APPENDIX IV: UNI FINANCE Mergers and take-overs in the finance sector

A trade union strategy

1. At the UNI-Europa Finance conference, held in January 1999, it was agreed that a working group on mergers and take-overs should be established. The objective of the working group was to propose a trade union strategy on mergers and take-overs to the insurance and bank trade section. As a basis for the development of this strategy, a survey was conducted on affiliates' experiences on mergers and take-overs.

2. The overall objective is to ensure that workers' rights and working conditions are protected in merger and take-over situations. It should provide overall assistance to unions whose members are involved in mergers and take-overs and establish guidelines to help affiliates co-ordinate their actions in the case of cross-border mergers. In order for this strategy to be implemented successfully, unions should co-operate closely and co-ordinate their actions to build a common front for communications and dialogue with employers. The strategy should be followed up and implemented by affiliates at national level.

3. This paper is split into three parts:

   A. Elaboration of trade union policy;
   B. Development of trade union guidelines;
   C. Establishment of a trade union code of conduct.

A. Trade Union Policy

Introduction

1. Mergers and take-overs are an integral part of the overall structural reforms characteristic of the globalisation of the economy. They are now a daily occurrence for workers and their unions.

2. The finance sector is a mature industry that has undergone many changes and there are many more still to come. Recent reforms, such as the liberalisation of trade in financial products and the globalisation of the overall industry, mean that companies are looking more closely at their size and costs in assessing their ability to compete in the world market. The "bigger is better" syndrome has become a distinguishing feature in the merger mania that is sweeping the global finance sector. And yet, in spite of this obsession to become the biggest bank or insurance company in the market, the question arises as to what defines "bigger" or "biggest"? It does not seem to include the size and stability of the work-force as merger and take-over activities invariably involve job losses and substantial uncertainty and disruption for the staff involved. Both the negative and the positive consequences of mergers and take-overs should be analysed as part of any company's long-term strategy. Structural changes must be acceptable to all stakeholders, including employees. This key factor underpins UNI-Europa's demand for a social dimension to structural reform.

3. To ensure a co-ordinated and successful approach at the European level, the strategy must be based on ones developed by unions at national level. A European strategy must also take into account the broader international impact of the growing number of mergers and take-overs among European-based companies, for example, Dutch bank ABN-Amro and Spanish bank Santander which have both invested heavily in Latin America.

4. Twenty-four unions from sixteen European countries responded to the UNI-Europa Finance survey. The overall experience is overwhelmingly negative in terms of impact on employees and unions themselves. Examples included lack of information and consultation, decreasing job security, deterioration of working conditions and increased stress levels in the work place. Some unions noted that employees whose companies have merged felt less susceptible to further take-overs and therefore more secure. However, this sense of security might be very brief and superficial as the process of mergers and take-overs continues unabated and no company or employee is safe. A few unions also noted that mergers and take-overs could improve the career possibilities of some employees, although

in reality the number of employees that do gain is extremely limited.

5. In addition, it was mentioned that mergers and take-overs have forced trade unions to take a closer look at themselves and to establish more detailed priorities. In turn, they have become more focused in their work. Trade unions can play a positive role during periods of change and uncertainty. Designated union officials should have the responsibility of assisting union representatives in companies during and after mergers or take-overs. They should also communicate and co-ordinate with unions in other countries whose members are affected within the same companies.

European Works Councils

1. Around 60 EWC agreements have been concluded in the finance sector. The EWC Directive provides workers with the right to be informed prior to decisions being taken on relevant issues, such as structural changes within the company. However, practical experience has revealed a number of cases where management has conveniently ignored the terms of the Directive. Indeed, unions in some countries have taken legal action against offending companies.

2. Unions should exploit the terms and conditions of the Directive in order to obtain as much regular and detailed information as possible from management on a merger or take-over. The EWC, itself, is the body through which this information should be channelled. Under the section on Trade Union Guidelines, appropriate questions are outlined for submission to management on the rationale behind a proposed merger or take-over.

3. Depending on the level of trade union affiliation among members of an EWC, it could also be used for co-ordination of national trade union action in the case of cross-border merger or take-over. EWC members are responsible for the dissemination of information from discussions with European management among workers in their respective countries.

4. Prior consultation

5. In the survey, a number of unions reported that even in situations where management does respect relevant legislation on information and consultation, experience shows that major decisions are often taken prior to the information and consultation process being set in motion.

6. Unions need to be involved in this process at the outset of any potential merger or take-over. Failure to obtain information at the beginning of a merger or take-over will affect the possibility of being informed and consulted at a later stage. Unions in countries where there is no legislation or regulation in this regard should lobby politicians to introduce such legislation and work to conclude agreements which cover this area.

Legal Action

Unions must be prepared to take legal action against management that does not apply national and/or European legislation or regulations that protect workers in merger or take-over situations. Cases should be brought to the attention of the European Court of Justice if necessary. Although legal proceedings can become long and drawn-out, it is essential to have the courts' interpretation of national and European legislation as this will create precedence for other cases in other countries. In the case of mergers and take-overs, the relevant European legislation includes:

- Directive on information and consultation (EWC),
- Directive on collective redundancies,
- Directive on acquired rights,
- Directive on take-over bids (pending),
- Directive on European company statute (pending),
- Directive on national information and consultation (pending).

Unions throughout Europe should discuss the establishment of a network of lawyers in different countries working on cases related to mergers and take-overs on their behalf. In this way, unions can benefit from experiences gained in other countries and costs will be reduced. The UNI-Europa secretariat should be kept informed of any legal action taken by unions.

Consequences of mergers or take-overs

1. On the basis of information from employers and other sources, unions should study the impact of a merger or take-over on, for example, employment, working conditions, quality of products, product range, availability of products, local communities and economic structure. The results of the analysis should be passed on to employees concerned in the company and its subsidiaries and to management. Demands should be developed regarding management measures in place to guarantee, among others, job-security and proper working conditions.

2. The longer-term aspects of mergers and take-overs relate to international union co-operation. Unions with members in the same company should extend their co-operation and co-ordination of activities to develop appropriate responses to management in multinational companies. Key to this international co-operation is the protection of workers' rights to consultation and information and their fundamental trade union rights.

Information dissemination

1. There are various options open to unions in counteracting any negative influences of a merger or take-over, including lobbying decision-makers, both at national and European levels, and informing the media. Campaign strategies should be elaborated by the national union in the country where the company concerned has its headquarters, in co-operation with unions with members in subsidiaries in other countries.

2. Union representatives should be fully aware of the consequences of a merger and the union should assist in the dissemination of information to members in the company concerned through work place meetings, bulletins, intranet and Internet-based discussion forums. It is particularly important that members be kept constantly informed about progress in negotiations on such issues as redundancy packages and retraining programmes.

Sectoral developments

Unions should be knowledgeable about general trends in the sector and maintain a vigilant watch for signs of potential mergers or take-overs. "Forewarned is forearmed" and unions should therefore allocate appropriate resources to follow and analyse sectoral developments to ensure prompt action as soon as rumours arise about potential mergers and take-overs. A more detailed awareness of general sectoral developments will assist the union in assessing potential consequences of the merger or take-over.

Alliances with other stakeholders

For unions to reinforce their position in dealing with mergers and take-overs, they should recognise the importance of establishing alliances with other stakeholder groups. For example, consumers suffer the consequences of mergers and take-overs in terms of price increases, deteriorating quality of products and services and branch closures. Research has shown that, in most cases, mergers and take-overs do not result in increased shareholder value, a promise invariably made by chief executives prior to merger operations. Union alliances should be designed to influence the voting of shareholders at their meetings if a potential merger or take-over will have negative repercussions on employment. Such alliances should also target shareholders within the work-force and members of pension fund executive boards.

Banking regulations

Unions must make every effort to bring pressure to bear on bank regulatory bodies at national and European levels, focusing their arguments on the adverse social consequences of mergers and take-overs. Strategies should be developed based on analyses of individual companies.

B. Trade Union Guidelines

Sectoral developments

1. Unions should closely follow developments in the sector, including shareholder prices, take-overs, mergers and company alliances.
2. Unions should monitor the financial development of companies, analysing whether a company is likely to be involved in a merger or take-over. The areas to concentrate on include:
   a. debt/equity ratio, which indicates financial strength and need for new capital;
   b. capital adequacy ratio, a low level may limit future business opportunities;
   c. p/e ratio, profits in relation to share values;
   d. share price and changes in pattern of ownership.
3. Unions and/or work place representatives must be prepared to allocate resources to keep abreast of and analyse developments in the sector.

Rationale behind merger or take-over

1. Unions should contact management immediately any rumours of a merger or take-over arise demanding their confirmation or denial.
2. Unions should demand a comprehensive dossier from management to determine the economic, financial and social suitability of a proposed merger or take-over.
3. Management should provide full details of short- and long-term motives behind any decision to merge with or take-over another company.
4. Management in the company which takes-over or becomes the majority shareholder should present the trade unions of the company with their project and a complete dossier, as stipulated in paragraphs 27 and 28.
5. Unions should analyse a company's situation after a merger or take-over, focusing on areas such as competitiveness, cost savings and quality of products and services.
6. Unions should ask what the alternative would be to a merger or take-over and what would be the consequences if a company does not merge or become involved in a take-over.

Union approach to management

Unions involved in mergers should elaborate a statement of principles in which they call on management to various address issues, including:

- A commitment to protect jobs and not to impose compulsory redundancies. If staff reductions are unavoidable, management should refrain from eliminating jobs over an initial period of two years or reach an agreement to achieve reductions through voluntary programmes, however not at the cost of public funds.
- A commitment to future career development opportunities for all staff in the merged company, including the possibility for staff, who so wish, to remain in their present job and location.
- A commitment in a contractual statement to staff that wages, pension provisions, terms and conditions of employment and fringe benefits shall be no less favourable after the merger or take-over than before.
- A commitment to continue existing recognition and procedural agreements, unless replaced by mutual accord.
- A commitment to grant recognition and negotiating rights for unions representing employees in the merged company.
- A commitment to pay employees a bonus in recognition of the upheaval and in reward of support on the completion of the merger/take-over.

Information dissemination

1. A network should be set up including at least one union representative per country from the companies involved in a merger or take-over. These representatives should be responsible for the dissemination of information from national union offices.
2. The national union(s) located in the country where the companies' headquarters are based should take responsibility for the dissemination of information to those national union offices in different countries with members in subsidiaries, i.e., the network. Information can be distributed in a variety of ways, for example, weekly/monthly bulletins on the Internet and/or in printed form. National union(s) should co-ordinate their actions with any relevant EWCs.
3. A network should be created of lawyers in different countries who act on behalf of unions bringing cases arising out of mergers or take-overs to national courts or the European Court of Justice.

European Works Councils

1. As soon as rumours emerge about potential mergers or take-overs, the relevant EWC secretariat must take the initiative to demand an extraordinary meeting of the EWC.
2. If management refuse the request or postpone the planned meeting date, the secretariat should press forward in organising a meeting where unions would have to cover their own costs to attend. The EWC secretariat concerned should co-ordinate activities with the relevant trade union network (see *Information distribution*).
3. The EWC secretariat should contact the national union(s) in the country where the company's headquarters is based to co-ordinate demands for management to provide details of the rationale behind the merger or take-over (see *Rationale behind merger or take-over*).
4. The EWC secretariat should contact unions in the countries where the company has subsidiaries to obtain detailed information on the individual national situations.

Re-negotiation of EWC agreements

1. Unions should ensure that agreements include provisions on re-negotiation in case of re-structuring.
2. Unions should compare and analyse the different agreements of the companies involved in

the merger or take-over.

3. Unions should ensure that employees of companies that are taken-over are subsequently represented on any existing EWC. This will enhance trade union solidarity.

4. If a bank and insurance company are involved in an individual merger or take-over then careful consideration must be given to the structure of the EWC, for example, should subcommittees be set up to deal with specific bank or insurance issues?

Merger protocol

1. Unions should compare working conditions between the companies involved in a merger or take-over and develop a common strategy.

2. If the merger or take-over is national, i.e., only one country is affected, then terms and conditions of employment should be harmonised and covered by the same collective agreement.

3. Job losses should be limited through various means, including the implementation of social plans, early retirement programmes, retraining programmes and changes to working time.

4. Unions should call for training programmes to be developed at the cost of the employer to enhance the employment prospects of workers who are made redundant.

5. Unions should call for training courses to be developed in connection with a merger or take-over. These courses should focus on the cultural differences and similarities between the companies, their different products, customer information, and so on.

Monitor increased work-loads

Unions should analyse:

- Which jobs are under threat in a merger or take-over;
- Which employees will keep their jobs;
- Whether the work-load or work description of those employees remaining in employment will change and in what way;
- What system should be developed to monitor stress-related illnesses in the new company.

C. Trade Union Code of Conduct

1. Trade unions must prioritise and co-ordinate activities with other unions with members in the same companies involved in a merger or take-over.

2. All trade unions must have the possibility to participate actively and on an equal basis in the co-ordination of activities in the same company.

3. Trade unions must agree on common objectives on how to work together and co-ordinate their work.

4. Trade unions must show solidarity with other unions and have a common approach towards management.

5. All UNI-Europa Finance affiliates should act in solidarity to ensure proper representation in EWCs of trade union representatives from acquired companies.

6. Trade unions should identify resources to be allocated to reach stated objectives.

7. Trade unions should develop a common communications strategy for members, the general public and the media.