But in a spatial model, this kind of commitment required is a commitment on locations and this is clearly feasible and credible by the merged firm: it can always decide to maintain its production at its current locations or keep its current range of products. On the other hand, the commitment necessary in a context of Cournot competition with homogeneous products must be in terms of production levels. The merging firm must commit to a high volume of output following the merger but since this is clearly not its optimal competitive answer to output decisions by the other firms this is not credible.

In conclusion, mergers in product-differentiated markets are without doubt profitable to the companies. Their welfare effect is uncertain, depending on the balance between the loss resulting from the price rise throughout the industry and the possible benefit consumers might obtain from an increase in the variety of products offered and cost savings. Actually, production of the (closely related) differentiated products is very likely to exhibit economies of scope. In that case, the merged company could exploit these cost complementarities and generate cost savings. This could lead to a reduction in variable costs of production and/or fixed cost (combination of headquarters, R&D, marketing, distribution operations) that could be reflected in lower prices. Such cost synergies also create incentive to increase product variety, because the set-up costs for a new product will be lower for the merged firm. All these conclusions hold all the more strongly when firms can adopt discriminatory pricing policies (reflecting their local monopoly power in the spatial competition model).

### Vertical Mergers

When products are complementary and produced by firms with monopoly power, every pricing decision by one firm imposes an externality (through demand effects) on the other firm. Without coordination, prices will then be set too high. This inefficiency

loss (for the consumers as well as the firms who could jointly obtain higher profits) is usually referred in the case of vertically related firms as the double marginalization problem. In a standard manufacturer-retailer setting, this means that the retailer adds a further mark-up to the wholesale price already set by manufacturer above its marginal cost (the 'chain of monopolies' idea). A merger allows to internalise this externality. The new single company will price the two goods so as to maximize its total joint profit. The integrated firm will choose a retail price lower than the price set by an independent retailer, even though this reduces its retailing profit, because that loss is more than offset by the increase in the manufacturer's profit from increased sales volume. The coordination of the separate activities enabled by the merger is in this case socially desirable since it suppresses the sub-optimal pricing and the resulting economic inefficiency. However, this result holds only when each of the merged firms has monopoly power. Otherwise, if one the two goods sector is competitive, there will be no double marginalization, hence no gain from the merger by correcting this market failure. In a similar way, the benefits of a vertical merger strongly depend on the possibility for the downstream firm to switch to a substitute of the product sold by the upstream firm, that might be competitively supplied.

Vertical merger can also be used as a mean to facilitate price discrimination, which as we know allows a monopolist to take profit of the differences in willingness to pay of its downstream client firms. However, the implementation of such profitable strategy faces two difficulties: the identification of the buyer's type (does it have an elastic or inelastic demand?) and the possible resale of the products among buyers. A merger leading to vertical integration can bring a solution to the latter problem. The upstream firm will in this case merge with the firms controlling the markets with the highest elasticity of demand. It will then control and prevent any resale of these products to the inelastic markets, on which it will then be free to charge the profit-maximizing price.

A vertical merger might rise the possibility of foreclosure. This refers to a situation where the vertically integrated firm can either deny the other downstream firms a source of inputs (e.g. with a price squeeze), or upstream competitors a market for their products. The major resulting anticompetitive effects explain the very cautious approach of these kind of transactions by antitrust authorities (and the huge number of investigations and legal cases, such as the famous historical one with Alcoa).

These three factors: overcoming the problem of double marginalization, enhancing a supplier's ability to price discriminate, and facilitating market foreclosure combine each other to offer a clear motive for vertical mergers.

### Conglomerate Mergers

In this case, the merger brings together firms whose products are neither substitutes, nor complements. It then gives birth to a firm with a very large and diversified range of products sharing very little in common: the so-called conglomerate. While gone out of favour today, we will see later that a number of reasons could be advanced to support the economic rationale behind the model of conglomerate firms:

- economies of scope (could have several sources: common inputs, shared marketing or R&D)
- financial diversification and shareholder risk reduction,
- transaction costs reduction (transaction costs refer to the cost of using external market mechanisms to exchange goods and services: searching, negotiating, monitoring and enforcing the contracts. They increase with uncertainty and the specificity of the transaction, i.e. the degree of specialization of the assets involved.) In that perspective, a merger allows to manage internally under a different non-market regime these transactions, when the transactions costs are particularly important.
- managerial motives (this behavioural explanation builds on the needs and wishes of the management). For sure, a multi-product organization complicates shareholders' control and monitoring, enhancing the discretionary power of managers.

However, it should be noted that all these motives seem quite questionable, are rarely supported by empirical and econometric tests, and again do not explain the true origin of the benefits expected from the merger. If we consider for example the scope economies and the financial arguments, they do not fundamentally explain why production must be organized within a single multi-product firm. A joint production could actually be handled by different companies linked by contracts and shareholders

could indeed invest in two firms rather than in the combined one to split his risks over two different products and markets.

#### 3.1.2.4 "Purely Strategic" Mergers

Pushing the strategic explanation one step further, Shenck (1999, 2001) suggests that international mergers may be undertaken for purely strategic rather than wealth-creating reasons.

The suggestion is directly based on the basic findings: (1) that most mergers occur in clusters, producing so-called merger waves; and (2) that mergers have repeatedly been shown to fail in terms of wealth creation. The latter finding is clearly at odds with both standard economic and learning theories of the firm and necessarily implies that market mechanisms fail in consistently disciplining sub-optimally performing firms. The author argues that the prevailing degrees of freedom allow firms, under certain conditions, to pursue what he calls a minimax-regret decision rule (the goal is to minimize the highest possible regret), as well as purely defensive and reputational strategies. Under this assumption combined with managerial defensive and concern for reputation (rather than wealth creation), an internal move by one company is likely to trigger imitation strategies, leading to a cascade of mergers. Actually, this might force a firm to jump in the merger bandwagon even if it does not share this behavior rule, simply to avoid becoming an acquisition target itself. Such a "merger mania" might have negative consequences for economic welfare (first of all the wasting of investment and the squandering of managerial talent and time).

#### 3.1.3 Consequences of mergers (performances and overall benefits)

However, there is a large consensus that empirical studies as well as theoretical research have still produced little insights on the two following key issues: the long-term consequences of mergers, and what makes some of them successful and others not. One basic reason is that the precise mechanisms through which mergers do create or destroy value remain largely unknown and unpredictable. Further investigation is clearly needed at the level of the firms involved in a merger. Our project lies within this framework and suggests to focus on the implementation process, and in particular the role played by employees. To do so, a joint and parallel industrial economic and anthropological analysis of a set of case studies has been carried out.

### 3.1.3.1 Welfare outcome: price, concentration, and innovation

This point is extensively discussed by the antitrust literature on mergers (Viscusi, 1995), but being rather a consequence and an ex-post result of the mechanisms our survey focuses on, it will not be reviewed here.

### 3.1.3.2 Merger benefits at the firm level

Our starting point will be the well-documented fact that most mergers fail in terms of economic performance, while their number continuously keep on growing. This kind of paradox is well illustrated by a recent survey (interviews in Spring 2001 with 118 companies involved in a major M&A between 1997 and 1999) by KPMG (2001), which shows the considerable gap between managers view of how successful the transaction had been, and the assessment delivered by objective criteria. Only 30% of the deals had generated value (measured as the relative change in pre-deal and one year afterwards equity prices, compared with the overall trend in the industry segment meanwhile as a benchmark rating), while a same fraction did destroy value. However, 75% of the board directors interviewed claim their deal had been very successful. This survey also displays the different motivation for the merger, as cited by the firms' managers: increasing market share (29%), expanding into new geographic markets (28%), maximizing shareholder value (23%).

An amazing result of this survey, which strongly supports the multidimensional nature of mergers, is that the majority of companies did not measure the success of the transaction implementation in terms of whether it had achieved its initial objective. Only 25% actually measured their performance against the objective of increasing shareholder value. The implementation evaluation is often based on criteria unrelated to the original stated objectives, such as synergies (12%), pre set targets (21%), or profitability (19%).

Table 4. Mergers Performance Measures

Approach	Method	References	Main results
Stock market reaction to merger announcement	Short window event series (e.g. abnormal returns $\pm$ 3 days, or -20 days/close of the merger)	Jensen, Ruback, 1983 Andrade et al., 2001	Overall value creation but gains accrue entirely to the target firms (small negative but not robust result for acquiring firms)
Long-term returns	Long-term event studies measuring abnormal returns over 3-5 years	Rau, Vermaelen, 1998 Mitchell, Stafford, 2000	Post-merger negative returns with dramatic differences based on financing (stock vs

	following the merger		cash, with worse results in the first case)
Profitability	Compare pre- and post merger accounting measures such as operating margins, or return on assets	Ravenscraft, Scherer, 1989 [1] Healy et al., 1992 [2] Andrade et al., 2001 ???	[1] finds a loss in profitability But [2,3]? shows that performances are improved relative to an industry benchmark.

Many theories and models of M&As have been formulated and developed in the economic and management literature. A comprehensive review of these many quite heterogeneous contributions can be summarized around four major factors determining whether the merger produces positive, zero or negative value change:

- efficiency gains or merger's synergies
- hubris (target firms overpayed)
- agency problems and errors
- redistribution policy.

Mergers basically increase the size of firms so the first justifications are logically related to the economic advantages associated with a larger size. Under the generic term economies of scale, it is important to distinguish different factors:

- increasing return to scale (direct result from the form of the production function. Defines cases where an increase in input quantities brings a more than proportional increase in the output of the firm. Various origins such as facilities physical basic laws – surface/volume relation-, or increased specialization of workers)
- often combined in commodity industries with learning effects (in a dynamic perspective this refers to the reduction in production costs with the cumulative output produced, as employees progressively develop routines and solutions to handle and solve operating problems)
- spreading fixed costs over a larger number of units to reach a better capacity utilization (the basic scope of indivisibilities including plants, machinery equipment, has been gradually enlarged in the modern theory of the firm to include other sunk costs such as R&D and advertising, and

eventually corporate generic management functions (finance, planning, control, human resources).

Beyond these economies of scale (where the production cost of one good declines with the volume produced), one must also consider economies of scope. In this case, the firm will produce other products at lower cost, benefiting from its experience with its existing range of products.

What are then the available sources of total value increase?

- efficiency increase. Here the value is created through the increased efficiency of the target company. This is the classic view of merger as a reallocation device, allowing a relatively efficient bidder to acquire a relatively inefficient target. The efficiency gains may result from better management, more efficient critical mass for operations, better utilization of fixed investment...)
- operating synergies. The idea is that the value is generated by the joining of the two firms. The merger actually allows taking profit of scale economies accessible to firms in the industry (while their current smaller levels of activity fall short of the existing potential economies of scale)
- diversification. The combination of different business (either on a geographic, product, market, or process perspective) bring several self-reinforcing effects: risk diversification for the owner-managers (if any) and other non diversified non institutional shareholders, ensures a better job security and opportunities for promotion for employees and managers alike, protect the firm reputational capital and specific information on teams and work organization (destroyed and lost if liquidation).
- Financial factors. Mergers are also a efficient instrument for redeployment of capital, because of the lower costs of internal financing. Particularly true for a combination between a firm with large growth opportunities and as large financial needs, with a firm enjoying excess cash flows. A larger size also increases the debt capacity (providing in addition tax savings on investment income). Mergers also induce per se tax savings and can be used

to substitute capital gains to ordinary income, but it is likely to be only a complementary motive, not the driving force for a sensible merger.

On the opposite, empirical studies show that often acquirers overpay the target company. This might turn larger than effective synergies and bring total gains down to zero. Roll(1986) applies to mergers the winner's curse concept used in the literature on auctions to describe how, in the case of a highly uncertain good, the winner tends to be cursed and typically pay in excess of the expected value. He claims that in a similar way bidders will have higher valuations over the real economic value of the target, because of a hubris factor (pride, arrogance, over-optimism in evaluating synergies and growth opportunities).

The maximization of personal income or utility through mergers will lead them to disregard many unsuccessful experiences in earlier mergers and try to expand the size of the company beyond the optimal one for shareholder wealth.

Agency problems have a mixed relation with mergers. Agency problem typically arises between two agents when there are information asymmetries between them either on the private action of one, or on exogenous information. This is a very useful concept to describe the relation between shareholders and managers in the firms and the difficulties arising from the separation of ownership and management. The agency literature tends to present mergers as a powerful last resort device to discipline managers and limit their discretionary power. Stock market price gives actually a continuous monitoring of the firm's strategy and management decisions. If they sound critical and irrelevant by the financial markets, then the low stock prices increases the likelihood of a takeover, with as a direct consequence circumventing existing managers.

#### [3.1.4 Implementing mergers: the business and management view](#)

While economic and financial studies have so far rarely examined the merger process per se, merger implementation has rapidly become a major topic in the business and management literature. Besides, advice on merger and acquisition strategy is now an important market for consulting firms. To differentiate their offer in the very competitive environment of corporate advice, these companies have then clear incentives to formalize their diagnosis of the mergers' problem, and to exploit their

bases of cases and experience to illustrate the argument with stylised facts and statistics. Despite an immediate commercial motivation, these contributions are worth considering for two reasons. First, they provide us with some statistical data and detailed case studies in a field largely constrained by confidentiality rules and secrecy (mergers remain highly strategic operations, supervised by a handful of senior executive). Secondly, because the argument developed and the key success factors identified by consulting firms often also mirror managers' beliefs and common knowledge on mergers.

The common feature in this management and consulting literature is the attempt to identify the successful merger strategies, in other words, to separate "good" mergers (profitable, efficient and coherent) from the "bad" ones. Two contributions will help us to illustrate this approach, its interesting results, but also its limitations. The first one (Bower, 2001) presents the main findings of a study sponsored by Harvard on a sample of 1036 M&A deals over \$500 million made between 1977 and 1999. It aims at listing and specifying the different strategies of acquiring companies and their implications on the integration. Bower suggests a typology based on five distinct rationales, resulting in specific strategic objectives, major concerns and challenges for the deal success, and associated recommendations (see the following table 5).

Table 5. M&A Strategies

	Strategic objectives	Major concerns	Frequency*
Overcapacity M&A	Eliminate capacity, gain market share, improve operations' efficiency	Need to rationalize quickly, values differences, fight between management for control in a merger of equals	37%
Geographic roll-up M&A	Geographical expansion	Impose processes and values from the acquirer	9%
Product or Market extension M&A	Extend a company's product line or international coverage	Cultural and governmental differences, lack of understanding of markets	36%
M&A as R&D	Acquisitions replace in-house R&D	Evaluation of the target, cultural differences, retain key executives and staff	1%
Industry convergence M&A	Build positions in a new emerging industry	Opportunities selection, adjust the right level of integration	4%

\* relative weight in the sample analysed, Source: Bower, 2001, pp. 94-95.

Bower's conclusion is that "M&A is a means to an end. If the strategy is unclear, there is no reason for a company to go down one of the more difficult paths it can follow". Each kind of mergers and acquisitions raises specific challenges that should be carefully discussed, examined, and handled by the management to avoid the widely-found post-merger disappointment.

A second similar and complementary view is given by recent research reports by the consulting firm McKinsey. Again, the widespread use of the single concept of merger to refer to very different situations is criticized. Such a generic view actually leads to several unsuitable approaches and methods. A good example is given by the excessive focus put on costs' synergies at the expense of post-merger revenue growth. But empirical studies demonstrate that measured against industry peers, acquirers and targets have to face a significant slowdown. The problem is that shortfall in revenue growth can easily outweigh fluctuations in planned costs savings. And accordingly, a pursued momentum and higher growth rates than anticipated might offset a failure on initial (often over-estimated) costs targets. A McKinsey (2001) survey of 160 mergers in 1995-96 across 11 sectors claims that only 12% of the acquirers achieved organic growth rates ahead of the organic growth of their peers over the next three years (to 1999). Secondly, joining Bower's perspective, the need to specify the underlying strategic motivation to a merger is emphasized because it is argued that their relevance and chances of success will be very different. Stock market reactions and financial indicators are mobilized to demonstrate this point.

Global economic integration, the dismantling of barriers to trade and investment, the rapid homogenisation of consumers' preferences worldwide, have paved the way during the last decade to a dramatic increase in cross-border activity. The level of tangible and R&D investment required and the pace imposed by reduced products' life cycle actually force companies to operate on the largest accessible markets. In this perspective, access to the world market becomes a key strategic objective, and cross-border mergers are a privileged instrument to preserve the firm's competitiveness and maintain its gained competitive advantage. The empirical distinction between mergers pursuing expansion strategies (such as the entry in new geographical markets or the creation of new distribution channels for its products and services) and mergers aimed at consolidating, restructuring and rationalising existing business is central to the management literature.

A recent McKinsey survey (Bieshaar and al., 2001) of 231 transactions (mergers, acquisitions, JV) achieved by 36 companies between 1994 and 1998 which monetary value was announced publicly examined the stock price movements a few days before and after the release of the deals. Within the hypothesis of financial markets' efficiency, this indicator actually captures all the information about the deal. Stock price reaction will incorporate an assessment of the expected future performance of the companies involved in the merger. The relative role of possible explanatory characteristics such as the industry, the deal size, the nature of the transaction or the company performance is discussed through a multivariate linear regression. Their results illustrate i) the preference given by financial markets to "expansionist" deals relatively to "transformative" takeovers. Combinations of two firms in the same industry (either for geographic expansion or consolidation) earned a 1.1% market premium in the 11 days surrounding the announcement, while creation of new distribution channels for the existing range of products and services resulted in a 4.2% premium. On the contrary, a refocus of an healthy portfolio of activities through the sale of divisions or subsidiaries, and mergers supporting a diversification in new lines of business destroyed on average 5.3% of the company's (i.e. the acquirer here) value. Logically, synergies tend to be much more concrete and predictable in a combination of similar assets rather than in the second type of transactions. The second interesting, though quite intuitive, result is that the size and the frequency of the deals do not have significant positive effect in value movement following the announcement (because first, greater potential synergies but greater risks as well, and secondly, that superior deals-making skills are already embedded in the pre-merger stock price). Unsurprisingly, sector-based features do matter a lot in market reactions to the deals: with a positive impact on the company's stock price for telecom and banking, and negative for petroleum industry.

These management and consulting contributions make a strong case for the scope of our study since they anticipate the growing role of mergers with a cross-border dimensions, that correspond to the "transformative" or "geographic roll-up" deals, whose chance of success are the largest. However, the analysis of the merger is once more limited to a single ex-ante dimension: the coherence between the company's strategy and the deal proposed. The rest is considered as a matter of execution, and management's skills. Therefore the implementation process is again often neglected. Or, which is equivalent simply reduced to a "people factor" or a "cultural problem". While there is no doubt that this is an important question for sociologists and even

management research, as the two following examples illustrate, we believe that this radical interpretation of implementation issues as strictly cultural or sociological factors is misleading and unsatisfactory. It is implicitly (or voluntarily?) a way to rule out the role of economic, financial or commercial elements in this critical process. Our empirical investigation on case studies aims on the opposite to address this question.

Previous research on M&As has tended to use theories developed in the United States on firms located in the United States and did not differentiate between domestic and foreign takeovers. While financial theories, such as the market for corporate control and agency theories, dominated the field and worked well in the United States' environment, the differences in national cultures can impact this activity either positively or negatively. Using Hofstede's (1980) dimensions of culture there is some evidence for the argument that societal norms affect organizational structure and processes and that these differ for domestic and cross-border transactions. Three of Hofstede's cultural variables - 'Individualism,' 'Masculinity,' and 'Uncertainty Avoidance' - affect the likelihood of a domestic acquisition whereas 'Power Distance' only affects the likelihood of a foreign acquisition. Goines (2001)

The shift from comparative studies of cultural differences to the study of intercultural interactions is offering a considerable challenge to European management research. The mapping and codifying of different management styles and business contexts is offering an interesting ground for comparisons but may not be enough to understand the dynamics of international business encounters. The paper argues that the real important issue in international management is not the existence of differences per se, but rather the way behavioural differences are perceived and interpreted by members of other managerial/organizational/national cultures, and particularly how the interactions - the "contact" across these cultures - are socially constructed and managed. In order to shed light on the complex phenomena at play in international business settings we need to integrate the body of knowledge provided by intercultural communication studies with management research. The results of a pilot study illustrate how the cultural challenge of cross-border mergers and acquisitions can be best explained by using qualitative and contextually sensitive methodologies and by focusing on communication and miscommunication between individuals. Irrmann (2001)

### 3.1.5 Mergers, shareholders, management and employees in the social sciences<sup>2</sup>

Within the field of social sciences, mergers are not studied as such. Most of the time, mergers, acquisitions and joint-ventures are gathered together as one of the symptoms of a growing internationalisation of firms. This internationalisation process and its consequences for corporate governance schemes and for labour are questioned and analysed. On the one hand, it calls into question the debate over the variety of capitalisms and its sustainability.

The analysis of firms' ownership structure, of the relation between management and shareholders and their evolution – that is everything but limited to the study of mergers – gave rise to a vast literature, especially in the Anglo-Saxon political economy on corporate governance. It aims at identifying different – national and/or regional – models of corporate governance. The comparative advantages of those different models are examined, particularly German versus Anglo-Saxon model [Windolf, Beyer, 1996; Kaplan, 1997; Vitols et al., 1997; Mayer, 1998; Rhodes, van Apeldoorn, 1998; Jürgen et al., 2000]. It focuses on the ability for alternative corporate governance systems, such as the German one, to survive in a time when the pressure for short term profitability exerted by investment funds affects more and more firms<sup>3</sup>.

Of course, there is a specific field of corporate governance studies called “stakeholder approach” not only focusing on managers and shareholders but integrating firms' clients, suppliers, employee representatives and a certain amount of state-controlled authorities<sup>4</sup>. However, these studies usually concentrate on a macro and systemic level. Their authors sometimes evoke cross-border mergers, but as a symptom – not as a research topic – indicating a change in the corporate governance system, or announcing the domination of the Anglo-Saxon model. Employee representation structures are not examined as such but as an element of the entire system. Most of the

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<sup>2</sup> Excluding economy

<sup>3</sup> On *corporate governance*, see among others, in addition to the references indicated above: Fligstein, Freeland, 1995; Moerland, 1995; Müller, 1996; Hopt *et al.*, 1998; Mayer, 1998. These authors essentially focus on the relation between managers and shareholders, and sometimes, when they talk about Germany, on the employee representatives sitting at the supervisory board of the large firms: Hopt, *in* : Hopt (eds.), 1998: 227-258; Roe, *in* : Hopt (eds.), 1998: 361-372; Jürgen *et al.*, *op. cite*.

<sup>4</sup> See among others: Vitols *et al.*, 1997, Jürgen *et al.*, 2000.

time they focus on the way employee representation structures impacts firms' competitiveness and/or the (lack of) attraction of a national territory to investors.

On the other hand, the internationalisation process represents a new challenge for labour and its representatives. Concerning forms of employee participation in trans-national companies – not necessarily arising from a cross-border merger – there are however a lot of articles on the implementation and operation of European Works Councils (EWCs)<sup>5</sup>. Most of these articles, published since the beginning of the 1990s, are based on case studies. The first ones [Streeck, Vitols, 1993; Turner, 1993] precede the European Directive on EWCs (Directive 94/45/EC, adopted on 22<sup>nd</sup> September 1994), and examine the “spontaneous” creation of supra-national information and consultation bodies within multinational firms such as Volkswagen, Bull, Thomson or Europipe. Those supra-national employee representation bodies already existed in a hundred of firms, some of them being officially recognised by management, others not. In the absence of a European legislation, their structures and functioning are rather heterogeneous. Turner writes: “it is really impossible to tell if what we are seeing is a groundwork for future progress or dead-end” [1993: 21]. The European Directive adopted in 1994 covers multinational firms employing at least 1000 workers in the member States, including at least 150 employees in two member States<sup>6</sup> [European Industrial Relations Review, 250, November 1994]. In 1998, 400 EWCs had been implemented [EIRR, 296, September 1998]. Despite this quantitative success, studies on EWCs and their functioning point out the lack of information and consultation rights for employee at a trans-national level [EIRR, 317, June 2000]. Those bodies are not used by national employee representatives as a tool allowing them to develop and coordinate a European solidarity, to decide joint minimum standards under which unions or

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<sup>5</sup> On EWCs, see among others: Streeck, Vitols, 1993; Turner, 1993; *European Industrial Relations Review*, 1994-2000; *Industrial Relations Europe*, 1994-2000; Turner, 1996; Lecher *et al.*, 1998; Lecher, Rüb, 1999; Didry, 2000; Hancké, 2000.

<sup>6</sup> Those firms have to engage in negotiations at management's request or at the request of more than 100 employees (or their representatives) in more than one member State. The negotiations imply the constitution of a trans-national “special negotiating body” composed of employee representatives from all countries covered by the Directive on which the firm is located. This special negotiating body aims at negotiating an agreement with management on the implementation on a EWC, or on information and consultation procedures. The agreement should determine: the list of subsidiaries covered by the agreement, the composition of the European Works Council, the number of seats and their distribution, the role and procedures of information and consultation of the EWC, the frequency and duration of meetings, the financial resources of the EWC, the duration of the agreement and the negotiation procedures for the following negotiation.

employee representatives would refuse to negotiate locally. Moreover EWCs appear to work as an information forum under management control [Hancké, 2000].

One of the rare author to deal with the "exact" topic of our research: Tony Edwards, identifies three different consequences of cross-border mergers for labour and its representatives: i) redundancies; ii) management appealing to the principle "divide to rule" in relation to labour representatives; iii) the national effect: substantial differences remain in the nature of national business systems in which firms are embedded, and they lead to differences in the way management considers and deals with employee representatives [1999: 323-324]. He concludes: " The growing Anglo-Saxon influence associated with international takeovers clearly presents challenges to employee representatives in general and to those on EWCs in particular. These challenges stem from the tendency for Anglo-Saxon firms to intensify the use of labour, involving the close monitoring of short term labour costs, an emphasis on numerical flexibility and hostility to national and European structures of employee representation. " [id.: 338].

To sum up this bibliographic survey on the literature dealing more or less, but rather less, with our research topic, we will stress the four following points:

1/ even if numerous social scientists mention the growing importance of mergers in general, and especially of cross-border mergers, none of them examine the specificity and the characteristic of mergers and of their mechanisms (excluding economy);

2/ if we now turn to economic analysis, we must face a fundamental obstacle. Our review of existing models shows that neoclassic theory does not allow to satisfactorily characterize the changes brought when two separate production units are joined and replaced by a single integrated one. This results from a larger weakness of the theory regarding the scope and the boundaries of the firm. That does not prevent it from deriving interesting results about the impact of mergers on competition and welfare, but little can be said about the merger process itself: what does common ownership permit the merged firms to do that could not be done before separately?

3/ On the one hand, legal forms of employee participation exist at European level, but they don't seem to be the occasion for different national union representatives to develop a collective strategy to defend European employee rights;

4/ On the other hand, even if lots of studies focus on management and shareholders in trans-national firms and only consider employees through the number of lay-offs caused by the merger, the literature also shows some examples of information and consultation bodies created within multinational firms at the request of employee representatives, sometimes well before the adoption of the 1994 European Directive: in some firms, employees and their representatives care for trans-national issues, and even in multinational firms, there is room for labour initiative.

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### 3.2 Results of the case studies: the key role of "the national issue"

In order to go beyond the general debate on broad systems of corporate governance and their development, we were willing to focus on the very moment of the creation of a trans-national company. We decide to base our research on detailed case studies of Franco-German mergers<sup>7</sup>, to meet management and employee representatives as well, and to conduct interviews about the process and the consequences of the merger.

Unlike the observations and analysis made by academics on the functioning of EWCs in firms with long multinational tradition, we assumed that a cross-border merger – that is the very moment of the creation of a new firm of European dimension, in the current context of growing market internationalisation and European economical integration, when according to Vallourec CEO "industrials are making Europe"<sup>8</sup> – would initiate a debate among management and labour representatives from different countries in order to face together concrete problems and issues. So that we would see new exchange and dialog processes – formal or informal ones – emerging at a trans-

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<sup>7</sup> By looking in press archives, we collected almost 70 cases of Franco-German mergers over the past ten years. We finally decided to focus on four detailed case studies: Aventis, Europipe, Quante Pouyet, V&M Tubes. For a short description of the cases, see annex.

<sup>8</sup> "Les 'politiques' et les 'financiers' parlent de l'Europe, les industriels la font.", Arnaud Leenhardt, Vallourec CEO, *Le Figaro*, 12 février 1997

national level. We assumed that these processes would depart from pre-existing national forms of employee participation. We thought we would witness the progressive disappearance of national challenges (at least regarding some issues), and the emerging feature of the European Society, which statute was still debated<sup>9</sup>.

Surprisingly, our case studies show that national issues are still extremely present within firms arising from a cross-border merger, even if the merger occurred ten years ago. There are several different ways for the national issue to be present. We will examine three: i) firms care for a fair balance of the work load among different national territories; ii) 'social' issues (wages, working time, holiday, pensions...) are absolutely differently managed within the firm and linked to national territories; iii) there is almost no dialog among different national employee representatives within the trans-national firms we examined. To illustrate and discuss these elements, we have included direct quotations from the interviews in the text with references to the cases when this was allowed by the companies (in two cases, there will be no direct quotations but the results of the fieldwork research and the interviews conducted with their employees and managers is included and clearly fit with the argument developed).

This section then reviews the outcome of our case studies on the four following points: 1) the emergence of the fair balance rule in the merger, 2) the persistent national dimension of social issues, 3) the role of the employees in the merger's implementation, 4) the role of unions during and after the cross-border merger.

Those different ways for the national issue to be present within trans-national firms have to be seriously studied. They should not be considered as survival or "has been" forms that are going to disappear as time goes by, but have to be examined and analysed as real research issues. When European presidents and prime ministers just adopted a proposal for a European Directive on the European Company Statute, it is essential to identify the specific ways the national issue arise within trans-national firms to take note of their possible (non-) compatibility with the supranational structures implemented by the European authorities.

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<sup>9</sup> The arguments developed in this paper, based on a small number of case studies, should be considered as assumptions to be tested in a larger research on cross-border mergers.

Let's start with a brief presentation of the four cases selected and the main features of the mergers considered (more details are available in annex).

### **Aventis**

Creation	1998
Merged firms	Rhône-Poulenc, Hoechst
Employees	95 000
Headquarters	Strasbourg (France)
Products	pharmaceutical and agricultural
Centralized activities	sales, purchase, quality, production planning, R&D, investments, maintenance, accounting
EWC	established in 2000
Rationale	mega-merger of equals between the two holding companies (consolidation and synergies)
Synergies	evaluated by the management to 1,2 billion euros between 2000 and 2002
Cross-border staff moves	about 700 in 2000

### **Europipe GmbH**

Creation	1991
Merged firms	Mannesmannröhren-Werke, Bergrohr, GTS Industries, Usinor
Employees	1260 (in 1999)
Headquarters	Düsseldorf (Germany)
Products	large diameter steel pipes
Rationale	Merger of two specialized subsidiaries (consolidation)
Centralized activities	sales, steel plates purchase, quality, production planning, R&D, investments, maintenance, accounting
Lay-offs	200 laid-off employees in Germany, 200 in France, closing of two tube plants, one in Germany, one in France

EWC	no officially recognised EWC, but an informal structure for employee representation at European level
Participation regime	holding located in Germany, rules by the <i>Montanmitbestimmung</i> law, softened by a company agreement: employee representatives have half of the seats at the supervisory board, but in case of blocked situation, shareholders have the last word.

### **Quante Pouyet**

Creation	1998
Merged Firms	Quante AG, Pouyet SA
History	the Quante group had 66% of Pouyet shares since 1992 as it bought the shares hold by a holding of employees: Pouyet Participation; in 1997, Quante AG tried to implement a joint strategy and to reorganize both firms but Acome the minority shareholder of Pouyet blocked this attempt, in 1998 the Quante group buys the rest shares of Pouyet.
Employees	2500 (in 2000)
Products	components and systems for communicative networks
Rationale	acquisition (geographic expansion and new market entry)
Centralised activities	marketing, sales, R&D
Lay-offs	closure of a production site in United Kingdom
EWC	no EWC
Participation regime	holding located in Germany
Special remark	the Quante family decided to sell all its shares of the Quante group to the American firm 3M. Announced on the 1st February 2000.

### **V&M Tubes**

Creation	1997
Merged firms	Vallourec, Mannesmannröhren-Werke AG

History	Mannesmann is the first external steel supplier of Vallourec; the two firms created a first joint subsidiary in 1990: IDPA and a second one with the Italian Dalmine, in 1994: DMW
Headquarters	Paris (France)
Employees	France-Germany: 6200 (in 2001), Brazil : 5000 (in 2001)
Rationale	Merger of two specialized subsidiaries (consolidation)
Products	tubes d'acier sans soudure
Centralised activities	reporting, suppliers, commercial departments, security, sales, R&D
Lay-offs	850 "lay-offs" in Germany managed by a social plan, most of those redundancies occurred through early retirement
EWC	officially recognized since April 2000
Participation regime	holding located in France

### 3.2.1 The national fair balance rule

In some cases, the management of the trans-national firm arising from the merger does not just decide according to the economic rationality. Some decisions, such as work load distribution, are ruled by a specific logic.

"There has been no change concerning physical flows. In case of low loading we tried to have a fair distribution of the orders, except in case of absolute specialisation".<sup>10</sup>

(V&M Tubes, 02. 2001)

"The production planning committee makes sure of a fair distribution of the work load between France and Germany, partly based on costs and competencies, but not only".

(Europipe, 11. 2000)

One of the main objectives of the management of a trans-national firm is the search for a fair distribution of the work load among national territories, provided that technical

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<sup>10</sup> The italics are exact extracts of the interviews we conducted for the case studies.

constraints (absolute specialisation) do not interfere. Cost and competencies criteria that can be related to the economic rationality constitute one of the decisive factor for the distribution of the production among plants. However, management does not only decide according to these criteria. As such, they do not guaranty a so called "fair" balance of the work load among national territories. This form of distribution is based on something else (partly based on cost and competencies, but not only).

"If we were willing to work, politically, we had to distribute the load in a fair way: on the middle run, however, we can be forced to take different decisions, this creates a very strong potential tension".

(V&M Tubes, 02. 2001)

Besides economic rationality, the trans-national firm has to submit to the political rule in order to to avoid labour conflicts and/or employee resistance. The political rationality that operates within the firm governs the relations among plants located on different national territories. It requires (we had to) a fair distribution of the work load. As a consequence, trans-national firms are not systematically free from national issues, they are not de-territorialized.

These two rationalities, the economical one and the political one, can not be merged, they are distinct. If they are compatible, the work load is fairly balanced. As soon as they are no longer compatible, the economical rule prevails over the political rule (we can be forced to take different decisions) and this non-compatibility leads to imbalances regarding the work load distribution on the one hand, and eventually creates tensions on the other hand.

"The fair balance rule regarding work load among the two tube plants operated up to 1998, 1999. Since then Dunkerque has always had a lower loading than Mülheim. Dunkerque had to implement a flexible organisation since the 1980s, and developed tools allowing to face dramatic changes in load. This is an advantage as well as a disadvantage: as the plant got this know-how, it is also required to implement it. In 2000 Dunkerque systematically operated with low loading (50% of its capacity) in order to preserve a full activity in Mülheim: as a consequence the rule does not exist any longer".

(Europipe, 12. 2000)

The political rule leading to fairness can come to an end. As a consequence, in case of low loading, the logic at stake is a logic appealing to the different capacities national firms can use to face a lower loading. This logic is also related to the national issue but in a totally different way: the trans-national firm intends to mobilize the distinct resources given by different national laws regarding short-time working, fixed term contracts, temporary posting, etc. It is then a logic of differentiation (see § 2).

Within the trans-national firm, the political – national – work load (or production) trio governs the relations among plants located on different national territories according to the fairness rule, provided that this rule is compatible with the economic rationality.

Management in trans-national firms sometimes submit to multiple logics and principles. This is everything but a naive understanding of the quotations. In the end, the firm is ruled by the economic rationality. However this logic is not the only one to constrain management decisions. It lets room for manoeuvre and can temporary be confronted to other rationalities within the trans-national firm.

The political rationality, that is the 'fair balance rule', leading to a fair handling among national territories is provisional. It seems to be at stake at the very moment of the creation of the trans-national firm, and in some cases – especially horizontal mergers (Europipe, V&M Tubes) – it can go on for a long time.

While (as we will see in the following section) most cross-border mergers must already cope with the fact that wages, social policy, work organisation and conditions remain set on a national basis, the 'national fair balance rule' adds the two following economic constraints:

- the initial number of production sites in each country will not change,
- new orders and production are on average shared equally between the countries.

One might immediately question the economic viability of such a plan. How can one expect benefit from combining operations if you cannot exploit the increased size by rationalizing production and plants, nor coordinate on a global basis wages and labour costs? It is here very important to draw attention to the merger agreement, and in particular the actions undertaken during the pre-merger phase (i.e. the one-two year

period between the very first informal contacts and the official public announcement of the transaction). The above mentioned plan can only be sustainable in an economic perspective if the productivity levels in the different sites are not too different. This requires prior to the merger, and as a condition to its effective fulfilment, a levelling of the initial economic conditions. This was achieved through a simultaneous rationalization of each national industrial tool. In the cases studied, plant closing were actually decided before the merger (even if in some cases it really took place after it). With this starting point, one can reasonably contemplate that the status quo regarding the national number of plants and the equal share of workload is economically viable.. at least for a while. Actually, if the initial agreement was soundly designed, the merged company can run its operations in a quasi steady state for some years (5, 7, 10?). However as time goes by, the internal tensions are likely to grow, if productivity gaps between plants and national wages differences are not progressively brought down. This might eventually rise the issue of closing a plant. Such a decision would constitute a very serious challenge to the stability and future of the joint company. On the other hand, we can consider that this is the ultimate test to determine if the merger was just a temporary organisation form, or if it has given birth to a truly new independent and self-sufficient firm.

Another key issue in the initial agreement is the location of the new headquarters of the merged company. In a subjective manner first for employees, because it eventually marks in a symbolic way the geographical rooting of the company. But also, since the mobility of employees remains very limited, it instantly indicates which nationality will predictably dominate the staff in the central functions of the merger firm. To avoid this kind of conflicts as well as to improve management efficiency, a solution consists in setting up a very light and holding structure with a limited workforce (10-20) and decentralize to the largest possible extent the management of operations at the individual site level (Europipe, V&M Tubes). If markets, technology and products characteristics however impose an important central structure, firms may choose to close their former headquarters and create a greenfield corporate HQ in a new geographic location (Aventis chose Strasbourg which symbolically stands as a crossroads of France, Germany and Europe).

### 3.2.2 The 'social issue': partition and differentiation

The second way for the national issue to arise within trans-national companies appears in the 'social' topic (wages, working time, holidays, pension...). 'Social' themes are absolutely separated among territories and lastingly rooted at the national level.

This point constitutes the specificity of a cross-border merger. In the case of a merger between companies located on one and the same national territory, work contracts, wages, working time, etc. are subject to an harmonization. This process (can) lead(s) to tensed discussions or conflicts between management, employees and their representatives: "in case of merger or acquisition [in a national context] the integration of employees is always a problem, especially when they loose some advantages" (V&M Tubes, 02. 2001).

At the time of a cross-border merger, a lot of activities tend to be coordinated: sales, marketing, management, relations with suppliers, quality, security, R&D... This process neither takes place immediately nor smoothly. But the management of the trans-national company instigates an active policy regarding the harmonisation of these issues (see § 3). On the contrary, work contracts, wages, seniority, working time, holidays, pension are not supposed to be brought closer. Sometimes, those issues are not even re-negotiated: "the employees of the tube plant in Mülheim kept a Mannesmann work contract until 1997 [even if the plant belongs to Europipe since its creation in 1991]" (Europipe, 11. 2001).

The social issue is not an ordinary topic:

"Social issues are very specific. Social issues are strictly a national problem, it's the specificity of social issues to be national, because of the legislation on the one hand and of the social practices [social partners] on the other hand".

(V&M Tubes, 02. 2001)

Social issues are ruled by their own logic, which is a national one whatever the geographical area of the firm's operations may be. It represents one of the major areas in which the firm is confronted to the national State. This confrontation regards two attributes of the State: the law on the one hand and social partners of the other hand

(see infra). The company may be trans-national, it has to submit to the different legal rules fixed at the national level.

As a consequence, social issues are settled at national level, referring to other firms belonging to the same industrial sector:

“There has been no unification of the pension, working time or wages regimes for Europipe employees. French subsidiaries still follow the rule fixed by Usinor and German production sites adopted the MRW rules”.

(Europipe, 11. 2000)

Moreover, there is no discussion about the different decision-making processes on this issue within the trans-national firm:

“The wage issue is a black box on both sides”.

(Europipe, 12. 2000)

The human resource manager at Europipe France discovered at the beginning of 2000 that his German counterpart needed the approval of the works council to hire a new employee<sup>11</sup>. This story is not only anecdotic. The partition of social issues treatment, and its national founding is absolute. Yet, this lack of communication does not prevent employees and union representatives from both sides to have a rough idea of wages differences. For example, it is well known that wage increase was nil or negligible in France in 1999, while in Germany branch negotiations resulted in an average 3% growth. There is also a wide consensus on a 25-30% difference between French and German gross salary (though comparisons are pretty complicated by very different qualifications and promotions systems).

Nowadays, French subsidiaries of trans-national companies are forced to negotiate over working time reduction to 35 hours a week. German firms still operates with a 35 hours week since 1996, at least in the metallurgy. As we were asking our French interlocutors (on the management side), that are employees of a Franco-German firm, if they benefited from the German experience of working time reduction or at least if they talked with their German counterparts to know how they dealt with it, all of them

answered with a no. Moreover they considered the German experience to be of no help for them, the national practice is the only one that counts:

“In France the solution for the 35 hours week was well known, since 82<sup>12</sup> we have not reduced the plants utilisation time, but we introduced compensatory holidays, time accounts.”

(V&M Tubes, 02. 2001)

Regarding social issues, the experience that has been acquired on a national territory cannot be transferred into another. Social issues act as a factor of absolute differentiation and partition. Distinct social regimes lastingly co-exists within one and the same entity.

“Concerning social issues, [...] each nationality continues to operate within its national context, social systems are considered as too different to be brought together”.

(Europipe, 12. 2000)

Social issues are not only related to national but also to nationality, that is what legally rules and defines the membership of a national State. Regarding social issues, that is the way firms treat, count, pay their employees, the way for the national issue to present refers to national differentiation under State's control. Employees of a trans-national company are still attached to a specific national territory.

This pre-eminence of national patterns within the firm can also been understood as a result of weak shareholder control. In a 50%-50% merger, there is actually no clear dominant actor that could unanimously stand as the owner of the new firm (even though the merger agreement might give one of the shareholder the industrial control and daily management of operations). Since in most industrial mergers observed in Europe, the shareholders of the joint firm remain the parent companies (i.e. the former owner of the plants), the logical tendency for employees on every site is to stick to their

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<sup>11</sup> Even if it sounds like a repetition, let us recall that the merger occurred in 1991.

<sup>12</sup> In 1982, the socialist government passed a law on the reduction of working time from 40 hours to 39 hours a week.

previous employer. From that, the common feeling shared by many of the managers we interviewed that in many plants the real owner of production facilities and the staff's employer still seem unclear.

Of course, trans-national companies use the comparative advantages offered by different national legislation, as we saw with the case of the tube plant in Dunkerque at Europipe. But, this non-harmonization of social issues is not only rooted in objectives such as "divide and rule". Trans-national firms have to submit to the own logic of social issues embedded in the Law and the State that constrains them to implement distinct national solutions.

In the absence of any social legal framework at the European level, social issues intrinsically lead to differentiations within the trans-national firm. This way for the national issue to be present, which is the presence of national States within the trans-national firm will last. We can also turn the argument another way: even though firms are located on several national territories, national States still have a decisive and ultimate influence on them.

### [3.2.3 The employee factor in the merger outcome](#)

The two previous sections illustrate the severe limitations associated with a cross-border merger in terms of production consolidation and wages coordination. As a result, the potential for production costs and labour costs reduction (often described as the primary source of economic benefits brought by a merger) is drastically restricted. This is the reason why we consider that the employee factor in the merger implementation is of key importance and should be central to the analysis of mergers' final outcome. Actually, any other source of economic synergy from the merger will necessarily deal with the internal organization of each former company (sales, marketing, R&D, accounting, finance, management control, computer system, and purchase units) in order to bring changes increasing overall efficiency. In such a process that implies intangible and information assets (such as working methods, rules, practices, standardization framework, software...), employees are likely to play a major role. Either as a driving force, or as a powerful source of opposition.

How can these organizational changes be implemented? Our case studies offer interesting insights into this difficult problem. First of all, the unifying of the two

existing systems is not considered as a credible solution. The main arguments raised against it are the cost, the internal resistance from employees on both sides, and a far too long precarious transition period. That leaves only two alternative means: the common adoption in the whole firm of one national system, or the creation of a new one. The first one seems to apply in situations i) where there is a strong and clear commitment from the management to implement this solution (e.g. Europipe imposed the SAP accounting system used by Mannesmann to the French plants, that did not anyway previously shared a common unified system), or ii) when the system at work in one company emerges as indisputably superior. In the latter cases, reciprocal decisions could also help a smooth adoption: in V&M Tubes, the French management of the plant storage and cleanness and the German procedure regarding workplace security, unanimously viewed as superior, have been introduced in the counterpart plants. In some cases, we noted that the status quo (i.e. former company systems still run in parallel with minor changes in the waiting of a new common standard system) is the only reasonable and feasible solution. The management must then wait for an opportunity to bring this change at the lowest possible cost and with the highest possible commitment and support from the affected staff. We noted in our cases two different factors that might bring such opportunity: a technological change, that makes obsolete the old equipment, and a generation change (with the retirement of the majority of the employees in one unit). In each case, the introduction of new equipment and software, or the hiring of new employees (that do not share the historical heritage in terms of routines and practices from the pre-merger firm) can legitimate and make easier the adoption of a common shared system.

The interviews evidenced that there are three fields where these organizational changes are considered as particularly decisive but difficult: sales, accounting & finance, and computer systems. In any case, the final completion of these tasks far exceeds the period conventionally referred as the merger and might require five to ten years. Information systems (IS) are obviously a critical issue in the merger because of their central role in the collection, processing and communication of information within a company. Therefore a minimum level of integration must be rapidly achieved to implement the merger process, without disturbing too much the daily course of operations. This raises a number of technological problems, such as compatibility and redundancy of hardware and software, connectivity, standards... Their resolution

proves to be vastly time consuming and in most occasions the timetable planned initially for IS integration turns to be severely underestimated, and even unrealistic. However, it would be misleading to only consider here the technical story. Actually, our case studies illustrate how these IS technical features are closely related to the specific work organisation in a company. This basically results from the three following factors:

- the organization of the IS department in the firm structure and its degree of centralization: is there a unique central department with all the staff or several teams working at the level of a division, a business line or a plant? Depending on the organization set up, the links and intensity of information exchanges between the production side, the sales and marketing, and the IS people will be very different.
- the level of autonomy and initiative given to divisions and/or plants to develop and implement their own products, software, solutions: this defines the degree of internal diversity of IS, but also the incentive in local innovation.
- the level of outsourcing of computer and communications systems operations, maintenance and upgrading: this is a strategic choice, usually decided by the management on the basis of careful cost/benefits analysis, but with serious consequences on the size, the skills and the possible mobility of the company's IS staff.

The first two points are not limited to IS but also apply to every central function, such as sales, accounting or R&D. Accounting and finance is another key field where the visible instrumental and practical differences mirror major discrepancies in the economic and industrial approach of the firm. Accounting classification, amortization rules, frequency and extent of financial planning are not only conventional rules that may be changed in a few days time. They ultimately refer to the strategic choices of the managers and the shareholders, and how they chose in the past years to financially picture the company and review its evolution. Any integration project of teams, software or methods must first deal with that problem and requires the prior definition of a common view on the merged company. Sales gives an example of how the organization chart shaped the skills and experience of employees and the resulting irreversibilities and obstacle to a major change. A sales department cannot immediately

without costs, loss of efficiency, and risk of losing the leading elements, be transferred in a new organization. We observed in our cases studies, that this is a very slow process, mostly top-down driven with the managers experiencing and showing the example, and avoiding major frontal clash (such as a direct mixing of national teams or direct competition). In some cases, for the most basic, disaggregated and repetitive tasks, such as order management and follow-up, the inertia and barriers to change inherited from decades of routine work and habits makes that there is no other choice than to wait for the retirement of a significant fraction of the employees, and the hiring of a new generation to implement any change.

### 3.2.4 Unions and the national issue

Within the context of a cross-border merger occurring in continental Europe, unions and employees representatives still have a pretty important room for manoeuvre to impose their view on certain issues, especially for securing employment level or existing structures of representation.

Yet, if Europipe is a firm ruled by the German law, with a supervisory board within which employee representatives and shareholders have an equal number of seats, this is incontestably due to the action of IG Metall. At the time of the creation of the company, the union feared that this merger would be an occasion for management and shareholders of the new firm to set a preceding case by escaping from the parity co-determination model instituted in the German steel industry (Montanmitbestimmung, 1951 law). At that time, management argued that Europipe was not producing steel but made tubes out of steel plates, and as a consequence did not fall under the 1951 law any longer. IG Metall threatened to mobilize the German workforce and put pressure on the management. In the end, Europipe agreed to implement a parity supervisory board in accordance with the 1951 law [Turner, 1993 : 33]. However contrary to this law that requires to appeal to a neutral arbitrator in case of a blocked situation, shareholders have the last word, in accordance with the 1976 law on co-determination applying to firms of more than 2000 employees. On top of this, Europipe has no Arbeitsdirektor, who is a sort of a human resource manager, member of the management board, responsible for human resource issues, appointed by employee representatives (interviews, 11. 2000). Even though the participation regime of employee representatives at Europipe is noticeably different than the one that prevailed at

Mannesmannröhren Werke AG, IG Metall succeed in preserving an important part of the role devoted to employee representatives.

Within German firms, employee representatives are given extended and co-determination rights by the law. When those firms are involved in a merger process, those strong national participation rights guaranty a certain influence of employee representatives over the merger process itself and a stability of the structures of employees representation. So that, the specific feature of the legal recognition of the role and place of employee representatives at national level significantly determines the supra-national representation structures.

Otherwise, in all cross-border merger cases we have studied, employee representatives have put pressure on management to secure employment and/or control the amount of lay-offs caused by the making of the new firms. However, employee representatives capacities are limited in two important ways. We will use the merger between Quante AG and Pouyet SA as an example.

On the one hand, one of Quante managers argued that this merger did not occasion any lay-offs, especially because of the pressure of the IG Metall:

“There has been no lay offs caused by this merger. This was a major concern, and has only been possible because of the specific market feature: a growing market. No lay offs was a major issue in order to have people’s support for the merger process. [...] The IG Metall and the elected members of the Works Council have been pursuing a strategy to protect workers”.

(Quante Pouyet, 11. 2000)

But, in February 2000, the Quante family, who still owned the majority of the group’s shares, decided to sell its shares to the American firm 3M. The press release proclaiming this take-over has immediately been followed by another one announcing the firing of 500 employees (20% of the group’s total workforce) and the closing down of French and German subsidiaries. Even if employee representatives still have the possibility to secure employment in case of cross-border mergers within continental

Europe, the arrival of Anglo-Saxon firms considerably modifies their room for action<sup>13</sup>. This remark meets Tony Edwards' conclusions on the growing influence of Anglo-Saxon firms that are pursuing a short term cost strategy regarding labour and are limiting unions' room for manoeuvre [1999 : 338].

On the other hand, even if it sounds surprising, our interlocutors declares that the Franco-German merger occasioned no lay-offs – actually there has been no lay-offs in France and in Germany –, but in fact the merger lead to the closure of a subsidiary in the United Kingdom. If IG Metall engaged in an active policy to secure employment on the German territory, it did not succeed in (did not know how to?) preventing the closure of a production site outside Germany. Of course neither IG Metall nor the Quante's works council initially decided the closure. But considering the role of German employee representatives – especially concerning lay-offs, that cannot be handled without employee representatives' agreement – it is reasonable to argue that, in this case, the fair balance rule did not apply, as in other merger cases, but that a logic aiming at preserving national employment level to the detriment of employees located on other territories prevailed, and that this logic was supported by the IG Metall and the works council.

Therefore, unions have a non-neutral relation to the national issue. They implement and/or support a national and sometimes even nationalist logic, which effects can be substantial.

Within trans-national companies we studied, there is few (or no) exchanges and discussions among employee representatives coming from the different national territories on which the firm operates. Of course, supra-national representation structures, such as European Works Councils (EWCs) exist, but the different national groups of employee representatives seem to be weekly (not at all) informed about the proceedings and decision-making processes of their counterparts. The French representative at Europipe's EWC has no information on German negotiations over wages. He declares:

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<sup>13</sup> Since the end of the year 2000, the implementation of those lay-offs absorbs the whole group's management, who refused us any complementary interviews related to the research project...

“Even though employee representatives meet once or twice a year without management, those meetings are not the occasion for determining a joint strategy...”

(Europipe, 12. 2000)

This absence of dialog is also clear by the time of the creation of V&M Tubes. As members of the supervisory board and before giving their opinion about the merger project, German employee representatives came and visited French plants with which the tube department of Mannesmann was supposed to merge. They discussed with production managers, asked for detailed explanations about the production program, operations, investments... but they never expressed the wish to meet employee representatives of those plants. French and German union representatives seat together on the V&M Tubes EWC nowadays, but they much more ignore each other than they dialog.

Cross-border mergers, and the firms arising from these mergers are not used by unionists to create and implement a European solidarity. This conclusion meets the results of Bob Hancké [2000] in his study on EWCs in the car industry. Neither the challenge represented by the creation of a trans-national company, nor the existence of supra-national structures of employee representation constitute sufficient conditions for the implementation of an inter-national dialog among unionists. After all the different unions are still strongly rooted in their own national framework.

If we want to understand this point, we have to examine the proper nature of unions<sup>14</sup>. National unions are legal forms of employee representation, legally recognised by a national State. They came from labour actions and strikes that aimed, among other things, at the recognition of structures responsible for representing labour. The State recognises their existence and rules the room for and the forms of their action (negotiations, strike, etc.) by the law. But beyond their legal form, unions are embedded in the “State’s framework” as they are part of the specific feature of the State on each national territory, and because they support the national consensus. Since

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<sup>14</sup> For this part, we assume, that most of employee representatives belong to a union and act as unions representatives, which is true for France and Germany. For Germany, see Thelen, 1991.

1945, European unions have grown up in a close “symbiosis with their own national State” [Streeck, 1998 : 1].

German unions for example are one of the pillars of the social market economy, which is a state-doctrine that has been formulated, among others, by Ludwig Erhard, who was the first minister of economy of the German Federal Republic after the second world war. The doctrine of the social market economy guides the social and economic policy of the GFR since its foundation in 1949. It is based on the principles of ordoliberalism and rules the relation between the State and the Economy. According to this doctrine, the State has to intervene in the fields surrounding the economic life such as: demography, law, environment, training... But any State intervention regarding economic life processes is considered as dangerous. Therefore, unions and employers associations benefit from a “tariff autonomy” (Tarifautonomie)<sup>15</sup> and regularly bargain over wages, working time, holidays, etc. free from any interference from the State. The collective agreements cover all the firms of the industrial sector affiliated to the employer association at the regional level. This autonomy of the social partners is expressed from the State and fixed in a law. We will not analyse in details the evolution of German industrial relations within the past 50 years<sup>16</sup>. Even if collective bargaining tends nowadays to define a framework that will be the basis for a second round of negotiation at the firm level, even if the works council benefits from a growing importance<sup>17</sup>, the relations between unions, employer associations and the State remained unchanged. In accordance with Silvia, we would rather insist on the remarkable stability of the German industrial relations regime: “the social partners and politicians have therefore typically responded to challenges to the post-war labour relations regime by defending the statu quo at best they could.” [1999 :116].

Even though they have separated roles, the State assists social partners each time it has the possibility and always indirectly. It can act as a moderator, or takes decisions related to issues it is actually responsible for to help social partners to reach an

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<sup>15</sup> Fixed in the “*Tarifvertragsgesetz*” of 1949.

<sup>16</sup> About German industrial relations, see for example : Waline, 1970 ; Kissler, 1988, Thelen, 1991 ; Silvia, 1999.

<sup>17</sup> See also Corteel, 1999.

agreement<sup>18</sup>. The State (almost) always intervene to preserve social peace. The extremely constraining rules settled by social partners to govern their relations, also lead unions and employer associations to adopt a somewhat peaceful collaboration relationship. The State (government and parliament), as well as the social partners aim at solving conflicts in a consensual way.

German unions are embedded in the "State's framework", because their bargaining autonomy is fixed from the State, according to constitutive principles of the State doctrine that governed the foundation of the GFR, and because – as employer associations and political parties do – they support the national consensus (State Ideology, would have said Althusser [1995]): social market economy, "Modell Deutschland"<sup>19</sup> and the systematic search for the consensus. Arguing that unions support the national consensus does not mean that there is no debate within unions, or between unions and employers associations or between unions and the State, but it indicates that these debates take place within the limits imposed by the national consensus.

Even if the history is different, French unions also belong to the State's framework\*. They are no sectoral unions as German unions are, but partisan unions often related to parliamentary political parties. At the end of the second world war, the CGT<sup>20</sup> is the strongest union. The links between the CGT and the French Communist Party make the effects of the world's bipolarisation and the antagonism between the labour movement and the State extremely substantial in post-war France. However, there is an evident nationalisation of the French labour movement, from the CGT appealing French workers in 1946 to do their best to win the "production battle", that is rebuild the national economy, till the persistent references to the French working class, the interest of French workers, the national interest. This kind of nationalism of the CGT

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<sup>18</sup> The 1984 law on early retirement, has been proposed by Norbert Blüm who was minister for labour. It has been discussed and voted at the Bundestag as early retirement was a major issue among social partners. The bill allowed the conclusion of more than 300 collective agreements on early retirement and avoided strikes on this issue, see Lattard, 1987.

<sup>19</sup> This expression was founded by the social-democratic party, in 1976 and characterises an export-oriented model of national economy. See for example: Casper, Vitols, 1997.

\* For helpful discussions and comments on this part we wish to thank Laure Pitti. The usual disclaimers apply.

<sup>20</sup> Confédération Générale du Travail

coincides with the economic and industrial policy of the French government of the late 1950s and the 1960s, based on the development and the active support of “national champions” in every key sector of the economy (automobile, aeronautic, energy...)<sup>21</sup>. Parallel to the détente and to the pacification of the East-West relationship, the antagonism, typical for the French situation, decreases. As a consequence, State and unions relations are contractualised in the 1960s and the 1970s: steady and formal bipartite negotiations are implemented aiming at guarantying and/or restoring social peace (see for example the “accords de Grenelle” in 1968<sup>22</sup>). During the 1980s and 1990s the firms – including private ones – are progressively integrated in this contractual relation between the State and the unions, especially at the time of the negotiation of the big social plans (in the steel and the car industry for example).

In France, the evolution of the norms regarding minimum wage, working time reduction, etc. is the concern of the legislation. Since the implementation of the 40 hours week and the two weeks of paid holidays in 1936, the working time reduction up to 39 hours a week in 1982, till the Aubry law on the 35 hours week, the State is unions’ main interlocutor to bring lots of their claims to a successful conclusion<sup>23</sup>. In France too unions support the national consensus: parliamentarism, national production, central role of the State. We could proceed to the same demonstration for English or Italian unions.

Therefore, we observe a homogeneous feature in the post-war Europe (until now): unions are embedded in the State’s framework, the way this membership operates is specific for each national State.

The different employee representation structures at European level precisely stumble over this national and state membership of unions. The European structures do not only gather together very dissimilar structures with various action capacities, but those different organisations are intrinsically related to the national territory and to the State of their country of origin. Therefore, as Streeck points it out [1998: 9] European Works Councils are far less used to defend employees rights, than they are to preserve the

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<sup>21</sup> See for example: Hancké, 1999.

<sup>22</sup> See : Joffrin, 1988.

<sup>23</sup> On French unions and French labour movement, see for example : Bardou *et al.*, 1977 ; Touraine *et al.*, 1984.

integrity of formal and legal structures at national level. The initial controversy between IG Metall and the future management of Europipe over the supervisory board perfectly illustrates this argument. IG Metall's first aim was to secure German co-determination, not to build a European structure where European union solidarity would be at stake.

#### 4. Conclusions and policy implications

By proposing a research project on cross-border mergers focusing on the merger process itself, and on employees as well as employee representatives participation to this process, we assumed we would find out new mechanisms, departing from national forms of employee participation on the one hand, and from former academic studies on European representation structures implemented in firms with long multinational history, on the other hand.

We thought that the arising of supra-national challenges within emerging trans-national firms would lead employees and their representatives to mobilize these issues in order to create new forms of dialog and participation that would coincide with management's need to make employee commit to the merger project.

However, all along the interviews we have been conducting for this project, the remarkable presence of national issues within trans-national firms struck us. So that our own observations do not fundamentally diverge with the studies on multinational firms and the implementation of EWCs. Regarding cross-border employee participation regime, a merger does not depart from firms with a long multinational tradition.

But, our case studies bring to light an interesting phenomenon, never mentioned in the literature: the national fair balance rule, that is a very specific mobilization of the national issue under the fairness principle.

Why do firms submit, even temporary, to this logic? According to us, this question constitutes a highly interesting research track. We can already propose several potential answer:

- the intervention of national industrial shareholders having a close relationship with the trans-national firm (as suppliers of the firm for example) and interested in maintaining a certain activity level on the different national territories... this first hypothesis is rather insufficient, because those national industrial shareholders operate themselves and since a long time all over the world, and do not depend any longer on national clients.

- The threat of employee mass protest in case of substantial reduction of the work load, especially in countries such as Germany where unions are strong. But the management aims at maintaining the activity on each territory, even on territories where unions are weaker, and management clearly knows the weakness of union coordination at European level...
- The need and the will of the young trans-national firm's management to get labour's support during the implementation and the construction of this trans-national firm. This support is considered by most of our interlocutors as necessary for the merger project to succeed.

We have seen that this fair balance rule is very likely to come an end within a few years of the merger completion. When will it end and why are still open questions.

Contrasting with the fair balance rule, the two other ways for the national issue to be present within the firms lead to differentiation, they are lasting and corroborate former studies' results. The merger as creation of a trans-national firm does not impulse new forms of dialog departing from the observed forms in supra-national structures implemented in companies with a long multinational history.

The social issue is nationally rooted, regulated by the law and carried out by national social partners embedded in their own national State's framework and reinforcing the differentiation process.

Yet, the European integration policy is above all an economic integration policy. However, the protection of employees vis-à-vis market integration still fundamentally rests on national States, in the absence of any European institution able to handle it [Streeck, 1998]. As long as national States are responsible for carrying out social policy trans-national firms will be forced to adopt distinct social regimes on different national territories and unions will turn to national States and continue to act within a strict national framework.

However, considering that national union are embedded in the State's framework, the europeanisation of union organisations does not only mean redefining their strategy at a higher, supra-national level, but changing profoundly their own structures. There is no European State, and there will probably be none in a short as well as in a medium term. Rooting unions at a European level does not only mean federating different

national unions but creating (inventing) absolutely new structures, as they are not going to negotiate with a European State, but with a European agency and with different European member States.

In conclusion, we would like to go back to an argument that was briefly mentioned before about unions, but not developed. We actually said that unions were legal forms of employee representation coming from labour actions and strikes that aimed, among other things, at the recognition of structures responsible for representing labour. The paradox of the European structures is that they have been created without any labour action: without any mass mobilisation of employees claiming their construction [Turner, 1996]. There has been no European strike (except when Renault decided to close the Vilevoorde plant, see Didry 2000). Moreover, the interviews with German workers in the car industry, conducted by Delphine Corteel<sup>24</sup>, showed that workers had few if no interest for European issues.

Considering the state and national nature of unions, in the absence a real preoccupation of employees themselves for European issues, it is reasonable to predict that employee representation structures created at European level will continue to be information forum controlled by management and used by unions to preserve national forms of representation and participation. No European Directive will create a European mass labour movement.

Otherwise, even if Europe becomes an important issue of labour protest, and if, as a consequence, unions engage in a real and active europeanisation of their organisations, it may well be that the dialog among employee representatives appear next to formal existing structures at European level as the example quoted in Turner [1996: 336] shows:

“EWC enthusiasts at DEC [Digital Equipment Corporation], in fact, viewed their unrecognised body as accomplishing the main positive function foreseen for EWCs in European firms: the exchange of information and the building of a cross-national network of plant activists. They argued that this outcome was in fact better than some officially recognised EWCs for which

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<sup>24</sup> Individual interviews conducted with 30 workers at VW in Hanover, in October 1998, and with 25 workers at Leonische Drahtwerke AG, near Bremen, in April 1999. Fieldwork research for a PhD in industrial anthropology.

management paid the costs but also dominated the meetings, allowing little time for plant and union representatives to meet without management being present.”

## [5. Dissemination and exploitation of results](#)

In addition to the final Conference, which is the main exploitation and dissemination activity within EMEP project, we have presented our results in several academic arenas. First seminars at the School of Mines and the LES (London). And secondly in two large conferences:

- the IIRA (Industrial Relations) European Congress (Oslo, 25-29 June 200) (<http://www.iira2001.org>). The Congress theme is: Working Europe, Visions and Realities. The results of EMEP research and their policy implications in were included in the first track dedicated to "Structural and Economic Changes Affecting Industrial Relations".
- 27<sup>th</sup> EIBA Conference (European International Business Academy) in Paris (13<sup>th</sup> December) in a session devoted to "Mergers and Acquisitions"

The typical slides of these presentations are included in the annex.

In addition to this external events, our results and their implications have been discussed in internal meetings with the firms that participated to the case studies (with the management but also with the employees representatives).

Finally, two academic papers have been submitted for publications to international reviews in industrial relations and international management studies.

## [6. Acknowledgements and References](#)

See the comprehensive list of references in section 3.6

## [7. Annexes](#)

The volume of annex is composed of the following sections

- 7.1 Questionnaire for interviews in the firms
- 7.2 Mergers' case studies
- 7.3 Conference call for papers and program (9 March 2001)
- 7.4 Conference's summary and papers
- 7.5 PowerPoint presentation of the EMEP project and results