

**PHD ON LAW AND BUSINESS  
XXX CYCLE**

**Dissertation title**

The consequences of outsourcing on employment relationships: from the MPS experience to the recent Alitalia-CAI and Alitalia-Etihad cases

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**SUMMARY OF THE DISSERTATION**

The Fordist business model has long dominated the world stage. The company carried out mass production and was conceived and structured to ensure the entire production process could be housed under one roof: the raw materials enter through one door, and the finished product comes out another. It was only towards the end of the eighties that the limitations of the model became evident, and the need for more flexible, competitive and innovation-oriented systems led to a drastic streamlining of business processes and of the organisational structure within businesses.

Today, the post-Fordist model is a lightweight structure geared towards productivity, affordability and flexibility. Under this model, a business focuses its core business on the activities that give it its competitive edge and outsources the activities ancillary to production, through contracts that allow it to source the input necessary to construct the finished product.

The expressions used by experts to explain this phenomenon are mainly production decentralisation and outsourcing. Although there is a widespread consensus that such terms are mostly synonymous, in reality, production “decentralisation” is generally understood as the entrepreneurial decision oriented towards “buying” rather than “doing”, whereas the term “outsourcing” is more indicative of the technical and legal instruments through which such organisational strategy is implemented.

This complex fragmentation of the production process has several consequences on employment relationships. This is the reason why labour law has been called over the years to reconcile the need to avoid penalising, a priori, the reorganisation of the production system with the aim of protecting the workers involved.

Indeed, when a company intends to divest a segment of its business, the choice is limited: (i) close down the business and, thus, make the employees redundant; or (ii) sell the business unit and enter into a service contract with the buyer. In the first case, it is important to assess whether, and if so to what extent, the divestiture of the segment results in the elimination of job positions, which inevitably leads to individual or collective redundancies. In the second case, it is necessary to assess whether the divested segment meets the requirements to constitute a business unit transfer.

It is therefore important to be able to apply the rules that govern the transfer of a business unit to a particular case, especially in relation to the various implications of labour law under Article 2112 of the Italian Civil Code. This article has been amended many times over the years, including through intervention by the EU legislator and stipulates that when a transfer of business unit takes place, the employment relationship transfers by operation of law to the purchaser. Conversely, when a business unit cannot be identified, the transfer of the employment relationships requires the consent of each employee (under Article 1406 of the Italian Civil Code).

Given the different consequences depending on whether a transfer of a business unit exists – which are particularly relevant from a legal perspective – it is clearly crucial to identify the requirements to qualify as such a unit.

That being said, the dissertation will start with an analysis of the rules on transfers of undertakings and business units also giving attention to case law interpretation (particularly in light of EU law). From this analysis it would be clear that the identification of a business unit is far from undisputed and has been the subject of varied judicial interpretation at both national and EU level.

Then, the dissertation will focus on the largest and most important production decentralisations that have been implemented by Italian businesses in the last decade: (i) the transfer of the back office unit from Banca Monte dei Paschi di

Siena to Fruendo; (ii) the transfer of business of Alitalia-Linee Aeree Italiane (Alitalia-LAI) to Alitalia-Compagnia Area Italiana (Alitalia-CAI); and (iii) the *partnership* between Alitalia-Compagnia Area Italiana (Alitalia-CAI) and *Etihad Airways* with the subsequent transfer of Alitalia-Compagnia Area Italiana (Alitalia-CAI) to Alitalia-Società Area Italiana (Alitalia-SAI).