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Cross-border deals in the European Union

Merger muddle

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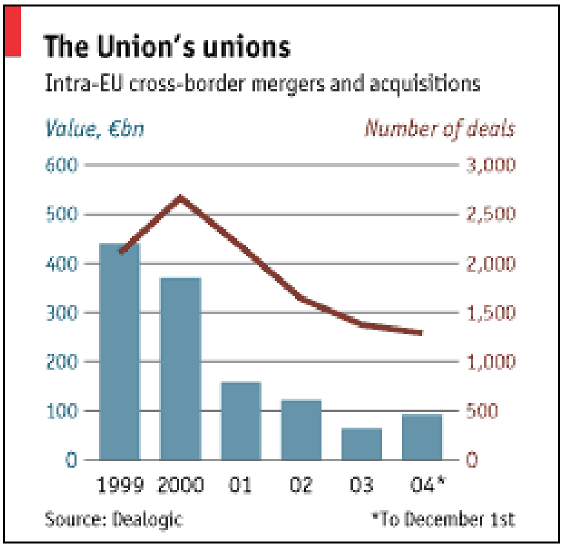
At last, ministers reach a compromise on cross-border merger rules

“IT IS high time it was put right,” said Charlie McCreevy, the new European commissioner for the single market. Indeed. After 20 years of talks, drafts, objections and waterings-down, on November 25th ministers from European Union countries finally approved a directive on cross-border mergers. The directive must be approved by the European Parliament before coming into force.



Europe needs a law on cross-border deals, says the European Commission, because unbridgeable differences in national laws make transnational mergers with companies in Austria, Denmark, Finland, Germany, Greece, Ireland, the Netherlands and Sweden impossible. Acquiring firms have to resort to creating new subsidiaries in these countries or complex holding structures. This is costly and inefficient.

The wrangling over the directive shows how hard it is proving to complete Europe's much-vaunted single market. Until now Germany, in particular, has thwarted attempts to make cross-border mergers easier. The main stumbling block in the protracted negotiations was Germany's system of *Mitbestimmung* (co-determination), which gives its workers more influence in the running of companies than any others in the EU. Employees' representatives make up one-third of the supervisory boards of German firms with more than 500 employees, and a half in companies with more than 2,000. In some other countries one-third of board members may be workers' representatives. In Britain, Spain and Italy, employees have no say at all.

Because Germany would not budge on *Mitbestimmung*, the final version of the directive says, in effect, that after a merger involving a German company, German rules will apply: a merged entity will have to adopt co-determination if one-third or more of the workers are German. Business groups are grumbling, but they might have fared even worse. Barbara Mayer of Graf von Westphalen Bappert & Modest, a German law firm, points out that under the European company statute, which came into effect in October, the threshold is only 25% of the workforce. This law, which paved the way for the compromise on the cross-border merger directive, allows companies or subsidiaries from different EU countries to combine as a Societas Europea, a new legal form of company. Despite this innovation, many companies tying the knot are likely to prefer straightforward cross-border mergers to the hassle of adopting a new legal status.

German business is especially unhappy with the directive. Last month national bosses' federations published a proposal to weaken co-determination. “The directive is a catastrophe,” says Jan Wulfetange, of the BDI, one of these groups. Foreigners will shy away from a merger with German firms, just when the country's industry is in dire need of consolidation.

However, the final agreement on the directive smacks of more than just German intransigence. There was the usual Brussels horse-trading too. Britain went along with the compromise in exchange for help in its battle against a directive that would give more rights to temporary workers. France's price was backing for its fight for subsidies for farmers.

The directive is supposed to be approved by European parliamentarians by the summer. German unions, who think the directive does not go far enough in protecting co-determination, hope that socialist deputies will defeat the new law. However, Klaus-Heiner Lehne, a German Christian Democrat (centre-right) MEP, is confident that it will pass. Meanwhile, Europe's business lobbies are pondering the directive with mixed feelings. After years of stalemate, says David Coleman of UNICE, a pro-business lobby group in Brussels, at least there is progress.