Analysis of Authentic Legal Negotiation Discourse: Towards an ELP Pedagogy

A thesis submitted in fulfilment of
the requirements for the degree of
Doctor of Philosophy

Department of Linguistics
Macquarie University

by

Anthony Richard Townley

BA / LL.B. (Brisbane, Australia)

MA (Applied Linguistics/Teaching English for Specific Purposes)
(Sydney, Australia)

June 2017

Table of Contents

Abstract

Lawyers have traditionally learned how to negotiate the operational terms of contracts based on an experiential or implicit sense of what is appropriate, gained through working closely with other lawyers. A significant implication for law graduates is that while they may acquire a more or less passive familiarity with key contractual genres from formal education, they are not always able to produce situation-specific examples of such genres and remain relatively unaware of the discursive subtleties of situated practice in the legal-professional workplace (Bhatia, 2004, 2008). These challenges can be much more acute for the growing body of lawyers from non English speaking backgrounds and contexts, many of whom will need to negotiate contracts in English as the primary lingua franca across a wide range of multilingual and multicultural contexts (see Breeze, 2014).

In response to these pedagogical challenges, I carried out intensive research in a commercial law firm in Istanbul, where I gained access to the authentic legal texts and discourse practices pertaining to the negotiation of a Mergers-and-Acquisitions (M&A) type transaction, conducted in English, with European partners and counterpart lawyers. Applying the innovative multi-perspective research model of Candlin & Crichton (2011), I aimed at providing richly contextualised analyses of a wide range of discursive and discourse related practices and of the interactional roles and relationships of the legal and business professionals involved in the negotiation process, as they operationalise their own individual repertoires and expertise. My findings show how lawyers and other professionals, using English as the lingua franca in an international business and legal context, depend on the strategic use of language and discourse(s), as mediated by the intertextual use of emails and covering letters to negotiate and record negotiation activities. Using discourse and genre analytical methodology, I identify key lexico-grammatical features and rhetorical structures both in email communications and in the negotiated contractual documents. Analysis also shows how these genres overlap and interact as part of *genre repertoires* (see Orlikowski and Yates, 1994a, 1994b) and how certain genres are adapted and hybridized to create new genres to achieve context-specific discursive goals as a type of *genre ecology* (see Spinuzzi & Zachry, 2000) for this M&A transaction. Other important findings relate to the institutionalised use of the *Track Changes* editing tools in Microsoft Word as the dominant communicative function to negotiate amendments to contractual documents, where it is supported by other ancillary discourse types like advising and informing.

This thesis is to my knowledge the first of its kind to produce a comprehensive intertextually and interdiscursively oriented ontology and ecology of legal negotiation discourse. The study makes an original contribution to applied linguistics and especially to the emergent field of professional discourse studies in situated legal contexts. My hope is that findings from this thesis will also be used to develop more effective pedagogy for teaching English for Legal Purposes (ELP) by situating learning in real-world scenarios.

Candidate's Declaration

I certify that the work in this thesis, entitled "Analysis of Authentic Legal Negotiation Discourse: Towards an ELP pedagogy", has not previously been submitted for a degree, nor has it been submitted as part of the requirements for a degree, to any other university or institution other than Macquarie University.

I also certify that the thesis is an original piece of research and it has been written by me.

Any help and assistance that I have received in my research work and the preparation of the thesis itself have been properly acknowledged.

In addition, I certify that all information sources and literature used are indicated in the thesis.

The research presented in this thesis was approved by the Macquarie University Ethics Review Committee, as noted in Ethics Approval 14 June 2013 (5201300322).

ANTHONY TOWNLEY
(41065093)

Acknowledgements

I would like to extend my appreciation and gratitude to my Principal Supervisor, Dr. Alan Jones, for his comprehensive and unwavering support throughout my PhD candidature. I first benefited from his professional experience and insight in 2012 when Dr. Jones discussed the utility of providing legal English workshops at the law firm participating in my research project as a way to engender mutual trust and cooperation before the data collection process commenced. When there were extended delays in obtaining access to confidential research data in 2013, Dr. Jones then made the critical decision to change my PhD candidature from full-time to part-time to ensure that I had adequate time to complete my thesis without incurring any institutional penalty. Once the research and analysis process began in 2014, Dr. Jones has provided me with exceptional encouragement, mentorship and intellectual assistance in many aspects of analysis and in the writing of my thesis. All of these acknowledgements deserve added recognition when we consider the tragic passing of my Associate Supervisor, Professor Chris Candlin on 15 May 2015. As a small part of the greater, immeasurable loss of Chris Candlin to the academic world, I sorely missed the constructive feedback I received from him during the early stages of writing my thesis and his enthusiasm and encouragement as a gregarious intellectual. After his passing, Dr. Jones had to shoulder all of my supervision until Dr. Stephen Moore agreed to take over the role of Associate Supervisor in 2015, who I thank for his support.

I would also like to thank the Department of Linguistics (Research Enhancement Fund) and Macquarie University (Postgraduate Research Fund) for supporting me financially to attend an international linguistics conference in China convened by Dr. James Martin in 2014 and a professional workshop on ethnography and linguistics research held at King's College in London in 2015. I am indebted to those research committee members for providing me with the opportunity to discuss my research with linguistic academics. Finally, I would like to thank the law firm in Istanbul who participated in my research study. It has traditionally been extremely difficult to gain access to legal documents due to a culture of confidentiality in the legal profession and I am indebted to the law firm's willingness to break with tradition and grant me access to a significant body of data pertaining to an international M&A transaction. In short, this PhD thesis would not exist without their collaboration. For that I am extremely grateful.

List of Tables

List of Exhibits

List of Figures

CHAPTER ONE

INTRODUCTION

Chapter 1 first discusses the professional and pedagogical contexts that underpin and rationalise the objectives of this study, which is designed to provide insights into the full range of discourse practices and interactional roles that were needed to negotiate a particular Merger-and-Acquisition (M&A) type transaction that involved Turkish and European lawyers as well as other business professionals (Section 1.1). It then introduces the key theoretical concepts that pertain to this study grounded in the research traditions of discourse and genre analysis, including the concept of authenticity in relation to written materials and to the contextual setting (Section 1.2), professional identity and discourse expertise (Section 1.3), and intertextuality and interdiscursivity (Section 1.4). Chapter 1 then outlines the research objectives of this study (Section 1.5) and summarises the research outcomes (Section 1.6) before concluding (in Section 1.7) with a summary of the chapter-by-chapter organization of the thesis.

1.1 Context and rationale of the study

1.1.1 Lawyer-linguist researcher

My professional life has been divided into two main phases of first practising law in Sydney from 1998 - 2008 and then working as an instructor of English for Legal Purposes (ELP). In 2006, I made the decision to pursue an academic career in language teaching by first undertaking a Master degree in Applied Linguistics (Teaching English for Specific Purposes) at Macquarie University and then taking up a position to teach ELP writing programs to law undergraduates at Koç University in Istanbul in 2008[1]. As a lawyer-linguist, it was a natural and constructive decision for me to undertake applied linguistic research into legal discourse analysis for the purposes of this doctoral thesis.

During my linguistics studies, I would often critically reflect on my experiences as a junior trainee lawyer and how I never received any formal training in effective legal

[1] Koç University is a private, non-profit institution recognized internationally for the fact that it is one of only a few higher education institutions in Turkey to use English as the language of curriculum and instruction www.ku.edu.tr

communication. Instead, I had to develop the requisite professional understandings, interpersonal communication skills and formal writing skills by problematizing what were "conventionalised or institutionalised textual features in the context of specific institutional and disciplinary practices, procedures and cultures" (Bhatia, 2002a, p.6). This type of language learning and development relates to the process of induction into *communities of practice* (Wenger, 1998; Wenger, McDermott & Snyder, 2002), whereby learning to function discursively as a lawyer is developed through "social practice in which language and disciplinary knowledge play a significant role" (Bak & Murphy, 2008, p.199).

In order to develop my legal writing proficiency skills during my traineeship I had to refer to records of legal documents within the law firm's databases that embodied the same rhetorical features and conventions that I had to produce for a particular legal task or activity. In some cases, colleagues would also give me access to emails and records of legal advice that they had previously sent to clients in order for me to formulate appropriate institutional responses to written discourse demands. In terms of oral legal advice, I was invited to attend meetings and conference calls with more experienced colleagues to learn how to develop discourse competencies for determining client needs and negotiating outcomes with counterpart lawyers. Another significant challenge was to develop an understanding of the longitudinal nature of contract negotiation and how different skills-based tasks for providing legal advice and negotiating and drafting a variety of legal documents are all required for one project. It was only by participating in these interactional activities with colleagues, clients and professional peers, and especially by attending to how language was being used, that I became inducted into the professional community of lawyers within the law firm.

This experiential process of learning to communicate and function as a practising lawyer becomes necessary for trainee lawyers due to the fact that most law schools do not provide any specific language training or instruction about how to communicate as a legal professional. This is also a significant problem for many situated contexts for apprenticeship in law firms, where learning new ways of thinking and acting is mainly achieved through participation in discursive practices with colleagues (Lave, 1993) and not taught in any constructive or explicit way. Hafner (2008) notes that the view of the legal community in Hong Kong, for example, is that language skills development does

not come within the scope of formal legal education and training and that any efforts there to improve legal discourse competency are remedial rather than needs based. My own 'trial and error' process of learning to communicate as a lawyer took me a number of years before I felt I was competent enough to practice law independently and without supervision and review by more senior colleagues. I remember feeling frustrated about the lack of formal education and professional support for this important process of professional development within the law firm.

It was therefore cathartic to learn how theoretical concepts from linguistics can be used to improve professional writing skills and competencies during my studies for a Master degree in Applied Linguistics (Teaching English for Specific Purposes). For instance, I learnt how to apply Markee's instructional framework (2001) to a short-term innovative program that replaced textbooks with authentic legal materials for the English for Specific Purposes (ESP) process of negotiating and drafting contracts. This innovation was based on the principles of *communicative language teaching* (CLT) within a progressive philosophical tradition that has "strong links with experiential learning, humanistic psychology and task-based language teaching" (Nunan & Lamb, 2001, p.28). Genre-based educational theory and practice has also been used extensively for ESP (Hutchison & Waters, 1984; Dudley-Evans, 1994; Bhatia, 2004, 2008) and its effectiveness has largely been determined by the degree to which tasks can prepare learners for the discourse realities of the professional world context and purpose (Dressen-Hammouda, 2003; Bremner, 2008). Genre analysis uses authentic samples and patterns of language to provide linguistic researchers as well as to ESP teachers with effective methodologies to teach the "structure, style, content and intended audience" (Swales, 1990, p.58) of discursive practices. Genre theory is explored in more detail in Chapter 2 as a key analytical methodology for this study.

1.1.2 The ELP classroom

(Undergraduate law students in Istanbul, Turkey)

After completing my Masters degree in 2008, I was appointed to teach a legal English writing program at Koç University, which was designed to enable Turkish undergraduate law students to "use the (English) language in legal writing as practicing

lawyers" (Koç University, 2007, p.2). However, the curriculum that I inherited from the previous American instructor was clearly deficient in meeting these course goals. Students were primarily taught to analyse and write case notes for United States Supreme Court decisions pertaining to the *equal opportunity* doctrine embodied in the Fourteenth Amendment of the U.S. Constitution despite the reality that only a small number law graduates from Koç University ever go on to post-graduate study or legal practice in America. Instead, the large majority of graduate lawyers work in private commercial law practice in Turkey and most legal work in English is undertaken with Turkey's closest and largest trading bloc in Europe.

With English as the *lingua franca* of legal and business discourse throughout Europe (Vuorela, 2005), the proficient use of legal English is increasingly becoming a necessary ability for Turkish lawyers. According to Fenyő (2003), EU Member States and companies within those countries need English as a common corporate and political language and this also involves Turkey as an EU Accession State to a significant extent. The legal formalization of political, economic and social opportunities with Europe and other counties is primarily entrusted to lawyers in Turkey, who negotiate and draft trade agreements[2], treaties, conventions and other forms of legal instruments in English as the lingua franca of international law and business.

1.1.3 The use of ELP textbook materials

Another significant problem with the ELP curriculum that I inherited was the reliance on textbook materials to teach some aspects of commercial law. For instance, the previous instructor used materials from a text book titled English for Contract and Company Law (Chartrand, Millar & Wiltshire, 2003). Chapter Two of the textbook first introduces students to the types and structures of commercial agreements used under European Law and the types of terms and conditions common to those contracts. Based on a number of interactive exercises, the textbook then focuses on technical text and clarifies concepts by disambiguating terms, or matching terms and definitions. While there is some recognised benefit in teaching the lexico-grammatical features and

[2] The terms *contract* and *agreement* are used interchangeably throughout this dissertation based on the definition that a contract is "an agreement with specific terms between two or more persons or entities in which there is a promise to do something in return for a valuable benefit known as consideration" http://legal-dictionary.thefreedictionary.com/contract

structures of English contracts through a variety of these readings and practical exercises, many researchers agree that using textbook materials fails to adequately educate and prepare students for the realities of academic communication or professional practice (Holmes, 1988; Sheldon, 1988; Hyland, 1994; Bhatia, 2008; Bremner, 2008; Huang, 2016).

The reliance on ELP textbook materials to teach legal discourse competency was therefore a significant rationale for me to undertake this study in order to make a meaningful contribution to ELP pedagogy. Findings from a review undertaken by Candlin, Bhatia and Jensen (2002) of 37 textbooks published for the ELP context indicate that while most ELP textbooks do make efforts to "authenticate their materials" (p.302), it is not possible for generic textbook materials to accurately represent the form or features of linguistic discourse that professional legal practice has established. The pedagogical reality is that textbook materials tend to be "contrived" and present learners with "a meagre, and frequently distorted, sample of the target language to work with and have failed to meet many of their communicative needs" (Schiffrin, 1996, p.311).

Another criticism is that most textbooks failed to take a more "principled approach to the design and development of legal writing materials suitable for EALP contexts" (Candlin et al., 2002, p.299). More specifically, it was noted that:

> Most of the insights provided remain at too general a level and need to be sharpened both in their focus as well as their applicability, for example indicating how particular linguistic strategies are more appropriately and more effectively associated with one legal genre rather than another (p.304).

One of the most valuable recommendations from the textbook review that aligns well with the objectives of this research study is that legal writing course design should focus "on the defining characteristics of legal language, as established through linguistic and discourse analysis" (p.311) in order to demonstrate to students that:

> Learning to write legal discourse is part of a process of learning to participate in the affairs of the legal community and its disciplinary culture. On this argument, it is not enough to be able to construct legal sentences as part of the mastery of some specialist genres, but also to be aware of the place of such genres in the disciplinary community; in essence to ask why such genres are written the way they are. To do so is to evoke the conditions and processes of legal practice. It is exactly this mix of generic and disciplinary knowledge, which constitutes the training of legal specialists (ibid, p.312).

Similar criticisms have been levelled at English textbooks for business communication purposes, which fail to give thorough descriptions of social and cultural aspects in relation to cross-cultural business negotiation exchanges (Pinto dos Santos, 2002, p.167). Bremner (2008) argues that without researching the sites of professional practice, we "run the danger of requiring the students themselves to be overly creative, forcing them to invent a context, or to operate without one, a situation that bears little relation to an authentic workplace (p.319). Bhatia (2008) has also singled out discourse/genre analysts for criticism that the majority of ESP students in tertiary education "are still unaware of the discursive realities of the professional world" (p.161) and the collective consensus from these pedagogical concerns is the need for more effective interdisciplinary research at authentic sites of professional discourse. Legal practice requires lawyers to possess sophisticated oral and written communication skills in English – skills that are embedded in (often tacit) professional understandings and complex discursive repertoires and practices. Effective ELP is therefore not simply a matter of teaching linguistic skills but of teaching students how to assume a certain type of professional identity and a way of interacting based on a type of contextual discourse.

1.2 Authenticity

1.2.1 Authentic materials and learning activities

In order to overcome the pedagogical concerns discussed above, the analysis of authentic materials is fundamentally important. In defining what materials qualify as *authentic,* an authentic text has been defined, following Morrow (1977, p.13) as: "a stretch of real language, produced by a real speaker or writer for a real audience and designed to convey a real message of some sort". It is possible to say whether a text is authentic or not (within these terms) by referring to "the source of the discourse and the context of its production" (Gilmore, 2007, p.98). Sourcing authentic materials integrates the micro and macro-levels of discourse analyses of the kinds of texts that are used in professional contexts. This analytical nexus relates to what Cicourel (1992) would call "ecologically valid" applied linguistic research, i.e. research that accurately describes, interprets and explains professional communication practices. On the basis of my specific research of contract negotiation, I argue that, for pedagogical purposes, language teaching and learning needs to be reconceived as a social practice within that

particular institutional context and that only authentic materials provide learners with the opportunity to acquire the "appropriate skills in professional interaction" and the "efficiency in work-related tasks to be carried out in particular roles to professional positions or contexts" (Vuorela, 2005, p.8).

1.2.2 Investigating the setting - ethnographic research methods

The collection of authentic materials can effectively be undertaken through ethnographic research processes that involve site visits and interaction with the discourse participants (Bhatia, 1993; Smart, 2008, 2012; Lesiak-Bielawska, 2015). As noted above, authentic texts can be regarded as products of the contextual settings in which they were produced. It is therefore valuable for the researcher to visit the authentic research site and collect such discourse data records in direct contact with the discourse participants that produce them. This will primarily ensure that all data records are derived from authentic discourse experience. Reflexively, these authentic texts can be analysed as ethnographic materials that help define the way professional and organizational discourses are defined by professional practices, identities and organizational hierarchies. Ethnographic research methodology is critical for the outcomes of this research study and Chapters 4 and 5 provide detailed discussion of the specific methods used for the ethnographic analysis of legal discourse practices within the professional setting of a law firm based in Istanbul.

1.3 Professional identity and discourse expertise

The analytical nexus between text and context enables me to explore the professional roles and identities of the research participants. In professional work settings, identity is a social phenomenon that emerges from the dialectic between the individual and the role that he/she is called on to perform for a particular communicative activity or purpose (Berger & Luckmann, 1967). These professional roles and identities are also extensively (re)produced in the authentic texts sourced for this study, which are examined using discourse and genre analysis methodology.

Analysis of these professional roles and identities also involves examination of the *communicative competence* and *discourse expertise* of the different participants as they interact to achieve shared communicative goals. While communicative competence relates to the ability to participate in a wide range of professional activities, the concept of discourse expertise is regarded as an embodiment of the textual, generic and social communicative competencies for specific discourse activities (Candlin, 1999). This study explores how the use of discourse expertise defines competing identities and contested orders of interactional discourse between the legal and financial professionals working together on the M&A deal.

1.4 Intertextuality and Interdiscursivity

The analysis of different discourse practices and resources over an extended period of time and across a variety of organizational settings for contract negotiation involves the key research concepts of *intertextuality* (Bakhtin, 1981; Candlin & Maley, 1997; Bhatia, 2004, 2010; Bremner, 2008) and *interdiscursivity* (Candlin & Maley, 1997; Candlin, 2006; Bhatia, 2004, 2010). Intertextuality has been extensively used by discourse analysts to understand the epistemological and functional relationship between texts, based on Bakhtin's very important insight that all texts dialogically exist in response to and in anticipation of subsequent texts. It is therefore essential that analysts examine the discursive links between texts and the different textual factors that influence the way that texts are constructed (Bremner, 2008). This is particularly pertinent for the contract negotiation process due to the interoperability and application of a variety of negotiative texts and email communication that influence the co-construction of content and inter-operation of the contractual document under negotiation. For example, each communicative interaction between the parties ties back into antecedent discourse (both written and spoken) at the same time that it anticipates subsequent discourse. On this basis, every textual document recorded for negotiation, including emails, letters of advice and different versions of contracts, represent units of intertextual discourse.

The concept of interdiscursivity extends analysis of the text-internal properties across texts to an examination of the different discourse ideologies, resources and practices that influence and contribute to the production of these texts (Bhatia, 2010). The basic

distinction is that while intertextual analysis operates internally within the textual unit, interdiscursivity analyses the appropriation and use of lexico-grammatical resources across different genres, professional practices and professional workplace contexts (Bhatia, 2012). The identification and understanding of this process of dynamic discursive activity can be found in Bakhtin's (1981) "dialogism" and Foucault's (1972) "discursive formations". Quite often, interdiscursivity operates to recontextualise and resemiotise existing discourses into novel or hybrid forms (Roberts & Sarangi, 1999; Candlin, 2002; Fairclough, 2011). This is extremely relevant for the contract negotiation process under analysis, whereby parties with different legal and business interests working in different professional and organizational contexts all contribute discursively to construct – sometimes collaboratively and sometimes in competition - the intended meaning and operation of texts.

1.5 Research objectives

This study is designed to provide a comprehensive (intertextually and interdiscursively oriented) account of the kinds of legal negotiation discourse as well as the communicative practices that are involved in a real-life Merger-and-Acquisition type transaction, with the hope that this detailed account can be used to develop materials for effective ELP pedagogy. In doing so, it seeks to provide responses to the following research questions:

1) What are the chief discursive features of the authentic, contract negotiation discourse that was involved in a particular Merger-and-Acquisition transaction involving Turkish and European lawyers as well as other business professionals and that was carried out in the medium of English?
2) What are the main discursive/communicative practices that underpin these discursive features?
3) What are the main discourses and genres deployed in the M&A negotiation?
4) What are the intertextual and interdiscursive features of the relevant discourses and genres?
5) What are the different discursive identities and roles of the participants and how do they operationalise professional discourse expertise and communicative competence across the negotiation process?

In order to capture the multi-faceted ecology of these discursive realities (Cicourel, 1992), research was undertaken in a commercial law firm in Istanbul that generated the legal texts and some of the discourse practices to be examined. This aim required using a multi-perspectival research model of a kind recently developed (Candlin & Crichton, 2011) so as to be able to analyse a range of discourse capabilities and the interactional roles and social-professional relationships of the lawyers involved in the negotiation process, including analyses of their own interpretive agendas, repertoires and expertise. The ontological and epistemological perspectives and methodologies of this multi-perspectival (MP) model are examined in detail in Chapter 4.

1.6 Research outcomes

By framing this study within a multi-perspectival research model, this study is able to provide comprehensive, empirically grounded explanations for a type of professional legal practice that is discursively complex and constrained by institutional values and ideologies. Discourse analysis is an inherently useful research tool and the present study study aims to provide insights into the full range of discourse expertise and professional communicative competencies that are needed to negotiate commercial contracts in English. On a practical level, it is hoped that, by describing the contract negotiation process along with all its key textual features, interactional and relational consequences, while also identifying and interrelating key legal practice activities and meanings, through a partly ethnographic methodology, this study can make a significant contribution to ELP pedagogy.

The development of legal practice communication skills has not usually come within the scope of formal legal education or training and any efforts to improve legal communication skills have historically been remedial rather than needs based (Hafner, 2008). A significant implication of this for law graduates is that while they possess a more or less passive familiarity with certain key genres and their textual features, they are not always able to produce examples of such genres and remain relatively unaware of the discursive subtleties of situated practice in the legal-professional workplace (Bhatia, 2004, 2008). These challenges can be much more acute for the growing body of lawyers from non English speaking backgrounds and contexts, many of whom will need

to negotiate contracts in English as the primary lingua franca across a wide range of multilingual and multicultural contexts (Breeze, 2014). The possible benefits of the pedagogical materials developed from this study can therefore be far-reaching for both professional individuals and institutional workplaces in most legal contexts around the world.

1.7 Thesis organization

The remainder of this thesis consists of nine chapters, each of which is briefly outlined below.

Chapter 2 - Theoretical Perspectives on Discourse Analysis provides an overview of how the key concepts relating to discourse analysis are constructed and problematized in the existing literature. It also includes a discussion of the related field of genre analysis and the need for research to be undertaken in the situated context of professional discourse.

Chapter 3 - Legal and Business Discourses presents a literature review of linguistic-based studies of legal and business discourse analysis with a particular focus on contract negotiation. Due to a limited research literature on negotiation in legal contexts, the final section in this chapter examines studies of business negotiation that conceptually relate to the research goals of this study.

Chapter 4 - Theoretical Perspectives on the Research Methodology examines how the multi-perspectival analytical framework (MP model) was used to analyse legal negotiation discourse primarily within the professional context of a Turkish law firm and multidisciplinary contexts of international M&A negotiation.

Chapter 5 - Data Collection and Analysis provides details about the corpus of textual data pertaining to an international M&A transaction for the sale of a Company and describes the data collection process, including ethnographic interviews conducted with lawyers of the participating law firm in Istanbul. It also examines how the corpus of data correlate to three stages of the M&A transaction that are examined in separate

chapters of this study: the explorative phase of *initiating the bidding process* during Stage One (Chapter 7), the *deal-making* phase of Stage Two (Chapter 8) and the *finalisation* phase of the M&A transaction during Stage Three (Chapter 9).

Chapter 6 - Contextual Research Perspectives first explores my perspectives as researcher and discourse analyst in relation to the perspectives of the lawyers participating in this study in the law firm in Istanbul. The analyses in this chapter are integrated into an examination of the contextual meaning of negotiating the international M&A deal within the law firm in Istanbul using the social-institutional and social practice perspectives of the MP model.

Chapter 7 - Stage One: Initiating the Bidding Process. This chapter uses the MP model to examine how the legal and commercial representatives of the Sellers of the Company prepared contractual genres to begin the tender and bidding process for the M&A deal and the evaluation of initial bids submitted by prospective purchasers of the Company.

Chapter 8 - Stage Two: Deal-making. This chapter examines how the Sellers' representatives co-constructed the primary Sale & Purchase Agreement (SPA) and then negotiated terms and conditions of the contract with the eventual winning Purchaser of the company.

Chapter 9 - Stage Three: Finalising the Transaction. This chapter examines how the representatives of both the Sellers and the Purchaser finalised contractual documents, transactions and processes for the completion of the M&A transaction.

Chapter 10 - Summary and Contributions draws together the analytical arguments put forward in the earlier chapters and provides a synopsis of the major implications of the research study and the contributions it makes to ELP pedagogy. It then concludes with discussion of the limitations of this study and recommendations for further research in the field of professional ELP.

CHAPTER TWO

THEORETICAL PERSPECTIVES ON DISCOURSE & GENRE ANALYSIS

Chapter 2 discusses literature concerned with theoretical concepts related to discourse analysis, a field from which this research study derives its conceptual basis. More specifically, this chapter explores the inextricable relationship between *text* and *context* for analysis of a multiplicity of discourses used for different social activities and purposes. This research focus involves analysis of powerful concepts like discourse role and identity, communicative competence and discourse expertise, membership to discourse communities and communities of practice. Chapter 2 further examines the key concepts of intertextuality and interdiscursivity, which are central to discourse analysis and the related theoretical research framework of genre analysis. In a broader sense, this chapter provides important theoretical understandings for the more specific examination of literature pertaining to legal and business discourse in Chapter 3.

2.1 The meaning of discourse

2.1.1 Textual product

The term *discourse* has been attributed various meanings in the field of applied linguistics, where it came into use as an analytical concept denoting coherent stretches of language as used in real world communication. In an elemental sense, it presupposes the organization of language, both spoken and written, beyond the level of the sentence, into extended stretches that are perceived to be "meaningful, unified, and purposive" (Cook, 1989a, p.156). This allows us to define the textual record of discourse as a *product* or artefact that can be constructed and understood in systematic terms, a type of systematicity that was called *cohesion* (Halliday & Hasan, 1976, 1989). For instance, some of the earliest discourse studies were designed to identify the types of consistently occurring lexico-grammatical features of business texts that lent them cohesion, as so defined (Halliday, McIntosh & Strevens, 1964).

For many social and professional communicative purposes, the analytical distinction

between written and spoken modes of discourse is often difficult to establish in research practice, "as the flow of discourse inevitably mixes one with the other when the professionals go about their work, interacting with colleagues both within and outside of the organization" (Cheng & Mok, 2008, p.62). However, due to confidentiality constraints imposed by the legal research participants, this study is limited to analysis of textual records and ethnographic interviews with lawyers that participated in the M&A transaction within the law firm based in Istanbul. Despite these imposed research limitations, the textual products often contain the most salient oral discourses that surround and contribute to the co-construction of such texts for analysis.

2.1.2 Analysis of text within context

Significant for the research goals of this study is the increasing importance placed on the context in which a text is produced as a form of social process, in order to ascertain how language and the use of language make certain social practices possible. In recognition of this fact, Bhatia, Flowerdew and Jones (2008) note that discourse analysis evolved from an initial focus on "language as text" to place more importance on "language in use", drawing on insights from "sociology, psychology, semiotics, communication studies, rhetoric, as well as disciplines such as business and marketing, accountancy, organizational studies, law and information technology" (p.1), to the point where the "connection between workplaces and their discourses is now well established in the research literature" (Candlin, 2006, p.1). Drawing on a sociolinguistic theory of "language as a form of social practice" (Halliday, 1994; Fairclough, 1992, 1995), Gee (1990; 1996; 1999) developed a dualistic approach in defining discourse as either what he called "little 'd' discourse", which relates to the lexico-grammatical, phonological, morphological and semantic features of language, or "big 'D' Discourse" which represents discourse as grounded in culture and ideology and which defines the identity of the discourse participants within a discursively-constructed social context. This distinction is designed to conceptualise the interrelationship between text and context together as part of "a socially accepted association among ways of using language, of thinking, feeling, believing, valuing and of acting that can be used to identify oneself as a member of a socially meaningful group or social network to signal (that one is playing) a socially meaningful role" (Gee, 1990, p.143). Capital 'D' Discourse is therefore not simply comprised of isolated textual or dialogic constructions, but is "a

complex communicative event that embodies a social context, featuring participants (and their properties) as well as production and reception of processes" (to borrow from van Dijk's definition of discourse; 1988, p.2). This complexity entails the two concepts of *discourse expertise* and *communicative competencies*, which are involved in all types of effective professional communication activity (see Section 2.1.5). These concepts involve not just mastery of the linguistic system, but the ability to use language effectively in conjunction with social practices and social identities in ways that others in the social or professional community will recognise (Curl & Drew, 2008, p.22). Discourse analysis is therefore inherently constructive in defining how people assume a certain type of professional identity and a way of interacting as part of a specific (capital D) Discourse (Gee, 1990, 1996).

2.1.3 A Multiplicity of Discourses

The discussion in the previous section implies that, within a given society, there will be different Discourses. We can predict that the type of behavioural values, attitudes and language specific to a particular social context will differ from other contextually appropriate Discourses. In this sense, a specific Discourse (associated with a particular set of social-contextual functions) can be represented by a particular social identity and by specific interactional practices which, in turn, entail knowing how to use its specific grammatical and lexical features in communication (Gee, 2001). In the social context of a courtroom, for example, lawyers use legal language (or *legalese*[3]*)* for cross-examination purposes in a manner that is recognizable to other members of this legal Discourse, but is perhaps unintelligible to other people not qualified in the legal profession. A significant implication that arises here is that knowing a particular social language means you are able to "be" or "recognize" a particular identity or set of identities belonging to a given Discourse and to communicate and interact effectively with them. In other words, knowing a particular Discourse, means that you are, or have become, a member of a particular *discourse community* (Swales, 1990), such as the entire community of barristers participating in courtroom practices whether these are ever in physical contact or not.

[3] This *legalese* term refers to the technical or conceptual nature of legal language as a particular type of professional discourse and is discussed in more detail in Chapter 3.

This homogeneity of a singular Discourse is difficult to maintain in complex societies, where any given social context can include a variety of Discourses. Moreover, within the same situated courtroom context identified above, it is probable that lawyers will need to use linguistic and discursive features and practices that simplify *legalese* in order to communicate effectively with jury members and clients (laypeople). These multi-discursive interactional processes were identified by Atkinson and Drew (1979), who pioneered ethnographic research into the verbal expression of the different roles, status, and purposes of key participants in courts of law. More recently, Conley and O'Barr (1990) undertook ethnographic analysis of courtroom proceedings to highlight key differences between the relational narratives of clients and non-legal participants in the legal process as opposed to the more transactional and law-focused accounts of lawyers.

In noting that we all participate in multiple Discourses (sometimes within the same situated context), it is important to distinguish between primary Discourses and secondary Discourses (Gee, 1990). Primary Discourses are those that we are initially socialised into from birth and have been described as fundamental to the *sense of self* within a particular cultural context. Secondary Discourses are those that we gain through subsequent participation in various social groups, institutions, and organizations (Gee, 1990). Implied in the concepts of secondary and multiple Discourses is the understanding that, in addition to a primary Discourse, a person can acquire additional secondary Discourses through participation and activity in the social context for communicative purpose(s).

2.1.4 Discourse activity types

A useful analytical approach to examine the multiplicity of Discourses is to focus on a particular *discourse activity* that brings together different discourse participants in certain situated social contexts using certain discursive practices and strategies for a common purpose. This concept was introduced by Levinson (1979), who recognised that social interaction depends on "knowing the nature of the activity in which the utterances play a role" (p.365). Levinson (1992) later defined activity types as "socially constituted, bounded events with constraints on participants, setting and so on, but

above all on the kinds of allowable contributions" (p.69). The specific activity type reflects and embodies the discursive goals and rules for communication and social interaction, and for this reason represents a useful conceptual focus for discourse analysis. Cicourel (1992) argues that it is the purpose of communicating that is key to understanding the discursive event or activity because it emerges from the "task at hand" and determines the type of interdependence between language and social practices.

In relation to the discourse activity constituted by a medical consultation between doctor and patient, Candlin (2006) developed a conceptual framework within which *activity types*, *discourse types*, and situated *communicative strategies* fit together to constitute a "neat and nested arrangement" where units at each successive level interact to achieve a common communicative goal (p.21). For instance, the patient consultation discourse activity is realised by a range of characteristic discourse types such as "history-taking, troubles talk, counselling, advising, and instructing", which involve a range of "often overlapping and hybridized communication strategies" such as "talking plainly, talking obliquely, giving face and deference, justifying actions, hypothesizing, envisaging outcomes" (p.34).

In referring to this discursive phenomenon, Jones (2014, p.335) argues that, "activity types, discourse types and discursive strategies are inextricably linked, interdependent, and *simultaneously enacted*" (emphasis in the original) for professional communicative purposes. He continues:

> While meaning on the more abstract and time-stable levels (activity types) tends to be highly conventional and constraining, meaning on the more contingent and dynamic levels of realization (discourse types and strategies) is reactively, responsively and innovatively constructed.

In applying this tri-stratal system to this study, I can identify contract negotiation practices as an activity type entailing "the strategic and dynamic deployment by participants of their discursive resources, often in a co-constructed and collaborative way, in the pursuit of particular professional, institutional and personal objectives" (Candlin, 2002, p.2). For example, previous research indicates that a main discourse type for contract negotiation involves making proposed amendments to the text of the contractual document and inserting marginal comments to that effect (using Microsoft

editing tools in Track Changes[4]), referred to collectively as *Markup* (Townley & Jones, 2016). This discourse type is consistently used throughout the negotiation process as the dominant communicative function, where it is supported by other ancillary discourse types like advising, and informing, and by numerous discourse strategies (such as indirectness and hedging). The discursive resources deployed for transacting the entire merger and acquisition then involve a range of particular discourse types and strategies which altogether make up a time-stable and conventional legal practice (Jones, 2014).

2.1.5 Communicative competence and discourse expertise

Participation in discourse activity involves the use of *communicative competence* and what Candlin (1999) has called *discourse expertise.* Communicative competence in professional contexts has been defined to operate at the levels of *textual competence*, *generic competence* and *social competence* (Bhatia, 2004). *Textual competence* is "textual-internal or language-related" (Bhatia, 2004, p.144), and relates to the ability to both "master the linguistic code" and "use textual, contextual and pragmatic knowledge to construct and interpret contextually appropriate texts" (p.141). Both generic competence and social competence are text-external. *Generic competence* relates to "the ability to respond to recurrent and novel rhetorical situations by constructing, interpreting, using and often exploiting generic conventions embedded in specific disciplinary cultures and practices to achieve professional ends" and *social competence* "incorporates an ability to use language more widely to participate effectively in a wide variety of social and institutional contexts to give expression to one's social identity, in the context of constraining social structures and social processes" (Bhatia, 2004, p.144). Clearly, this concept, as defined by Bhatia, has much in common with Gee's notion of a capital D Discourse (see Section 2.1.2).

While communicative competence is "signalled as a marker of expert behaviour in a wide range of professional activities" (Candlin, 1999, p.1), the concept of *discourse expertise* or *expert behaviour* can be regarded as an embodiment of the textual, generic and social communicative competencies for a specialised discourse activity, such as the

[4] Track changes is a feature within most word processing applications that enables a user to keep track of different types of alterations, changes or deletions made to a specific document.

cross-examination of a witness discussed above (Conley & O'Barr, 1990). The ability to cross-examine is localised and contextualised only in courtrooms and the requisite discourse expertise is displayed as the systematic and conventionalised use of language specific to the rules for civil and criminal litigation and the institutional requirements of each court system. Cross-examination also involves the use of professional-specific institutional behaviours, which differ to other branches of legal practice. For instance, commercial lawyers are professionally excluded from participating in cross-examination in courtroom contexts and they rely on broader set of interactional communicative skills for international contract negotiation activities and practices. Communicative competence for commercial deals also involves the interdiscursive appropriation and use of resources and strategies across different professional, organizational and cultural practices in order to respond to the demands of particular discourse activities and shared communicative purposes. Communicative competencies and expert discourse skills are conventionally developed within social (professional) groups of people (examined below in Section 2.1.6 as discourse communities and/or communities of practice), to the point where they become embedded in (often tacit) values and attitudes and complex discursive repertoires and practices as performed by other professionals participating in the discourse activity.

2.1.6 Discourse communities and communities of practices

The analytical concepts of *discourse community* (Swales, 1990; Fairclough, 1992) and *community of practice* (Wenger, 1998; Barton & Tusting, 2005) will be referred to in my analyses. Both concepts can be loosely defined as a non-local social groupings united by shared ideological positions and shared access to specialised knowledge or values that regulate ways that members of that group communicate. However, the two concepts differ in terms of their emphases, as will be explained below. The concept of a community throws considerable light on the nature of professional and/or disciplinary communities, and are used to throw light on the legal-professional community at issue in this thesis. By focusing on the shared aims, communicative purposes and genres of such a community, researchers can begin to understand the rhetorical resources, roles and identities that expert members of the community typically draw on to participate in discourse activities and achieve communicative goals.

2.1.6.1 Discourse communities

In his seminal work on genre analysis, Swales (1990) argues that a discourse community will have developed some specific lexis or terminology that distinguishes it from other groups, and also typically possesses a number of specific genres that help realise shared or "common public goals". The underlying caveat is that only persons with a suitable degree of knowledge of relevant lexis content or discursive competence with genre-specific discursive expectations, are able to participate effectively in the discourse community. If we return to the professional goals of cross-examination in the courtroom context, as discussed above, only qualified barristers with the relevant knowledge and expertise in criminal trial documents and procedures are permitted to participate in the communicative processes of prosecution or defence and other laypeople are excluded from this discourse community due to lack of qualified knowledge of specialized terminology and competence in such discursive practices.

The concepts of communicative competence and discourse expertise discussed above are key constructs for defining *membership* in discourse communities. Only those discourse participants that can demonstrate use of the communicative norms and the knowledge conventions through *discourse initiation* will be inducted into that community (Wenger, 1998). According to Gee (1996; 1999; 2001), Discourses – defined as "ways of being in the world" – cannot be learned through overt instruction. Rather, Discourses are acquired through socialization and apprenticeship into the social practices of a particular Discourse. While some form of modelling and instructional guidance are important, Discourses, which Gee also described as "social languages" (1996, p.66), are typically acquired through immersion in meaningful communicative practice (Gee, 2001). In other words, when you are learning a social language in a manner that allows you to produce it, you are being socialised into a Discourse. On that basis, "initiated members of discourse communities are particularly insistent that the novices follow these conventions (Johns, 1997, p.22). Gee (1989) states that if one does not possess all the knowledge required to be successful in a discourse community, then one cannot be part of it:

> Discourses are not like languages in one very important regard. Someone can speak English, but not fluently. However, someone cannot engage in a Discourse in a less then fully fluent manner. You are either in it or you're not (p.487).

For the purposes of the present study, the participating law firm in Istanbul can be defined as a discourse community with "a set of mutually accessible conventions which most members of a professional community share and hence gives the genre or practice a recognizable character" (Bhatia, 2004, p.115). Discourse analysis then involves investigating not only authentic texts, but also the social-contextual environment of the law firm in order to understand how discourse community members construct, interpret and use language along with other semiotic signals and behavioural practices, to achieve their community goals and why they communicate the way they do in their legal practice (Candlin & Hyland, 1999). In a narrower and more specific sense, the commercial law department may also be defined as a different discourse community in comparison to the group of lawyers working on criminal matters within the same law firm. Each legal department within the firm may be focused on different types of problems and embody different ideological positions, knowledge or values that may result in the application of different communication norms and the construction of distinctive genres and practices. The type of legal lexis may also differ significantly across different legal practice areas, both in its nature and the interpretation of identical terms.

2.1.6.2 Communities of practice

In contrast to the strict conceptual standards established for a discourse community (Swales, 1990), a "community of practice" is defined a group of people who work and participate in social (professional) activities together, thus developing a shared knowledge of discursive practices (Wenger, 1998). Developed by sociocultural theory rather than linguistics, a *community of practice* has a broader conceptual meaning. For instance, although Swales (1990) felt shared goals were definitive, it has been observed that a "public discourse community" cannot have shared goals, and more crucially, a generalised "academic discourse community" may not have shared goals or genres in any meaningful sense. By comparison, Wenger (1998) argues that the concept of communities of practice includes "mutual engagement" and "a joint enterprise", which "separates it from the more diffuse understandings that surround discourse community" (p.78). This broader definition applies more appropriately to the interaction of multidisciplinary teams in professional organizations such as law firms, where an

increase in specialised roles results in a greater diversity of experience and purpose across individuals.

This also relates to the broader context of international legal practice, involving the interaction of professionals from different institutions in different countries for the joint enterprise of negotiating an M&A transaction. In a study of an inter-organizational project conducted primarily through email, Orlikowski and Yates (1994a) recognised that members of a community of practice tend to use multiple, different, and interacting discursive resources and genres for shared communicative purposes, which they refer to as a *genre repertoire*. "When members of a community enact genres constituting their community's genre repertoire, they not only signal and reaffirm their status as community members, but they also reproduce important aspects of that community's identity and its organizing process" (p.546). By adopting the broader analytical concept of a community of practice, research for this study can then be more inclusive to analyse the genres that are routinely enacted by lawyers and other business professionals across disciplinary contexts. This also involves analysis of email communication used by a type of "virtual community of practice" (Zucchermaglio & Talamo, 2003), made up of members geographically dispersed in different jurisdictions of international legal practice. This community of practice analytical framework can also be used to explore different discourse identities, which are defined by the roles these different members perform and the professional relationships they share in the collective group's activity.

2.1.7 Discourse roles and identities

Membership and participation within a discourse community or community of practice are also instrumental in defining discourse roles and identities. Both of these concepts are socially constructed and become realised in the situated context(s) of discursive interaction. *Role* is a theatrical term made popular by the social theorist Goffman (1959, 1961, 1974), who aligned with the premise that "everyone is always and everywhere, more or less consciously, playing a role" (Park, 1950, p.249). In drawing a distinction between the Primary and Secondary Discourses defined by Gee (1990), Goffman (1974) earlier reserved the term "personal identity" for the individual person and prescribed the

term "role" to refer to "a specialised function which the person may perform during a given series of occasions" (p.128). Sarangi (2010) more recently recognises this transformative aspect to role performance by noting that "there are multiple roles available to any individual within a given activity" (p.31).

The interaction of different discursive roles in the context of contract negotiation can be usefully analysed within Goffman's (1959) theoretical settings of *front-stage* and *back-stage* performance in institutional settings. Goffman's argument is that we perform on front-stage in particular discursive and behavioural ways because of our assigned role in a specific professional context, such as the roles of parties involved at what can be identified (following Scollon, 1999, 2001) as a *critical site of engagement*. Scollon (2001) defines a site of engagement as "the convergence of social practices in a moment in real time which opens a window for a mediated action to occur" (p.147), where action is mediated by cultural tools, language or discourse, and other social actors. Goffman (1959) argues that such performance roles are largely assigned to us by our membership to a particular profession and do not reflect the roles that we see as closer to our true selves. The back-stage metaphor suggests that we express our more personal or private identity, voice and authorship behind the *face* of front stage interactions. These alternative conceptions of *self,* which are realised largely through discourse, often overlap and this inter-semiotic interaction is important to analyse the ways that both stages influence the negotiation process within the meaning of interdiscursivity.

In Goffman's (1967) terms, *face* is the identity that people create for others to see on the front stage of social interaction. While people are generally concerned to maintain a positive social value, to *lose face* is to publicly portray a negative self-image. The management of social identity is associated with the socio-linguistic concept of *facework* (Brown & Levinson, 1987). This concept is defined by what the person says and does during social interactions in showing how she or he understands the situation and evaluates what the other discourse participants are saying or doing. Brown and Levinson (1987), and many researchers since, have observed that people generally cooperate in maintaining face in social settings through the discursive use of politeness (Watts, 2003; Hernández-Flores, 2008; Ho, 2011; Gil-Salom & Soler-Monreal, 2009; Sifianou, 2012). Following Goffman (1967) and Brown and Levinson (1987), Holmes

(1995) defined politeness as "behaviour which actively expresses positive concern for others, as well as non-imposing distancing behaviour". She commented further:

> In other words, politeness may take the form of an expression of goodwill or camaraderie, as well as the more familiar non-intrusive behaviour which is labelled "polite" in everyday usage.

However, the nature of interaction means that – intentionally or unintentionally – discourse participants are also involved in what Brown and Levinson (1987) refer to as *face-threatening acts* (FTAs). Obvious examples include insults or acts of aggression (Infante & Rancer, 1996), or expressions of disapproval, intolerance or rudeness (Lakoff, 1989). Apart from these, other necessary acts such as criticism, naming things, speculating or asserting one's priority in professional contexts, can also threaten face (see Brown and Levinson, 1987, pp.65-68; see also Myers, 1989, 1992). The extent that these types of FTAs can be tolerated more in work-related contexts and facework ultimately depends on the institutional and/or professional norms of interaction, "whereby different kinds of politeness, non-politeness and/or rudeness characterise different activity or discourse types" (Archer, 2011, p.2). The impact and management of FTAs in professional contexts also relates to the particular roles and identities of the protagonists and the relative distance of status and power between them (Brown & Levinson, 1987).[5]

In professional work settings, identity is a social phenomenon that emerges from the dialectic between the individual and the situated role that he/she is called on to perform for a particular communicative activity or purpose (Berger & Luckmann, 1967). The key to analysing identity is therefore to identify how tasks and roles are allocated and the arrangements made to facilitate and enforce role performance by individuals (Goffman, 1961). However, this type of analysis becomes complicated when, instead of a single discursive role or activity, we are dealing with a discursive *process* such as a contract negotiation, which involves a variety of business and legal discourse participants (the *social actors*) assigned to different roles, which can change over time in accordance with societal and professional transformations (Sarangi, 2010). Analysis of professional roles and identities must take account of the full richness and complexity

[5] More discussion about the discursive concept of politeness is provided in Chapter 3 pertaining to legal and business negotiation.

of the relevant social and institutional context, "where resources are produced and regulated, problems are solved, identities are played out and professional knowledge is constituted" (Sarangi & Roberts, 1999, p.1) as part of the participant's professional identity.

2.2 Intertextuality and Interdiscursivity

The interrelated nature of different texts, contexts, discursive practices and discourse activities used for a common communicative purpose (such as contract negotiation) necessitates the use of the key analytic concepts of *intertextuality* and *interdiscursivity* (Candlin & Maley, 1997; Bhatia, 2004, 2010; Bremner, 2008).

2.2.1 Intertextuality

All texts – as discourse units – build on and refer to prior texts. All texts used by a professional community for discursive activity are related either implicitly or explicitly and either deliberately or unintentionally to other texts, whether it is within the same Discourse or across different contexts. This type of textual interdependence is known as *intertextuality*. Intertextuality, as a theoretical concept, examines the pragmatic and conceptual links between texts and how the appropriation and use of different textual resources and discursive practices at various levels of professional engagement influence the way that texts are constructed (Bhatia, 2010). The concept is fundamental to analysing the contract negotiation process, which involves a variety of interoperable legal texts and a complex chain of (sometimes embedded) email correspondence to accomplish interrelated discursive goals.

A number of applied linguists have contributed to the classification of different types of intertextuality, such as Devitt (1991) and Fairclough (1992). In relation to the sociolinguistic processes for tax accounting, Devitt (1991) distinguished between three distinct types or levels of intertextuality. The most common type is *referential intertextuality,* which is observed when a text refers to a pre-existing text or to specific aspects of that text. *Generic intertextuality* describes the way texts, and discursive practices enshrined in texts, are influenced and shaped by the genre conventions, the

affordances available to members of the relevant discourse community (Bremner, 2008). And *functional intertextuality* refers to way that different texts with institutional authority interact and interoperate for a common set of professional purposes within the discourse community. It may be that specific texts have more authority over others and Devitt (1991) argues that adherence to the respective authority and intertextual function of these texts helps to define discursive competence and membership in the relevant discourse community.

Fairclough (1992) focused on three intertextual properties of any given text. While *sequential intertextuality* is observed when "different texts or discourse types alternate within a text" (p.118), e*mbedded intertextuality* occurs when a text or discourse type is clearly contained within textual fabric of another. This specifically relates to the use of a sequence of embedded emails (Gimenez, 2006) or "email chains" and "threaded emails" (Nickerson, 2000; Evans, 2012; Warren, 2013) and these concepts are discussed in more detail in Chapter 3 pertaining to business email communication. *Mixed intertextuality* refers to the way that texts or discourse types are merged in a more complex and integrated ways. By comparison, Devitt's theoretical approach is more comprehensive in accounting for the way that each communicative interaction between the discourse participants is tied back into antecedent discourse (either written or spoken) at the same time that it anticipates subsequent discourse. This is the preferred methodology of this research study to examine key textual documents implicated in the contract negotiation process, including email correspondence, letters of advice and changes recorded in *Markup* within consecutive versions of the contract. Each textual product represents a unit in an intertextual chain, and comprehensive discourse analysis would examine all of these different types of documents, genres and discursive events and would document the full gamut of rhetorical manoeuvres that make up the entire, goal-oriented process.

A demonstration of the intertextual nature of contract negotiation can be seen in Figure 2.1 below, which I developed in relation to previous discourse analysis of negotiating a distribution agreement (Townley & Riazi, 2014). A critical stage in the negotiation process is represented by email A2(4), which was sent by a lawyer (Ms. B) to her client (Mr. A) the day after they met to discuss the progress of negotiation. The oral discussions of that meeting are retextualised and recontextualised in email A2(4), which then intertextually connects to three other textual formats used by the lawyer to provide

legal advice to the client about contract negotiation activity. The email itself discusses the significance of two attachments: a cover letter containing more detailed advice about Version 5 of the contract. The cover letter refers to Version 5 and functions intertextually with the contract by explaining the justification for negotiating amendments to particular terms of the contract. Version 5 then records these written amendments in *Markup* and also includes comments exchanged by the counterpart lawyers to justify or explain those amendments using the Track Changes software function.

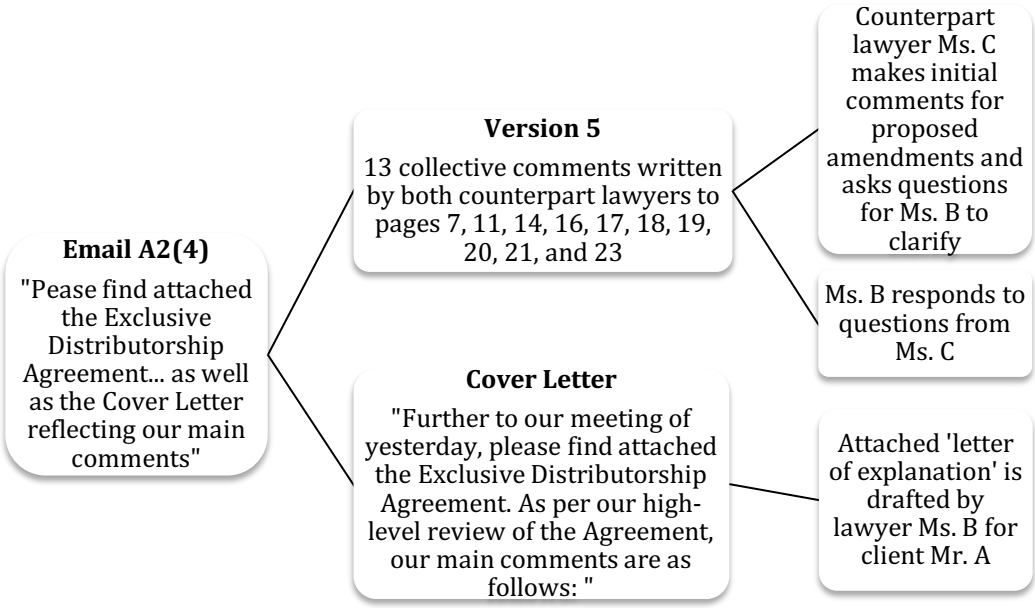


Figure 2.1: Intertextual schema of contract negotiation

Not limited to textual and spoken discourse, the concept of intertextuality has also been extended to multimodal contexts, involving the analysis of texts, images and designs in relationship to the built environment (Kress & van Leeuwen, 1996). Other researchers (Scollon, 1997, 2008; Scollon, Bhatia, Li & Yung, 1999) have explored the intertextual nature of social actions, in contexts where *intertextual* is synonymous with *intersemiotic*, through a "mediated discourse analysis" (MDA) of the many semiotic systems involved in face-to-face social interactions (Scollon, 2001; Norris, 2004). Ashcraft (2008) also argues for a broader analytical perspective, beyond the confines of verbal/textual production to also examine the discourse participants' cultural, historical and political backgrounds – all aspects of their capital 'D' Discourse. What all these studies have in common is the fact that they explore the premise that "any use of

language ties back to antecedent language [or discourse action and identity] at the same time it anticipates subsequent language" (Scollon, 2008) within any given social discourse context.

2.2.2 Interdiscursivity

As noted above, the analysis of a contract negotiation as a discourse activity also calls for application of the key research concept of *interdiscursivity*, which can be defined as "the use of elements in one discourse and social practice which carry institutional and social meanings from other discourses and social practices" (Candlin & Maley, 1997, p.212). Bhatia (2008, 2010) somewhat similarly describes interdiscursivity as "a function of appropriation of generic resources across discursive, professional and cultural practices, which [. . .] are typically employed in professional, disciplinary, and institutional communication" (Bhatia, 2010, p.33). The implication here is that professional workplaces, or at least many of them, represent multidisciplinary contexts in which diverse discourse activities are played out by a variety of professional participants with their own perspectives, experiential knowledge and discursive repertoires. Effective discourse analysis should therefore be able to account for the variety of overlapping discursive practices, involving a wide range of discourse types and discursive strategies, that are used by the different discourse participants for a shared communicative goal or purpose, such as (in this case) finalising the contractual deal. This view is shared by Candlin (2006) who argues that accounting for interdiscursivity is central to any discourse analytical study of professional practice:

> Any analysis of text which aspires to some explanatory rather than merely descriptive adequacy presupposes an engagement with social action within the context of the institution in question, and needs to take account of the distinctive perspectives of the involved participants (including the researcher). At the same time, our awareness of institutional dynamism in a changing and unstable world makes hybridity and interdiscursivity not some aberrant phenomenon, some momentary disorder, but what actually is the discursive case (p.6)

Contract negotiation involves the collaborative production of texts that often embody several distinct or even hybrid Discourses and that can thus be described as interdiscursive. Such collaboration across different legal jurisdictions and practice areas invariably involves use of different legalese terminology, whereby a word in one

Discourse of legal practice may not have the same meeting as it does in another. There are other, perhaps more significant differences that pervade the discourse, such as the disciplinary values that are encoded in the ways the discourse is organised and prioritised in different law firms or in the legal departments of companies. Palmeri (2004) notes that these differences can be productive and can lead to better-quality documents, but they can also be destructive and wasteful:

> Socialized into very different discourse communities and subject to intensive regulation of their discursive production and knowledge creation or dissemination, interprofessional collaborators may have striking differences in their beliefs about appropriate discursive conventions, epistemological standards, and definitions of technical terms – differences that make the process of coming to consensus about a document extremely difficult.

This is particularly relevant to the negotiation process, whereby discourse participants deploy a range of interdiscursive resources and strategies in response to the demands of critical discourse events at what Bhatia calls "specific sites of engagement" (2008, p.170) with counterparties. International contract negotiation also involves the further complexity of having multiple authors for many legal documents and of having multiple audiences of email communication addressed to multiple discourse participants involved in the discourse activity. Discourse analysis should be able to identify and examine the strategic use of these interdiscursive resources and practices across and within professional contexts for the purposes of this study.

2.3 Genre analysis

The integrated understanding of the D/discourse paradigm (Gee, 1990, 1996, 1999) and the important concepts of intertextuality and interdiscursivity (Bhatia, 2004, 2008, 2010) can be applied to genre analysis. Informed by these concepts, genre analysis provides grounded description and explanation of language use in professional contexts. As distinct from the concept of literary genre, Swales (1990) defined a genre as a specific communicative event in which members of a specific discourse community share "structure, style, content, and intended audience" (p.10) to achieve social purposes. A communicative event itself generally has one or several specific objectives that recur and is structured according to regularities of "staged, goal oriented social processes" (Martin, Christie, & Rothery, 1987; Martin, 1993). In relation to this regularity of form

and substance, Swales (1990, 2004) argues that a genre typically demonstrates a series of "moves". A move can be thought of as part of a text which achieves a particular purpose within the text. Each move can also involve a number of constituent elements called "steps". To develop a robust analytical model of a particular genre it is often necessary to recognise certain moves and steps as optional while some can be recycled (Swales, 1990). Moreover, moves or steps are sometimes combined in a single sentence, a strategy that often involves syntactic embedding (Bhatia, 1993, 2004; Townley & Jones, 2016). Early genre analysis focused on the *moves* and *steps* of written genres in the academic field, such as the abstract, research articles and the doctoral thesis (Swales, 1990) and professional business genres such as sales letters and application letters (Bhatia, 1993). Research findings from these studies were able to demonstrate that each genre type could be defined according to formal rhetorical organization and lexico-grammatical properties of the textual artefact with a special focus on "the stages through which texts unfold" (Martin, 1997, p.6). Indeed, the key function of genre is to codify purposes in terms of expected rhetorical structures and associated linguistic forms, and this enables analysts to demonstrate how genres are used to achieve professional discourse objectives.

Even though, in the conventional view, genre analysis began as a textual practice, it has been developed to also explore the many ways in which context and text are reciprocally related (Bhatia, 2004; Devitt, 2004). Like other forms of discourse practice, genres are "socially authorised through conventions, which, in turn, are embedded in the discursive practices of members of specific disciplinary cultures. These discursive practices, to a large extent, reflect not only conventions used by specific disciplinary communities, but also "social conventions, including social changes, social institutions and social knowledge" (Bhatia, 2004, p.186). Similarly, Yates and Orlikowski (1992) define genres of organizational communication as "socially recognized types of communicative actions - such as memos, meetings, expense forms, training seminars - that are habitually enacted by members of a community to realise particular social purposes" (p.312). The analytical premise here is that it is "impossible to understand the meaning of what someone has said or written without knowing something about the context surrounding the text. And the opposite is also true: if we can understand what our interlocutor writes or says, we can also draw conclusions about the context of situation" (Martin, 2001). In this respect, Mayes (2003) submits that schematic aspects

of genres are predictable based on the ability to "interpret the actions of others and act appropriately in a given situation is based on previous experience with situations that are perceived as similar" (p.18). This relates to the regularity of form and substance of genres (Swales, 1990, 2004) that enables researchers to draw epistemological conclusions about discursive practices and roles by analysing text types.

Within situated contexts, genre analysis is also used to understand how texts both assume and project interpersonal relationships between the author and reader/audience. This relates to the strategic use of linguistic choices within each move and step (Swales, 1990) to construct and maintain relational features that align with the communicative purpose of the text. For example, Breeze (2014) identifies certain lexical choices that are used by lawyers to provide clients with predictive legal advice in a letter genre. This involves the interpersonal use of pronouns and the metadiscursive features of hedging and boosting, all contributing to a professional tone that "steers both the client and the [legal] proceedings towards what is legally possible and/or expedient, through a process of discursive alignment" (p.1). Breeze (2014) identifies the ability to construct and maintain professional relationships through texts as "a vital part of becoming a fully-fledged member of the legal discourse community" (p.2) and her study of the legal letter of advice genre will be discussed further in Chapter 3 of this study.

2.3.1 A multiplicity of genres

Genre analysis can also account for the intertextual and interdiscursive ways that genres exist in dynamic interaction with other genres to mediate socially organised activities. To capture and account for the many different types of inter-generic relationship and consequent social actions, scholars have used a number of analytical frameworks such as genre sets; genre systems; genre repertoires; and genre ecologies.

It is common for a community or organization to rely on interrelated groups of genres that work together in a particular disciplinary domain or field of professional practice, thus developing a shared knowledge. The notion of *genre set* was first introduced by Devitt (1991) to describe closely-related constellations of genres that enable community members to accomplish repeated, structured activities for a particular rhetorical audience, purpose, subject, and occasion. In her study of tax accounting, Devitt (1991)

posits that different texts form "networks of interaction" for the accountants and she identified thirteen related genre forms (such as tax returns, IRS notices, IRS documents, tax legislation and audit work papers) which were repeatedly used for the primary purpose of interpreting tax regulations for a client. This genre set also involved sub-activities like writing letters to clients and IRS tax authorities, which Devitt (1991) identified as different genres for *promotional, opinion, response* and *reporting* purposes purposes (pp.339-340). Even though all of the above genres had their own typical lexico-grammatical and stylistic realisations, they still shared a common overall purpose and "unified activity type" (p.340) to justify their inclusion within the same genre set. Devitt (1991) also identified how each text was connected to the previous text in a sequential chain of actions and repeated use of this set of genres stabilised the tax accountants' community of practice and defined the specific purpose and situation of taxation activity (p.340).

In recognition of multidisciplinary contexts and intertextual sequences of communicative actions over time and space, Bazerman (1994) developed the concept of *genre systems.* This concept was meant to describe the use of multiple genre sets to coordinate and enact the work of multiple groups within larger systems of activity. Bazerman focused on the complex and protracted process for obtaining a patent in the United States and identified a system of interrelated genres that involve the application form, letters of correspondence, appeals, and potential court rulings, as well as the formal patent grant. Each activity connects to other genre systems, such as the involvement of funding corporations with the patent grant, and the entire process "is a complex web of interrelated genres where each participant makes a recognizable act or move in some recognizable genre, which then may be followed by a certain range of appropriate generic responses by others" (pp.96-97). As a conceptual framework, a genre system is constituted by multiple genre sets, which often involves the interaction of users with different levels of communicative competence and authority over an extended period of time.

By examining the use of genre sets within systems of activity, Orlikowski and Yates (1994a) established that genres do not just sequence, but tend to overlap and interact over time to form a *genre repertoire* that a community or organizations routinely use to accomplish work. Knowing the genre repertoire of a community involves being aware

of the community members' shared norms and expectations about communication and of the social context from which these norms and expectations derive. Based on this knowledge, the genre repertoire is then invoked in response to commonly recognised *recurrent situations* or occasions for communication, which reflect the history and nature of established work practices, social relations, and organizational policies (Orlikowski and Yates, 1994b). For example, Orr (1999) established a taxonomy of about 90 genres as a recognised repertoire in the field of computing, which he classified into five groups according to their primary goals: generation, procuration, dissemination, evaluation, and regulation:

> The primary goal of genres in the generation category is to help to generate new ideas, information, or products (e.g., memos, records, laboratory reports); genres in the procuration category have as their main goal to obtain information, resources, approval, etc. (e.g., email letters, grant applications); the goal of genres in the dissemination category is disseminating information, instructions, or opinions (e.g., papers, book chapters, manuals); evaluation genres are designed to evaluate (e.g., equipment reviews, feasibility reports); and regulation genres are designed to regulate professional activities within the community (e.g., contracts, guidelines).

In order examine how genres are used to respond to different rhetorical situations and purposes, Spinuzzi & Zachry (2000) developed the concept of *genre ecologies*. Distinct from the implicit premise of generic independence contained in concepts like *genre sets* and *genre systems*, this activity based framework focuses on the dynamic interaction of genres and the way that one genre is connected and coordinated with other genres to achieve discursive goals. Another theoretical premise to be emphasised here is that genres do not work as discrete parts of a *repertoire* but are interconnected and combine in carrying out different functions required by a work context. In this connection, Spinuzzi (2004, p.5) places the emphasis on dynamism and adaptability to exigencies:

> genres are not simply performed or communicated, they represent the "thinking out" of a community as it cyclically performs an activity. They represent distributed cognition in the sense that cognitive work is spread among the genres and the artefacts that belong to them, and opportunistic connections among those genres are historically made, cemented through practice, yet dynamic enough that new genres can be imported or can evolve to meet new contingencies.

Through this *contextually distributed* cognitive process, genre ecologies are constantly importing, hybridizing, and adapting for discourse activity within the constraints imposed by intertextuality and interdiscursivity. Bhatia (1997a) refers somewhat

obliquely to this as "genre embedding" whereby "a particular generic form … [is] used as a template to give expression to another conventionally distinct generic form" (p.191). This is in part a type of recontextualisation process that is germane to the generic intertextual nature of contract negotiation and the ways in which contract templates are recycled and reworked into new contractual documents within or across institutions or professional settings and for different purposes. The type of distributed cognition implied by genre ecologies is also interdiscursive in the way that genres change as discursive activities occur within different social contexts and territorial boundaries, involving the interaction of different professionals in international legal practice.

2.3.2 Email communication genres

As emails have emerged as the primary mode of communication in most professional contexts and communities of practice today (Hewitt, 2006; Argenti, 2006; Evans, 2012), there has been an increasing amount of research into the sociolinguistic use of email messages (e.g., Gimenez, 2000, 2005, 2006; Evans, 2012; Ho, 2011). The focus and depth of analysis of these studies has developed in step with the evolution of email from a relatively simple information transaction medium in the 1990's to the most pervasive communication system supporting global professional activities and interpersonal relations in the 21st Century (Murphy & Levy, 2006). This evolution has been assisted by significant developments in communication and information technology to the point where emails function seamlessly on real-time mobile devices across international boundaries. As organizational genres, Gimenez (2006) argues that emails have evolved "to meet the new communication demands of the business community, to adapt to its ideologies, and to reflect the individual agency of those who use them" (p.159).

The ubiquitous use of email correspondence in all workplace environments these days makes it unfeasible to identify a common communicative purpose or rhetorical structure within the meaning of genre (Koester, 2010, p.35). It is therefore more appropriate to define email communication as having different, but inter-related linguistic patterns and purposes within the meaning of a *genre sets* (Devitt, 1991) or *genre repertoires* (Orlikowski and Yates, 1994a). For example, Orlikowski and Yates (1994b) studied the email communication of professionals collaborating on a multi-year project and found that the bulk of their work and interactions were mediated by the use of just four email

genres that they labelled as *memo, proposal, dialogue* and *ballot*. These different genres were identified in professional situations which invoked their shared purpose, structural substance, and linguistic form. Once established and recognised by discourse community members, Orlikowski and Yates (1994b) found that this type of genre repertoire served as an effective mechanism for communicative interaction and achieving work tasks. While serving to institutionalise recurrent communication norms, Orlikowski and Yates (1994b) also argue that repertoires of email genre can change over time in response to project events, task demands, media capabilities, time pressures, and converging community norms. This can often involve changes to the structural composition of a recognised genre by "adopting and integrating characteristics of both written and oral modes of communication" (p.19) within the meaning of intertextuality (genre embedding) and interdiscursivity. By analytical extension, the four email genres identified by Orlikowski and Yates (1994b) can be taken to form a *genre set* (Devitt, 1991) that can be used with other genre sets in a broader *genre system* (Bazerman, 1994).

All of the conceptual frameworks described above are relevant for the present study of legal negotiation discourse. The interaction of legal and business professionals over an extended period of time supports the view that the contract negotiation process is mediated by a *genre system* (Bazerman, 1994). This system is constituted by multiple genre sets, which primarily rely on email communication and contractual texts (Devitt, 1991) to accomplish activities for specific negotiation purposes. As a clearly defined process, there is an analytical focus on how these genre sets are connected in a sequential chain of discourse activity types and how repeated use of these genre sets stabilise international legal practice for M&A transactions. Across this extended sequence of time and negotiation activity, it is also important to examine how genres overlap and interact as part of *genre repertoires* (Orlikowski and Yates, 1994a, 1994b) and how certain genres are adapted and hybridized to create new genres to achieve context-specific discursive goals as a type of *genre ecology* (Spinuzzi & Zachry, 2000) for this M&A transaction.

CHAPTER THREE

LEGAL AND BUSINESS DISCOURSES

Chapter 3 presents a review of language and discourse based studies of legal and business discourse analysis. There are three main sections. The approach is to first examine the variety of legal contexts that entail *professional legal communication* and the lexico-grammatical resources used for a number of related legal genres (Section 3.1). The second part of this chapter will focus on the key discursive concept of *contract negotiation*, which involves examination of relevant discursive practices and ideologies of legal practice (Section 3.2). Due to a limited research literature on the topic of legal contract negotiation, the final section in Chapter 3 examines studies of *business negotiation* as a conceptual basis for the research goals of this study (Section 3.3).

3.1 Professional legal communication

In recognition of the philosophical premise that social and legal reality is not only represented through language but also constituted by language (Searle, 1995), the past few decades has witnessed a dramatic growth in sociolinguistic studies of the constructive role of language in professional legal practice. This has occasionally involved the interdisciplinary engagement and collaboration of lawyers and linguists in attempts to understand how language and law function in society and to provide a clear critical and explanatory focus on how language use evolves to account for a varied and constantly changing set of legal practices (Salmi-Tolonen, Tukiainen & Foley, 2011; Jones & McCracken, 2007, 2011; Townley & Jones; 2016). Hafner (2014) notes that current research into professional legal communication incorporates a range of different scholarly traditions, including "genre analysis, conversation analysis, forensic linguistics, semiotics, linguistic anthropology, jurisprudence, legal writing and drafting, law and society" (p.349). Across this interdisciplinary scholarly activity, Shuy (2011) identifies five major foci for research: (1) statutory interpretation and legal procedures; (2) courtroom issues; (3) written language evidence; (4) spoken language evidence; and (5) extension into other areas that address the "ambiguity and vagueness of laws, procedures, jury instructions and business contacts" (p.86). A significant gap in this list

of foci in the current literature for professional legal communication is the absence of language and discourse orientated studies of contract negotiation.

3.1.1 Sociolinguistic contexts of legal discourse

The range of discourse activities used for the different communicative purposes identified above are embedded in different social contexts and institutional settings, which also need to be examined for any study of legal discourse. Such analysis becomes very complex when we consider the variety of (intertextual) texts and (interdiscursive) interactions that are produced in such settings by a range of participants for legal discourse activities. Even though these participants frequently share common values and beliefs and communicative competencies as members of the legal profession, it is practically impossible to identify a legal discourse community as a single, unified entity due to the diversity of social interactions involved in most legal activities. Hence, the common term "legal profession", while implying that this is a community of practice, is actually an unhelpful abstraction, and researchers need to be considerably more specific when defining the relevant legal community under analysis. For example, one law firm invariably maintains a particular legal culture, defined by discursive ideologies and practices that materially differ to those maintained by another law firm or professional institution, even when involved in the same type of legal transactions. These differences are exemplified across cultural boundaries and legal jurisdictions in which a "multitude of different kinds of legal communities can be identified, and practices vary between them" (Hafner, 2014, p.350). Notwithstanding such sociolinguistic diversity across a wide range of multilingual and multicultural contexts, one common feature that has emerged in this age of globalisation is the use of English as the primary lingua franca of international legal practice. Another institutionalised feature is the use of legalese for many legal practice genres and activities.

3.1.2 Legalese

As noted in Chapter 2, the term *legalese* is used to denote the discourse medium of legal English (written and spoken), which is commonly regarded, pejoratively, as a technical jargon that is difficult to understand or use. This association with *jargon* is due to the

technical or conceptual nature of legal practice which has tended over the years to re-classify a register of English used for "highly technical, specialised legal processes and relations" (Goodrich, 1986, p.151). One result of this has been to use everyday terms in precisely defined conceptual ways that make the familiar meaning of words misleading in a legal context. The key function of legislation is to define the rights, obligations and powers of members of society. Following Bhatia (1993), Hafner notes that this requires drafters to use "clear, precise and unambiguous language, while at the same time constructing a document that anticipates an unlimited number of real world scenarios to which the rules might apply" (2014, p.354). In order to serve these competing aims of precision and all-inclusiveness, Bhatia (1993, 1994) established that the language of legislative texts becomes imbued with the following complex syntactic properties:

> the use of long sentences, nominalization and passive voice, complex prepositional phrases (e.g. *in accordance with*), binomial and multinomial expressions ((e.g. *wholly and exclusively*), initial case descriptions that describe circumstances when the rule applies, complex conditional structures with frequent qualifications which introduce syntactic discontinuities to limit the application of the rule

Gotti (2011) also identifies another unusual feature of legal language, the extensive use of *latinisms* by legislators to "specify particular legal terms with a precise meaning" and to "contribute to the overall sense of formality and traditionalism" (p.37).

Some of the linguistic features described above clearly challenge the claim that legislative texts are designed to be clear and precise. Moreover, discourse studies demonstrate that legal language is inherently and necessarily vague and indeterminate (Bhatia & Bhatia, 2011). Such vagueness can be used as a strategic resource by the legal draftsperson to deliberately obscure the meaning of legislative terms and force the courts to decide their precise meanings when a question of interpretation arises. Indeed, the primary audience for these texts is often not the general public, but other legal specialists (chiefly lawyers and judges), who will jointly decide what exactly the document means. Some critical scholars also point out that the purpose of legislative language is not so much to provide clarity but rather to obscure the mechanisms of power that legal texts create in order to serve dominant interests in society (Wagner & Cacciaguidi-Fahy, 2008).

Contracts are a type of *normative* legal genre with the primary purpose to formulate everyday language and understandings in terms that are objective and rule-based. Similar to the language used for legislative texts, lawyers often rely on formal and archaic expressions when drafting contracts, so that they are often difficult to read, especially for the non-specialist or layperson[6]. Tiersma (1999) argues that this "formal and ritualistic language" of contracts can operate to signal to the parties that the contractual terms have significant consequences. It is also arguably used by members of the legal profession as an effective social mechanism to distance its members from the general public. Legalese also operates as a type of *performative style* of communication in English (Tiersma, 1999) that all discourse participants with legal discourse expertise can use to negotiate contracts, regardless of their cultural or professional backgrounds.

3.1.3 Legal genres

Due to the variety of different legal contexts and discursive activities for legal purposes, there is a growing body of literature that analyses a variety of recognizable legal genres. For Tessuto (2012), studying legal genres means studying critically how language is used as socially situated discourse, and it also provides a platform for studying the ways in which knowledge is created in legal professional and academic writing. This literature ranges from the analysis of the rhetorical structure and lexico-grammatical features of abstracts in legal journals and reviews of scholarly books to studies of the use of case notes in both legal practice and educational contexts (Tessuto, 2012). Genre analysis has also been used to understand legal discourse practices for arbitration (Bhatia, 2011; Hafner, 2011; Gotti, 2014) and legislative reform (Bhatia, 1993; Bhatia, A. & Bhatia, V. K., 2011). While the findings from these studies have limited application for this current study, Breeze's (2014) recent analysis of the *legal letter of advice* genre is particularly relevant for my analysis of the contract negotiation process in Chapters 7 - 9.

The letter of advice is defined by Breeze (2014) as "a pivotal genre in the legal profession" for the way that it informs the client about a legal issue within the cognitive

[6] Layperson' is a term used to define person(s) who have not received any formal training in the practice of law, which includes both the use of formal linguistic features of legal discourse (legalese) and understanding of the norms and conventions of the legal profession discourse community. Both functions can be difficult for non-specialists to understand.

framework of the law. Using Swalesean genre analysis, Breeze demonstrates how the rhetorical organization of the letter embodies the IRAC framework for providing predictive legal advice about the probable judicial outcome of an issue or dispute ("C" for conclusion) by applying ("A" for application or analysis) relevant law ("R" for rules) to the legal issue or dispute ("I" for issue). The inverse presentation of these *Moves* is widely used by legal educators and lawyers as the most logical way to organise legal analysis and provide legal advice for intrinsically complex tasks:

> The move structure provides an interactional framework which allows the lawyer to seek confirmation of the issue and the facts, to apply rules or principles to those facts, to propose solutions, either by recommending a course of action or by explaining the options and remitting the responsibility for the decision to the client, and to offer to take further action (p.6).

Breeze (2014) then examines how the lawyer uses certain lexico-grammatical choices to achieve interpersonal communicative goals within each Move. For example, Move 3 contains no hedges when advising the client about applicable laws or precedents in order to express certainty and demonstrate to the client that the lawyer has professional expertise with the issue under analysis. However, due to the uncertainty associated with different possible legal outcomes under the law, lawyers then rely on hedging in Move 4 to protect him/herself from the consequences of inaccurate prediction, such as stating that "a court would probably find" (p.15).

The main limitation of these findings for the current study is that legal negotiation does not usually involve predictive legal advice about the possible outcome of a legal dispute on the basis that the parties have not executed[7] the contract yet. Of course lawyers can provide contingent advice about what *could* eventuate *if* this provision was accepted, but this rarely involves analysis about what the courts would determine if a possible dispute eventuated. Instead, lawyers mainly rely on the letter genre to advise clients about the operational meaning of the contracts, including proposed changes for negotiation purposes. This sub-genre of the letter of advice is primarily used to explain and justify either accepting or rejecting proposed changes and keeping the client up-to-date with negotiation activities.

[7] An *executed* contract means that the contract has been finalised, often with the parties' signatures and/or company stamps, and is legally-enforceable.

Another limitation for this study is the lack of any studies that examine commercial contracts from a discourse or genre analytical perspective. Instead, ESP pedagogy relies on textbooks such *English for Contract and Company Law* (Chartrand et al., 2003) to understand the types and structures of commercial agreements used under European Law and the rhetorical structure and the types of terms and conditions commonly used in such contracts. For instance, the *English for Contract and Company Law* textbook includes content that is designed to teach the meaning of both contract law principles and vocabulary and grammatical terms commonly used in relation to working with contracts. It also includes exercises that promote student assessment of the schematic structure of an authentic commercial contract (on page 28) and the operative meaning of its specific terms and conditions. While these activities do provide important pedagogical insights into the genre of contracts, the textbook nevertheless fails to provide any materials "on the crucial issue of linkage between particular lexico-grammatical and discursive choices and such organization and content" (Candlin et al., 2002, p.311). It is hoped that this study will therefore make a significant contribution to genre analysis of a variety of contracts used in commercial law practice.

3.1.4 Negotiation discourse

From a discourse standpoint, any communication between people, "in which participants pursue their goals in order to reach an agreement can be described as negotiation" (Sokolova & Szpakowicz, 2006, p.288). As an "activity of social decision making on substantive matters" (Firth, 2014, p.3), negotiation is inherent to a variety of socio-legal transactions, including not just language use and texts but also ways of thinking, feeling, believing, valuing and of acting. In fact, most lawyering activities can be understood in the broad terms of negotiation and there is an extensive body of scholarly work that has analysed negotiation discourse in genres as diverse as legal cases (Bhatia 1993), law case reports (Harris, 1997), plea bargaining (Maynard, 1984), legal opinions (Hafner, 2010), arbitration awards (Gotti, 2008; Hafner, 2011) and legislative texts (Bhatia & Bhatia, 2011).

Most of these studies are concerned with the analysis of disputes and remedies, costs and benefits, profits and losses, but in legal contexts and for purposes that are not entirely relevant for this study. For example, Hollander-Blumoff (2005) researched

academic law reviews and legal journals on the topic and found that most of these articles typically "have at least some descriptive elements *(e.g.,* how legal negotiation does work) and some prescriptive elements *(e.g.,* how legal negotiation should work - that is, how practitioners should negotiate or how scholars ought to conceptualise the legal negotiation process)" (p.151). However, none of the articles include any discussion of the role that communication plays in negotiation because most of them are not premised on any type of research-based linguistic analysis of legal texts and language. More recently, Firth (2014) also laments that fact that research rarely considers the communicative processes of negotiation:

> Although communicative interaction is the quintessence of negotiation, there is nevertheless a veritable dearth of studies that address the discursive and interactional nature of the phenomenon, let alone produce and examine transcripts of recordings of negotiation. in addition, remarkably few studies have hitherto been based on 'real life' instances of negotiation: studies of simulated encounters predominate (p.8).

For these reasons, this study of contract negotiation as a discourse-based and authentic situated activity can only draw on a limited research literature that has examined the contract negotiation and drafting process from certain sociolinguistic perspectives that relate more or less indirectly to the analytical concerns of this study.

3.2 Contract negotiation

In applied linguistics or discourse analysis, contract negotiation is often considered a "cognate" of bargaining (Firth, 1995, p.10), involving an inherently competitive exchange of proposals and counterproposals, motivated by a need to reach an agreement that will essentially be a compromise between the competing interests (Gulliver, 1979, p.71). Like most legal processes, contract negotiation can be complex and protracted over an extended period of time due to the necessity for multiple interactions between contracting parties and their professional representatives in the "formation, negotiation, documentation, or consummation of a business deal (Klee, 2003, p.5).

Salmi-Tolonen (2008) argues that contract drafting is not only designed to formalise a deal in agreed terms between the parties, but is defined as having both a *preventive* and *proactive* legal function:

> The thinking of the proactive law movement represents a shift from the traditional *ex-post*, court-centred, backward-looking approach to a future-orientated *ex ante,* real-life approach. In other words, rather than treating contracts solely as a means to avoid disputes, conflicts and litigation, practitioners of proactive law view them as means for planning ahead and for advancing cooperation and possibilities for all parties involved (p.118).

It can be argued that the success of this dual function depends two basic premises. The first premise is that any negotiated cooperation between the parties (within the meaning of *proactive law)* must adhere to contractual law principles and other applicable laws in order to prevent possible legal disputes from arising (within the meaning of *preventive law*). An important distinction to make here is that contract negotiation is not a part of substantive law, but a social, discursive process that is designed to achieve legally binding outcomes. It nevertheless occupies a place in legal doctrine on the basis that the "bargaining chips" of most negotiated outcomes "derive from the substantive entitlements conferred by legal rules and from the procedural rules that enable these entitlements to be vindicated" (Galanter, 1984).

The second premise for successful negotiation is to ensure that the interests of each party are formalised in definite contractual terms as a *preventative* way to avoid any possible ambiguity and thus *proactively* ensuring a successful legal relationship. Salmi-Tolonen et al. (2011) argue that legal relationships, partnership and contracting are all language-related issues, and "successes and failures in these relationships are successes and failures in language use in one way or another" (p.10). These perspectives therefore underpin the rationale and motivations for this research project to focus on the discourse analysis of contract negotiation.

Karsten, Malmendier and Sautner (2014) more specifically examined M&A deals and identify two negotiation approaches defined either by cooperation or competition:

> According to the *cooperative-execution hypothesis,* the main objective of lawyers is to jointly execute legal elements of a transaction to mitigate economic issues that arise between buyers and sellers. Under this view, lawyer expertise is used to maximize the joint surplus of both parties by reducing transaction costs and facilitating deal completion (e.g., Gilson (1984), Mnookin, Peppet & Tulumello (2000)). Conversely, the *competitive-advice hypothesis* holds that lawyers compete with each other to primarily achieve negotiation outcomes that are in favor of their own clients.

Both approaches involve different discourse strategies and interactional routines to achieve successful negotiated outcomes, with the *competitive-advice* approach requiring a higher degree of professional expertise to negotiate in favour of the interest of clients. However, these findings do not involve any research-based linguistic analysis of negotiation discourse and the present doctoral study is designed to overcome these limitations in the literature by examining the discursive characteristics of these competitive and cooperative approaches to M&A negotiation.

3.2.1 The importance of professional legal expertise

Karsten et al. (2014) also examined the importance of professional legal expertise for successful outcomes in M&A deals. Applied linguists attribute discursive expertise to communication skills and repertoires in work-related tasks and professional interaction (Candlin, 1999; Vuerola, 2005; Candlin & Bhatia, 1998), which are often accounted for by discourse and genre analysis. However, Karsten et al. (2014) took a more quantitative approach in defining M&A negotiation expertise by degree of experience and education that the lawyer possesses. The first index they use for the relative experience of lawyers consists of five components: "(i) a lawyer's number of years as partner; (ii) his/her deal experience; (iii) her corporate sector experience; (iv) whether he/she is an M&A specialist; and (v) whether he/she is listed as an M&A expert in the Chambers Expert Lawyer ranking" (p.13). The second index used to define education consists of three components: "(i) the ranking of his/her law school; (ii) whether he/she has a business degree; and (iii) whether he/she graduated from a US law school" (p.14). In applying the ranking of these indexes to a number of operational constructs in a corpus of M&A contracts, Karsten et al. (2014) come to the general conclusions that more legal experience is associated with more favourable outcomes (including price) in competition and that relative level of education is also an important factor related to contract design for cooperative execution. These findings need to be augmented by analysis of how discursive strategies and repertoires are used to achieve professional goals and communicative outcomes under this study.

3.2.2 The contract negotiation process

It is common legal practice for the party initiating a contractual arrangement (such as the seller under a sale contract or the principal under an agency or distribution contract) to begin negotiation by tabling a contract they have used previously or a template commonly used for that type of commercial agreement (Townley & Jones, 2016). These are designed to expedite the negotiation process but can also act as a kind of "control mechanism, in that the writer is expected to operate within these predetermined categories" (Bremner, 2008, p.308). Such documents (or templates) tacitly support the principal party, i.e. the one initiating the negotiation and the counterparty may be constrained by this "first-mover advantage" (Molod, 1994). It is thus incumbent on the counterpart lawyer to limit the influence of the template contract by proposing amendments that protect the interests of their client for the particular deal currently under negotiation. Almost all negotiation discourse activity (oral and written) between the parties is ultimately retextualised in the form of written amendments to the text of the contractual document using Microsoft editing tools in *Track Changes*, referred to collectively as *Markup* (Townley & Jones, 2016).

3.2.3 The textual function of Markup

Using the Track Changes software in word processing documents to highlight proposed amendments and deletions to consecutive versions of a contract in Markup is an extremely effective device for assisting counterpart lawyers to negotiate terms of the contract. Such amendments and/or deletions are in a sense provisional, pending challenge and/or ratification by the opposite party's legal representatives. The discursive practice known as Markup requires lawyers to carefully identify all proposed changes made to the terms of the contract by the counterparty (even without any accompanying textual explanation) and this is facilitated by the Track Changes software assigning different colour text to changes made by different authors to the same draft document. The counterpart lawyer, if agreeing to the proposed changes without feeling the need to renegotiate, will accept them by using the Track Changes software to resemiotise the colour coded text as standard black letter font. Contentious terms

requiring further negotiation remain highlighted in coloured Markup until a mutually acceptable formulation has been agreed to over successive draft versions of the contract.

The Track Changes software also enables negotiating parties to insert c*omments* alongside proposed amendments, which serves two important negotiation discourse functions. First and foremost, they represent the most direct (and arguably most effectual) way for the lawyers to notify the counterpart of the reasons for making proposed changes highlighted in Markup or to raise questions for further clarification. In professional discourse contexts, these intertextual functions also improve reference and retrieval of information and increase levels of accountability among the discourse participants. It is surprising to note that these discourse activities, so intrinsic contract negotiation, have not subjected to any linguistic-based analysis and this current study is designed to fill a very significant gap in legal discourse literature.

As a focus for analysis, contract drafting can be regarded as a crucial component of legal discourse expertise that involves the appropriation and use of discourse-specific lexico-grammatical resources across different genres, professional practices and professional cultures within the meaning of interdiscursivity (Bhatia, 2010, 2012). It is also inherently intertextual in the ways that it draws upon prior textual amendments and in turn shapes or influences subsequent versions of the contract under negotiation (Devitt, 1991; Bhatia, 1993, 2004; Bremner, 2008; Warren, 2013). The other main discursive activity used by lawyers and other professionals to collaborate and negotiate the co-construction of contracts is the intertextual and interdiscursive use of email communication.

3.2.4 Legal email communication

Email communication has been identified as an integral part of legal practice to the extent that it is the "dominant mode of communication for lawyers" (Nadler, 2004, p.226). In relation to contract negotiation, Nadler argues that the speed and efficiency of email correspondence makes it the preferred mode of communication:

> Whereas in the past lawyers were forced to arrange a series of face-to-face meetings with opposing counsel to conduct settlement discussions or to discuss the terms of a

> deal, the availability of communication technology such as e-mail allows lawyers to negotiate "on the fly" without the need to set aside special days and times to talk with other lawyers involved in the deal or dispute. Because many negotiations between lawyers take place over a period of days, weeks, or months, e-mail affords the advantage of allowing each negotiator to reply to proposals at his or her own convenience, rather than coordinating availability with the counterpart (p.227).

The fact that a significant amount of legal work is now undertaken internationally also makes it a practical necessity for lawyers working in different countries to negotiate using email communication. While telephone or internet-based video link communication exchanges still represent valuable and important communication mediums for legal discourse, the ability to negotiate complex contractual terms and conditions without the risk of being misunderstood or interrupted during the cadence of oral conversation makes emails the preferred method to identify and formalise contractual issues in writing (Townley, 2010). And due to the fact that contract negotiation usually involves a protracted process of offer and counter-offer, emails also represent a material record of the chain of legal discourse for the purposes of referral and legal accountability.

Existing studies of email negotiation have predominantly focused on business or management dimensions of commercial bargaining processes, which are discussed in more detail in Section 3.3 below. The only research study of lawyers using email communication for negotiation purposes is limited to genre analysis of a rather limited data set of six emails (Townley & Jones, 2016), a study which needs to be supplemented by further analysis in this more comprehensive doctoral study. The most important function of this particular email genre was for the lawyer to inform and explain to her client about proposed changes negotiated to a distribution contract with a counterpart lawyer representing the principal seller of duty free goods. The research implication from these email findings was that the client was unfamiliar with the legal meaning of the proposed amendments and he relied entirely on the lawyer to negotiate on his behalf. In terms of generic move and step structure (Swales, 1990), the six emails included a combination of the seven moves and concomitant steps as detailed in Table 3.1. Many of the moves were optional and when present were often not realised in separate sentences. The only moves that were always present [as marked by the heavy ✚ symbol in Table 3.1] were M1 – Salutation (Addressing); M4 – the Main Move,

which is constituted by the different types of explanatory legal advice representing the core communicative purposes and function(s) of the message; and M7 – Signing Off.

Table 3.1: Rhetorical moves and steps for an email genre to provide client advice about negotiation activity.

		Moves	*Steps*
+	M1	**Salutation – Addressing**	
+/-	M2	**Notification of Attachments** +/- preparatory justification for amendments/actions taken	
+/-	M3	**Orientation** – establishes the message as a link in a chain of intertextual and/or extra-textual interactions	
+	M4	**Main Move** – a single email message can contain more than one M4: (i) Notification of action taken, typically, amendments pre-emptively inserted in Agreement (ii) Notification of disagreement with or rejection of proposed amendments to Agreement (iii) Advising/Not advising about legal negotiation actions that might be taken	+/- **Step 1** **Justification Purpose**: gives the pragmatic purpose of the main move(s), i.e. M4 +/- **Step 2** **Justification Reason:** explanation(s) and/or reason(s) underpinning move(s), i.e. M4
+/-	M5	**Request for Action/Assistance**	
+/-	M6	**Offer or promise of further assistance/help**	
+	M7	**Sign off**	

Considering the formal relationship maintained between lawyer and client, Move 1 was often used to formally address the recipient as "Dear Client" followed by a politeness based expression such as "I hope you are fine". Move 2 was typically used to identify any documents attached to the email, which often included the version of the contract currently under negotiation and/or documents that provided more detailed information or advice (in letter format) pertaining to the subject of the email.

Move 3 was used to achieve the important cohesive function of explaining to the recipient how this particular email message fit into an overall sequence of negotiative activities, typically by referring back to a section of the same email or to a previous email, in either case producing a type of intertextuality called referential (Devitt, 1991) or endophoric (Halliday & Hasan, 1976), and/or by referencing an extratextual communicative event, and thus producing another kind of cohesion that can be called exophoric (following Halliday & Hasan, 1976). Move 3 often takes the form of an adjunct phrase or dependent clause preceding a main clause or clauses realising Move 4.

The primary communicative purpose of the emails at the Main Move (M4) was for the lawyer to provide the client with explanatory account of negotiated Clauses[8] and related issues under the contract, around which the steps cluster in a preparatory or ancillary fashion. Most emails were structured into separate paragraphs for more than one of the three different types of Main Moves to notify the client of negotiative action taken and to provide legal advice about each Clause amended. Although optional, Steps 1 and 2 were frequently used to support the Main Move (M4). In S1 the lawyer notified the client of the pragmatic purpose of the current negotiation activity. In S2 the lawyer provided explanations and/or reasons for amendments proposed or already made to the current version of the contract, or for a particular issue under negotiation (described in Move 4). Explanations and reasons were either external (legal, institutional) or internal, based on the type of negotiation activity and the needs or interests of the client (Townley & Jones, 2016). As noted above, Steps 1 and/or 2 are also often combined with the orientating Move 3, and all of these often appear as adverbial phrases or clauses preceding a clause realising the Main Moves of the message (M4).

Moves 5 and 6 were optional in circumstances where the lawyer did not require anything further from the client at the particular stage in the negotiation process and there was no further assistance that the lawyer could realistically provide the email client. Move 7 is germane to most email communication to sign off and conclude the email with a polite valediction.

In terms of the associated linguistic features, the most salient findings indicate that this

[8] The use of the capitalised term 'Clause' here refers to the provisions or sections of a contract as distinct from the use of the grammatical term 'clause' in the preceding paragraph.

type of email genre to provide the client with an explanatory account and justification for negotiation activity is discursively *hybrid*, which relates to "the mixing of different discourses, genres and styles" and the "disarticulation" and "rearticulation" of relationships between discourse and other social elements (Fairclough, 2011, p.1). Indeed, it was significant to discover how much *legalese* (see Section 3.1.2) was embedded in the interpersonal, relational discourse of the emails prepared by the lawyer to advise the client about proposed amendments being made to the contract. The use of legalese refers to the performative legal language of the contract, which is highly impersonal and extremely technical, rich in legal terms. Tiersma (1999) differentiates between this formal, *operative* or *performative style*, as exemplified in legally enforceable documents such as contracts, and a less formal, *expository* or *persuasive style* characteristic of the talk that goes on between lawyers as well as between lawyers and their clients. The latter reflects the 'style' of the emails sent by lawyer to client to explain and justify changes to the wording of the contract. Both of Tiersma's two 'styles' can be re-classified here as discourses, since both reflect and indeed realise the knowledge structures and values that underlie the practice of the law. While the persuasive discourse is superficially regarded as more comprehensible to lay audiences, the persuasive discourse used when professionals interact – orally or in writing – also entails the frequent use of technical terms as well as grammatical constructions that are foreign to everyday language use. Persuasive negotiation discourse also relies on the skilled deployment of a range of sophisticated strategies aimed at maintaining and developing a range of relevant interpersonal relationships while subtly negotiating meanings and outcomes. The two different discourses often interact in complex ways in the textual products that realise the negotiation of contracts.

Thus the language used in these emails is characterised as interdiscursive or *hybrid* in the sense they blend the technicality associated with the performative discourse of legal instruments with interactional features characteristic of a discourse that aims to persuade while also maintaining professional and/or commercial relationships and mutual trust. In both cases the former discourse is embedded in the latter, since persuasive purposes and relational issues are paramount in those contexts. This professional discourse is often more complex than the use of Markup by lawyers to draft contracts, partly because its orientation to the fulfilment of these often-competing goals (see Tracy & Coupland, 1990; Tracy & Eisenberg, 1990/1991) but also due to

recognition of different discursive roles and identities.

3.2.5 Overcoming asymmetries of legal knowledge between lawyers and laypeople

Even though contracts are often viewed narrowly as legal instruments that are negotiated and drafted by lawyers, the negotiation process usually involves other discourse participants, such as commercial advisors and other business professionals. Salmi-Tolonen (2008) notes that "expertise in contracting can be found several different levels in companies: the management, project management, purchasing or selling departments or production-management and the legal department" (p.119). However, such diversity in experience and expertise in contract negotiation can result in different perspectives and misunderstandings that need to be mediated by discourse types and communicative strategies.

Hafner (2012) acknowledges that lawyers and laypeople are often required to interact in legal contexts with their own assumptions about norms of communication, which have been developed through their historical experiences and are "grounded in their individual personal, professional, and other socio-cultural affiliations" (p.525). A number of discourse studies of lawyer-client interaction have examined oral face-to-face meetings or interviews, pertaining to legal matters such as criminal trials (Candlin, Maley, Crichton & Koster, 1995), civil litigation (Conley & O'Barr, 1990); mediation (Merry, 1990); and divorce proceedings (Felstiner & Sarat, 1986). Most of these situated interactions are characterised by significant asymmetries of legal knowledge and different perceptions of what is central and relevant to the legal matter under discussion by lawyer and client:

> On the one hand, the lawyer stands as the spokesperson for, and the interpreter of, a complex and intricate body of rules which will form the guidelines for the lawyer's advice and future action (if any) on behalf of the client. On the other hand, the client brings to the interview a narrative 'filtered through lay language and lay sensibilities' (Goffman 1961: 288). In the refinement or definition of the client's matter, it is the lawyer who has the controlling input, who must transform the social into the legal (Candlin, Maley, Crichton & Koster, 1995, p.43).

The key discursive activity for lawyers here is to translate and transform client accounts into legal relevance primarily through questioning and rephrasing or paraphrasing the client's narrative. These reformulations in legal terms are then offered to the client for confirmation or denial (p.45).

Other studies have also identified that meanings and understandings of the same rule-governed process can differ in legal contexts. For instance, Salmi-Tolonen (2008) argues that misunderstandings of key concepts of transactional law are common in international settings due to differences in legal culture and experience and differences in proficiency with legal English as the lingua franca of international legal discourse:

> In cross-border transactions, it is easy to assume that familiar words mean what we are accustomed to. What is believed to be self-evident and to go without saying may cause major misunderstandings leading to claims and disputes, even litigation…The legal profession may claim that the cause of problems are the non-lawyers who do not know the concepts but on the other hand it is also the lawyers who do not know the terminology and concepts of other legal orders (p.120)

More specifically, Salmi-Tolonen (2008) focused on the subjective interpretation of the contractual terms *non-conformity, avoidance* and *termination* in multicultural and multilingual legal contexts. When these terms are used pursuant to international legal agreements such as the Convention on Contracts for the International Sale of Goods 1980 (CISG), conflicts in interpretation can arise either due to the fact that the contracting parties ascribe the terms different meanings or because they lack equivalents under their respective national legal systems. It is interesting to note that the common sense, natural or logical meaning of contractual terms can often exacerbate misunderstanding in legal contexts and that the legal meaning and operation of these terms need to be clearly understood by all parties through negotiation and consensus. These findings help to demonstrate that language is manifested by "knowledge of legal culture in its broadest sense, including legal systems, a legal order, legal institutions, history and practice and practitioners" (p.135) and legal discourse is socially constructed and negotiated. It is therefore important for analysis to examine how communicative competencies are used to resolve any asymmetries of legal knowledge or associated problems of interpretation during the contract negotiation process (Scollon & Scollon, 1995).

3.2.6 The use of epistemological emotion in legal negotiation

It has recently been suggested that another important discourse strategy used by lawyers to mediate misunderstandings and impasse in communication relates to the ability to use analytical and emotional deliberation of subjective phenomena and experiences during the negotiation process, such as expressions of compassion, envy, hope and gratitude. In legal contexts, Ryan (2005) argues that the epistemological value of emotional insight is pivotal, as "lawyers, judges, and policymakers consult emotional data in evaluating facts, understanding arguments, formulating proposals, and negotiating resolutions" (p.237). As part of the negotiation discourse process:

> Emotional sense fuels a pre-linguistic, quasi-inductive reasoning process - an inner deliberation that runs beneath conscious thought - that enables each of us to draw on stored information about emotional phenomena to hypothesize about motives, behavior, and consequences, both within ourselves and in others (p.244).

This type of emotionally resonant knowledge can be drawn upon to help understand and resolve some of the complexities of interactional discourse between participants. The epistemological exercise of empathy, for example, has been identified as a key component of successful negotiation. Empathetic understanding of opposing perspectives and cultural differences enables lawyers to shepherd the negotiating process "past pitfalls of misunderstanding, communication breakdown, damaged trust, and even substantive impasse" (p.262) in order to mediate a successful outcome.

What makes this novel area of discourse study somewhat controversial and perhaps makes emotional epistemology underutilised in legal contexts is that lawyers are traditionally expected to be keenly rationale thinkers, beyond any considerations of emotional variables (Golann & Golann, 2003). Indeed, we can see this type of institutional mask or role in operation in research studies where lawyers translate client narratives of subjective experience into legal terms that are objectively rule-orientated (Conley & O'Barr, 1990; Candlin et al., 1995). Ryan (2005) goes further, however, to argue that negotiating lawyers are "discouraged from refining (or even acknowledging) their use of emotional knowledge by a professional culture that disdains it" (p.236). Nevertheless, her research supports the argument that all negotiating parties, including lawyers, engage in what is called an "epistemological emotionality-loop" to to "hypothesize about the other parties' projected experiences (and respond accordingly),

and then consult emotional sense to evaluate the success of his/her projections (and modify as necessary)" (Ryan, 2005, p.262). Ryan positions this *loop* within a psycholinguistic space she refers to as the *Negotiation Beneath*:

> Facilitating the substantive negotiation above, the *Negotiation Beneath* generates a constant stream of connective tissue that holds the overall enterprise together against the forces of inherent interest conflicts that might otherwise tear an emerging resolution apart.

The ensuing argument is that without such an emotional reasoning process, negotiators run the risk of impasse and failure. In addition to the use of empathy to understand and mediate differences, analysis can also seek to identify and evaluate interpersonal communication traits and strategies that have emotional tenor (Halliday, 1994), involving "collective deliberation, listening and mindfulness in negotiation" (p.283). Meanwhile, Martin and White (2005) have developed a useful conceptual framework – the so-called Appraisal Framework – for analysing the emotional or affective nuances of language.

The meaning of *negotiation* is left deliberately broad by Ryan (2005) in order relate her theoretical discussion of epistemological emotion to most areas of legal practice: transactions, disputes, lawsuits, legislative proposals, client interviews and settlement conferences. However, she is unable to provide any detailed case studies to support these claims. These types of interpersonal negotiation discourse strategies have been researched more extensively in business contexts discussed below.

3.3 Business negotiation

Most of the existing literature on commercial negotiation discourse analysis involves business entities represented by business professionals. Indeed, beyond the types of research discussed in Section 3.2 above, Hafner (2014) notes that, "there has been relatively little research conducted into written genres specific to the legal workplace (e.g. communication within a law firm)" (p.354). It is not the intention of this study to explore business negotiation literature in any great detail, but in Section 3.3.1 below I touch on some discursive activities and strategies that prove transferable to the analysis of legal negotiation.

3.3.1 Interpersonal discourse strategies for successful business negotiation

There are many linguistics-based studies of business negotiation that focus on the use of interpersonal discourse strategies to maintain business relationships in order to achieve successful business outcomes. For instance, Pinto dos Santos (2002) analysed a corpus of business letters exchanged between Brazilian and European companies and found that "an amicable atmosphere between participants and the progression of the negotiation exchanges" was achieved with "certain lexical options which carry the meaning of personal impact or emotional feelings such as regret, believe, feel, trust and hope - all processes of mental nature" (p.184). More specifically, he identified that the use of formal expressions such as modals, adjuncts of entreaty, indirect questions with hypothetical expressions, and minimised imperatives to request either services or information "help to create an atmosphere of cordiality and respect" despite differences in language status, business interests and market knowledge, which emerge between companies from different countries (p.187). In a similar cross-cultural business context, Nadler (2004) also tested a hypothesis about successfully engaging in *small talk* under a controlled experiment of a group of learners given the task of negotiating the sale of a car. Compared to those research participants who were not given the opportunity to develop some rapport with their counterpart prior to negotiation, the majority of those participants who were directed by Nadler to engage in "small talk" were found to be more likely to reach agreement rather than impasse, and were less angry and more respectful of their adversary in negotiation.

Another important discursive feature, to which the maintenance of a good rapport and successful business relationships is commonly attributed, is the concept of politeness. This concept has most often been analysed in terms of the related concepts of *facework* and *face-threatening acts* (Brown & Levinson, 1987). Face has been analysed in terms of two broad systems, *positive* politeness strategies and *negative* politeness strategies (Brown & Levinson, 1987). These have also been referred to as a *solidarity* politeness system and a *deference* politeness system (Scollon & Scollon, 1995). A solidarity face system (equivalent to *positive politeness* in Brown and Levinson's terms) refers to language use in a social context in which there is no power difference or distance between the participants, and these express closeness to each other through strategic communication choices. A deference politeness system (*negative* politeness in Brown

and Levinson's terms) involves participants who are considered socially equal but who keep each other at a distance in order to "have autonomy and not to be unduly imposed upon" (Ho, 2011, p.302). Both types of system are marked by certain pragmatic and lexico-grammatical choices. Among the former are speech acts such as requests, apologies, encouragement, recognition and compliments. Among the latter we find the strategic use of personal pronouns as relational devices[9]. These discursive choices enable professionals to establish a particular social status or relationship with other members of the business community and to accurately define the aims they pursue (Myers, 1992; Gil-Salom & Soler-Monreal, 2009; Cortés de los Ríos, 2010; Ho, 2011). Both systems are relevant for the present study of contract negotiation in the context of international legal practice, where multicultural and multidisciplinary professionals are required to collaborate on finalising a complex M&A transaction.

Also significant is the analysis of *face-threatening acts* (FTAs) in this professional setting. As discussed in Chapter 2, the social assumption is that FTAs threaten face through acts of aggression like insults (Infante & Rancer, 1996), or expressions of disapproval, intolerance or rudeness (Lakoff, 1989). However, in business contexts, FTAs can be regarded as necessary speech acts, involved in the exchange constructive criticism, naming things, speculating or asserting one's priority (Myers, 1989, 1992; Gil-Salom & Soler-Monreal, 2009). As Jones (2009) has argued, conflict (and by implication disagreement and other FTAs) is inherent in business discourse. There is also the concept of "politic/appropriate" activity (Locher & Watts, 2005, p.11), which is regarded as a type of behaviour that does not fall into the category of polite or impolite behaviour on the basis that it always goes unnoticed during an interaction because it is taken to be "appropriate to the current interaction" (p.17). The extent to which these types of FTAs or politic behaviours negatively impact on professional relationships depends on analysis of the institutional and/or professional norms of interaction and the professional roles and identities of the protagonists. This involves consideration of the social distance (a symmetric relation) and the relative power between them (an asymmetric relation) (Brown & Levinson, 1987). The way that FTAs are managed in professional contexts also relates to the use of lexico-grammatical choices and

[9] Lexico-grammatical choices for politeness strategies relate to the pragmatics of language use discussed in more detail in Chapter 4 in relation to the semiotic resource perspective of the MP model.

politeness strategies (positive/solidarity and negative/deference) to repair or compensate in some way the threat to face.

3.3.2 Business email negotiation

For studies of English as a lingua franca in cross-cultural communication, Jensen (2009) notes that "the spread of English as a common language in international business communication has been considerably facilitated by the increased use of e-mail within the last decade" (p.6). Part of the reason for this is that the informal style of emails makes them "less threatening to use when communicating in a foreign language" and "the use of email is not bound by personal schedules, geographical limitations, or time zones" (id.). These developments in professional communication have been the subject of a growing number of discourse oriented studies of email communication used for business negotiation purposes (Gains, 1999; Nickerson, 1999, 2000; Pinto dos Santos, 2002; Gimenez, 2000, 2006; Nadler & Shestowsky, 2006; Jensen, 2009; Cortés de los Ríos, 2010; Warren, 2013).

Similar to earlier research highlighting the use *small talk* to develop rapport during negotiations, Nadler and Shestowsky (2006) more recently stress the importance of using preliminary emails to establish a form of "common ground" among discourse participants before engaging in email negotiation. This is considered an important discursive strategy to "compensate for the absence of communication facilitators such as nods, eye contact, gestures", which are commonly used during face-to-face negotiation meetings (p.155). Other studies have analysed email negotiation as an interactive activity evolving over time, with a particular focus on interaction goals and strategies of the protagonists (Putnam and Wilson, 1990). In response to suggestions that the decontextualised nature and communicative brevity of email can diminish conventions of politeness and reduce regard for face risk management (Goffman, 1967), which are normally associated with the more established and personalised communication forms for negotiation such as face-to-face meetings or telephone calls (Murphy & Levy, 2006), Jensen (2009) found that managers of a Danish and Taiwanese company were able to use discursive strategies in emails to develop a successful business relationship that "progressed from initial contact (new relationship) to on-going business (old relationship) within a three-month period" (p.16). These tactical

strategies included the use of interactional meta-discourse, such as hedges (*possible, might, perhaps, would* and *could*), boosters (*clearly, obviously, highly* and *demonstrate*), attitude markers (*interested, welcome,* and *glad*), self-mention (*the uses of we versus I)* and engagement markers *("I look forward to hearing from you"*), which are recognised by other researchers (Brown & Levinson, 1987; Charles, 1996; Hyland, 1998, 2005; Nickerson, 2000; Planken, 2005) as an important means of facilitating communication, supporting a writer's position and building a positive relationship with an audience.

Jensen (2009) also mapped the use of these rhetorical strategies in email correspondence over three phases of the entire negotiation process, beginning with (i) the *contact* phase when initial contact between the companies was established, (ii) the *negotiation* phase during which the terms of the agreement were then negotiated, and (iii) the final *in-business* phase which commences with signing of the agreement and the establishment of the business relationship. Each stage is significant for the interactional goals that are achieved by using specific types of discursive strategies. For instance, a relationship of respect and trust is established during the *contact* phase with "the buyer's frequent use of a 'low-power' communication style, characterised by a frequent use of hedges" (p.13) in recognition of the seller's position of power. Once established, the buyer uses considerably less interactional meta-discourse during the *negotiation* phase and more assertive language to signal strength as an equal partner under the agreement. It is interesting to note here that there is a shift in power as the seller now competes for buyer's interests and attempts to develop trust by combining self-mention with attitude markers and boosters, such as "we are very eager to start a long and prosperous business relationship..." (p.15). After the agreement was signed, the quantitative findings indicate that interactional markers from both parties became more personal during the *in-business* phase now that power and trust relations had been formalised by the contractual terms:

> We found a notable decrease in the use of we versus the use of I in both seller and buyer e-mails across time, which indicates that the relationship developed from the corporate level to a more personal relationship at a more informal level, more I than the institutionalised we.

In agreement with much other research, the present study has found that email communication represents an effective communication system to maintain interpersonal

relations and build long-term business relationships for successful negotiations, not dissimilar to face-to-face interactions (Sokolova & Szpakowicz, 2006; Galin, Gross & Gosalker, 2007). This of course depends on the strategic use of written language to achieve certain interactional goals at different stages of the negotiation process, relative to the context. One significant advantage of using email for non-native users of English is that it affords them the time to deliberate and deploy such discourse strategies as opposed to the immediate response times required in face-to-face interactions. Furthermore, the use of email in multicultural contexts appears to be more accepting of using minimalist language, making typing errors and linguistic errors due to the fact that "e-mail is a medium that highly facilitates non-native use of English as 'a language of communication' with its greater tolerance in respect to correctness" (Jensen, 2009, p.16).

Intertextuality is also an important feature of email communication for interactional business activities and processes (Nickerson, 2000; Gimenez, 2006; Evans, 2012; Warren, 2013). Gimenez (2006) notes that emails have evolved into a more complex genre that "embeds a series of messages generated in response to the original email, hence the name *embedded email*" (p.155, emphasis in the original). This not only relates to the rhetorical function to intertextually connect successive emails (also referred to as "chain emails" and "threaded emails" in the literature), but also how embedded messages in the chain of connected emails are dependent on others to make complete communicative sense. The use of embedded emails is also central to Warren's (2013) study of the intertextual nature of business email communication. He identified four main types of intertextuality in emails, including "(i) explicit references (i.e. signals) to prior and/or predicted texts, (ii) implicit references (i.e. signals) to prior and/or predicted texts, (iii) embedding by means of paraphrase, summary of other texts, (iv) embedding in a text by means of direct quotes" (p.15). In professional discourse contexts, these intertextual functions are relied on to improve reference and retrieval of information and increase levels of accountability among the discourse participants. In relation to the research focus of this study, the ability to retrieve emails that not only record agreed decisions but also the discursive processes that frame such decisions is also critical for accountability in legal practice and contract negotiation. A related function also generated by the email software is the extensive use of the carbon copy (CC) facility in international business communication as a way of encouraging reliable and consensual decision-making among the different persons involved in the

professional discourse activity (Gimenez, 2006). As an extension to the business contexts of these studies, the same type of analysis is relied on to examine the extensive use of email communication for legal negotiation discourse activities under this research project.

CHAPTER FOUR

THEORETICAL PERSPECTIVES ON THE RESEARCH METHODOLOGY

Chapter 4 explains the multi-perspectival research model that is used by this study. The chapter also includes discussion of the literature pertaining to the research methodologies available for each of the five ontological and epistemological perspectives within the model, and the relevance these have for my present research.

4.1 The Multi-Perspectival (MP) research model

In step with the recent approaches to discourse and genre analysis as used in relation to legal practice and ELP, discussed in Chapters 2 and 3, this study of legal contract negotiation has been conceptualised on the understanding that the "connection between workplaces and their discourses is now well established in the research literature" (Candlin, 2006, p.1). It no longer suffices for professional discourse analysis to be undertaken in isolation from the social nature of its institutional context, "where resources are produced and regulated, problems are solved, identities are played out and professional knowledge is constituted" (Sarangi & Roberts, 1999, p.1). In response to these research premises, a number of different variations on the concept of a multi-perspective analytical framework have been developed to account for the complex role of language in different social discursive contexts (Fairclough, 1989, 1992; Cicourel, 1992; Firth, 1995; Martin, 1997; Bhatia, 2002b, 2004; Martin & White, 2005; Hausendorf & Bora, 2006; Handford, 2010).

This study adopts the multi-perspectival model recently introduced by Christopher Candlin and Jonathan Crichton and devised specifically for discourse analysis (Candlin 1987, 2006; Crichton, 2003; 2011; Candlin and Crichton 2011). This research model has been designed to undertake a three-dimensional approach to analysing text (written and oral), discursive practice and social (professional) practice:

> The 'text' is the sample of written or spoken language; 'discursive practice' describes the text as it enters into social interaction, and 'social practice' focuses on the social origins and consequences of the discursive event and on how it shapes and is shaped by larger scale processes such as those associated with particular organizations and

> institutions. These three dimensions are not discrete – as if texts lead three separate but concurrent lives. Rather, the three-dimensional account of discourse points to the fact that discursive events are instances of socially situated text, embedded in and constitutive of social practice (Crichton, 2011, p.29).

The key research premise is that situated socio-pragmatic practices shape a given text in its inception and in its development. For example, any contractual document used in the negotiation process is the textual product of complex interactional processes, involving a range of different discourse participants and a determinate range of discourse types and strategies. As such, the communicative contexts in which these discursive resources and capacities are deployed and the professional practices within which they are embedded are just as important as the resources themselves, which contexts of use and generic goals have gradually shaped (Bhatia, A. & Bhatia, V. K., 2010). Analysis of this language-context inter-relationship therefore becomes crucial for researchers to understand the strategic and dynamic deployment by participants of their discursive resources, often in a co-constructed and collaborative way, in the pursuit of particular professional, institutional and personal objectives (Roberts & Sarangi, 1999; Candlin, 2002; Sarangi, 2005, 2008).

Use of the multi-perspectival model (the MP model) obliges the researcher to deploy a variety of analytical tools and a range of empirical data to account for the complexity of social discourse activities. For example, in a study of the discursive construction of creativity, Hocking (2010) collected data generated from "a variety of primary and secondary discursive practices, including texts and other semiotic artefacts, the interactions and interpretative accounts of participants, recordings and observations from ethnographic sites of engagement" (p.238). He also extended his analysis to focus on an understanding of the socio-historical ideologies that define the institutional culture of the situated context. This is a considerable challenge for the researcher, but the reflexivity of the multi-perspectival analytical model is crucial in order to "keep both language and context *in play* during analysis and to ensure that neither is marginalized" (Crichton, 2011, p.20). Otherwise, a significant risk is that "some perspectives will be a priori subordinated, underdeveloped or excluded" (p.22).

Such criticisms have been levelled at Fairclough's (1989, 1992) focus on the operations of power and ideology in society under critical discourse analysis (CDA). The

orientation of this focus on the power and ideologies of dominant social groups means that, "individual action is a priori subordinated to macro-social structures and processes, and consequently, in relation to methodology, the social-theoretical assumptions which underpin constructs such as 'power' and 'ideology' drive the analysis of data representing micro-social phenomena" (Crichton, 2011, p.2). At the other end of the language-context spectrum, it has been noted that conversation analysis (CA) proponents (Sacks, Schegloff & Jefferson, 1974; Sacks, 1992) exclude potentially relevant features of institutional or social context by focusing on the sequential organization of talk at the micro level. For them, it is only essential to understand the context in which the sequential organization of talk occurs.

The different approaches taken by CDA and CA to the analysis of language and context have raised concerns that these linguistic research traditions tend to focus on particular phenomena to the neglect of new discoveries. In highlighting the way that the multi-perspectival approach does not subordinate or exclude any possibly relevant perspectives, Crichton (2011, p.25) notes how researchers' prior knowledge and research assumptions are challenged by the social realities of the discourse activities under scrutiny as a necessary function for interpretive analysis:

> Rather than a 'hierarchic mechanism', this suggests a more fluid relationship in which the different perspectives have the potential to combine, draw on and contribute to each other in ways which can be informed by the emergent understanding of the researcher, and which leaves open to discovery how the perspectives interrelate in particular settings by keeping them continuously 'in play'.

Within the encompassing sphere of the analyst's research motivations and activities, the other interrelated perspectives are defined along the macro-micro nexus linking the *social-institutional* and *social practice* contextual perspectives to the *semiotic resources perspective* with the *site-specific discursive practice.* These are represented by intersecting circles and visually positioned within the encompassing outer circle, representing the analyst's perspective, in the Venn diagram in Figure 4.1 below. However, the research focus is not necessarily designed to proceed from *macro* contextual realities of the study to the *micro* textual details of recorded data. For instance, the use of semiotics within the *site-specific discursive practices* can be analysed to explore the social and cultural reasons for rhetorical features and lexico-grammatical choices identified in text (Bhatia et al., 2008). Alternatively, analysis can

also focus on the way that the *social-institutional context* and *social practices* influence and shape the choice of *semiotic resources* for certain types of discourse activities. Candlin & Crichton (2011) define the overlaps in the Venn diagram in Figure 4.1 as "(Inter)discursive relations" in order to highlight the "interdiscursive nature of research that seeks to combine these perspectives in the exploration of a particular discursive site" (p.10). Indeed, the utility of this MP research model is defined by the functional ways that the different analytical perspectives complement each other in providing a grounded and holistic account of language in action:

> The overlapping circles represent different ways of understanding and investigating the discursive practice(s) under scrutiny. Within this ontology, discursive practices may be investigated from one or more of the perspectives: a single discursive practice can be viewed from one perspective, or at the overlaps between two, three or all four circles (Crichton, 2011, p.33).

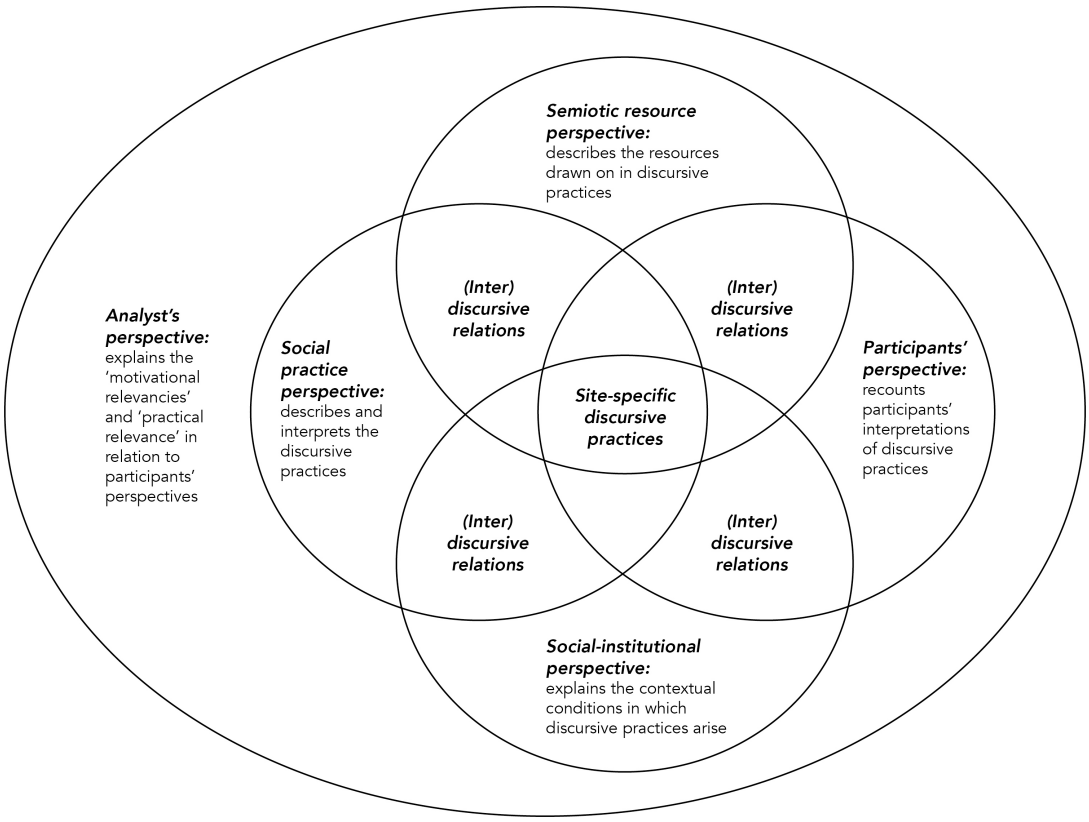


Figure 4.1: Model for a multi-perpsectival research. Adapted from Crichton (2003, 2011) and Candlin & Crichton (2011)

4.2 The Analyst's perspective

The MP model is designed to overcome the risks of prioritising certain sociolinguistic phenomena discussed above and to account for subjective bias by forcing the analyst to first define their what they believe are the discourse relevancies of the given study (Candlin, 2006). Linguistic research invariably begins with the analyst forming certain assumptions about the proposed study, including theories regarding the nature of the research language-context and the preferred research methodologies for investigating it. However, preliminary assumptions can be misleading and research questions can "create contextual frames that may not be consistent with informant's everyday practices" (Cicourel, 1987, p.217). On this basis, any *motivational relevancies* that an analyst initially uses to define research focus and methodology need to be *reflexive* in being able to reconcile any ontological or methodological differences that may arise between the analyst and the participants once the research process begins. This reconciliation process is an ongoing concern for the duration of the study and the need for research reflexivity is of "practical relevance" when we consider the *analyst's paradox* (Sarangi, 2002, 2007). Sarangi argues that what the analyst hears or reads explicitly or observes may not be what the discourse participants perceive as professional practice. Under the MP model, the researcher is forced to hold him/herself accountable for any interrelated relationships between discourse and social phenomena as perceived by the four overlapping circles and is therefore responsive to new analytical discoveries.

4.3 The discourse participants' perspective

The key research rationale for researching the *participants' perspective* is to obtain grounded *explanations* of situated discursive practices from those professionals actually involved, rather than rely on *descriptions* or *interpretations* from the researcher's own analytical perspectives (Fairclough 1989; Candlin, 1997). Such analysis typically involves the researcher interviewing discourse participants in semi-structured and open-ended interviews and obtaining what we can call *narratives of experience* (Riessman, 2003; De Fina & Georgakopoulou, 2008; De Fina, 2009). The important thing to note here is that these narratives are not only a primary source for understanding how the

participants interpret and present themselves in authoring their own experience, but they also represent data that the researcher can use to co-construct his/her understanding of discursive practices and the discursive roles and ideologies of the situated context. Within the reflexive structure of the MP research model, analysis of these narratives forces the researcher to "speculate openly about the meaning of the participants' utterances" (Riessman, 2008, p.137) and bring them into relation with his/her own assumptions embodied in the *analyst's perspective*. By doing so, the epistemological inequality between interviewer and interviewee is minimised as the researcher foregrounds the meanings of the narratives in relation to his/her own perspectives (Clandinin & Connelly, 2000; Riessman, 2008) in continual dialogue with the discourse participants.

Ethnographic analysis of the discourse participants' perspectives for this study also relate to their own identity and performance roles as a practising lawyer within the law firm. Identity is conceived as socially constructed by the discourse activities within the law firm, and written texts must be analysed as the contextualised performance of the author's identity (Hyland, 2012). As collective *agents* of the law firm, where negotiation decision-making is consensual and accountability is shared (Townley, 1994), researching the participants' perspectives will also provide subjective accounts of interactions with colleagues and what it means to work as a team in the law firm.

4.4 The social-institutional and social practice perspectives

The *social-institutional* and *social practice* perspectives are conceptually positioned at the *macro* end of ethnographic analysis in trying to understand the large-scale phenomena of the situated context or domain. By applying theoretical concepts related to professional workplace and organizational discourse studies, such analysis is designed to understand the professional nature and institutional order of commercial legal practice and how the organizational structure and sub-culture of the participating law firm in Istanbul operationalises discursive practices to achieve negotiated outcomes for the M&A transaction. The rationale for these social analytical perspectives is to overcome analytical weaknesses or biases inherent in the subjective narratives of the discourse participant perspectives by identifying and making transparent "features of

discursive practices which are typically unnoticed by the discourse participants because they are routine and taken for granted" (Crichton, 2011, p.39). This is a significant concern for researchers we when consider how membership to a discourse community or community of practice is often realised through the trial and error process of apprenticeship without any formal training or theoretical understanding of their discursive roles and identities within the broader social activity of negotiating an M&A deal.

4.4.1 Social-institutional perspective

The social-institutional perspective examines the social structures that regulate and constrain particular institutional (or professional) discourse activities. For this study of M&A legal practice, this entails identifying the social reasons or rationale for discursive practices that have been produced and reproduced over time in accordance with applicable laws and institutionalised activities. This type of ethnographic social analysis draws on *activity theory* (Engeström, 1999), which views human activity as object-orientated, collective and mediated by discursive tools and resources, and social and historical in nature (Engeström & Miettinen, 1999). While research studies of *activity* have traditionally been aligned with cultural-historical activity theory and sociocultural psychology as an applied social science, a growing body of applied linguistic analysis is now focused on exploring the degree to which discursive activities are regulated by ideological positions, knowledge or values within institutional or professional contexts. It is therefore essential for this study to first understand how the 'outside' professional systems for M&A transactions are socially constructed and justified before exploring the extent to which they influence or constrain the social practices or *activities* 'inside' the law firm.

Another research methodology to examine the social nature of M&A legal practice is to use critical discourse analysis (CDA) to identify the economic and legal relationships of power and control over the negotiation process (Fairclough, 1992). As a key practice area of international commercial law, M&A transactions are inherently complex involving different legal and business professionals - often with competing interests and goals - across different cultural contexts and legal jurisdictions. CDA is applied to this

social process to understand the ideologies of dominant groups or alliances of participants and the unique ways that they have evolved into power-knowledge discourses that enable professionals to collectively perform tasks, solve problems, and attain their communicative goals.

4.4.2 Social practice perspective

Discursive activities for international M&A transactions are stabilized by shared repertoires of professional experience, knowledge, genres and regulatory procedures. The social practice perspective is focused on interpreting how lawyers and other professionals contribute to these discursive activities through participation; often as routine activities due to the fact they have become so conventionalised or institutionalised in a mutually understood social world (Crichton, 2011). For the broader professional context of international M&A legal practice, this requires me to reflexively investigate the extent to which these discourse activities are shaped by regulatory and customary practices for M&A transactions in Europe. Within the more specific context of the participating law firm, research must also examine how discourse expertise is operationalised by the organizational structure and sub-culture of the firm and how well coordinated and aligned the lawyers are in their strategies of dealing with other discourse participants during the negotiation process. Through comparative analysis of the social practices and discursive roles of participants for both contexts, there is also the research opportunity to account for what the law firm is doing in new and productive ways to differentiate itself as an M&A law firm in a competitive market for legal services in Turkey. Engeström and Miettinen (1999) refer to such innovation as "the inherent contradictions" that lead to change and individual autonomy. An innovative perspective or discursive strategy can also prove crucial in expediting the negotiation process and/or determining the successful outcome of impasses in negotiations.

4.4.2.1 Discursive roles and identities

Analysis of the social practices of the law firm will need to be augmented by sociolinguistic understanding of the discursive identities and relationships of the

participants, including the different roles they play *frontstage* (with the client and counterpart lawyers) and *backstage* (with each other) (Goffman, 1959; Sarangi & Roberts, 1999). Since social identities are themselves extensively (re)produced in language, the analysis of interactional and institutional discourse can reveal a great deal about them, not just denaturalising stereotypes but also describing their emergence, embedding and effectivity (Rampton, Tusting, Maybin, Barwell, Creese & Lytra, 2004). This is particularly relevant for legal practice, whereby lawyers are defined by their field of professional expertise and the roles and activities they become designated to performing within a law firm. For instance, it is not uncommon to refer to a particular employee as an 'M&A' lawyer of a 'tax' lawyer on the basis that they work predominantly on M&A deals or tax-related tasks.

4.4.2.2 Professional discourse expertise

Another key issue for institutional analysis is to explore how the law firm operationalises professional discourse expertise for negotiation practices. One preconceived research approach is to analyse how the participating law firm perceives and evaluates discourse expertise in English and how it is delegated and operationalised internally during the contract negotiation process. At the top level of institutional hierarchy, this can begin with defining the professional values and ideology (as opposed to 'culture') of the law firm as a type of discourse that can be analysed (Krause-Jensen, 2011). This knowledge can then be applied to the discursive level, to analyse how these institutional ideologies and values (if any) inform and shape the negotiation discourse practices of the individual lawyers working together. Researchers have described the nexus between ideology and communicative competencies and expertise as the convergence between experience and interaction (Wenger et al., 2002). And while there have been no studies undertaken within a private law firm, there are a number of comprehensive studies detailing accountancy practices (Birkett, 2003; Flowerdew & Wan, 2006; Kavanagh & Drennan, 2008; Jones, 2009, 2014) and arbitration discourse (Bhatia, Candlin & Engberg, 2008) that examine theoretical concepts of knowledge, competencies, skills and attributes, which may be transferable to analysis of legal negotiation discursive practices.

Jones (2014), for instance, defines expertise in professional practice as the successful

use of discursive strategies and lexical and grammatical choices when participating in activity types or communicative events (p.27). This mainly equates to the deployment of skilled interactional routines or conventional discourse types (Sarangi, 2000; Candlin, 2006) in recognition of the fact that they often serve routine communicative functions in situated contexts. This resonates with the use of genre analysis to understand how professional goals and interests are advanced using conventionalised modes of communication. Jones (2014) also raises the exigency of communicative competencies and expertise to be able to respond to discursive challenges by using "a range of contingent and dynamic discursive-communicative strategies that cope with unexpected scenarios or problems" (p.31):

> Expecting differences (Marra, 2008) and indeed expecting things to go wrong, communicatively and interactionally (Scollon & Scollon, 2001: 22-23), while having the resources to cope with eventualities these are hallmarks of expert communicators.

4.5 The semiotic resource perspective

The *semiotic resource perspective* has a micro-interactional analysis function to account for the discursive resources that the participants use to create meaning and achieve discursive goals within the contextual realities of the *social institutional and practices* perspectives of the MP model. As a relational feature of CDA, it is also used to understand the inter-relationships of power of the discourse participants and the discursive strategies that enable them to interact and undertake the complex intertextual and interdiscursive recontextualisations (Candlin & Candlin, 2002). These semiotic resources are embedded in a variety of written texts under analysis, such as contracts under negotiation, marketing and regulatory documents and email communication. The research approach is therefore to use discourse analytical tools to bridge the gap between text and context, such as genre analysis and pragmatics.

4.5.1 Genre-register analysis

Genre analysis will be used to analyse the use of semiotic resources and the rhetorical and structural-functional organization of key textual documents used throughout the negotiation process. This primarily involves the use of Swalesean analysis to identify

the *moves* and *steps* that constitute the different negotiated genres in comparison to each other. Based on this textual analysis, the communicative purpose and discursive roles can be explored in the social context of each genre to understand what shared knowledge of conventional discourse types and strategies are required to co-construct these genres in negotiation discursive activity.

The examination of intertextuality across these key documents can also be used to explain the factors that shape genre sets (Devitt, 1991) and genre repertoires (Orlikowski & Yates, 1994a; 1994b) as they combine to achieve related activities and purposes. In pointing out these intertextual links, analysis is designed to demonstrate how a text is structured with reference to previous documents, organizational styles and collaborative communication between the discourse participants. The collaborative co-construction of these genres also involves consideration of interdiscursivity in the way that discursive resources are used and exploited across different institutional or professional contexts to achieve the common discursive goal of finalising the legal document.

For analytical purposes, these situated contexts comprise two different levels of abstraction, i.e. genre and register, which are respectively described in terms of context of culture and context of situation (Eggins, 1994). *Register* refers to patterns of a language use or certain lexico-grammatical features identified within recognizable text types or genres and used for certain discursive functions and activities. The reason for this variation is that when the situated context and field of activity differs, so do the frequencies of lexico-grammatical patterns within such texts. Cortés de los Ríos (2010) refers to these as "linguistic peculiarities" in her study of the register of business genres, which identified the extensive use of "modal verbs, conditional sentences, passive voice, imperatives, concessive, consecutive and causal clauses" (p.27). The communicative function of these lexico-grammatical features is best understood when analysed in conjunction with the contextual purpose and rhetorical and structural-functional organization of the text type or genre in which they consistently occur. Other register studies have focused the degree of formality of language used in texts to achieve certain discursive functions, which have been classified as *frozen, formal, consultative* and *casual* stylistic register.

4.5.2 Pragmatics

Pragmatics methodology is used in conjunction with genre-register analysis to focus on the use of language to signals action during contract negotiations. For example, giving a promise to undertake a commitment and asking a question to make a request are negotiative behaviours that can be rationalised and explained with pragmatics. Similar to genre analysis, pragmatics studies move beyond the micro-processes of textual discourse to understand the functional meaning that words have in the interactional contexts (Putnam, 2005, p.19) and enable researchers to understand "written communication as social engagement" (Jensen, 2009, p.7).

More specifically in relation to business negotiation, pragmatics has been used to analyse tactical moves used to influence business negotiation processes. For example, the use of lexico-grammatical tools for "command, request, advice, suggestion, tentative suggestion (positive actions)" (Sokolova & Szpakowicz, 2006, p.291) and "prohibition and negative advice and refusal and denial (negative actions)" (p.291) are extensively used in business letters of negotiation (Pinto dos Santos, 2002), business e-negotiation (Sokolova & Szpakowicz, 2006) and business meetings (Cortés de los Ríos, 2010). Such analysis has identified "language patterns from personal pronouns and content nouns (for example those denoting negotiation issues), modal verbs and their negations, main verbs and optional modifiers" (Sokolova & Szpakowicz, 2006, p.292).

Another key pragmatics feature for contract negotiation is the use of epistemic markers of stance to convey the participant's certainty or doubt toward a proposition. For example, researchers have identified the use of adverbials *perhaps* and *probably* (Conrad & Biber, 2000) and epistemic nouns *claim*, *theory*, and *assumption* (Charles, 2003) for marking epistemic stance in media and different academic disciplines, such as politics/international relations and materials science. Hyland (1998, 1999) also identified the modal verbs, *may*, *would*, *could* and *might*, and hedging verbs *suggest*, *indicate*, *seem* and *assume* to be the most frequent devices to express stance across humanities and social sciences academic disciplines. While these studies are not explicitly concerned with legal practice, the findings are transferable to the interactional discourse strategies used by professionals to negotiate contracts. For instance, the use of *modality* (the degree of assertiveness in the exchange of propositions and proposals)

(Wolf & Cohen, 2009) is fundamental to the negotiation of rights and obligations during the construction of contractual documents. Another feature particularly associated with legal discourse is the use of passive and non-specific subjects to avoid taking responsibility for epistemic marking in negotiations (Hyland, 1999).

The strategic use of politeness systems (Brown & Levinson, 1987) is also germane to the use of pragmatics to analyse professional communication. For example, Leech (1983) was able to identify common lexico-grammatical choices that are commonly made to establish a tone of politeness:

> This is achieved using impersonal verbs, the use of shields, such as modal verbs (could), semiauxiliares (seem to), adverbs and adjectives of possibility (it is possible), epistemic verbs (believe, suggest, consider, think) and intensifiers of an emotional kind (of particular interest, of particular importance). Other resources to moderate or soften the content of the message are approximators (somewhat, kind of), expressions of scepticism (in our view, in our opinion) and finally signals of pessimism by means of adjectives and nouns with negative connotations (difficult, problems, etc.).

As discussed in Chapter 3 for business negotiation contexts, there are a number of other studies that have analysed the use of interactional meta-discourse, such as hedges, boosters, attitude markers and engagement markers using person pronouns for the purposes of facework and maintaining professional relationships (Charles, 1996; Hyland, 1998, 2005; Nickerson, 2000; Planken, 2005; Jensen, 2009; Myers, 1989, 1992; Gil-Salom & Soler-Monreal, 2009; Cortés de los Ríos, 2010; Ho, 2011). Findings from these studies will be comparated and applied to the analysis of negotiation activity in this study.

4.6 The site-specific discursive practice

On any given day during the negotiation period there can be a number of different discourse activity types, discourse types, and situated communicative strategies (Levinson, 1979; Sarangi, 2000; Candlin, 2006; Jones, 2014), involving different participants interacting for negotiation purposes. In order to capture these discourse activities, the *site-specific discursive practice* under analysis is positioned at the centre of the overlapping perspectives of the MP model in Figure 4.1. This analytical term

derives from Fairclough (1992), who proposes that any instance of language use is a discursive event, which is simultaneously an instance of text, discursive practice and social practice:

> The 'text' is the sample of written or spoken language; 'discursive practice' describes the text as it enters into social interaction, and 'social practice' focuses on the social origins and consequences of the discursive event and on how it shapes and is shaped by larger scale processes such as those associated with particular organizations and institutions. These three dimensions are not discrete – as if texts lead three separate but concurrent lives. Rather, the three-dimensional account of discourse points to the fact that discursive events are instances of socially situated text, embedded in and constitutive of social practice (Crichton, 2011, p.30).

By positioning site-specific discursive practices squarely within the middle of the MP research model, Candlin and Crichton are reinforcing the work of Cicourel (1981, 1992) and Fairclough (1992), who have both emphasised that the meaning of any discursive practice must be understood by also investigating the multiple contexts along with the participants. The analytical focus is on the specific negotiation activity or practice, which is then extended to examination of the other sociolinguistic perspectives that frame around this core event or activity. As an integrated approach to discourse analysis under the MP model, the operational space between each language-context perspective and the site-specific discursive practice involves the key concepts of *intertextuality* as each discursive event is connected to precedent and antecedent discourse activities through the appropriation and use of different textual resources and discursive practices that influence the way that texts under analysis are constructed (Bhatia, 2010). Analysis must also consider the how the *site-specific practice* or activity interdiscursively draws on different semiotic resources and social-institutional discourse practices, and how these interrelations shape and are shaped by other social activity contexts.

4.7 A gap in the literature

It is important to note that while some of the legal discourse studies discussed in Chapter 3 do involve text-external analysis of context and socio-pragmatic considerations, this study is the first of its kind to undertake multi-perspectival analysis of contract negotiation in the multicultural context of international legal practice. In doing so it makes an original contribution to applied linguistics and the emergent field of professional discourse studies in situated legal contexts.

CHAPTER FIVE

DATA COLLECTION AND ANALYSIS

Chapter 5 discusses the data collection processes and research methodologies used to analyse the discourses and discursive practices involved in the sale of a cement company in Turkey. This M&A transaction was a protracted negotiation involving two seller companies and a large number of potential purchasers through an international tender and bidding process. In Section 5.1 I begin by introducing the law firm in Istanbul that agreed to participate in this study by providing a corpus of authentic contract negotiation data pertaining to the M&A transaction and allowing me to record interviews with lawyers involved in the negotiation process. I provide details of this corpus of data and the negotiation discourse participants in Section 5.2 with an account of how the data correlate with the negotiation process, which can conceptually be represented as a three-stage process:

(1) Stage One: The legal and commercial representatives of the Sellers of the Company prepared documents to begin the tender and bidding process and evaluate initial bids of interest;
(2) Stage Two: The Sellers' representatives negotiated terms and conditions of the Sale & Purchase Agreement (SPA) with individual bidders as the deal-making process to evaluate formal bids and select the winning Purchaser of the company;
(3) Stage Three: The representatives of the Sellers and the Purchaser finalised documents, transactions and regulatory processes required to complete M&A transaction and transfer ownership of the Company to the Purchaser.

I then explain the interview data collection process in Section 5.3, including details of the number of interviews conducted on-site at the offices of the participating law firm and the type of questioning for the lawyers who participated in the interviews.

In the remaining sections of Chapter 5 I explore the integrated nature of the analytical methodology used for this study, which is conceptualised as an *interpretive* case study of contract negotiation. I conclude by highlighting the implications my findings may

have in the field of applied linguistics, specifically with regard to the teaching of English for legal purposes (ESP).

5.1 The participating law firm (LF)

A significant operational hurdle for this type of analytical study was the strict legal obligation to keep all contract negotiation data confidential. Almost all contracts, regardless of content or purpose, contain a *Confidential Information* Clause that requires that information pertaining to the contract not be disclosed to persons outside the scope and ambit of the contract and there is a similar expectation for all negotiation correspondence. This is perhaps one of the main reasons why linguistic-based studies of contract negotiation are extremely limited and I also experienced a number of setbacks before gaining access to the corpus of negotiation discourse data in collaboration with the participating law firm in Istanbul.

I was first introduced to the participating law firm in 2009 through my professional association with the Dean of the law faculty at Koç University, who organised a meeting on my behalf with senior members of the law firm that he knew very well. This formal introduction was key for an outsider in Turkish culture where personal relationships carry significant importance for business collaboration. It is doubtful that the law firm would have welcomed me without this association with the Dean of the Koç University law faculty and since that initial invitation, I have gratefully benefited from their professional support in developing this research study. Nevertheless, the law firm is still bound by strict confidentiality obligations for all professional work it undertakes and a number of possible deals for analysis never came to fruition due to access being denied. After almost 18 months of delay, access was granted in December 2014 to the corpus of negotiation data (discussed in detail below) pertaining the sale of a cement business in Turkey in 2007. The law firm also agreed to participate in ethnographic interviews about the discourse records within the situated context of the law firm office in Istanbul.

5.1.1 Ethical requirements

This study is regulated by the *Australian Code for the Responsible Conduct of Research* and the *National Statement on Ethical Conduct in Human Research* (2007), which primarily state that all research projects and teaching units involving human participants require ethics approval. The ethical aspects of this study have been approved by the Macquarie University Human Research Ethics Committee in compliance with the relevant requirements for individual lawyer participation, as evidenced by the letter of ethical clearance and consent in the attached Appendix F. In accordance with research ethics requirements, the nature and purpose of my research was explained to each interviewee in order to obtain their written consent on the approved ethics consent forms. In doing so, it was clearly stated that the identities of the interviewees and their responses would be kept confidential by replacing names with pseudonyms. I have also made the decision to refrain from describing the participating law firm in any significant detail that may lead to assumptions being made about its identity. Furthermore, only my doctoral supervisors and I have had access to the corpus of written data and ethnographic transcripts and recordings.

5.2 Corpus of textual data

The study is based on a corpus of textual data for a contract negotiation process that is complex and protracted, lasting for over six months, from September 2006 to February 2007, and involving complex interactional processes, within and between law firms and other legal and financial advisors in Turkey, England, France and Portugal. While some of the most delicate negotiations involved in this process were carried on face-to-face or over the telephone, in official and unofficial meetings, these were generally progressed more systematically – and *on the record* – in the form of emails, email attachments, and as suggestions, comments and amendments recorded in successive 'marked-up' versions of the contracts under negotiation. This study is limited to analysing records of these textual documents and artefacts.

5.2.1 Sale of the Company

The M&A deal under analysis relates to the sale and acquisition of a cement business (the Company) incorporated and operating in Turkey. The Company is a complex entity that is owned 50% by a wholly owned subsidiary of a French multinational company in Turkey (referred to as Seller 1) and 50% by a Turkish company with its individual shareholders (referred to as Seller 2). These two entities are referred to collectively as the "Sellers". Seller 1 and Seller 2 formed a partnership in 1995 to invest in the cement industry in Turkey and a joint venture agreement was signed in 1997 to form the Company, which currently operates production plants and related packaging and transportation operations in Turkey. Seller 2 is a Turkish public company, the majority of whose shares are owned by six individual Turkish shareholders; these individuals also hold minority shareholding stakes in the Company directly. The sale of the Company involves selling to a potential purchaser all of the shares owned by Seller 1 (50%) and the majority of the shares owned by Seller 2 (49.79%). The remaining 0.21% of shares in the Company is to be held directly by the six individual shareholders of Seller 2, who are referred to as the "minority shareholders". The Sellers are represented by a variety of legal and financial professionals as set out in Figure 5.1:

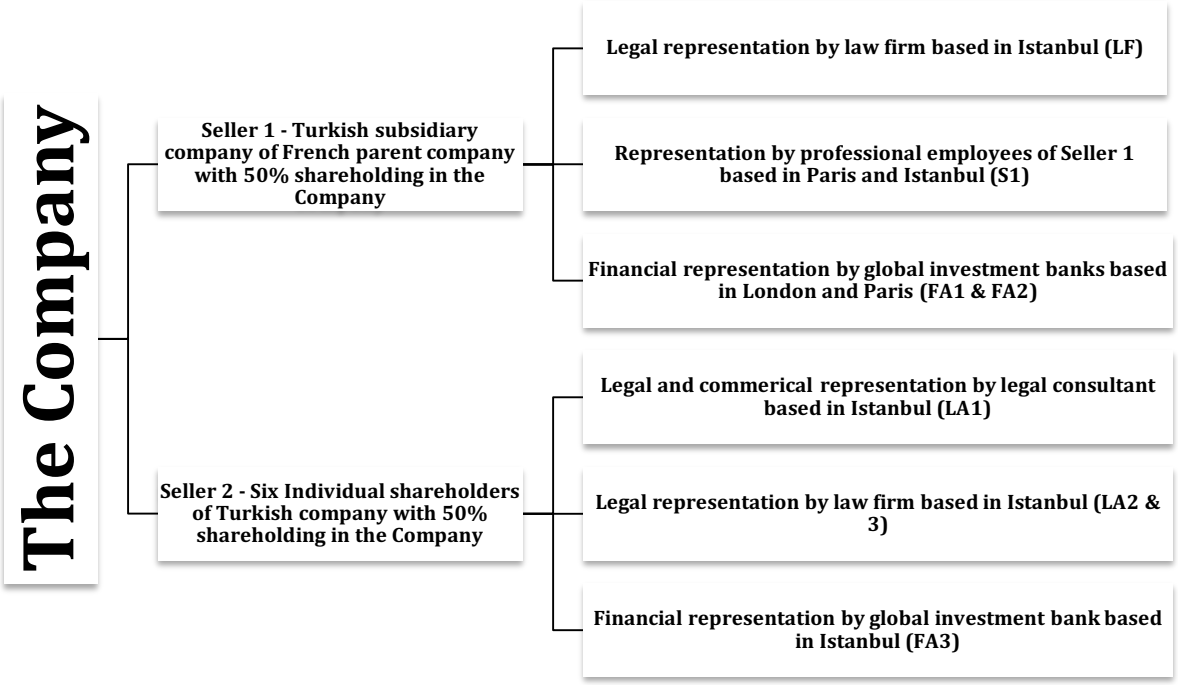


Figure 5.1: Professional representation of the Sellers of the Company

5.2.2 Negotiation discourse participants

Tables 5.1 – 5.5 below set out in more detail the variety of different discourse participants who were involved in the M&A transaction, but for different legal and commercial motivations and practices. I only obtained consent to undertake ethnographic research within the law firm based in Istanbul, which was appointed to represent the legal interests of Seller 1 in Turkey (referred to as *the law firm* or *LF* throughout this study). I did not have the opportunity to interview the other discourse participants and research is restricted to analysis of their written communication artefacts and discussions with lawyers from LF concerning their interactional activities with the other legal and financial professionals.

Table 5.1: Professional legal staff of the Law Firm (LF)

Law Firm representing Seller 1	**Turkish law firm based in Istanbul that provided me with the textual data records and participated in ethnographic research through a series of interviews.**
LF1 – Lawyer 1	Senior partner of the Commercial law department within the firm, who acted as the main contact partner for other discourse participants outside the law firm and supervisor of the other lawyers working within the law firm.
LF2 – Lawyer 2	Principal lawyer who had extensive experience working on M&A deals within the law firm and was therefore given a significant degree of independent responsibility by LF1 to participate in the negotiation process.
LF3 – Lawyer 3	Principal lawyer expert in competition law.
LF4 – Lawyer 4	Senior partner in Litigation department, who participated in one research interview.
LF5 – Lawyer 5	Founding owner of the participating law firm.

Table 5.2: Employee representatives of Seller 1

Employee Representatives of Seller 1	**These discourse participants were employees of the Seller 1 company based in Paris.**
S1	Regional Senior Legal Counsel based in Paris – (British national and the only native speaker of English who participated in the deal)
S1a	Local Chief Legal Counsel based in Istanbul (Turkish national)
S1b	Assistant lawyer involved in competition and transition agreement during Stage Three

Table 5.3: Legal representatives of Seller 2

Legal Advisors representing Seller 2	**These discourse participants were lawyers who primarily represented the legal interests of the Seller 2 company and the individual shareholders based in Turkey.**
LA1 – Legal Advisor 1	LA1 was in the unique position as being one of the six individual shareholders of Seller 2, who also represented them as legal counsel.
LA2 – Legal Advisor 2	Partner of another law firm in Istanbul, who represented the six individual shareholders of Seller 2.
LA3 – Legal Advisor 3	Junior lawyer of the same law firm as LA2.

Table 5.4: Joint Financial Advisors

Financial Advisors 1	**These discourse participants worked for a global investment bank based in London and commissioned by Seller 1.**
FA1 – Financial Advisor 1	Vice President of Investment Banking based in London.
FA1a – Financial Advisor 1a	Assistant banker to FA1 also based in London.

FA1b – Financial Advisor 1b	Managing Director of M&A in London
FA1c – Financial Advisor 1c	Resident VP Investment Banking based in Istanbul.
FA1d – Financial Advisor 1d	Assistant banker to FA1d also based in Istanbul.
Financial Advisors 2	**These discourse participants worked for a global investment bank based in Paris and commissioned by Seller 1.**
FA2 – Financial Advisor 2	Investment Director of Cement Group in Paris.
Financial Advisors 3	**This discourse participant worked for a Turkish investment bank based in Istanbul and commissioned by Seller 2**.
FA3 – Financial Advisor 3	Head of Corporate Finance in Istanbul.

There were 20 independent bids of interest in purchasing the Company (formally referred to as *Indicative Proposals*) submitted by 19 October 2006 during the initial Stage One. These bidding companies were based in a variety of countries, including Turkey, Italy, Spain, Portugal, Luxemburg and the United States. However, this list of companies was reduced to just four bidders involved in the evaluation process for selecting the winning Purchaser of the Company during Stage Two. The main discourse participants representing the Purchaser are identified in Table 5.5.

Table 5.5: Professional representatives of the Purchaser

The Purchaser	**A cement business with headquarters in Portugal.**
P1	Managing Director based in Lisbon.
P2	Investment manager.

P3	Operations manager.
P4	Turkish lawyer at independent law firm acting on behalf of the Purchaser based in Istanbul.
P5	Turkish lawyer at independent law firm acting on behalf of the Purchaser based in Istanbul.

5.2.3 Stages of negotiation activity

In a functional operational sense, the entire M&A transaction can be divided into three stages of negotiation activity. These stages resonate with the three stages identified by Jensen (2009), with reference to negotiation using business emails (see Section 3.3.2) and those identified by Koerner (2014) more specifically for M&A transactions (see Section 6.2). The three divisions that I have identified here are: the explorative stage of initiating the bidding process during Stage One (examined in Chapter 7); the deal-making phase during Stage Two (examined in Chapter 8); and Stage Three in which the M&A transaction is finalised (examined in Chapter 9). This functionally structured process is set out in Tables 5.6 – 5.8 below with a description of the key documents and the main negotiative activities and processes.

Table 5.6: Stage One – initiating the bidding process

STAGE ONE **September & October 2006**	Stage One extended over September and October and initially involved educating potential bidders about the sale of the Company. Each bidder was then required to sign a Confidentiality Agreement before formally submitting an Indicative Proposal and Authorization Certificate in order to participate in the bidding process. This involved the preparation, negotiation and revision of the following documents:
Individual minority shareholder rights	• Preliminary written advice about the rights of remaining individual minority shareholder in Seller 1 vis-à-vis the potential purchasers (bidders) by considering the Company's Shareholders Agreement and the restructuring of the Company's shareholding structure by the Purchaser.
Information Memorandum	• Referred to informally as "the Teaser", this document contained the genre characteristics of a marketing document that provided details

	about the commercial features and future viability of the Company. It was also designed to be understood in conjunction with the Process Letter. • A more detailed Information Memorandum was developed and sent to bidders after they signed the Confidentiality Undertaking.
Process Letter	• The Process Letter set out the commercial and legal realities of the sale and transfer of shares in the Company. • It also included a number of legal conditions and warranties that bidders had to agree to before submitting Indicative Proposals.
Confidentiality Agreement	• Bidders also had to sign a Confidentiality Agreement (CUA) in order to submit an Indicative Proposal. • Most bidders proposed changes to the CUA that needed to be negotiated with the Law Firm and other representatives of Seller 1and Seller 2. • Failure to agree to some proposed amendments resulted in potential bidders being rejected during this Stage One evaluation process.
Indicative Proposals from bidders	• The deadline for submission of Indicative Proposals was 12:00pm (London time) on 19 October. • 20 Indicative Proposals were received from 20 individual bidders.
Data Room Arrangements	• Data Room Index distributed on 28 September. • Data Site Service Agreement distributed on 11 October. • Disclaimer for Virtual Data Room (VDR) issued on 27 October. • Invitation to access the VDR sent on 31 October.

Table 5.7: Stage Two – deal-making

STAGE TWO **October - December 2006**	Stage Two extended from October to December 2007 and involved co-construction and negotiation of the Second Stage Process Letter and the Sale & Purchase Agreement (SPA). Characterised as the *deal-making* phase, Stage Two also involved negotiation of the SPA with four investors, including the winning bidder Purchaser of the Company
Second Stage Process Letter	• The Second Stage Process Letter set out terms and conditions for submission of formal bids by investors by 2 December.
Sale & Purchase Agreement (SPA)	• The initial version of the Sale & Purchase Agreement was first distributed for negotiation and co-construction between representatives of the Sellers on 9 October until 14 November. • A Turkish translated version was distributed on 22 November. • Finalised SPA in English and Turkish languages signed by the Purchaser on 14 December after a process of negotiation between representatives of the Sellers and the Purchaser.

Table 5.8: Stage Three – finalising the M&A transaction

STAGE THREE **December 2006 - February 2007**	Stage Three extended from 18 December until complete finalisation of the M&A deal on 27 February, which involved the following documents and discourse activities.
Competition Board Application	• It was a requirement of Turkish law to to obtain approval or *clearance* for the sale of the Company from the Turkish Competition Board (TCB). This involved the collaboration of different legal specialists in submitting a prescribed application form to the TCB.
Escrow Agreement	• An Escrow Agreement was negotiated to ensure that a percentage of the Purchase Price for the Company was deposited in an independent bank account to function as a type of financial incentive or security for successful completion of the M&A deal.
Minutes of Closing & Closing Checklist	• Tabulated documents used by the representatives of the Sellers and the Purchaser in February to help facilitate completion of all legal and administrative processes required for finalisation of the M&A deal.
Final Purchase Price Calculation	• Purchase Price schedules and Escrow account calculations finalised on 22 February for transfer of the Company on 27 February.

5.3 Interview data collection

As an integral part of my research approved by the Macquarie University Human Ethics Research Committee, I made site visits to the participating law firm to conduct structured, semi-structured and open-dialogue interviews with three lawyers to record insights into institutional practices and professional perspectives that contextualise the corpus of textual data (Geertz, 1973; Sarangi, 2008). As a key construct of the MP research model, discussing the textual discourse records and analytic findings in a collaborative way with the interview participants helped ensure that I was not interpreting the research data with incorrect assumptions or perspectives. I was then able to incorporate details from these recorded interviews into my analytical discussion of the textual findings grounded in the professional context to produce what Bhatia (1993, 2004) has often referred to as *thick description* of the legal negotiation process (a phrase he borrows from Geertz, 1973).

5.3.1 The interview process

There were three rounds of formal interviews undertaken within the participating law firm on the following dates and participants:

- Round 1 interviews – 12 December 2014 – LF1 and LF4
- Round 2 interviews – 23 February 2015 – LF1 and LF2
- Round 3 interviews – 13 August 2015 – LF1 and LF2

Interviews were between one and two hours in duration and were undertaken with the interviewees on an individual basis.

The preliminary round of interviews conducted on 12 December 2014 involved a specific set of questions designed for LF1 and LF4 to talk about the organizational structure and social (professional) practices of the participating law firm and to provide some contextual explanation about the professional roles of the main discourse participants (see Appendix A). As noted above, LF1 was the lead partner of the firm who worked on the M&A deal and LF4 was a partner in the litigation department. Even though LF4 was not directly involved in the deal, I had worked with her previously on a smaller research project for my Master thesis and I knew that she had extensive knowledge about the operational practices and culture of the law firm to make a significant contribution to this doctoral study. This was a structured interview process, whereby I sent the specific questions to LF1 and LF4 by email and they recorded their responses using individual dictaphones I had provided them. This interview approach was designed to give LF1 and LF4 a type of *professional privacy* without my involvement at this preliminary stage of the research project in order to encourage them to be expansive in responding to the questions. As I had anticipated, LF4 provided very considered and comprehensive responses to serve my research goals of producing knowledge about the social-institutional and social practice perspectives of the law firm. In comparison, LF1 was not as expansive in giving more succinct responses that required me to take more control of asking further questions and exploring the interpretation of answers (Brinkmann, 2011) during subsequent interviews.

For the next round of interviews held on 23 February 2015, I adopted a semi-structured approach to interview LF1 and LF2 in person about specific issues and discourse activities that I had identified in my analysis of the textual data since December 2014. I interviewed LF1 and LF2 individually in order to record separate accounts about the same issues. Even though I prepared questions in advance (see Appendix B), the interviews proceeded as a social practice through turn-taking and co-constructing meaning together (Talmy, 2011). I also used follow-up questions to encourage the lawyers to discuss their social practice perspectives and experiences about certain issues and discursive events during interviews. These types of individual interviews were not entirely standardised due to differences in "contextual experience and emergent meaning making" (Brinkmann, 2011, p.64). This is not to say that there were striking contradictions in the responses from LF1 ad LF2, and any differences in perspective resulted in a positive outcome to broaden the scope of ethnographic insights into the M&A deal from two legal professionals performing different discourse roles within the same institutional context. These on-site interviews in February 2015 were conducted at a time when I was beginning to comprehend the full range of issues and discourse activities for analysis in the corpus of textual data. For this reason, these interviews involved the largest number of questions and recorded the longest duration of discussions with both LF1 and LF2.

After six months of further textual analysis, the third round of interviews conducted on-site on 13 August 2015 were more focused on specific issues that required further clarification by LF1 and LF2. For these interviews I adopted an open-dialogue approach without the use of scripted questions. Instead, I relied on notes and my developed understanding of the deal to explore the complexity of certain discourse activities and the importance of broader contextual issues in discussion with LF1 and LF2 (see excerpt of interview transcript with LF1 in Appendix C). While the authentic textual materials served in the first instance as a focal point for discussion, the interview data collected at all of the interviews significantly contributed to the integrated analysis of site-specific discursive practices and activities using the MP model.

5.4 Analytical methodology

The MP model discussed in Chapter 4 was used to combine analyses of the written negotiation corpus with the interview research findings in order to understand the intertextual and interdiscursive ways in which negotiation discourse activities integrate key elements of the professional culture and discourse expertise of the professional context. However, rather than undertake such analyses for the entire continuous process over six months, the preferred approach was to analyse each of the three distinct stages identified in Tables 5.6 – 5.8 independently, using the MP framework to focus on the main discourse activities and international processes germane to each stage.

5.4.1 Comparing the perspectives of analyst and authentic discourse realities

Analysis in Chapter 6 began by comparing my own assumptions about M&A transactions with the the social-institutional and social practice perspectives of negotiating this type of international deal as a way to minimise the inequality between my preliminary assumptions and the contextual realities. Most of Chapter 6 was then devoted to examining the institutional environment of the participating law firm and the experiential perspectives of the lawyers recorded through the interview processes.

5.4.2 The focus of analysis in each stage of the negotiation process

The analytical approach was then to focus on each stage of negotiation as set out in Tables 5.6 – 5.8. Each stage is defined by certain contractual documents that were co-constructed and negotiated in a chronological sequence of interaction. The commencement of Stage Two and Stage Three was also dependent on finalisation of the documents and discursive activities central to the previous stages and for these reasons it was logical to analyse each stage independently (in different chapters of the thesis) from the others reflexively using the different perspectives of the MP model.

5.4.3 An integrated analysis

The conceptual nexus between text and context described by Crichton (2011, p.30) and earlier by Fairclough (1992) underpins the integrated approach to analysis adopted by this study:

> Any instance of language use is a 'discursive event', which is simultaneously an instance of text, discursive practice and social practice. The 'text' is the sample of written or spoken language; 'discursive practice' describes the text as it enters into social interaction, and 'social practice' focuses on the social origins and consequences of the discursive event and on how it shapes and is shaped by larger scale processes such as those associated with particular organizations and institutions. These three dimensions are not discrete – as if texts lead three separate but concurrent lives. Rather, the three-dimensional account of discourse points to the fact that discursive events are instances of socially situated text, embedded in and constitutive of social practice.

Most analyses began with examining the main *site-specific discursive practices* (representing discursive events and activities) within each stage of the negotiation process from the *semiotic resource* perspective of the MP model. This called for me to undertake detailed analyses of each key activity type and associated documentation, using a variety of analytical tools to explore the linguistic, communicative and interactional dimensions of negotiation discourse. For instance, genre analysis was primarily used to examine the rhetorical organization and discursive features of key documents and email communication using Swales' (1990) move analysis. Pragmatics methodology is then used to examine how lexico-grammatical choices and discursive strategies are used to influence negotiation activity.

This textual analysis was then extended to examine the interactional roles and communicative competencies of the participants, and the extent to which they are regulated and constrained by the professional nature and institutional order of M&A commercial legal practice from the social-institutional and social practice perspectives of the MP model. As part of this ethnographic analysis, the main discursive activities were also discussed with the participating lawyers to obtain their *insider* personal interpretations of what was going on. This was designed to reduce the inherent danger of viewing the action from the perspective of an outside analyst in developing a shared understanding of the professional world being studied (Crichton, 2011). Such an integrated approach was designed to produce a comprehensive ontology of each key

discursive activity by investigating where and how it takes place, its institutionally determined objectives and stylistic constraints, and the types of professional interactions that are involved in the collaborative process.

Another important discursive aspect to examine was the intertextual and interdiscursive relationships with other negotiation activities and documents (from different site-specific discursive practices or activities) within each stage of the negotiation. Each recension or version of these negotiated documents was attached to email correspondence exchanged between participants involved in the particular discourse event or activity, sometimes with other attached documents that assist in the interpretation and operation of the key document. The reflexive nature of the MP model then motivated me to examine the epistemological and functional relationships between these different negotiation texts and discursive events within the meaning of *intertextuality,* particularly how the discursive properties of any given text can draw upon prior texts (and emails) and in turn, shape subsequent texts or discursive events.

5.5 Case study research as interpretive ethnography

Before I begin discussing the analytical findings in the following chapters, it is important to acknowledge a difficulty that other researchers (such as Macgilchrist & Van Hout, 2011) have identified for this type of discourse analytic methodology:

> As a theoretical and methodological perspective on situated practices, ethnography is particularly useful for examining discourse production. Nevertheless, we share John Swales' (1998) hesitation to use the noun form “ethnography” for our studies on discourse production. He refers to his seminal discourse analytically inspired study of situated academic writing practices as a "textography" to "mean something more than a disembodied textual or discoursal analysis, but something less than a full ethnographic account" (1998, p.1). Likewise, given our fairly specific (thick) attention to discourse and discursive practices, we prefer to use the adjectival form "ethnographic" to embed our studies in the epistemology, attitude and research methods associated with ethnography but to bode caution in the type and scope of "findings" the studies will provide.

In light of the above, my present study can best be described as an ethnographic case study of how the M&A lawyers and business professionals “interact and communicate with one another, what they believe and value, how they define and solve problems, how they create and apply knowledge, and how they accomplish learning and work”

(Smart, 2008, p.56). It is not intended to provide a full ethnographic account of legal negotiation practices, but to focus on those key roles, practices and activities relating to the negotiation of a specific M&A transaction. This type of research focus on "a small number of informants in their everyday rounds of life or on a single event" has been characterised as a case study rather than ethnography (Smart, 2008, p.57). In comparison, Smart (2008) differentiates ethnography as research that examines a collective social or cultural group to produce a "holistic account of the shared conceptual world that is discursively constructed and maintained by the group" (p.58). Ethnography is also associated with longitudinal studies over a period of time, whereas this cases study of one contract negotiation period does not involve any comparative analysis of the development of discursive practices. Notwithstanding the limited focus, this research study can still be described as an example of interpretive ethnography in the Geertzian tradition, whereby the research goals are to gain an understanding, or a *thick description* (Geertz 1973; Bhatia, 2002a; Sarangi, 2007) of the negotiation of an M&A deal in legal practice.

It is also important to acknowledge the significant challenges of interpreting context and exploring the relationship between text and context for a complex commercial deal negotiated across Turkish, French, English and Portuguese cultural boundaries. The underlying conceptualization of context here is that it is in a reflexive relationship with the language: context, in the form of practices, constrains and enables what language is appropriate and therefore produced; also, the language reproduces, maintains and may alter the context. The role and nature of context in discourse is infinitely expandable, elusive and contested and Cook (1989b) argues that, "analysts need to forego claims of objectivity and completeness in describing a context" (p.1). Therefore, a more realistic goal of this study is to achieve a plausible, rather than a comprehensive and incontrovertible, interpretative ontology of international legal negotiation for this case study.

5.6 Applied nature of my research

The role and stance of the researcher has also been explored as a key consideration for discourse analytic studies. Sarangi (2012) draws a distinction between pure, fundamental research undertaken in the pursuit of *intellectualism* on the one hand and

more ‘practical’ applied linguistic research that is designed to examine the linguistic functions of expert knowledge in professional settings on the other. This distinction is blurred by the complex analytical outcomes of a study that generates discoveries based on language use that have important theoretical implications and also insights into the sociolinguistic applications of this knowledge, insights gained through the interpretive work of the researcher (Halliday, 2006). I would position myself as being involved more as an applied linguist in this current study, trusting that the outcomes of my analyses will be able to be applied to ELP pedagogy and in educating law students and practicing lawyers concerning the most used (and the most effective) discourses for contract negotiation. This type of linguistically informed education will provide students with a degree of professional communicative expertise in helping them to understand the effects of different discourses and discourse strategies upon those who are linked and constituted through them and by equipping them to use such discourses and strategies competently in future contract negotiations. The ethnographic perspectives of the MP model importantly ensure that this applied knowledge is not disconnected from the social practices of contract negotiation within the professional context of international legal practice.

CHAPTER SIX

CONTEXTUAL RESEARCH PERSEPCTIVES

Before focusing on the main discursive activities for each stage of the negotiation process in Chapters 7-9 below, Chapter 6 is designed to account for the macro phenomena of the social contexts of the M&A transaction under negotiation. Section 6.1 begins with discussion of my own limited knowledge about M&A negotiations, i.e. within the researcher perspective of the MP model. I show how analytical weaknesses in my personal understanding are mitigated by a systematic objective examination of the socio-economic realities of international M&A legal practice, that is, from the social-institutional perspective in Section 6.2. Against this broader social background, Section 6.3 then examines the socio-culturally situated context of the participating law firm in Istanbul, including its organizational structure and discursive practices and the roles and identities of the lawyers working on the deal in focus here – now from the social practice perspective of the MP model.

6.1 My perspectives as lawyer and researcher

I never had the opportunity to be directly involved in an international M&A transaction during my experience as a lawyer in the Information Technology (IT) & Telecommunications legal practice department of a national law firm in Australia. The only relevant knowledge I did acquire on this matter was from discussions with a colleague who specialised in such deals and my understanding is that M&A lawyers are expected to deal with a diverse range of commercial and company law issues (including corporate structure, employment, intellectual property, anti-trust and competition laws, Australian securities and corporate taxations laws) and negotiate a variety of contractual documents that pertain to the sale of companies and the transfer of shares and assets. Indeed, the scope of work was comparatively much greater than my own limited role of advising clients on telecommunication regulatory issues and negotiating contracts for the acquisition and supply of IT and telecommunications services and equipment within Australia. Furthermore, I have had no opportunity to practice law in Europe, which is the professional context of this case study. Socio-ethnographic analysis of the *social institutional* and *social practices* perspectives within the MP below is designed to

overcome these inherent weaknesses in my professional unfamiliarity with the type of M&A transaction under analysis. The subjective narratives of the lawyers' *participant* perspectives are also incorporated into these analytical accounts to provide a holistic understanding of the discursive realities of international contract negotiation for the sale and purchase of a company.

6.2 Social-institutional perspective on international M&A transactions

M&A transactions are a key activity of international commercial law practice and come within the broad contracting definition of the "formation, negotiation, documentation, or consummation of a business deal (Klee, 2003, p.5). More specifically, Paavola (2014) defines M&A transactions as:

> a unique interaction process that emerges in the process of mergers and acquisitions, where interdependent transaction parties, a buyer and a seller, who have mixed motives compete and cooperate simultaneously while attempting to create a contract (a share purchase agreement or an agreement to purchase assets) and maximize their payoffs through collaborative joint decision making. During the negotiation process transaction, parties use creative strategies and tactics, which include elements from argumentation, problem-solving, persuasion, compliance gaining and conflict management. Negotiators' are the individuals who are involved in this process as representatives or advisors of either buyer or seller parties (p.14).

Implicit in the interactional nature of the negotiation process is the participation of a variety of different professionals and it is common for M&A contracting expertise to be found in the corporate finance, project management, marketing and the legal departments of large companies. Furthermore, the majority of commercial law firms employ professionals who specialise in M&A transactions due to the ubiquity of selling and acquiring corporate capital in all jurisdictions throughout the world. It is now common for all of these professionals participating in different institutional and cultural contexts to have discourse competence or expertise in English (Candlin & Bhatia, 1998; Bhatia, 2004) in the sense that they have the ability to effectively communicate in English as the *lingua franca* for international legal and business negotiation purposes (Fenyő, 2003; Vuorela, 2005; Salmi-Tolonen, 2008).

The complexity of M&A deals negotiated across different jurisdictions and cultural contexts is now significantly regulated by uniform commercial codes and legal

processes adopted by national legal systems. In order for companies in Turkey to participate in the global economy, the Turkish commercial code and trade legislation must be compatible with global regulatory standards such as the EU acquis communautaire – the legislation that candidate countries must adopt to become EU members. Adoption of these uniform laws and principles of corporate governance relate to issues of transparency and reliability, which help define accepted business practices and regulations, often as represented by professional organisations.

The process phases for negotiating international M&A transactions have also become predominantly standardised across different jurisdictions and cultural contexts. While the academic literature describes the institutionalised processes for M&A transactions slightly differently, a general consensus can be framed around three main process phases: premerger, merger and post-merger (Salus, 1989; Haspeslagh & Jemison, 1991; Pablo, Sitkin & Jemison, 1996). This study aligns itself with the process formulated by Koerner (2014):

> The business case is developed during strategy evaluation, candidate screening as well as selection and the determination of the business model. This preliminary explorative phase is followed by "deal-making" project phases which involve the due diligence, the financial/legal transaction, including price negotiations, setting of terms and conditions, contract development and antitrust clearance. Finally, the integration planning and implementation of an M&A project is where the organisational and cultural merger is conducted.

This chronological account of the M&A negotiation process is representative of the three stages of negotiation activity identified in Tables 5.6 – 5.8 for the deal under analysis in this study. By *initiating the bidding process* during Stage One, the business case of the Company is evaluated by the contents of the Information Memorandum (Information Memorandum) and potential bidders are screened in terms of their Indicative Proposals, subject to the Confidentiality Agreement (Confidential Undertaking) and Process Letter (Process Letter) issued by the legal and financial representatives of the Sellers. The *deal-making* phase of Stage Two is characterised by more detailed evaluation of the Company by investors and negotiation of the terms and conditions for purchasing the Company pursuant to the Sale & Purchase Agreement (SPA). Once the successful Purchaser has been selected, the discursive activities to complete the sale and enforce the merger during the *finalisation* phase of Stage Three are heavily regulated by international commercial law and regulations specific to the

jurisdiction of the Company in Turkey. For example, there are a number of documents and procedures that can be defined as *administrative* without any scope for negotiation between the parties, such as the payment of Stamp Duty Tax, the Competition Board Application and other required documents identified under the Closing Checklist for completion of the M&A deal.

The practical reality of these standardised regulatory practices and processes is that discursive roles and activities are also significantly pre-determined and controlled across different legal jurisdiction in commercial law practice. This is particularly relevant for the tendering process used for this M&A deal under analysis. The rationale for using a tendering system is that the Sellers of the Company can use a pre-planned marketing programme designed and managed by the investment bankers to maximise the profile of the Company in the international market place. Furthermore, it creates a pre-determined timeframe for sale by requiring potential purchasers to submit Indicative Proposals in conformity with the agreed Information Memorandum and Confidentiality Agreement before a determined completion date. The tender bidding obligations are formalised in accordance with shared tendering principles to increase the value of the sale of the Company as the bidders are forced to submit the best price in competition with each other, details of which are kept confidential by the Sellers. The tendering process is then designed to provide the legal and commercial representatives of the Sellers with adequate time to carefully evaluate each bid through comparative analysis and the opportunity to negotiate more favourable terms with potential purchasers. The entire M&A negotiation process can therefore be described as consisting of a series of staged, goal-orientated events (Martin et al., 1987; Martin, 1993) or activity types (Levinson, 1979; Sarangi, 2000; Candlin, 2006; Jones, 2014), whereby the different discourse participants maintain a shared understanding of respective roles and activities.

From the extensive list of legal documents in Tables 5.6 – 5.8 under analysis in this study, the only contracts that involved considerable negotiation discourse with the eventual Purchaser of the Company were the Sale & Purchase Agreement (SPA) in Stage Two and the Transition and Escrow Agreements in Stage Three. Discourse records relating to these documents contain contentious issues that gave rise to discursive tension between the counterparties and analysis at these *critical sites of engagement* provides authentic insights into the application of rules and remedies and

consideration of costs and benefits for the objective of negotiating a more advantageous outcome. This represents the front stage of negotiation activities where relationships of power are played out and discursive strategies are deployed to force the other party into compromise. However, this is not to say that the parties are entirely free to negotiate desired possibilities as they are constrained by adherence to contractual law principles and other applicable laws to prevent possible legal disputes from arising (within the meaning of *preventive law*). It is also incumbent on the lawyers to formalise these negotiated terms in definite contractual terms as a *preventative* way to avoid any possible ambiguity and thus *proactively* ensuring a successful legal relationship (Salmi-Tolonen, 2008) for both parties involved in the sale and purchase of the Company.

Another interesting dynamic is played out between the legal and business representatives of the Sellers through their interaction in backstage roles. While the primary fiduciary of the lawyers is to draft contractual terms that protect client interests and prevent legal liability, the banking professionals are sometimes prepared to compromise *preventative* and *proactive* legal processes to pursue purely financial or commercial objectives through negotiation. These potential conflicts of interest not only apply to the drafting of key contracts such as the Confidentiality Agreement and Sale and Purchase Agreement, but can also arise in the development of more procedural documents such as the Information Memorandum (Information Memorandum) and the Process Letters. Such discursive interactions are restricted to backstage performance, often requiring the intervention of the Sellers to determine the outcome of the different priorities and approaches taken by their representatives.

6.3 The social (professional) practices of the participating law firm (LF)

Established almost 50 years ago, the participating law firm (LF) enjoys international recognition as a specialist in M&A activities in Turkey. This recognition is partly due to its extensive experience throughout the modernization of the Turkish economy over the past 30 years and also due to the importance it places on practicing law in English. The firm sets English proficiency as a pre-condition for recruitment and employment and maintains high communicative standards through its mentoring system discussed in more detail below.

In relation to professional personnel, the law firm maintains a ranking system for lawyers in terms of their experience and seniority. The firm's owner (LF5) has over sixty years of legal practice experience and remains active in a supervisory and advisory role on issues that require his expert knowledge and institutional authority. The firm is then structured in terms of partner, principal, senior associate and (junior) associate-level lawyers with undergraduate law student interns also undertaking work experience in the firm during the summer months of the year. After commencing work as an associate, promotion to senior associate normally takes four years and promotion to principal also normally takes a further four years, depending on yearly performance reviews. Promotion to partner level is then based on an overall evaluation of these formative years of experience and expertise.

It is institutional practice for a partner and principal or principal and senior associate to work in tandem on complex M&A transactions, with some specific discursive activities also being delegated to other lawyers within the firm. As demonstrated in the data records, the principal lawyer LF2 is involved with most discursive activities throughout the entire negotiation process and the partner LF1 is only active at specific times for specific purposes. This tandem relationship can be defined by Goffmanian (1959, 1967) performance roles, whereby LF2 is the main lead actor on *frontstage* communication with other discourse participants and LF1 performs the majority of her discursive roles backstage in consultation with LF2. In terms of her frontstage performance, LF1's role can be characterised as more *ceremonial* in the sense that she only becomes involved in negotiation activities to represent the law firm with institutional authority, such as to provide legal advice on a contentious issue, at the finalisation stage of certain contracts or to request action from other discourse participants in order to meet a crucial deadline. These performance roles will be examined in more detail in the textual records for each of the three stages analysed in the chapters below.

6.3.1 The mentoring system

The pairing of professional colleagues across different experience levels serves a number of other key organizational and operational functions within the law firm. It forms the basic structure of the professional development *mentoring* system of the firm,

whereby junior lawyers are paired with more senior associates to be trained as competent members of the firm's discourse community through an apprenticed process of watching, asking and participating. LF1 believes that part of the reason for institutionalizing the mentoring system is due to her own experience as a new lawyer to the firm more than ten years ago:

> I didn't have the chance when I was a junior because the partners of the firm back then, I mean they would just give you the documents and the annexures, and you had to just get them prepared. So we didn't have any mentors in that regard and I think it's very important because I was ... when they left the office I had to work actually on previous deals to understand what has been done and what could be the idea behind, so it was very difficult. Having you know experienced that I now try to educate people to understand and if they want they can ask questions. I think it's more beneficial for the firm in the long run of course and for the relevant individual (Round 1 interview).

All lawyers are delegated to this type of mentoring partnership as much as practicable in backstage roles of learning "strategic professional communicative competence" (Vuorela, 2005) by acquiring experiential knowledge of discursive skills and repertoires in work-related tasks and professional interaction. A core mentoring process is for the senior lawyer to delegate work to the junior partner to complete under supervision before being sent to a client by the senior lawyer. Such work can involve the junior lawyer writing email correspondence, undertaking legal research for written advice and translating documents between Turkish and English languages. The process of apprenticeship was explained by LF1 as an incremental process of being given more work opportunities based on more experiential learning:

> As a junior lawyer, you would be required to provide legal documentation that would put out or explain the Turkish legal system or the specific questions that may arise with the client concerning Turkish legal legislation and then with our senior lawyers you would put those issues into an email, into a legal opinion and by doing that you get used to ways of providing legal opinion and through time you're getting involved in meetings, conference calls, and then you start to … or you're allowed to … or you are given the responsibility to carry out the meetings, the conference calls and it continues like this calls (Round 1 interview).

In terms of front stage interaction with clients, the process of apprenticeship is perhaps longer before junior associates are given the responsibility to communicate directly with clients or counterpart lawyers, either at face-to-face meetings or over the telephone. A key learning environment for this learning process are client meetings, whereby it is institutional practice to have a junior lawyer accompany the senior lawyer in charge of the deal under negotiation. Again, the apprentice junior layer is in attendance to observe

and learn and more importantly take notes about "what is being discussed and who said what" so that there is a formal record of the negotiated outcomes of the meeting (LF1, Round 3 interview). The notes are then recontextualised into formal minutes for consideration by all parties before being used to make amendments to contracts under negotiation. This discursive process was highlighted by LF1 as also being extremely important for conference calls taken within the law firm:

> I usually take notes or ask my colleagues to take notes of that conversation and if I believe that it's ... I mean it's a very important for a transaction, very sensitive, then what I would do is I would put that into the form of a minute of the call and then circulate to everyone and say do you have any comments, this is the minute so then you can have it as a written record of or evidence of what has been discussed. So ... I mean we always tell our colleagues to take very seriously notes during meetings, during negotiations and during conference calls (Round 3 interview).

The outcomes of the mentoring system are two-fold. One significant benefit is that the risks for professional error are minimised by senior supervision and the junior lawyers are promoted to a standard of expertise with which to practice law independently quicker through experiential learning. When questioned about the usual time period for this process of apprenticeship, LF1 believes a lot depends on the personal commitment, aptitude and personality traits of the individual lawyer in not being able to provide a definitive answer. Nevertheless, from her experience supervising the development of colleagues within the firm, it is reasonable to expect a new entrant to develop the necessary discursive knowledge and skills to function in the same capacity as the lead associate lawyer LF2 in the data records within four years. Of course, the sooner a junior associate can complete their apprenticeship for promotion to senior associate, the more beneficial it is for the law firm in being able to delegate more responsibility to them for independent fee-earning activities (LF1, Round 2 interview).

The other benefit for the law firm is that the mentors are able to delegate time-intensive tasks to junior apprentices, leaving them with more time to concentrate on more critical matters and other specialised work activities. In discussing the normal workload of principals and senior associates with LF2, it is not unusual for them to be appointed to lead three of four different projects at the same time while also being responsible for smaller, unrelated tasks delegated to them from colleagues on a needs basis. Mentoring closely with a junior lawyer thus provides the principal or senior associate with a *professional partner* who they can trust to undertake work that would otherwise make it

difficult for them to manage time effectively. This also applies to partners being able to trust principals or senior associates with most of the negotiation discursive activities for complex transactions due to the standard of expertise to which they have been trained under the mentoring system. In a reciprocal way, these relationships of professional trust then enable the partners to spend more time in their backstage mentoring and supervisory roles with other members of the law firm and the mentoring system is recognised by LF1 and LF2 as one of the core strengths of the law firm (Round 2 interview).

For complex deals like the M&A transaction under analysis, it is also standard practice for the senior associate and/or partner to delegate certain discursive activities to other senior colleagues in order to best manage use of professional resources within the firm and to ensure that critical deadlines are met. Timing is often critical for legal negotiation processes and LF2 confirms that it becomes essential for other lawyers to delegate to colleagues with more experience or expertise in certain discursive activities in order to save time and meet operational deadlines with other participants:

> You can spend 12 hours, 13 hours in the office working … even in the weekends so time is not a major issue but expertise in meeting deadlines in terms of timing; that can be an issue (Round 2 interview).

Indeed, it is common to define a lawyer by the type of professional expertise they possess, such as an 'intellectual property lawyer' or a 'tax lawyer' and we can see the involvement of LF3 for only competition law and tax law purposes during Stage Three below. While it is institutional practice for LF3 to only work on competition or tax-related issues across all ongoing transactions within the firm, LF2 is defined as an 'M&A' lawyer who works predominantly on these types of commercial transactions with a broader legal skill set for a variety of discursive goals and activities. This compares similarly to my own professional experience as a 'telecoms' lawyer specializing in telecommunication industry issues. I would only become involved in the M&A deal by being delegating some task specific to the telecommunications law by a colleague within the law firm.

6.3.2 Organizational structure

The organizational structure of the law firm becomes a strategic feature to analyse when we consider the use of the mentoring system and the delegation of tasks to different lawyers. A number of years ago, the firm made some significant changes to the professional personnel of the litigation department and implemented the mentoring system with a fewer number of lawyers. The main reason for this was the unwillingness and inability of one partner and four principals to work with junior lawyers and delegate discursive activities to them. Instead, their preference was to maintain control over matters in the belief that they could perform the work better. These beliefs may have been systematic of their own apprenticeship as junior lawyers in the same way that LF1 received no assistance from senior lawyers when learning to discursively function as a member of the firm ten years ago. However, LF4 confirmed that this failure to mentor and delegate work caused many junior lawyers to be under-utilised in terms of professional resource management, which ultimately impacted negatively on work performance and project deadlines. The decision was made to "part ways" with the recalcitrant senior lawyers in restructuring the junior lawyers with the remaining senior associates under the institutionalised mentoring system. The owner, LF5 was responsible for overseeing this reformed mentoring arrangement and in the four years since, LF4 reports that, "this young litigation team have actually done wonders and they are now almost all at the senior level" (Round 1 interview). This example demonstrates that in addition to short-term improvement in work productivity through delegation, the mentoring system provides more long-term benefits for the law firm by having junior lawyers promote more quickly and more reliably to senior positions of professional competence and authority.

In relation to the commercial law department responsible for the M&A deal under analysis, the organizational structure has remained relatively stable since the deal was finalised in 2007. Even though some junior and senior associates have left the firm to be replaced by new recruits and the promotion of others within the firm, the composition of lawyers now remains basically the same as in 2007. LF2 regards this organizational stability and "team work" as a critical strength of the commercial law department in being able to collaborate on discursive activities:

> As an M&A project requires a group of attorneys to work on the project, you would distribute the workload among each other and while having both time pressure and work load pressure on you, you may need … you may be required to help your colleagues. So, yes, experience, written English, oral English and teamwork is … are the four issues, I would say [that define the successful qualities of the commercial law department (Round 1 interview).

6.3.3 Professional knowledge and experience as key constructs of discursive expertise

The mentoring system within the organizational structure of the law firm is designed to provide lawyers with professional experience and knowledge, which are the key constructs for discursive competence in many professions. In Bernstein's (1996) theory of knowledge relations and identity formation, there is a relation between the knowledge base of professions and the ethical commitment of professionals to expert work performance. Changes to workplaces and professional institutions caused by commercialism and technological advancement, for example, can have profound consequences for professionals with regard to their relationship with knowledge as these changes potentially compromise the core elements of the relationship. In line with this theory, Beck and Young (2005) argue the possibility that commercialism, which values flexibility and the adaptiveness of knowledge, has "displaced professional identities and threatened the dedication and genuine ethical responsibility" of accountants (p.188).

Sociolinguistic analysis in this study shows that the participating law firm has institutionalised the mentoring system in order to prevent any compromise or disconnect with supervised experience and the acquisition of professional knowledge. When comparing these two constructs of discursive competence, LF2 believes that the experiential learning is the most constructive for successful outcomes in M&A transactions. While she acknowledges that it is essential to have knowledge of all applicable laws and legal processes that regulate M&A transactions, she believes that it is her experience with previous deals and prior disputes that enable her to foresee possible problems and negotiate more favourable terms for clients within the meaning of *preventative* and *proactive* legal discourse. Without the benefit of experiential learning under the mentoring system, LF1 laments that she had to acquire knowledge by "opening prior files, old files, reading many agreements, many share purchase agreements, and then reading articles about it, international practice, so I in a way

educated myself". The result is that it took much longer for her to develop communicative competence and discourse expertise.

6.3.4 Institutional culture

Workplace institutions are fundamentally constructed out of the discourses by which they operate, such as legal procedures and practices and fiduciary relationships of service to clients. On this basis, Gunnarsson (2000) claims that the degree of discourse competence reflects organisational cultures and plays a crucial role in an institution's success and even survival. The participating law firm clearly aligns with these views by basing its reputation on its knowledge resources and capabilities to practice international law in English. Undertaking legal work with foreign clients in English accounts for more than 90% of its overall business and for this reason that the law firm only employs lawyers with proficiency in legal English and then devotes significant resources to maintaining high standards of professional communication under the mentoring system. When discussing the importance of discourse competence for the law firm during the Round 1 interview, LF4 pointed to the fact that all client correspondence is supervised under the mentoring system to maintain client satisfaction and reputation:

> Formal language is basically the skills of lawyers and that is why we pay a lot of attention to the correspondence that goes out of this office because if we are making grammatical errors it shows that we are not careful enough; if I don't double check what I have written, this is not excusable. Maybe an advertising person or a marketing person can do this, but for lawyers, this is the skill you are selling to clients as professionals.

When discussing the perceived reputation of the law firm during the Round 1 interview, LF1 highlighted the importance of *client care* as a differentiating factor with other law firms in Turkey. The legal services market in Turkey is becoming increasingly competitive with the entry of foreign multinational law firms recently establishing offices in Istanbul. Even though the participating law firm is comparatively smaller than these firms in terms of professional personnel and support staff, two lawyers are always assigned to a client in order to be extremely responsive with all communication. LF1 also drew attention to the law firm policy to supply all lawyers with smartphones so that clients can contact them at anytime. For international legal matters across different time zones this can mean receiving a call or email in the early hours of the morning or on the

weekend. Both LF2 and LF4 confirm that this regularly happens and is becoming standard legal practice in the law firm (Round 1 interview).

Another important discursive strategy maintained by the law involves a conciliatory or *ethical* approach taken to dealing with counterparties on behalf of clients, as explained by LF1:

> We respect the other party and our way of doing law is not trying necessary outdo them... this is not a race, this is not a game, so we are not trying to win, they are trying to protect their client, we are trying to protect our client and we need to find some compromise so that's how we see it (Round 1 interview).

LF1 also discusses the *attitude* of the law firm not to engage in heated discussions or confrontations when negotiating with the counterparty on the basis that this does not serve the best interests of the client. She laments the fact that some law firms do engage in confrontational strategies and power struggles to control the negotiation process and believes that this is counterproductive for successful outcomes for both parties. Instead, she believes that clients appreciate the 'soft policy' approach that the participating law firm has institutionalised because it has proven to be more constructive in overcoming impasses during the negotiation process and reaching successful outcomes for both parties. In turn, these discursive strategies help define the successful reputation of the law firm as one that is fair and effective in finalising deals, which ultimately saves the client from paying expensive legal costs over a protracted period of time. It will be interesting to see evidence of these discourse strategies in the textual analysis of the three stages of negotiation activity in the following chapters.

Another discursive strategy that defines the culture and reputation of the law firm is the intention to maintain control of the communication channels between the different discourse participants. This aligns with Van Dijk's (2008) argument that one important condition for the exercise of social control through discourse is the control of discourse and discourse production itself:

> More powerful groups and their members control or have access to an increasingly wide and varied range of discourse roles, genres, occasions, and styles. They control formal dialogues with subordinates, chair meetings, issue commands or laws, write (or have written) many types of reports, books, instructions, stories, or various mass media discourses. They are not only active speakers in most situations, but they may take the initiative in verbal encounters or public discourses, set the "tone" or style of text or talk,

> determine its topics, and decide who will be participant or recipient of their discourses. It is important to stress that power not only shows "in" or "through" discourse, but is relevant as a societal force "behind" discourse. At this point, the relation between discourse and power is close, and a rather direct manifestation of the power of class, group, or institution, and of the relative position or status of their members (Bernstein, 1971-1975; Mueller, 1973; Schatzman & Strauss, 1972) p.21.

Seller 1 appointed LF as the primary legal representative for the M&A deal and LF1 notes that it was extremely important for the law firm to maintain a central role in all discursive activities during the negotiation process. To have its legal advice or authority challenged by the other legal and financial representatives can mean losing control of discursive power, which impacts negatively on the reputation of the law firm. Therefore, LF1 and LF2 both acknowledge the importance of "directing the discursive traffic" (Round 2 interview) by having access to the various forms or genres of discourse to provide the most comprehensive legal service in a timely manner. My analysis must therefore seek to identify features of discourse that may specifically "enact, manifest, express, describe, signal, conceal, or legitimate power relations" (van Dijk, 2008, p.28) between the discourse participants in the M&A deal. This can be achieved by examining the social level of power relations between the participants and the pragmatic level of using lexico-grammatical and rhetorical choices to control discursive interaction.

6.3.5 Discursive identity

The discursive identity of the individual lawyers participating in the M&A deal relates to the theoretical concept of *agency,* which examines the discursive characteristics of individuals in relation to forces of institutional culture. Foucauldians such as Townley (1994) support a collective interpretation of *agency* where individual decision-making is consensual and accountability is shared due to interrelationship of power, discourse and the self (Foucault, 1977, 1980). The agentic processes of negotiation discourse within the law firm are strictly controlled by the supervision of the partner or principal lawyer under the mentoring system. Lawyers appointed to senior positions are entrusted with maintaining the discursive practices and ideologies of the law firm that they have institutionalised throughout years of apprenticeship. It is also common for lawyers to adopt specific discursive roles within the organisational structure of the law firm, such as a tax or competition law specialist. As such, the expectation is that there is little room

for individual lawyers to take behavioural and interactive initiatives and assert themselves in ways that conflict or contradict with the institutionalised practices of the law firm. It will therefore be constructive to explore how *changes* in the identity of self relate to *changes* in discourse and legal negotiation practice activities (Newton, 1998). For example, there may be preferred ways of communicating based on the unpredictability and complexity of the negotiating with a range of different discourse participants across different cultures. The key challenge for discourse analysis is to examine the identity of individual lawyers as agents of the firm, who are controlled by institutional norms for negotiating an M&A deal, but retain the capacity to influence their environment at critical sites of engagement.

CHAPTER SEVEN

STAGE ONE: INITIATING THE BIDDING PROCESS

Chapter 7 focuses on the commencement of the bidding process during Stage One and consists of seven sections. It begins with discussions of the social-institutional and social practice perspectives, i.e. at the *macro* end of ethnographic analysis, following the MP model. In Section 7.1 I examine the large-scale phenomena of the social-institutional context of the M&A transaction by focusing on institutional structures and the social rationale for the discursive activities used to initiate the sale of the Company under a tender/bidding system. These discursive activities are a blend of standardised procedures and templates with more situated discursive moves, which depend importantly upon shared repertoires of professional experience, knowledge and expertise. In Section 7.2 I describe the social practice perspective, in terms of two main sets of stakeholders: financial stakeholders and legal stakeholders. My account reveals how the institutional constraints outlined in Section 7.1 help to shape the main components of social action: the professional identities and discursive roles of the legal and financial representatives of the Sellers of the Company.

Section 7.3 briefly examines the main discursive activities that occur during Stage One, which are then analysed in the ensuing four main sections of Chapter 7, using the analytical perspectives of the MP model in such a way as to complement each other in providing a grounded and holistic account of legal negotiation discourse. For the convenience of readers, details of the different analytical foci (i.e. sub-sections) in Sections 7.4, 7.5, 7.6 & 7.7 are set out as follows:

Section 7.4 The key genres used to initiate and regulate the bidding process

7.4.1 The use of template documents
7.4.2 The Confidentiality Agreement
7.4.3 The Process Letter
7.4.4 The importance of Intertextuality
7.4.5 A key email genre used to co-construct legal documents

Section 7.5 Competing advice between legal stakeholders

7.5.1 Request for legal advice by FA1
7.5.2 Intervention by LA1
7.5.3 More detailed response from LF1
7.5.4 Intervention by LA3 on behalf of LA1

Consideration of each discursive activity or event will not always proceed from the macro contextual perspective of *social practice* to the micro textual details of discourse and genre within the *semiotic resource* perspective. Instead, the MP model enables me to take an integrated approach to understanding (a) the form and function of language as it is used to achieve discursive goals and (b) the discourse roles and interactional behaviours of those participants involved in these specific discursive activities, all within the contextual environment of this particular international legal practice.

7.1 The social-institutional perspective on Stage One

As discussed in Chapter 6, international M&A transactions usually involve the participation of corporate finance and legal professionals, often working in different cultural and jurisdictional contexts. For this particular deal, the Sellers of the Company appointed three investment banks (headquartered in London, Paris and Istanbul) to promote and manage an international bidding system to sell the Company. This was certainly an expensive option for the Sellers, but one that exploits the view that "companies with an overall strategy and experience of M&A are more successful than those that are less experienced or merely react to a M&A opportunity" (Koerner, 2014). Other researchers regard this professional engagement as critical for success on the basis that "planning an acquisition strategy can help avoid a takeover marked by poorly matched partners and maximise the potential for success" (Galpin & Herndon, 2000).

The decision to use a bidding system is strategically important for selling entities in the sense that it helps to establish the best sale terms for the Company (including price) by forcing potential buyers to bid against each other. Furthermore, it helps to eliminate uncertainty by establishing a pre-determined timeframe for the sale, such as the two-stage competitive process of evaluation and deal-making determined for this deal (Stages One and Two), as clearly stated in the Process Letter:

> *The Selling Shareholders, together with the joint financial advisors, will evaluate the proposal and determine a shortlist of potential buyers based on the financial merits of the proposal. Short-listed potential buyers will be invited to participate in a second stage of the process.*

These institutional practices enabled the Sellers to maintain hegemonic control over the bidding and negotiation process and promote a favourable outcome for the Sellers. As a further control mechanism for bidders to comply with the bidding process and agree to the contractual terms determined for the Sale & Purchase Agreement by the Sellers, the Process Letter explicitly stated the following:

> *Please note that preference will be given to those indicative proposals with limited onerous legal or financial requirements in order to expedite the negotiations and facilitate the early completion of the transaction.*

The Process Letter also stated that the Sellers could terminate any existing negotiations and sell the Company by some other means without incurring any legal liability to any bidder:

> *The Selling Shareholders and the Joint Financial Advisors expressly reserve the right, in their sole and absolute discretion, at any time and in any respect, to amend or terminate the procedures set out in this letter, to terminate discussions with any or all prospective buyers, to negotiate with any party in a manner and to a timetable other than that outlined in this Process Letter, to enter into any special arrangements with any prospective buyer or to enter into a binding agreement relating to Company without notifying any other prospective buyer.*

Despite these legal and institutional controls over the sale, the fact that three international investment banks participated in the M&A deal (as detailed in Table 5.4) indicates that the sale of the Company represented a significant commercial business opportunity for investment in the global cement industry. The financial records of the Company demonstrate that it was a very profitable business enterprise during the previous five years with the potential for additional growth in Turkey in the future,

which is characteristic of the commercial rational for M&A deals to "provide synergy development and achieve competitive advantage for the purchaser through acquisitions of knowledge, production capabilities, assets and market share" (Carbonara & Rosa, 2009, p.191). Hence, there was considerable bidding activity with 20 companies submitting formal bids – referred to as *Indicative Proposals* - during Stage One.

7.2 The social practice perspective on Stage One

As a formal process to sell the Company on the international market, the bidding process was initiated in accordance with conventionalised professional practices. This first involved the financial stakeholders publicising the sale of the Company in international markets by means of an *Information Memorandum*. The process then involved legal evaluation of the *Indicative Proposals* submitted by potential buyers, subject to the terms and conditions of the Confidentiality Agreement and the Process Letter initially distributed by the Sellers (see Section 7.4). Both the financial and legal representatives of the Sellers participated in these activities in accordance with conventional institutional roles and professional practices.

7.2.1 Financial stakeholders

The investment banks performed the main role in marketing the sale of the Company, particularly during the initial process in Stage One. As noted above, Seller 1 engaged the services of two banks; the primary one was based in London (FA1) and the other in Paris (FA2), which was also the location of the headquarters of Seller 1. Furthermore, Seller 2 primarily relied on the services of a Turkish investment bank based in Istanbul (FA3) due to fact that the Company was registered in Turkey and the individual shareholders were Turkish nationals. The roles of these "Joint Financial Advisors" were strictly regulated by professional conventions and constrained by legal controls established for international M&A bidding processes.

This international mix of discourse participants set the stage for complex interactions between the financial professionals and lawyers, involving multicultural and cross-institutional considerations. Of particular importance were the differences in the

ideological and institutional perspectives of the financial and legal professionals. As reported by LF1, the investment banks were entitled to fees calculated as a percentage of the overall sale price of the Company and were therefore inclined to compromise legal safeguards to achieve better commercial outcomes (Round 3 interview). This divergence between commercial and legal priorities can also be explained by the primary obligation of the banks to secure the highest possible purchase price for the Company as financial agents of the Sellers (Sitkoff, 2011). This can create professional discord with the lawyers and conflicts with their own legal fiduciary duties (see Section 7.2.2.2), despite the fact they are all representing the same clients.

7.2.2 Legal stakeholders

Negotiation of an M&A transaction is fundamentally a legal process, subject to constraints imposed by Turkish law and international legal practice. On this basis, the legal representatives of the Company can be regarded as the most accountable stakeholders in the deal under analysis.

7.2.2.1 In-house legal counsel for Seller 1

S1 was employed as the chief in-house legal counsel of Seller 1 at their headquarters in Paris and represented the main client contact for the financial and legal representatives of the Company. He was an English lawyer and the only discourse participant who could be regarded as a *native* speaker of English. This fact might lead to assumptions about language mistakes and inadequacies in language usage in the corpus of research data, but as most of the other professionals were highly educated and experienced professionals, these drawbacks were found to be very few, and did not seem to interfere in the communicative understanding between the members of this international community of practice. The discursive role of S1 was also significant for the authority he maintained to ultimately decide on contentious issues and disagreements that arose between the financial and legal representatives of the Sellers during the negotiation process.

7.2.2.2 LF

Most of the legal tasks for Stage One were addressed to the law firm (LF) and this signifies its primary role to represent the commercial law interests of Seller 1 (and Seller 2 as joint parties). The appointment of LF was based on their professional reputation as a leading law firm in the legal services market in Turkey, particularly in recognition of the extensive work they had undertaken for foreign clients in English.

As discussed in Chapter 6, LF1 was a senior partner of the law firm. In this position she was the key contact for other professional representatives of the Sellers, but maintained a largely *ceremonial* role in the sense that she only became involved in discursive activities to represent the law firm with institutional authority or to respond to specific queries from other participants. Otherwise, it was institutional practice for LF1 to delegate discourse activities to LF2, who undertook most of the legal work in her role as a principal lawyer of the firm.

In terms of discursive identity, both LF1 and LF2 can be regarded as agents of the law firm in upholding it institutional culture and adhering to conventionalised discursive practices for contract negotiation (see Chapter 6). LF2 can also be classified as an "M&A lawyer" on the basis that she specialised in negotiating these types of commercial deals as a member of the corporate law department of the law firm. LF1 has a more complex professional identity due to the fact that she was involved in supervising a broader range of commercial law practices and discourse activities. For this particular M&A transaction under negotiation, she participated as the most senior professional within the law firm, having the most professional experience and expertise dealing in these types of commercial law discourse activities.

Collectively, LF1 and LF2 can also be regarded as agents of the Sellers, appointed to represent their legal interests during the negotiation process. These professional roles relate to the legal concept of *fiduciary* duty and the obligation on the law firm to "to act for or on behalf of or in the interests of [the Sellers] in the exercise of a power or discretion which will affect the interests of [the Sellers] in a legal or practical sense" (Edelman, 2013, p.8). This type of professional undertaking involves both *preventive* and *proactive* legal functions of negotiation to ensure the best possible contractual

relationships for clients while minimizing the possibility of legal disputes (Salmi-Tolonen, 2008). As noted above, this fiduciary agentic role of lawyers sometimes conflicted with the financial priorities of the representatives of investment banks to secure the highest possible purchase price for the Company.

7.2.2.3 Seller 2

The other main legal discourse participants during Stage One were LA1, LA2 and LA3, who represented Seller 2 and the individual shareholders of the Company. As separate legal entities, Seller 1 and Seller 2 sometimes pursued different negotiation priorities and agendas for the sale of the Company and this created *hegemonic struggles* between their respective legal representatives. Discursive hegemony here relates to power that is achieved through the construction of alliances (Fairclough, 2002), and the way it was used by LA1 and LA3 to prioritise legal advice about the rights of the minority shareholders is examined in detail in Section 7.5 below.

7.3 Main discursive activities in Stage One

The main discursive activities that constituted Stage One were set out in the email sent by S1 to the other legal and financial representatives on 14 September. These activities are in the form of a proposed agenda (see below). The use of the CC email software function was standard practice among the legal and commercial representatives of the Sellers so that "all members of a geographically dispersed team can participate in the decision-making processes of the group, being at the same time equally accountable for the outcomes of such decisions" (Gimenez, 2006, p.161).

The complexity of the M&A tendering process was mediated by the types of institutionalised activities which typically characterise such transactions, and began with the following tasks delegated by S1 (underlined sections of the email are analysed below in different sections of Chapter 7):

> Dear All,
>
> Just to confirm the conference call on legal matters next Monday 18th September at 11 am Turkish time.

Proposed agenda:

- Finalise Confidentiality Agreement (if not already finalised this afternoon). LF to provide model power of attorney for buyers signing Confidential Undertaking and for Indicative Proposals.
- LF to advise upon wording of Process Letter and Information Memorandum concerning Seller 2 shareholders (if not already finalised this afternoon).
- LF to advise on rights of possible remaining individual minority shareholder in Seller 2 vis-à-vis purchasers (Company Shareholders Agreement, restructuring of the Company shareholding structure by purchaser, e.g. merger Seller 2/Company etc...)
- Agree on content of data room index (cf drafts circulated by S1a this morning). and process for collating data.
- Any other items

Best regards,
S1

The email also established a time and date for a conference call on 18 September, which represents the most efficacious way for the legal and financial representatives of the Sellers to orally discuss the main activities to commence the negotiation process. Scheduling face-to-face meetings was not feasible for most of the cross-cultural collaboration undertaken during this deal, involving participants based in Turkey, France and the UK. Conference calls were therefore the best alternative, with video technology enabling participants to visually interact as they discussed important matters pertaining to sale of the Company. While the oral interactions in this conference call and other such meetings were not recorded for the purposes of this study, the content of such discussions are nevertheless recontextualised in the contractual documents under analysis and alluded to in email correspondence as communicative events or activities that precede or follow the co-construction of the documents.

These main discursive activities for Stage One represent the *site-specific discursive practices* positioned at the centre of the overlapping perspectives of the MP model. Used together, they foreground descriptive, interpretive and explanatory modes of analysis, and the starting point for analysis varies in accordance with the utility of each perspective for examining a particular document, role or activity and their relevant focal themes (Roberts & Sarangi, 2005). This has been described as an "interactive" approach to data analysis (Miles & Huberman, 1994), which emphasises analysis as a "continuous, iterative enterprise that mobilises all aspects of the research design" for the

MP model (Crichton, 2011, p.47). What is central is that *all* perspectives are necessary and mutually informing to provide an integrated and holistic account of negotiation activities for Stage One. As noted in Chapter 5, this study is conceptualised in one respect as an interpretive ethnography in the Geertzian tradition, whereby the research goals are to gain an understanding, or a *thick description* (Geertz 1973; Bhatia, 2002a; Sarangi, 2007) of legal contract negotiation.

7.4 The key genres used to initiate and regulate the bidding process

The Confidentiality Agreement and Process Letter were the primary contractual documents used to socially authorise and regulate the processes and activities for participation in the bidding process during Stage One. Bidders were required to sign both of these documents before submitting any initial bids (referred to as *Indicative Proposals*). This section will account for the way that the Confidentiality Agreement and the Process Letter were co-constructed, typically starting from generic template documents, with a particular focus on the interdiscursive way they were exploited to stabilise bidding activity by the representatives of the Sellers. Genre analysis is also used to highlight the importance of intertextuality and the way that the generic, linguistic and rhetorical changes were made to the documents to improve the operational relationship between both the Confidentiality Agreement and the Process Letter and the Information Memorandum.

7.4.1 The use of template documents

The initial copies of both the Confidentiality Agreement and the Process Letter that were distributed by FA1 embodied prototypical contractual genres of the kinds typically used by financial institutions to initiate the tender bidding process. They can be defined as *template* documents on the basis that they derive from pre-existing texts that have been used previously by FA1 for similar types of M&A transactions.

From a social-institutional and social practice perspective, template documents can make the preparation of contracts easier by utilizing pre-existing terms and conditions to create new texts for the particular circumstances and purposes of the negotiation

activity. The use of template documents has become part of what Berkenkotter (2001) calls "historically sedimented practices" (p.338) within professional organizations and according to LF2, choosing the most appropriate template provisions depends on "a clear understanding of the parties' positions and experience in dealing with such matters in the past". LF1 confirmed that there were thousands of contractual documents stored on the law firm's database, which demonstrates how pervasive they are in organizing (and constraining) the discursive practices of lawyers. It is also common practice for LF2 and her colleagues to source only "specific Clauses" from template contracts that have been "tried and tested" over time in the belief they can operate effectively in response to the rhetorical needs of the contract under negotiation. The effective exploitation of different templates (and individual contractual Clauses) has therefore evolved into an important form of interdiscursive expertise as technology has changed to enable lawyers to access and use electronic documents in legal practice (Bhatia, 2010).

The customary practice was then to distribute the template contract to the other legal and financial representatives of the Sellers, who could then make further proposed changes to the text based on their own experiential knowledge of the type of contract under co-construction. This type of editing collaboration represents a process of *generic intertextuality* (as defined in Section 2.2.1 by Devitt, 1991), either directly or indirectly, as each version of the contract "draws on previous texts written in response to similar situations" (p.338). The use of different Clauses from different templates can also be considered as product of functional intertextuality, with the "patchwork" of different textual parts being used in a collaborative cycle of discursive activity that is focused on a common goal of constructing a new, cohesive and functional document.

However, the use of templates can also adversely function as a kind of institutional control mechanism for the author(s) tabling the document for co-construction and/or negotiation. Particularly when the author(s) maintain a dominant institutional role and identity, the other negotiating participants may feel compelled or pressured to operate within the rhetorical structures already determined by the template and agree to existing contractual terms. These institutional pressures can also create perceptions that it is unnecessary or unacceptable for the other participants to try and change the provisions of the template contract. All of these factors can have a negative effect on the intended

function of template documents to expedite the negotiation process by making it contentious and more protracted for the other representatives to negotiate proposed changes in competition with the author(s) of the document. This type of "hegemonic struggle" (Fairclough, 1992) was played out more substantially during the co-construction of the SPA, which is analysed in Section 8.5. Another perceived negative consequence is that innovation in contract drafting can diminish over time due to over-reliance on template examples. LF2 reported that the use of the template database system had become institutionalised in the law firm and the concern is that lawyers are not given the opportunity to develop the discursive skills and strategies required to effectively draft contractual amendments at critical sites of engagement (Scollon, 1999) in "real-time" during the negotiation process.

7.4.2 The Confidentiality Agreement

As a template document, it is important to note that the original version of the Confidentiality Agreement distributed by FA1 named the author of this document as someone from an investment bank on Wall Street in the United States and not someone within FA1's London-based investment bank. This small textual detail is symptomatic of the larger social practice of legal and financial professionals, appropriating any textual materials they deem suitable starting-points for specific discourse activities. The Confidentiality Agreement used for this deal appears to have been previously used for an international deal involving FA1 across U.K. and U.S. jurisdictions. Based on this experience, FA1 then stored it for use in some future deal. Unlike the academic discourse community that adheres to strict citation rules for acknowledging the owners of intellectual proprietary materials, the construction of contracts in this community of commercial legal practice is characterised by the freedom to utilise any textual discourse materials in the broadest sense of generic and functional intertextuality. The decision to use this template agreement proved to be uncontroversial and effective on the basis that only minimal changes were proposed by the other financial and legal representatives. For instance, the pre-existing requirement for the Sellers to first sign the agreement was deleted based on the practical recommendation of S1 to "allow more time to arrange signatures on behalf of the Selling Shareholders as a second step".

The only other changes made to the template document was for S1 to rename it as a "Confidentiality Undertaking" (as opposed to a Confidentiality Agreement) in order to frame the contractual terms of the document as obligations *undertaken by* the bidders rather than being *imposed on* them by the Sellers. S1 also made changes to the person deixis (from 'you' to 'we' and 'us') to reflect this change, (as highlighted in bold) in the following except from the document:

> ***We** hereby agree that the Evaluation Material will be used solely for the purpose of evaluating a possible Transaction between the Selling Shareholders and **us**, and that such information will be kept confidential by **us** and our Representatives who need to know such information for the purpose of evaluating any such possible Transaction between the Selling Shareholders and **us** (it being understood that such Representatives shall have been advised of this Confidentiality Undertaking and shall have agreed to be bound by the provisions hereof in writing).*

Although these changes do not alter the substantive meaning and operation of the terms and conditions, they do alter the interpersonal function of the document, as a discursive strategy to invite more participation by more bidders "from a marketing point of view" (S1). The original wording of the Agreement was to impose confidentiality obligations on the bidder by using the imperative modal verb "you shall" to demand action and compliance with the terms and conditions. This is the customary feature of legally normative texts to clearly establish rules by giving orders and instructions. However, by changing the explicit personal tenor to the "we" and "us" person deixis, the interactional order between subjects is reversed so that the contractual obligations became undertakings that the bidder was willing to perform in order to participate in the bidding process. These interpersonal changes made to wording are based on S1's own assumptions about what was the best communicative approach for interaction with bidders, which had been developed through his personal, professional, and other socio-cultural experiences with M&A transactions (Hafner, 2012, p.525).

In relation to the semiotic features of the Confidential Agreement, the terms and conditions exhibit distinctively legal discourse features of the kind often attributed to legalese. As discussed in Chapter 3, this term usually refers to the *performative style* of contractual language (Tiersma, 1999), which consists of extremely specialised technical terms and grammatical constructions that are foreign to everyday language use. This is demonstrated in the following excerpt taken from the Confidentiality Agreement

(marked terms are in bold font; any passive verb forms and/or constructions are underlined):

> *We **hereby** agree that the Evaluation Material will be used solely for the purpose of evaluating a possible Transaction between the Selling Shareholders and such information will be kept confidential by us and our Representatives who need to know **such** information for the purpose of evaluating any **such** possible Transaction between the Selling Shareholders and us (it being understood that **such** Representatives **shall** have been advised of this Confidentiality Undertaking and **shall** have agreed to be bound by the provisions **hereof** in writing, except to the extent that disclosure of such information (a) has been consented to in writing by the Selling Shareholders, or (b) is required by law, regulation, regulatory authority or other applicable judicial or governmental order provided that in any case such disclosure **shall** be limited to the extent legally required.*

This long and syntactically complex sentence illustrates lawyers' frequent use of multiple subordinate and embedded clauses to represent complex and typically chained legal processes. Another discourse feature is a terminology that strives to retain the precision and authority of legal reasoning (Jones & McCracken, 2007), exemplified by expressions such as *bound by the provision hereof in writing; provided that in any case such disclosure shall be limited to the extent legally required;* and *we agree, at our sole expense, to take all reasonable measures*.

In recognition of the way that legalese re-classifies language to reflect "highly technical, specialised legal processes and relations" (Goodrich, 1986, p.151), some of the marked grammatical features that appear in the contractual provision are listed below. These typically serve to disguise and embellish everyday speech acts and to identify them as being embedded in a normative authoritative discourse:

- the modal auxiliary *shall* after 3rd person subjects to convey the meaning of will;
- the use of *such* instead of *this/these* as a formal cohesive device;
- the use of *here* in complex adverbials to reference time (hereby) and the contract (hereof);
- and extensive use of passive forms and structures to emphasise the importance or salience of the action, not the agent (underlined in the excerpt).

In accordance with the institutionalised practices for this Stage One of the negotiation process, bidders were required to sign the Confidentiality Agreement before being issued with the Process Letter and Information Memorandum by the Sellers.

7.4.3 The Process Letter

The Process Letter was also a template document distributed by FA1. From a social practice perspective, this genre has two main discursive functions. The first function was to clearly set out the terms and conditions for submission of Indicative Proposals, including the type of information required for evaluation of the Proposal by the Joint Financial Advisors and the Sellers. Here is how that was entextualised in Clause[10] 2.1:

> ***2.1*** *Specific terms that you should include in your indicative proposal are:*
>
> *i)* *Details of any key assumptions and valuation methodology underpinning your proposal;*
> *ii)* *Confirmation that you are willing to acquire the Company including all the liabilities described in the Confidential Information Memorandum and that the stated value has been prepared on this basis;*
> *iii)* *The level of approval obtained for the indicative proposal and full details of any conditions to which the acquisition would be subject (including any necessary governmental, regulatory or other third party or internal approvals) and your expected timetable to satisfy these conditions. If any regulatory clearances (including anti-trust clearances) are required, this should be explained in detail, and such an explanation should incorporate your views on the likelihood of obtaining such clearances;*
> *iv)* *A summary of any other relevant legal conditions and business considerations that you would anticipate to incorporate into any definitive Sale & Purchase Agreement.*

The rhetorical use of a numbered list is effective for this type of procedural genre, functioning to clearly set out the scope of the bidding activity in 'step-by-step' fashion. While the textual structure of these Clauses is quite complex, there is limited use of technical terms and passive constructions. In preference the authors used everyday language to clearly convey that certain requirements are non-negotiable. For example, the modal auxiliary "should" was used in preference to the more legalistic *shall* in order to soften the imperative of demanding action.

The other main function of the Process Letter was to limit the obligations and exclude any legal liability for the Sellers in relation to the Indicative Proposals at this stage of evaluation of bids. I give a sample text below:

[10] The use of the capitalised term 'Clause' here refers to the provision or section of the Process Letter as distinct from the use of the grammatical term 'clause'. I have opted to use the term 'Clause' to refer to specific sections or provisions of all contracts under analysis throughout my thesis so as not to confuse the reader when I refer to specific 'Sections' of my thesis.

The Selling Shareholders and the Joint Financial Advisors are under no obligation to consider or accept any proposals made (irrespective of whether such proposal offers the highest proposed purchase price) nor will they be liable for any costs incurred by any other party in regard to this process.

Neither this letter nor the Confidential Information Memorandum shall constitute an offer to sell the Company or any of the assets described therein and should not be considered as a recommendation in relation to the Company or any part thereof. An offer will be deemed accepted by the Selling Shareholders only when the definitive Sale & Purchase Agreement has been executed.

The only obligations of the Selling Shareholders shall be those set forth in such definitive Sale and Purchase Agreement. Under no circumstances neither the Joint Financial Advisors, nor the Legal Advisor nor any of their respective group companies or associated companies, will have any liabilities or obligations to any prospective buyer.

This excerpt embodies the more normative function of the Process Letter, characterised by the use of legalese and a very formal and explicit style to define the rights and obligations of the Sellers regarding the process for submitting Indicative Proposals. For example, *shall* is here used with 3rd person subjects to express legal obligations The multiple negative operators *neither* + *nor* are used to exclude explicitly listed actors, actions and liabilities in complex finite sentence structures; and these are combined with future-passive verb forms are relied on the account for explicitly described future contingencies, such as *nor will they be liable for any costs incurred by any other party* and *nor any of their respective group companies or associated companies, will have any liabilities or obligations to any prospective buyer*. In comparison to the procedural Clause(s) illustrated further above, the interpersonal function of the language used in this part of the template document consolidates the legal importance of these terms and clearly signals to the parties that these contractual terms have significant consequences.

This analysis of the structural and linguistic features of the Confidentiality Agreement and Process Letter demonstrates the interdiscursive and intertextual way that generic features of texts can change as the documents are co-constructed by different participants across different social and professional contexts. Based on his professional and organizational preferences, S1 changed the interpersonal function of the Confidentiality Agreement template distributed by FA1 into a more personalised "undertaking" by the bidders, while keeping most of the formal and ritualistic language of contracts to define legal rights and obligations. Furthermore, the Process Letter exemplifies the mixing of different discourses, genres and styles within the definition of

discursive hybridity (Fairclough, 2011) in order to serve two primary discursive functions; one to clearly set out the bidding requirements for potential buyers and the other to control potential contingencies during the bidding process by excluding all legal liability and obligations for the Sellers until the Sale & Purchase Agreement is executed. Both documents can therefore be characterised as interdiscursive in the way these genres blend the technicality associated with the performative discourse of legal instruments with interactional features characteristic of a discourse that aims maintain professional and/or commercial relationships and mutual trust (Townley & Jones, 2016).

7.4.4 The importance of Intertextuality

As demonstrated by previous studies (O'Connor, 2002; Cheng, 2009; Warren, 2013), competence in intertextuality is a crucial feature of professional discourse. The Confidentiality Agreement, the Process Letter and Information Memorandum were designed to function in conjunction with each other and hence it is important here to trace the conceptual and pragmatic use of intertextual links by the legal and financial representatives of the Sellers.

The first material provision (Clause 2) of the Confidentiality Agreement states that signing the Confidentiality Agreement is a precondition for being granted access to confidential information contained in the Information Memorandum. This link represents both referential and functional intertextuality (as defined by Devitt, 1991). While the explicit reference to the Information Memorandum is obvious in Clause 2, the functional intertextuality of the two documents (with institutional authority) is realised when the bidder signs the Confidentiality Agreement and is then given access to confidential information about the Company contained in the Information Memorandum. When this occurs, the normative terms of the Confidentiality Agreement function to regulate and restrict use of such confidential information in the Information Memorandum:

solely for the purpose of evaluating a possible Transaction between the Selling Shareholders and us[11]*, and that such information will be kept confidential by us and our Representatives who need to know such information for the purpose of evaluating any such possible Transaction between the Selling Shareholders and us (it being understood that such Representatives shall have been advised of this Confidentiality Undertaking and shall have agreed to be bound by the provisions hereof in writing).*

The importance that the Sellers' representatives place on referential and functional intertexuality is evidenced in the following emails exchanged between LF2 and FA1 regarding the intertextual wording of the Information Memorandum and Confidentiality Agreement. Note how I have identified a generic move structure (separate sections of the emails marked by M1, M2 etc…) in Tables 7.1 – 7.3 below. These identifiers mainly relate to my analysis of *a key email genre used to co-construct legal documents* in Section 7.4.5 below. In this Section 7.4.4, I examine how the emails were used to improve the intertextual wording and function of the Confidentiality Agreement, the Information Memorandum and the Process Letter.

At M4 in Table 7.1, LF2 identifies the fact that the decision to rename the Confidentiality Agreement as an "undertaking" had not been reflected in the wording of the Information Memorandum or the Process Letter and she hedges her advice to the other representatives that "you may wish to amend it" in order to make the language consistent in all documents.

Table 7.1: Generic structure of intertextual wording email (A)

	From: LF2 **Sent**: Wednesday, September 27, 2006 10:42 PM **To**: LA1; S1a; LA2 **CC**: LF5; LF1; LF4 **Subject**: RE: Comments on "Important notice" of IM
M1	Dear All,
M2	We have reviewed the "important notice" on pages 2 and 3 (S2) of the Information Memorandum version dated 26.09.2006; 08.36 (the last version circulated to us) (S1).
M4	We see that the references are still made to the confidentially "agreement" (S1) [sic] however as the wording of the confidentiality texts are changed to "undertaking" you may wish to amend it that way as well in the Information Memorandum and also the process letter (S2).

[11] As noted in Section 7.4.2, the pronouns "us" and "we" are used to refer to and involve the bidders on an interpersonal level.

M3 M5	I had commented to this effect for the process letter on 21.09.2006 and feel the need to repeat that comment as I am not aware of any objection by any party to it. If it has been decided to leave the wording as "agreement" in the Information Memorandum and process letter, then you may disregard my comment.
M7	Best regards LF2

As set out in Table 7.2 below, LF2 then sent another email to inform the other representatives about her review of the intertextual wording of the Process Letter and the Information Memorandum. At M4-S2, she advises them to insert the same definition for "Seller 1 and individual shareholders of the Company…" as stated in the Information Memorandum (M4-S1) into the Process Letter by highlighting the "need to be consistent with such wording" and improve the intertextual function and operation between the two documents.

Table 7.2: Generic structure of intertextual wording email (B).

	From: LF2 **Sent**: Wednesday, September 27, 2006 14:25 PM **To**: LA1; S1a; LA2 **CC**: LF5; LF1; LF4 **Subject**: RE: Comments on "Important notice" of IM
M1	Dear All,
M2/M4	After one last review of process letter and Information Memorandum (26.09.2006 version (M2-S1), we see that in section 1.2 3rd paragraph in the Information Memorandum (M2-S2) the content of the selling shareholders are stated to be "Seller 1 and individual shareholders of the Company are considering to jointly dispose their direct and indirect holdings in the Company, by means of selling to a potential acquirer the Company shares owned by Seller 1 and 99.33% of the shares of Seller 2" (M4-S1)
M4-S2	According to our opinion, changing the wording "...and its shareholders" in the first paragraph of Important Notice of Information Memorandum, [sic] such statement and first paragraph of the process letter will need to be consistent with such wording in the Information Memorandum section 1.2 3rd paragraph.
M7	Regards LF2

FA1 then followed up on this issue one hour later by sending the following email entextualised in Table 7.3:

Table 7.3: Generic structure of intertextual wording email (C)

M1	**From**: FA1 **Sent**: Wednesday, September 27, 15:53 PM **To**: LF2; S1a; LA2; FA1a **CC**: [Very extensive list of 23 participants, including LF5; LF1; LF4] **Subject**: RE: Draft Dear All,
M4	We should in fact re-write the sentence as "by means of selling" does not read well, and Seller 1 and the individual shareholders are the "Selling Shareholders" (S1). So, the sentence should read: "Seller 1 and individual shareholders of the Company (the "Selling Shareholders") are considering to jointly dispose their direct and indirect holdings in the Company, via the sale of the Company shares owned by Seller 1 and 99.33% of the shares of Seller 2 respectively, to a potential acquirer. The potential acquirer would, as a result, receive a 99.67% economic interest in the Company" (S2a). Something to this effect would clarify to potential buyers (a) what they are being sold and (b) what it means in terms of their economic / voting ownership of the Company (S2b).

These email exchanges importantly contributed to clarifying the intertextual meaning of the shareholders of the Company as defined in both the Process Letter and Information Memorandum. The concern for FA1 here was that any contradiction in the wording of the two documents would create a conflict of meaning and function, even though both documents were designed to facilitate evaluation of the Company by bidders. In this legal context, there was also the possibility that contradictions between the referential and functional intertextuality of the documents could lead to legal disputes that challenged the legal enforcement of one document over the others. In light of these potential problems, it is clearly imperative that lawyers and other professionals master the principles for the intertextual drafting of legal documents.

7.4.5 A key email genre used to co-construct legal documents

Email communication was primarily relied on by the representatives to collaborate and co-construct legal documents. However, the interaction of the legal and business

professionals over an extended period of time makes it unfeasible to identify one general type of email genre and it is more appropriate to define email communication in this study as having different, but inter-related linguistic patterns and purposes within the meaning of *genre repertoires* (Orlikowski & Yates, 1994a). The particular type of email genre used in the repertoire is related to the type of activity or work task being undertaken by the representatives and responds to "recurrent situations that serve to stabilise experience and give it coherence and meaning" (Berkenkotter & Huckin, 1995, p.4). This section is designed to examine the emails represented in Tables 7.1 – 7.3 above, which invoke a shared purpose, structural substance, and linguistic form for the representatives to explain or justify proposed amendments in the co-construction of the Confidentiality Agreement, the Information Memorandum and the Process Letter. Genre analysis of these emails is comparated with the generic moves and steps framework developed by Townley & Jones (2016) in relation to an email genre used by lawyers for the different purpose to inform clients about the negotiation of contractual terms undertaken on their behalf as set out in Table 7.4 (reproduced from Townley & Jones, 2016):

Table 7.4: Rhetorical moves and steps defining an email genre functioning to provide clients with advice about stages in a negotiation activity (as appropriated from Table 3.1) (Townley & Jones, 2016)

		Moves	***Steps***
+	M1	**Salutation – Addressing**	
+/-	M2	**Notification of Attachments** +/- preparatory justification for amendments/actions taken	
+/-	M3	**Orientation** – establishes the message as a link in a chain of intertextual and/or extra-textual interactions	
+	M4	**Main Move** – a single email message can contain more than one M4: (i) Notification of action taken, typically, amendments pre-emptively inserted in Agreement (ii) Notification of disagreement with or rejection of proposed amendments to Agreement	+/- **Step 1** **Justification Purpose**: gives the pragmatic purpose of the main move(s), i.e. M4 +/- **Step 2** **Justification Reason:**

		(iii) Advising/Not advising about legal negotiation actions that might be taken	explanation(s) and/or reason(s) underpinning move(s), i.e. M4
+/-	M5	**Request for Action/Assistance**	
+/-	M6	**Offer or promise of further assistance/help**	
+	M7	**Sign off**	

The rhetorical organization of the emails reproduced in Tables 7.1 – 7.3 (see Section 7.4.4) differs from the move and step structure in Table 7.4 due to differences in the audience, purpose, subject, and occasion (Devitt, 1991). While the email genre illustrated in Table 7.4 is designed to provide the client with an explanatory account of negotiation activity and advice about issues being negotiated under the contract, the emails in question here are used by the representatives to collaborate on proposed amendments to the intertextual wording of the legal documents before they were finalised for distribution to bidders and counterpart lawyers. As such, many of the optional moves and steps identified in Table 7.4 are omitted. For example, the *Salutation or Addressing* at Move 1 is either a collective reference to "Dear All" or omitted altogether due to the familiar interpersonal relationship of the discourse participants and the proximate timing of the next email in the chain of communication about the same topic and primary purpose. This proximity of the email exchanges also makes Move 3 redundant without the need to refer to the previous email or extra-textual interaction in the chain of communication. Instead, referential and functional intertextuality is achieved by the time stamp automatically recorded for each successive email and by the email software recording the most recent message directly above the previous emails in a chronological chain of communication. There is also limited evidence of Moves 5 and 6, used to request or offer further assistance in the expectation that the other discourse participants will respond by either accepting or modifying the proposed changes to the wording of the Clause under consideration. One exception is that LF2 uses Move 5 at the end of the first email in Table 7.1 to question whether the issue under consideration had already been resolved by the representatives in response to an earlier email she had sent on 21 September identified at Move 3 in the same email.

The structural-functional organization of these emails mainly consists of two moves that relate to Move 2 and 4 in Table 7.4 as follows:

- Move 2 consists of two steps to first reference the specific version of the Process Letter and Information Memorandum (S1) under negotiation and then identify the particular Clause under proposed amendment (S2).
- Move 4 also consists of two steps to first clearly state the problems with the current wording of the Clause (S1). This usually involves integrating the exact wording of the existing Clause into an explanation of the perceived problem with the wording. The next step is then used to propose new wording (highlighted in quotation marks) for the particular Clause with reasons justifying such amendments (S2).

The narrow focus of activity for this particular genre repertoire also created modifications to the rhetorical organization and function of these moves. For instance, LF2 combined Move 2 in a single sentence with Move 4 in Table 7.2, a strategy described in terms of (syntactic) embedding. Move 2 was omitted entirely by FA1 in Table 7.3 due to the close proximity of his response to LF2's previous proposed amendment of a specific Clause of the Information Memorandum. The email in Table 7.3 is referred to as a type of "embedded email" due to the rhetorical way "that one or more parts of the message are dependent on another or others to make complete communicative sense" (Gimenez, 2006, p.155). This is a common feature of the sequential nature of emails examined in more detail in Section 8.5.6.1 and these findings align with other studies of international business email communication that demonstrate how participants dispersed in different countries actively contribute to the development of the communication event in "real-time" through the exchange of embedded emails (p.162). FA1 also recycled Step 2 twice in Move 4 to provide additional justification for proposing additional amendments to the wording of "Selling Shareholders" in response to LF2's earlier proposals.

An important feature that is often overlooked in the literature on email communication is the use of the 'CC' facility, as used here by FA1 in the email in Table 7.3. Researchers have more generally failed to acknowledge the importance of the preliminary slots and the indicative entries that the email software generates. However, they can be used strategically by the author. While the "To" email facility is used to address the most important or "active" participants in the relevant discourse activity,

Gimenez (2006) argues that "others are summoned to witness the event and may never actively participate in the communication event" by the CC facility (p.162). The email records in Tables 7.1-7.3 above show that LF2 had previously included only her colleagues (LF1, LF5 and LF4) in the CC facility for negotiation activity. However, FA1 made the strategic decision to include 20 additional participants representing the Sellers in the CC facility for his email in Table 7.3. One analytical assumption is that FA1 wanted to demonstrate his active participation in this activity to the others, perhaps to promote his professional identity and/or role as an investment banker for Seller 1. Another plausible argument is that the CC facility is used to encourage those summoned to witness the communicative event (Gimenez, 2006) to also contribute specialised knowledge and expertise when the issue under negotiation requires such broader participation. Regardless of the specific motivations, these findings demonstrate how the rhetorical features of email genres can be modified and adapted as a part of a *genre repertoire* (Orlikowski & Yates, 1994a) to meet the exigencies of interacting with different levels of professional expertise and authority over an extended period of time of activity.

7.5 Competing advice between legal stakeholders

A complex social process during Stage One was realised by the exchange of emails between the main legal representatives of the Sellers, in which they provided advice about the legal implications of the proposed sale for the minority shareholders of the Company. In other words, would these minority shareholders retain rights after the sale of the Company? The focus of analysis in this Section 7.5 is to examine how lawyers competed for professional authority as they provided such legal advice – even when that meant disrupting the co-construction of the Confidentiality Agreement and the Process Letter. Any perceived deficiencies in the quality of legal services during this deal could impact negatively on the professional reputation of the law firm and its ability to participate in future deals worth hundreds of thousands of dollars in revenue for the law firm.

For this particular deal, the minority shareholder issue involved a potential conflict of interest between the law firm (LF) and the lawyers representing LA1, who was one of

the minority shareholders of Seller 2. This shareholding placed him in the unique position of advising on the deal as a practising lawyer in Turkey while prioritising his own personal interest over the other sellers of the Company. The issue of the minority shareholding structure of Seller 2 and the Company was first delegated by S1 to LF for resolution. However, this task evolved into a complex intertextual and interdiscursive activity for examination involving numerous participants, i.e. S1, FA1, LF1, LF2, LA1, LA3, and LF5 sequentially in that chronological order.

The analysis below is designed to highlight the social contexts in which the discursive roles and capacities of the various participants were deployed and the discursive ways in which power and control was managed throughout the negotiation process (Putnam 2004). I will examine in turn the following discursive events and ancillary texts involved in this specific activity:

- Request by FA1 for LF1 to provide more detailed legal advice
  - ← Intervention by LA1
- Competing advice from LF1
  - ← Intervention by LA3 on behalf of LA1
- Letter of Advice from LF5
  - ← Concluding email from LA1 to impose consensus

7.5.1 Request for legal advice by FA1

As a follow up to the preliminary advice provided by LF1[12], FA1 made more specific enquiries about the rights of the existing shareholders of the Company in an email dated 18 September. Addressing his query directly to LF1 reaffirmed the central role of the law firm. It also signifies a type of professional alliance between S1, LF and FA1 on the basis that Seller 1 appointed both LF and LA1 as their legal and financial representatives respectively. Here I reproduce the excerpted text of the email in question:

[12] There is no record of the preliminary advice provided by LF1 regarding the minority shareholding in the corpus of data. However, from FA1's follow-up request it can be ascertained that it relates to incorporation of the shareholding structure of Seller 2 into the Information Memorandum and Process Letter and legal recognition of the minority shareholders.

Dear LF1 and LF2,

I have reviewed your document and I have the following questions for you:

1) You mention that the purchaser of the Company and Seller 2 cannot "increase the obligations of the shareholders". What does this exactly mean? Can the buyer not change the articles of association or the terms of the governing shareholders' agreement?

2) It would appear from your right up [sic] that the main rights that shareholder "X" would have vis-a-vis an acquirer are primarily frustrating, for example by taking the Board members to court if he/she were to disagree with any of the Board's decision. Is this a fair reflection?

Thanks and regards,
FA1

FA1 also included the other main legal and financial representatives of the Sellers in this query by using the CC email function. As discussed above, this is an important discursive function of email communication that was used to ensure communicative transparency throughout the negotiation process and to provide each professional representative with the opportunity to participate in the relevant discourse activity.

7.5.2 Intervention by LA1

Early next morning on 19 September before LF1 had responded to the email above, LA1 provided the following advice to FA1 in which he attempted to reassure the representatives that a certain individual minority shareholder "X" would not frustrate the new Board of the Company established by the Purchaser:

Dear FA1,

Don't you [sic] worry please, [sic] I have studied the minority rights of the Company and Seller 2 for the past two years professionally in detail, as I have already gone through that process.

You should not forget that "X" is a BOD member with signing authority and has signed to [sic] all decisions, which means a practical sue and/or action is out of question.

Please wait for my comments on all these including "Right of First Refusal"- as I recall that this does not imply [sic] to a single SH for Seller 2 shares, which I am checking right away-following this evening.

Kindest Regards,
LA1

LA1's brief message is incomplete which suggests that he was more concerned with being involved as an authoritative, reassuring figure ("Don't you worry please") in this discursive activity rather than providing any substantial advice at this time. Despite his assurances that he has "studied the minority rights of the Company and Seller 2 for the past two years professionally in detail", his legal advice is very simplistic and incomplete based on his own admission that he will check it further "right away – following this evening". For instance, he did not respond to the first query of FA1 regarding changes to the articles of association or the terms of the governing shareholders' agreement. And his advice about "X" as a BOD member with signing authority cannot sue is vague in response to concerns that minority shareholders could frustrate the board decision of the new purchaser of the Company. From the semiotic resource perspective of the MP model, LA1's reference to the "Right of First Refusal" (in paragraph 3 of his email above) is embedded in a sentence with grammatical error ("imply" instead of "apply"), incorrect punctuation and informal or ad hoc abbreviations 'SH' for shareholder. The overall evaluative impression is an email that has been hastily constructed in a colloquial tone while lacking any substantive content or legal advice.

7.5.3 More detailed response from LF1

In response, LF1 sent a more detailed and comprehensive email directly to FA1 later that afternoon with the other representatives included in the chain of communication using the CC function of the email software. This ensured that her legal advice was transparent to all of the other representatives, while making LA1 accountable for his previous advice.

> Dear FA1,
>
> The purpose of seeking unanimity in general assembly decisions in relation to increasing the obligations of a shareholder is to prevent the majority from taking any decision deeming any shareholder to have undertaken any liability other than those he had consented to. For example, a capital increase by way of increasing the nominal values of the shares, issuing new shares and thus causing shareholders to have additional subscription undertakings and in case of loss of capital in the balance sheet to subscribe cash injection to the company to cover such loss.
>
> With regard to your second question, please note that it is a right given by law to the shareholders of a company to seek for liability of Board members in case such board members cause direct or indirect damage to the company and/or the shareholders and

only disagreement with a board resolution may not be a valid cause of action.

Some examples which may cause the liability of the board, in which case a shareholder may have a valid reason to file a lawsuit are abuse of power, fictive profit distribution, obtaining or giving speculative credits, unnecessary investments, usage of company assets outside the scope of the company etc. Such actions may cause decrease in the value of the shares or dividends of the company. Therefore, provided that there are reasonable grounds each shareholder has a right to claim compensation and in any case such compensation, when rendered by the court shall be payable to the company.

Best regards,
LF1

Comparative analysis with LA1's earlier email indicates that this email represents a discourse strategy to prioritise legal advice and take professional control of this legal discourse activity. In terms of content, LF1 responded to both queries from FA1 by discussing legal ways to prevent any increase in shareholder obligations in the first paragraph of her email and the liability of board decision in paragraphs two and three. Legal advice pertaining to the first issue is somewhat obscured by LF1's reliance on the characteristics of legalese to use nominal group structures to explain legal processes as object-based rules in two very long, complex sentences (Tiersma, 1999; Bhatia & Bhatia, 2011). In relation to the second issue, LF1 seems deliberate to explain her legal arguments in detailed terms in order to more effectively refute LA1's simplistic claim that "a practical sue and/or action is out of question". For instance, she uses the narrative conjunctions ("Some examples, Such actions, Therefore") at the beginning of each sentence to coherently explain the legal implications of these circumstances in giving the shareholders the right to sue the board members. In comparison to the colloquial language used by FA1 in sentences without much syntactic integrity, LF1 constructs her email in a formal register that is characterised by "fully-formed and correctly punctuated sentences which a normal speaker of British English would regard as grammatical in their written form" (Gains, 1999, p.86). Within the meaning of interdiscursivity, LF1 also appropriates the formal and ritualistic language of relevant legislation to clearly demonstrate to LA1 that the minority shareholders do have significant legal rights.

7.5.4 Intervention by LA3 on behalf of LA1

As demonstration of its own strategic alliance with LA1, the law firm representing Seller 2 then became involved in this issue with LA3 sending the email below later that evening on 19 September. There is no record of LA1 following up on his promise to provide more advice about the issues raised by FA1 in his previous email (including the "Right of First Refusal" for minority shareholders). Instead, LA3 provided the following advice on his behalf:

> Dear All,
>
> Please find below our comments and additional explanations regarding the situation of the shareholder X.
>
> In order to file a lawsuit against board of directors, the shareholder shall deposit his/her shares to a bank as a guaranty and accordingly recover the loss of the company in case of losing the lawsuit.
>
> In the event that the shareholder wins the case, the compensation amount determined by the court shall be paid to the company.
>
> Therefore, filing a lawsuit against Board of Directors will be detrimental to the shareholder's interests due to the conditions mentioned above.
>
> For instance, in one of cases which we have followed, although the minority shareholder has a shareholding ratio of nearly 49.9%, he could not obtain a positive result from the court with respect this right to receive information from the company.
>
> According to the general approach of the courts, the right to receive information regarding the company is limited with the documents submitted in the General Assembly Meetings.
>
> In addition to the situations mentioned above, if X has signed any decision of the Board, he/she may not raise a claim against the other Board Members unless there is a written objection of [sic] him/her in the Board resolution.
>
> Best Regards,
>
> LA3

While LF1's previous advice is not explicitly referred to by LA3, it is clear that this email was distributed to the main representatives of the Sellers in order to publically refute her argument that the minority shareholder 'X' can sue the board of directors with respect to a right of first refusal. LA3 listed a number of reasons to support her legal opinion that resort to legal action is not a practical possibility based on her knowledge of the law and experience with "one of cases which we have followed". From a pragma-linguistic perspective, the register is comparatively less formal or

legalese than LF1's email message with only one instance of the auxiliary verb *shall* to express legal obligation. This can be viewed as a discursive strategy used by LA3 to ensure that her legal opinion is easily interpreted by all representatives, including non-lawyers such as FA1, in competition with LF1's preliminary advice.

7.5.5 Covering Letter of Advice

On 22 September, LF2 attached a letter of advice to an email in response to the advice provided by LA3 (see Appendix D), which includes more extensive advice about the rights of the (non-selling) minority shareholders.

A very significant issue to note here from a social practice perspective is that the owner of the law firm (LF5) personally signed off on the advice. In doing so, he is responding to a perceived challenge to the authority of the law firm in what can be identified as a critical site of engagement (Scollon & Scollon, 1995). LF5 is extremely well known and respected in the Turkish legal services market for having extensive experience and expertise in commercial law practice and his legal opinion represents significant professional authority in this exchange of legal advice. As noted in Chapter 6, LF5 rarely becomes involved on the frontstage of communicative interaction with clients or legal counterparts, instead devoting most of his professional time to advising his employee lawyers in a backstage role of supervision and professional support. His personal involvement here therefore represents a discourse strategy to underpin the legal advice with the highest institutional authority and reposition the law firm as the primary legal service provider amongst the others involved in the deal. This seems particularly important at this initial stage of negotiations during which the different discourse participants establish discursive roles and identities, because LF5 was not involved in written communication during the deal again.

The decision to use a letter format (as opposed to the email genre used previously by LF1, LA1 and LA3), is also a discursive strategy used by the law firm to provide more comprehensive and definitive advice on this issue and maintain control over the provision of legal services. As a nexus between the semiotic and social practice perspectives, genre analysis enables me to analyse how this document was used to achieve these purposes and outcomes (Bhatia, 2002a). The use of genre analysis is also

effective for understanding discursive practices and roles in this situated context of legal practice (Bhatia, 2011; Hafner, 2011).

The formal letter genre of advice (attached to email communication) represents a communication channel to provide more detailed and comprehensive legal advice. In terms of rhetorical organization, the letter genre is often structured with the use of paragraph headings (in bold) to focus discussion on the most contentious legal issues (Townley & Jones, 2016). For instance, LF2 uses headings to address the "Right of First Refusal" under the "Joint Venture Agreement" (between Seller 1, Seller 2 and the individual shareholders of the Company) to reach a "Conclusion", which forms the basis for the legal opinion in the final two paragraphs of the letter.

More specifically, the rhetorical structure of this letter is characteristic of IRAC legal analysis methodology set out in Table 7.5. which is designed to:

- first identify the legal *issue* (I);
- explain the applicable law or *rule* (R);
- analytically *apply* the law to the issue (A); and
- finally reach a *conclusion* as a form of reasoned legal opinion or advice (C) about the probable outcome of the legal issue or dispute.

The IRAC framework is explicitly taught in American law schools as the most effective methodology for organizing legal analysis so that the reader can clearly follow legal advice for intrinsically complex issues. It also forms an essential part of the *interoffice memorandum* genre in legal practice to provide predictive legal advice for clients (the use of *if* constructions to formulate analytical prediction are underlined).

Table 7.5: Covering letter genre using the IRAC framework

Move 1 SALUTATION	Dear All,
Move 2 **(I) ISSUE** Identification of the legal issue(s) under analysis	Further to our e-mail of 18.9.2006 we have completed our examination of the Joint Venture Agreement ("JVA") of the Company in relation to I) the right of first refusal of a non-selling shareholder. II) the necessity of getting the non-selling shareholder's written consent in case of sale of the Company shares.

MOVE 3(a) **(R) RULE** Explanation of the laws or regulations that are relevant to the legal issue(s) identified above	**Right of First Refusal** In article 9 with the title "Transfer of share certificates" • The first paragraph states the conditions for transfer of shares to affiliated companies of A and B Group shareholders. • The third paragraph states that in case any one of A or B Group shareholders wish to sell its shares to any third party, he may sell all of his shares and not part of them and the other A or B ***Groups*** shall have a right of first refusal. In case those who have the right of first refusal cannot agree with the seller over the proposed price, then they shall have the right to purchase the shares over the price to be determined by independent price appraisal expert.
MOVE 3(b)	**Joint Venture Agreement** • Article 7.2 and 7.3 govern share transfers to affiliates with the conditions set out therein. • According to article 7.5 "… a Party wishing to sell Shares can only sell all, but not part, of its Shares to a third party buyer (a "Purchaser"). Each of ***Seller 2*** and ***the Buyers*** or their designee has a right of first refusal over the Shares of the other in the event that either (the "Seller") wishes to sell its Shares to a Purchaser which right of first refusal may be exercised in the manner set forth in Section 7.6 below" • Articles 7.6, 7.7, 7.8, 7.9 and 7.10 govern the procedure of the exercise of the right of first refusal and the Seller's right in case such right is not exercised. In all of these articles the owner of the right of first refusal is mentioned as "non-selling Party".
MOVE 4 **(A) ANALYSIS** Analytical process of applying the relevant law to the legal issue(s) and inductive reasoning	**Conclusion** • In article 7.5 of the JVA the right of first refusal is only given to Seller 2 and the Buyers. Thus, in case Seller 2 wishes to sell its shares, the Buyers will have a right of first refusal and if the Buyers wish to sell, Seller 2 shall have the right of first refusal. If both Buyers and Seller 2 are selling together none will have the right of first refusal. Accordingly, neither Seller 1 nor the Individual Shareholders has any right of first refusal in case of sale of the Company shares to third parties. • In articles 7.6, 7.7, 7.8, 7.9 and 7.10 the owner of the right of first refusal is referred to as "non-selling Party" and as explained above Party covers Seller 1 and the Buyers on one side and Seller 2 and the Individual Shareholders on the other side. However, it can be interpreted that a non-selling Party cannot be any one of the Individual Shareholders because the word "Party" is defined and covers Seller 2 and the Individual Shareholders as one group. • Apart from this, i.e the discrepancy between article 7.5 and 7.6, 7.7, 7.8, 7.9, 7.10 of the JVA, the wording of the JVA is in contradiction with the wording of AA. The contradiction is that in JVA the right of first refusal is given to Seller 2 and the Buyers whereas in AA it is given to every A and B Groups shareholder.

MOVE 5 **(C) CONCLUSION** Legal opinion about the predicted result or outcome for the contentious issue based on the legal analysis presented above.	These provisions can be interpreted in two ways: One interpretation can be that each individual A group shareholder including the individual shareholder have a right of first refusal in case of sale of B Group or even A Group shares. The second interpretation is the following: According to article 13.8 of the JVA, in case of discrepancy between the JVA and the AA, the provisions of the JVA will prevail. According to article 7.5 of the JVA only Seller 2 and the Buyers, not the individual shareholders, have the right of first refusal. We shares [sic] this second interpretation.
MOVE 6 CLOSING	Please do not hesitate to contact [sic] in case you have any inquiries. LF5

In terms of Swalesean move and step structure, the legal issues identified at *Move 2* are reformulations of the two queries raised by FA1 regarding minority shareholders in his email dated 18 September (see Section 7.5.1). This *Move 2* also achieves the important cohesive function of explaining to FA1 how this letter integrates into the overall sequence of this negotiation activity, by referring to the date of LF1's previous email of advice, thus producing a type of intertextuality called referential (Devitt, 1991) or endophoric (Halliday & Hasan, 1976). The applicable laws for the two issues are then explained at *Moves 3(a) and 3(b)* by quoting directly from the Joint Venture Agreement (JVA) and the Articles of Association of the Company (AA) respectively.

LF5 refers to the next section of the letter as "Conclusion" at *Move 4*. However, this actually represents the *analytical* function of the IRAC framework to examine the Right of First Refusal issue subject to the relevant sub-sections of the JVA and AA explained in the previous *rule* section of the letter. Even though LF5 used the incorrect heading here, from a social practice perspective he is following the correct dialogic process of the IRAC framework used in legal practice as a "time-honored heuristic tool to help lawyers organize their analysis" (Breeze, 2014, p.4). At *Move 4* LF5 provided comprehensive analysis of the legal issues by using the *if* construction to "set out the possibilities or options with maximum clarity" (p.14) – see underlined sections of the letter in Table 7.5 above. He then formulated a general rule from particular to general as a form of inductive generalization for each issue at then end of each sub-section demarcated by bullet-points. Based on this reasoned analysis, LF5 then presented two

possible “interpretations” of the legal outcomes for the Right of First Refusal issue at *Move 5* in choosing the preferred option with the hedge that the law firm “shares this second interpretation”. These findings align with Breeze (2014), who also identified the use of hedging as a discourse strategy to protect lawyers from “the consequences of an inaccurate prediction” about future outcomes or recommendations in this final section of the IRAC framework (p.14). *Moves 1 and 6* represent common discursive features to begin the letter with a salutation and close the letter, which are disingenuous considering the fact that the letter is embedded in an email with the same functions.

When compared to the previous emails prepared by LF1(see Section 7.5.3 above) and LA3 (see Section 7.5.4 above), the rhetorical organization for this (IRAC) covering letter is much more coherent and effective in providing legal advice supported by regulatory analysis. In comparison, both LF1 and LA3 failed to provide any systematic analysis of the applicable laws as they relate to the issue under consideration. Instead, they relied on practical examples to support legal opinion that is not clearly reasoned or articulated. Indeed, LF1’s preliminary opinion that minority shareholders could sue the new board of directors of the Company actually contradicts with LF5’s subsequent opinion that they do not have such a right of first refusal. Also significant here is the use of headings and bullet-points by LF5 to present detailed legal advice in coherent stages of the IRAC framework. This is arguably more effective than LA3’s discursive strategy to separate each sentence into small, separate paragraphs and connect them with relational conjunctions used at the beginning of each sentence. The rhetorical organization of her email advice is coherent but fails to explain the relevant legal processes in any significant detail or connect them effectively to the central issues under analysis. The decision to use this type of IRAC letter genre was therefore a responsive and innovative discourse strategy (Jones, 2014) for the law firm to establish professional control over this type of legal advice on a contentious issue between the different legal representatives. It also supports the view that the law firm possesses a higher degree of textual, generic and social communicative competencies for this specialised discourse activity within the meaning of discourse expertise (Candlin, 1999).

7.5.6 An imposed consensus terminates the exchanges of advice

Three days later, LA1 responded to this letter of advice with the following email set out in Table 7.6. Similar to his previous email on the matter (see Section 7.5.2), LA1 seems more concerned with exerting discursive authority over this matter than with providing any substantive advice (Paragraphs have been numbered).

Table 7.6: Email used to impose consensus

0	Dear LF2,
1	Article 7 indicates the Right of First Refusal for the sale of the Company shares, where Seller 2 holds 49,79% and the remainder of 0,21% is distributed to 6 shareholders (in order to aid the concluding minimum Corporation structure of five,) apart from Seller 2 shareholding. As you can see there is [sic] no minority rights involved in here for the individual shareholder.
2	A remaining individual shareholder of Seller 2 has No Right of First Refusal over Company shares anyway, as this belongs to either Seller 1 or Seller 2.
3	Whereas Article 8 gives a Right of First Refusal to Seller 1 over the sale of Seller 2 shares -not the Company - of the individual Seller 2 shareholders in Seller 2, where the remaining individual shareholder holds 16,41% and thus has minority rights in Seller 2. But as this shareholder is in compliance with all the Board resolutions in Seller 2 and the Company, no lawsuits are practically achievable and may face the risk of loosing [sic] his shares in the Company in case of failure.
4	According to all the comments arising, all is clarified now and we should no [sic] further spend our effort and time for researching this matter any more.
5	On the other hand [sic] there is no longer any outstanding individual shareholder left as he agreed and signed the mandate last Thursday.
6	Best Regards, LA1

In the first two paragraphs of the email LA1 provided a very limited and abstract analysis of the JVA to support his view that there are no minority rights for individual shareholders. Instead, he merely reaffirmed the shareholding structure, stating that such a right only belongs to either Seller 1 or Seller 2.

In paragraph 3, grammatical and syntax errors obscure the intended meaning of his argument that the individual shareholders only hold minority shareholding in Seller 2 and not the Company. Again, LA1 provided no substantive legal analysis of the JVA to support this view. Instead, on the basis that every "shareholder is in compliance with all the Board resolutions in Seller 2 and the Company", he proposed that no minority

shareholder would be able to file a lawsuit because of "the risk of loosing [sic] his shares in the Company in case of failure". What this "failure" relates to is also unclear, but it implies some insider, practical knowledge of the legal arrangements between the different Sellers as a minority shareholder of Seller 2 himself. He also relied on this knowledge to finally state in paragraph 5 that, "there is no longer any outstanding individual shareholder left as he agreed and signed the mandate last Thursday".

LA1's failure to provide any substantive legal analysis in response to the covering letter of advice prepared by LF5 supports the view that LA1's primary goal here was to effectively force a consensus on the legal representatives and prevent any more time or professional resources being devoted to the issue. This is also evidenced in paragraph 4 with his proclamation that "all is clarified now" despite the fact he was unable to provide any clarification himself.

7.5.7 Discursive control and authority

From social institutional and practice perspectives, this interaction between the lawyers is significant for the way it establishes discursive authority over the provision of legal advice. It can be argued that a lot of the legal advice provided by the lawyers overlaps in arguing the same legal opinion, which became counter-productive when we consider the time and cost involved. This aligns with Palmeri's (2004) view that communication between inter-professional collaborators can be "destructive and wasteful", particularly when there are differences in their beliefs about appropriate discursive conventions and epistemological standards. For instance, it would have been comparatively less problematic for LF1 to simply agree with the legal opinion that LA3 presented in the email dated 19 September. Instead, the owner of the law firm became involved (at considerable cost to the clients) in order to draft more comprehensive legal analysis, which reaches basically the same view that the minority shareholders would/could not sue. His motivation for such intervention therefore relates to the perceived need of the law firm to exercise power and authority over the other participants in this discursive activity. The same discursive strategy was used by LA1 in his email response to the letter prepared by LF5, which was primarily designed to terminate the exchange of emails on his terms despite the fact he had nothing more to contribute to the issue under discussion. Reputations are on the line here and the stakes are high. If lawyers are

viewed as incompetent by clients, it can impact negatively on their brand reputation in the competitive legal services market.

7.6 Negotiating the Confidentiality Agreement with bidders

As noted above, bidders first had to sign the Confidentiality Agreement before they could access the Information Memorandum and Process Letter and participate further in the bidding process. However, some individual bidders wanted to make changes to the operational wording of the Confidentiality Agreement and here I analyse this important negotiation activity as an intertextual process involving the following processes, practices and textual artefacts:

- Bidders used Markup to make proposed amendments to the wording of specific Clauses of the Confidentiality Agreement.
- Bidders emailed this amended version of the Confidentiality Agreement to the Joint Financial Advisors, who then immediately forwarded them onto LF for legal review and evaluation.
- LF2 used a variety of discourse types and strategies to undertake this evaluative review, including the use of Markup within the amended version of the Confidentiality Agreement and email communication to provide evaluative legal opinion.
- LF2 then sent this textual review to the financial and legal representatives of the Sellers for input as a collaborative process of deliberation and negotiation.
- Once the representatives reached collective consensus about the proposed amendments, LF2 negotiated on behalf of the Sellers in direct communication with lawyers representing the relevant bidder. The oral negotiation exchanges between LF2 and the bidders were recorded and made transparent to the other representatives primarily with the use of Markup in the negotiated version of the Confidentiality Agreement and email communication.

These negotiation activities involved the interaction of different participants with their own interpretive agendas, professional backgrounds and communicative expertise (Candlin & Crichton, 2011). Nevertheless, the interdependence between these individual differences and the common discourse activity was stabilised by the shared

use of a genre repertoire of email communication and the use of Track-Changes and Markup as a discourse type to negotiate changes to specific Clauses of the Confidentiality Agreement. Section 7.6 is designed to account for this (intertextually orientated) ontology of contract negotiation using the different analytical perspectives of the MP model.

Due to the complexity of the process in a short period of time, S1 was assisted by S1a, who was a Turkish national and the Chief Legal Counsel for Seller 1 in Istanbul. FA1 was also assisted by FA1a, who was a lawyer working for the same investment bank based in London. The other discourse participants included the main legal and financial representatives of the Sellers and lawyers representing the bidders. Analysis in this section is framed as two negotiation case studies involving Bidder 1 and Bidder 2.

7.6.1 Bidder 1

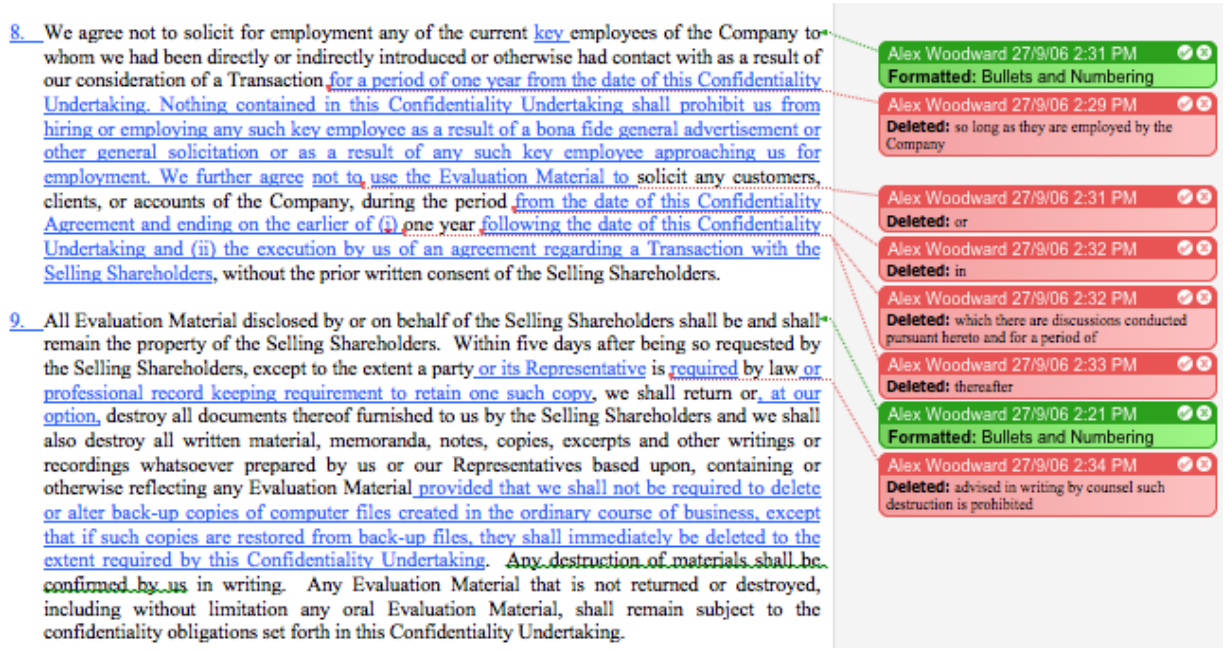
FA1a started the review process of Bidder 1 with the following message addressed to LF1, LA1, and S1a and CC'ed to S1 and FA1 on 28 September:

> Please find attached the CA from Bidder 1. It has substantial changes to text and contents. Please let us know how you prefer to deal with these changes.
>
> Best regards,
> FA1a

7.6.1.1 The institutionalised use of Markup for textual negotiation

From a social practice perspective, textual contract negotiation is primarily undertaken by writing proposed amendments to a document like the Confidentiality Agreement and inserting marginal comments (using Microsoft editing tools in Track Changes), referred to collectively as "Markup" (Townley & Jones, 2016). Exhibit 7.1 below is an excerpt from the Confidentiality Agreement that demonstrates how amendments or deletions proposed by Bidder 1 were recorded and highlighted in different colours by means of the Markup software. The nature of the changes or deletions was also recorded in coloured comment balloons, positioned in the right-hand margin of the page.

Exhibit 7.1: The highlighting and explanatory functions of Markup



These highlighted amendments and/or deletions are provisional, pending challenge and/or ratification by the Seller's representatives. For instance, proposed amendments to the wording of Clauses 8 and 9 below were highlighted in blue and underlined, and any text that was deleted from the original version of the Confidentiality Agreement was recorded in the red balloons located in the right-hand margin of the document. These boxes also include a record of the person who made such changes at a specific time/date during the negotiation process. Meanwhile, the green boxes in the right-hand margin record any formatting changes to the document, though these do not ordinarily relate to anything meaningful (in terms of substantive content) for consideration by the various parties.

Another function of Markup that is not apparent in the example above is the opportunity for authors to insert their own *Comments* in the right-hand margin of the document. Such comments represent important discourse types and strategies whereby lawyers (and other professionals) provide explanations, reasons or justifications for making proposed changes to the text highlighted in Markup or raise questions about the contractual provisions for consideration by the recipients and/or for further clarification (Townley & Jones, 2016). This intertextual function of inserting additional comments alongside the main text of the contract is the most direct (and arguably most effectual)

way to carry out this type of textual negotiation. The use of the Comments software also improves reference to specific Clauses under negotiation and also the retrieval of information about proposed amendments. It thus increases the level of accountability for negotiation activity among the discourse participants.

By clearly highlighting proposed amendments to the contract in Markup, quite often there is no need for the counterpart lawyers to provide any written explanation for changes made to the wording of the contract as demonstrated in Exhibit 7.1. This is particularly the case when the proposed amendments are based on conventional corporate law principles and the meaning is thus evidently clear to other members of the relevant community of commercial legal practice. For example, Bidder 1 made significant changes to limit the operational scope of the restraint of trade provisions drafted by the Sellers' representatives under Clause 8. The first amendment limits the provisions to only "key" employees of the Company involved in the M&A transaction and for only one year from signing the Confidentiality Agreement. The proposed amendments then operate to exclude the restraint of trade provisions entirely to enable Bidder 1 to hire or employ key employees of the Company through "bona fide general advertisement or other general solicitation or as a result of any such key employee approaching [Bidder 1] for employment". The other reason for not providing any further explanation for the proposed changes is based on a strategic discourse strategy. It leaves the interpretation of what is meant by "key" employees as conjectural as possible, with the intent to exclude as many employees as possible from the operational scope of Clause 8. This finding aligns with other studies that show that legal language is used as a strategic resource by draftsperson to deliberately obscure the meaning of legal terms in order to be strategically vague and indeterminate (Bhatia & Bhatia, 2011; Rear & Jones, 2013).

7.6.1.2 Legal review of marked-up Confidentiality Agreement

The marked-up copy of the Confidentiality Agreement from Bidder 1 was next forwarded internally by LF1 to LF2 in accordance with the customary work practices of the law firm. While LF1 was the formal representative of the law firm in direct correspondence with the other Sellers' representatives on the frontstage of interaction, most of the legal work for this preliminary task was delegated internally to the more

junior lawyer LF2 to complete in a backstage role in consultation with LF1.

On the same day, LF2 then sent her legal review in an email to the main Sellers' representatives (LF1, LA1, S1a, S1 and FA1). It is significant to note in Exhibit 7.2 below that LF2 begins the email by stating that she has not provided written advice about proposed amendments that the law firm believes "could be acceptable according to our opinion". Even though this circumvents the intended collaborative nature of this review process, it represents an effective practice to manage time and professional resources considering the number of bidders and Confidentiality Agreements that need to be reviewed and finalised in a short period of one week. To further expedite the process, it was determined that S1, LA1 and FA1 were the only representatives who could determine the outcome for any unresolved issues highlighted by the legal review undertaken by LF2. To involve other representatives (such as LA2 and LA3) could only frustrate or extend this time-critical review process. Tacit acceptance of this strategy by the other representatives confirmed the trust they had in the professional expertise of the law firm (LF), thus reinforcing its role as the primary legal service provider for this deal.

7.6.1.3 Genre analysis of emails used to report legal review of proposed amendments

In conjunction with the use of Markup, email communication was primarily used for this electronically mediated discourse activity which aimed to review and evaluate proposed changes to the Confidentiality Agreement. This section examines the generic features and functions of two emails (see Exhibit 7.2 below and Exhibit 7.3 in the following section) used by LF2 for the purpose of communicating her legal review and negotiation of the amendments proposed by Bidder 1 to the other representatives of the Sellers (underlined excerpts are analysed further below in the present section):

Exhibit 7.2: Preliminary legal review of proposed changes embedded in email

> Dear All,
>
> We examined the revisions. The ones we have not commented on could be acceptable according to our opinion.
>
> Clause 6
> We advise that the word "compel" stays as it is stronger than "required" and again their

counsel can be added next to selling shareholders counsel.

Clause 7
(M2a) Changes in clause 7 are too severe
(M1a) i.e addition of "key employees"
(M2b) should not [sic] acceptable.
(M2b-S1) Does this company make [sic] any business with the Company currently? Does it have an interest in the Company employees?
(M3) We think such article should remain unchanged.

Clause 8
(M2a) We cannot understand the purpose of [sic] changes.
(M1) In any case [sic] addition of "at our option"
(M2b) should not [sic] acceptable.
(M3) All the documents furnished by the selling shareholder shall either be returned or destroyed without any exception.
(M2c) We are not aware of any "professional record keeping requirement" for any documents or information which are confidential and instructed to be destroyed.

Clause 16
We are of the opinion that the revised wording could be kept but amended to say "... would do for our..."

Regards
LF2

The email shown in Exhibit 7.2 has a significantly different rhetorical structure to other emails used in the genre repertoire analysed in Chapter 7 due to a different rhetorical purpose, function and audience. Firstly, LF2 uses Clause numbers (i.e. Clauses 6, 7, 8 and 16) from the Confidentiality Agreement as paragraph headings in the email to focus discussion on those Clauses under negotiation.

Most paragraphs are then constituted by three distinctive moves and potential steps as follows:

- Move 1 achieves the important intertextual function of identifying the proposed amendment(s) made earlier by the bidder to the particular Clause of the contract.
- Move 2 provides evaluative explanation or opinion about the proposed amendment in advising to accept it or not. Move 2 can also involve a constitutive step to seek further information from the other representatives about the contractual Clause under negotiation in order to clarify whether the proposed amendment is acceptable or not.
- Move 3 requests or demands some action.

However, these key moves are rarely presented in the above order, with Move 1 typically sandwiched between several evaluative moves (Move 2) and constituted steps. This is a syntactic embedding strategy that was well exemplified in earlier research into legal email communication (something discussed in Townley & Jones, 2016). Move 3, likewise, may not be represented by the last sentence of the text, being likewise embedded in other move/step sequences. The example two paragraphs for Clauses 7 and 8 that I have underlined in Exhibit 7.2 above illustrate this structure.

In relation to in Clause 7, the proposed insertion of "key employee" (M1a) is embedded between evaluative opinion/advice that this is "too severe" (M2a) and "should not [sic] acceptable" (M2b). Uncertain about current possible dealings between the Company and Bidder, LF2 then uses the constitutive Step 1 to hedge this stance (M2b-S1) until further information can be obtained from the other Sellers' representatives pertaining to the proposed changes to the restraint of trade provisions. LF2 then concludes this specific review paragraph with the advice at Move 3 that Clause 7 "should remain unchanged".

LF2's review of Clause 8 follows a similar pattern of generic structuring whereby identification of the proposed amendment (M1) is embedded between advice that the law firm cannot "understand the purposes of [sic] changes" (M2a) and that the proposed amendment "should not [sic] acceptable" (M2b). LF2 then recommends alternative action (M3) based on subsequent detailed explanation for such action (M2c). The intertwined and recycled structuring of these different moves can create some confusion despite the intended goal of this email genre to clearly explain why certain proposed amendments should be accepted or not under the Confidentiality Agreement. This email genre could be used more effectively by restructuring the review in accordance with the M1 + M2 + M3 sequence identified by the analysis above.

From a semiotic resource perspective, and focusing once again on intertextuality, I note that LF2 quotes extensively from the original text of the Confidentiality Agreement and the wording of the proposed amendments in order to be as explicit and transparent as possible. She also uses quotation marks to highlight the most contentious terms under consideration. For example, she highlights the modified meaning of "key employees" under the restraint of trade Clause 7. Other lexico-grammatical choices are

comparatively simpler than the legalese nature of the predictive legal advice provided in the IRAC letter genre (see Section 7.5.5 above). Furthermore, there is no use of the hedging evidenced in the letter of advice because the rhetorical function of the moves in this email genre is to precisely state the meaning of the proposed amendments and the reason(s) for either accepting or rejecting them with alternative action.

Perhaps due to the limited time available for providing legal advice, LF2 makes a number of consistent grammatical errors, such as "should not acceptable". However, like her counterpart, LF2 is not a native speaker of English. The register can also be characterised as less than formal on the basis that she does not use "fully-formed and correctly punctuated sentences which a normal speaker of British English would regard as grammatical in their written form" (Gains, 1999). Nevertheless, previous research into business email communication practices indicates that making typing errors and linguistic errors in email communication is more acceptable in multicultural contexts using English as a second language (Jensen, 2009), providing that such errors do not confuse confusion. Another feature of the professional register to note is the use of plural pronouns by LF2 to represent the entire law firm when proffering legal advice. This lends institutional authority to her advice, such as: "*we* advise", "*we* are of the opinion" or "according to *our* opinion".

7.6.1.4 Genre analysis of emails used to report oral negotiations with bidders

The next social practice was for S1, FA1 and LA1 to consider this textual review and identify any outstanding issues for further evaluation with LF2. For this particular case study of Bidder 1, FA1 confirmed the next day that, "we are in full agreement with our legal advisor's comments". LF2 was then empowered to orally communicate this stance to the lawyer representing Bidder 1 (B1L) through a process of oral negotiation over the telephone. Even though the telephone conversation(s) between LF2 and B1L were not recorded for the purposes of this study, the content of such discussions are recontextualised in this excerpt of the email LF2 sent to FA1 on 3 October in Exhibit 7.3 (paragraphs numbered; underlined excerpts are analysed further below in the present section):

Exhibit 7.3: Example of email genre used to report oral negotiation activity with bidders to the Sellers' representatives

[1] Regarding ***Bidder 1***, their in-house called me and we went through their revisions. The ones I do not mention below are those non-problematic or which you already had not accepted and which he will consult internally:

[2] He will discuss internally the terms of confidentiality and its commencement periods. But he stated that the company would not ever accept to have confidentiality for more than 2 years and inquires whether you would accept to have it as 2 years.

[3] In relation to clause 7, their concern is that they might in the future decide to enter the market in Turkey and give advertisement [sic] for employees and if any employee of the company approaches to [sic] them they do not want to be in a position breaching their undertaking. I stated that "solicit" is explicit in meaning. He suggests to only include" employment via advertisement" and for this to be exceptional [sic] of the non-solicitation. I think [sic] is acceptable.

[4] In clause 8 he explained their obligation to keep their opinion [sic] and evaluation materials as record keeping under professional requirement of bars etc. I think it is not too detrimental for the Selling shareholders that the Evaluation Material is kept if it is a requirement in [sic] the company of the bidder under full confidentiality.

[5] Their reason for not accepting [sic] deleting back up copies is that though [sic] it cannot be reached [sic] by anyone such back up copies continue to exist and deletion of such requires computer service providers to visit the company and delete them which is additional cost to them and they do not want be obliged to delete them unless the evaluation material can be restored back.

[6] After he consults the above issues and some others which I stated that is not acceptable to the selling shareholders internally, he will prepare a revised draft and I will comment to [sic] it in line with your coming [sic] comments to the above.

Regards
LF2

The rhetorical purpose of this particular email genre is to provide the Sellers' representatives with a written account of negotiation activity with the bidders at this advanced stage of the negotiation process, which is constituted by two main functions. As a specific event in an intertextual chain of activity, the preliminary function of this email genre is to explain what had transpired between LF2 and the relevant bidder in paragraph [1] and to inform the Sellers' representatives about the planned course of negotiation activity subsequent to this email, briefly stated in paragraph [2] and explained in more detail in paragraph 6 to conclude the email.

The email is then structured into separate paragraphs for the other main purpose of discussing the specific Clauses still under negotiation, similar to the rhetorical organization of the preliminary legal review email (see Exhibit 7.2). However, LF2 only refers to *Clauses 7 and 8* at the beginning of paragraphs [3] and [4] instead of using the same Clause headings relied on in the previous email. More significant is the fact that she fails to identify any Clause numbers for the negotiative issues of the confidentiality period in paragraph [2] or deletion of back up copies in paragraph [5] at the beginning of these email sections. Nevertheless, the functional intertextual relationship and proximity with the previous email communication arguably makes the use of these types references less critical here because the other representatives (FA1, S1, LA1) are already familiar with these contractual issues still under negotiation.

In terms of semiotics, it is significant to note the changes in register and the different lexico-grammatical choices that LF2 makes as the rhetorical purpose of this email genre changes in comparison to her preliminary review email. This email essentially represents a narrative of what transpired between LF2 and B1L over the telephone and LF2 uses pronouns *I* and *he* to establish a professional persona for the participants. As demonstrated in the excerpt from the email in Exhibit 7.4 below, the narratives of the negotiation activity are constructed with a reporting technique, using reported speech forms like “he said this” to explain the reason(s) that Bidder 1 relied on to make the proposed amendments (Move 1) and “I said that” to report the legal reason(s) for LF2 either accepting or rejecting the proposal during their telephone conversation (Move 2) (intertextuality references are underlined; marked terms are in bold font).

LF2 also used the same discourse strategy as above to translate the rule-based terminology of the Confidentiality Agreement into an account of what the possible contractual outcomes of the proposed amendments practically mean for Bidder 1 and the Company. The intention here was presumably to use lay terms and a conversational register to make the meaning of the negotiations and her legal opinion as clear as possible for the other representatives of the Sellers to consider.

The rhetorical move structure within paragraphs is again different for this email genre used by LF2 to report on the negotiation activity – see Exhibit 7.4. Move 1 is first used to define the “bargaining chips” (Galanter, 1984) in this negotiation activity – the

practical reasons that B1L has advocated to LF2 in order to justify his proposed changes to a specific Clause. Move 2 is then used to account for the legal justifications that LF2 has used to either accept or reject the bargaining chip as part of a competitive exchange of proposals and counterproposals (Gulliver, 1979).

Exhibit 7.4: Example of the narrative register of reporting negotiation activity email genre

> In relation to clause 7 **their concern is** that they might in the future decide to enter the market in Turkey and give advertisement for employees and if any employee of the company approaches to them they do not want to be in a position breaching their undertaking *(Move 1a*). **I stated that** "solicit" is explicit in meaning *(Move 2a).* **He suggests** to only include "employment via advertisement" and for this to be exceptional of the non-solicitation *(Move 1b).* **I think** [sic] is acceptable *(Move 2b).*
>
> In clause 8 **he explained** their obligation to keep their opinion and evaluation materials as record keeping under professional requirement of bars etc *(Move 1)*. **I think** it is not too detrimental for the Selling shareholders that the Evaluation Material is kept if it is a requirement in the company of the bidder under full confidentiality *(Move 2).*

In relation to Clause 7, this move structure evolved into a two-stage communicative process. B1L was forced to scale down his initial proposal to exclude non-solicitation for instances when Bidder 1 was approached by employees of the Company (at Move 1a) to instances only relating to "employment via advertisement" (at Move 1b) as a compromise to LF2's critical rejection (at Move 2a). At Move 2b the parties appear to reach a provisional compromise with LF2 stating that she thought that this counter proposal was acceptable, pending ratification by the other Sellers' representatives.

The proposed changes to Clause 8 were designed to exempt Bidder 1 from the original obligation on bidders to destroy all materials provided by the Sellers for evaluation purposes, due to the "professional record keeping requirements" institutionalised by the Bidder 1. We can trace this intertextual negotiation process back to Markup in the original version of the Confidential Agreement (see Exhibit 7.1 above) and LF2's initial opinion that she could not "understand the purpose of [sic] changes" and that they "should not [sic] acceptable" in her preliminary advice email (see Exhibit 7.2). However, LF2 now changes this earlier stance in hedging her approval of these changes to Clause 8 as "not too detrimental" at Move 2 on the condition that Bidder 1 institutionalises the confidential protection of such evaluation materials he promises at Move 1. From a social practice perspective, these intertextual emails clearly

demonstrate how compromise is reached through negotiation discourse and the exchange of legally-grounded arguments and assurances between counterpart lawyers. From a semiotic resource perspective, the use of hedging represents an important interactional strategy used by LF2 to encourage the other representatives to deliberate carefully over this issue. It also functions to protect the law firm from any possible liability arising from such legal opinion or advice.

This comparative analysis of these emails drafted by LF2 for different communicative purposes supports the view that the use of generic resources "is versatile and dynamic in nature" and "has a natural propensity for innovation and exploitation" (Bhatia, 2002b, p.6), particularly when we consider the versatility of email communication. It also supports the view that expert members of professional communities, such as LF2, exploit conventionalised features of recognised genres to create novel variations (Berkenkotter and Huckin, 1995) in response to the specific exigencies of situated discourse interaction. As a result, email genres are often used in overlapping, mixed and embedded forms (Fairclough, 1993; Bhatia, 1997a, 1997b) as part of a genre repertoire developed by the Sellers' representatives throughout the negotiation process.

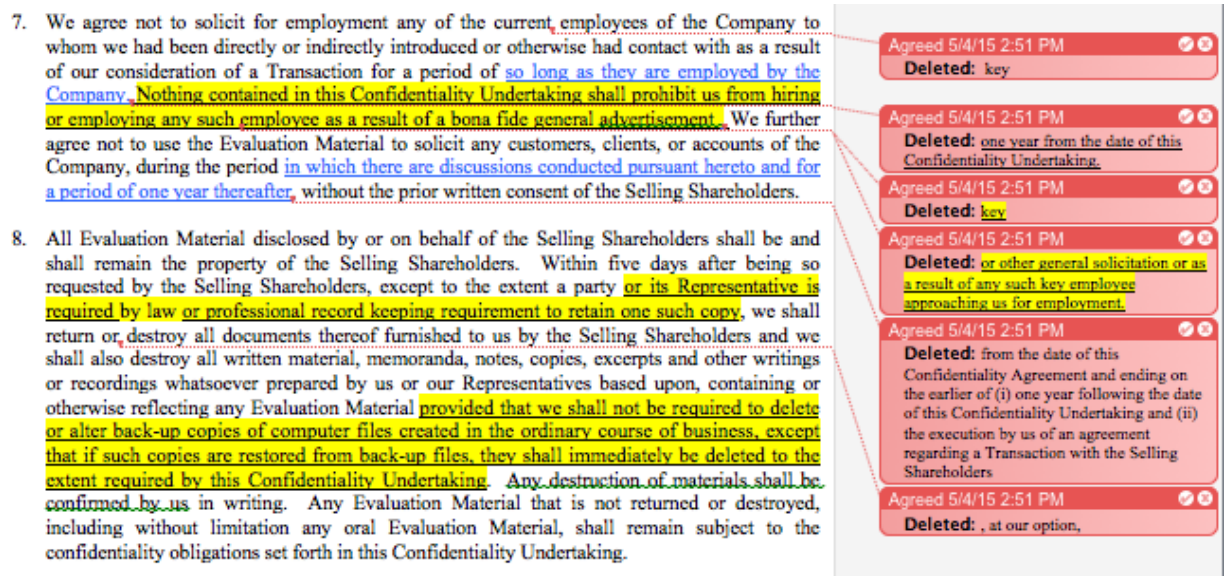
7.6.1.5 Final negotiations of the Confidentiality Agreement

The next social practice was for LF2 to retextualise the negotiative stance taken by the Sellers' representatives in response to her report on oral negotiation activity with Bidder 1 (see Exhibits 7.2 – 7.4) in the form of Markup recorded to the Confidentiality Agreement. We know this from this email LF2 sent to Bidder 1 on 6 October as follows:

> Dear Mr. B1L,
>
> I amended your version in line with our discussion with you in the beginning of this week to the extent possible for our clients. Waiting to hear from you.

Exhibit 7.5 below demonstrates how Markup was used to rearticulate the agreed provisions for Clauses 7 and 8, which also involved certain counter-proposals highlighted in yellow and underlined by LF2. The use of Markup also functions as an intertextual record of the negotiation discourse interaction between LF2 and B1L.

Exhibit 7.5: Bidder 1 re-negotiated Confidentiality Agreement



7. We agree not to solicit for employment any of the current employees of the Company to whom we had been directly or indirectly introduced or otherwise had contact with as a result of our consideration of a Transaction for a period of so long as they are employed by the Company. Nothing contained in this Confidentiality Undertaking shall prohibit us from hiring or employing any such employee as a result of a bona fide general advertisement. We further agree not to use the Evaluation Material to solicit any customers, clients, or accounts of the Company, during the period in which there are discussions conducted pursuant hereto and for a period of one year thereafter, without the prior written consent of the Selling Shareholders.

8. All Evaluation Material disclosed by or on behalf of the Selling Shareholders shall be and shall remain the property of the Selling Shareholders. Within five days after being so requested by the Selling Shareholders, except to the extent a party or its Representative is required by law or professional record keeping requirement to retain one such copy, we shall return or destroy all documents thereof furnished to us by the Selling Shareholders and we shall also destroy all written material, memoranda, notes, copies, excerpts and other writings or recordings whatsoever prepared by us or our Representatives based upon, containing or otherwise reflecting any Evaluation Material provided that we shall not be required to delete or alter back-up copies of computer files created in the ordinary course of business, except that if such copies are restored from back-up files, they shall immediately be deleted to the extent required by this Confidentiality Undertaking. Any destruction of materials shall be confirmed by us in writing. Any Evaluation Material that is not returned or destroyed, including without limitation any oral Evaluation Material, shall remain subject to the confidentiality obligations set forth in this Confidentiality Undertaking.

In relation to Clause 7, we can see that the significant changes proposed by Bidder 1 have been deleted by LF2 (in the red boxes in the right-hand margin of the document). However, as highlighted in yellow and underlined, we can see that the legal and financial representatives of the Sellers have agreed to the proposed wording that non-solicitation does not extend to hiring employees of the Company using a *bona fide advertisement* based on LF2's legal opinion that this was "acceptable" in her email in Exhibit 7.4. Despite this concession, LF2 has inserted the modifier *bona fide* and deleted the possibility of employees *approaching* Bidder 1 for employment as a way to limit the operational scope of the amended provision. Furthermore, in Clause 8 we can see in yellow highlight that Bidder 1's proposal to keep back-up copies of the evaluation materials for "professional record keeping requirements" has been agreed to, but subject to certain conditions as recommended by LF2 earlier at Move 2 in her email in Exhibit 7.4.

7.6.2 Bidder 2

This brief case study of Bidder 2 is important because it identifies certain practices and strategies modified by LF2 to negotiate proposed changes to the Confidentiality Agreement. The data records show that legal reviews had to be undertaken for 10 different bidders within a week and this forced changes to the discursive practices used by LF2 to complete the entire review process on time.

On 4 October, FA1 sent a copy of the Confidentiality Agreement marked-up by Bidder 2 to the other representatives for consideration. As part of the collaborative review, he had already communicated to the lawyer representing Bidder 2 (B2L) that changing the jurisdiction of the Confidentiality Agreement from Turkey to England was not acceptable:

> Dear All,
>
> Please find attached a markup of the CA from B2. I have had a quick look at the CA and I have already indicated to B2's counsel that they cannot change the governing law of the CA (to English law). They asked me to send them back a revised (complete) markup. Please review and send B2L your comments.
>
> Thanks,
> FA1

In response LF2 used a less time-consuming discourse strategy for reporting her legal review, compared to the process undertaken for Bidder 1. In departing from the earlier practice, LF2 communicated this different approach to the other representatives in the following email:

> Dear All,
>
> Due to time restraints I did not listed all changes in a separate e-mail but highlighted the revisions which I find unacceptable also based on your prior comments to other CA revisions. The blue highlighted section is my insertion and I assume their revision could be accepted with such insertion.
>
> I shall be waiting for your comments and revert to FA1 a revised copy
>
> regards
> LF2

As demonstrated in the excerpt from the Confidentiality Agreement in Exhibit 7.6 below, deletions to the original text made by Bidder 2 were highlighted by red-line and accepted by LF2, but subject to her insertions highlighted in blue and underlined by the Markup software. However, the deletions by Bidder 2 highlighted in yellow remain unacceptable in LF2's legal opinion. These relate to Bidder 2's intent to remove the requirement to pay all legal fees for litigation arising from breach under article 14, the ambiguous language of article 15 and the transfer of arbitration jurisdiction from Turkey to England under article 17. These sections of proposed amendment were highlighted in yellow manually by LF2 (and not automatically with the Markup

software) as a strategy to report her negotiative stance clearly to the counterpart lawyer B2L and the other representatives of the Sellers without the need to prepare a separate email for this rhetorical purpose (see Exhibits 7.1 - 7.4 above).

Exhibit 7.6: Bidder 2 re-negotiated Confidentiality Agreement

11. We confirm that we are acting ~~as principal for our own account~~on behalf of funds represented by us or our affiliates and not as an agent, intermediary or broker for any other person with respect to a Transaction ~~(other than where our sole business is the management of a fund or funds, and we have informed you that we are acting on behalf of one or more of such funds)~~.

12. We understand that (a) the Selling Shareholders shall be free to conduct any process with respect to a possible Transaction as the Selling Shareholders in their sole discretion shall determine (including, without limitation, by negotiating with any prospective party and entering into a definitive written agreement without prior notice to us or any other person), (b) any procedures relating to such Transaction may be changed at any time without notice to us or any other person and (c) we shall not have any claim whatsoever against the Selling Shareholders or the Company or the Joint Financial Advisors or the Legal Advisors or any of their respective directors, officers, stockholders, owners, affiliates, agents or representatives, arising out of or relating to any possible or actual Transaction (other than those as against parties to a definitive written agreement with us in accordance with the terms thereof).

13. It is understood and agreed that money damages may not be a sufficient remedy for any breach of this Confidentiality Undertaking and that the Selling Shareholders ~~shall~~may be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach ~~and we further agree to waive any requirement for the security or posting of any bond in connection with such remedy~~. Such remedy shall not be deemed to be the exclusive remedy for breach of this Confidentiality Undertaking but shall be in addition to all other remedies available at law or equity to the Selling Shareholders.

~~14. In the event of litigation relating to this Confidentiality Undertaking, if a court of competent jurisdiction determines in a final, non appealable order that we have breached this Confidentiality Undertaking, then we shall be liable and shall pay to you the reasonable legal fees you have incurred in connection with such litigation, including any appeal there from.~~

~~15. We hereby undertake that we will act as a prudent merchant and take due care of the Evaluation Material and show our best efforts for its protection.~~

14. ~~16.~~ This Confidentiality Undertaking is for the benefit of the Selling Shareholders, the Legal Advisor and the Joint Financial Advisors and is governed by the laws of ~~Turkey~~England.

15. ~~17.~~ Any disputes arising from or in connection with this Confidentiality Undertaking (also with respect to the conclusion and to the validity thereof) shall be finally settled by arbitration pursuant to the Rules of Arbitration of the International Chamber of Commerce ("ICC Rules")~~, subject however to the mandatory provisions of Turkish International Arbitration Law No. 4686 ("TIAL")~~. The seat of arbitration shall be ~~Istanbul, Turkey. For the avoidance of doubt, performance and execution of the award shall be subject to the provisions of TIAL~~London, England.

This particular review for Bidder 2 was approved by LA1 and S1 an hour later on 4 October as evidenced in the following excerpt from an email sent by LA1:

> Having spoken with S1 over the phone, we agree with your comments.
> LA1

There are no data records for what then transpired on the telephone between LF2 and B2L. However, it is evident in subsequent, intertextual email exchanges between LA1, FA1 and S1 that Bidder 2 was denied any further involvement in the bidding process due to the fact they could not accept Turkish jurisdiction in the event that a dispute arose under the Confidentiality Agreement.

Other terms of the Confidentiality Agreement that represented potential "deal breakers" during the negotiation process included provisions about remedies for breach of the Confidentiality Agreement under Clause 13 and the duration of the Confidentiality Agreement to extend for three years from execution under Clause 18. The data records show that other bidders tried to modify these provisions and were denied further participation in the bidding process if they failed to accept the original meaning of the terms in the Confidentiality Agreement. From a social-institutional perspective, these terms function as legal protection for the Sellers' confidential information and are not negotiable for this type of tender/bidding transaction that has a public profile in international markets.

This section is important for the way it examines the intertextual nature of a conventionalised type of contract negotiation activity and the interactional practices between representatives of the Sellers and the legal representatives of the bidders. This process involves the use of closely-related email genres that enable these community members of legal practice to accomplish structured negotiation activities for different rhetorical purposes and occasions within the meaning of a genre repertoire (Orlikowski & Yates, 1994a, 1994b). From a semiotic resource perspective, the data records also confirm the institutionalised use of Markup as a crucial practice for negotiation activities. Being able to record previous negotiation in the document under negotiation enables any number of lawyers and other discourse participants to collaborate in the negotiation of the document.

7.7 The pivotal role of LF2

Since professional roles and identities are extensively (re)produced in texts, the pragma-linguistic features of the review and negotiation process for the Confidentiality

Agreement foregrounds the different professional roles of LF1 and LF2. Within the integrated framework of the MP model, the agentic nature of these roles is explored from the lawyers' own perspective of working within the law firm in Chapter 6. As a partner and principal lawyer of the law firm respectively, LF1 and LF2 are entrusted with maintaining the discursive practices of the law firm that they have institutionalised throughout years of legal practice. LF2 must also adhere to the agentic duties delegated to her by LF1 under the firm's organizational mentoring system. Their roles are also examined from the social-institutional and social practice perspectives of international legal practice in Sections 7.1 and 7.2. For this type of M&A deal, the lawyers are assigned to certain roles and duties appropriate to their legal expertise as a pivotal mechanism for organising professional work in collaboration with the other representatives of the Sellers. LF1 and LF2 must also prioritise work practices in accordance with the fiduciary obligations they owe to the client Sellers. By taking an integrated approach to analysis, Section 7.7 is designed to demonstrate how these institutional roles and identities are played out in the textual records of negotiation activity.

L1's role is clearly defined by the *lack* of discursive activity during this legal review and negotiation process. As the partner appointed to this deal, LF1 maintained a largely *ceremonial* role in representing the professional identity of the law firm. This is evidenced by the fact that she only interacted once with the other legal and financial representatives of the Sellers to send the following email on 4 October in order to pressure FA1a in providing some critical response to LF2's follow-up advice email sent a day earlier:

> Dear FA1a,
>
> Following the call of yesterday with the counsel of Bidder 1, LF2 sent the below e-mail. I just confirmed with her that she did not receive any responses to that e-mail.
>
> Regards,
> LF1

In comparison, LF2 was required to undertake most of the legal review work under the supervision of LF1 in accordance with the institutional practices of the law firm's mentoring system.

The customary mentoring role for LF1 *should* be to supervise LF2's work and communicate the results of her review with the other representatives. However, the data records show that LF2 participated in most of the review and negotiation activities independently and communicated directly with the other representatives and counterpart lawyers. The reason for these changes to normal mentoring roles and practices is due to the extensive experience that LF2 had acquired working with LF1 on similarly large commercial deals, as LF1 explains (Round 2 interview):

> LF2 was ... she is very good at negotiation... and also we have this work share between us and we had this in so many deals together with her, because we were like replacements to each other when one of us was not available so that is the policy. I mean just not to create any interruption in the service you have two people who can manage the file at the same level and you cannot do that with a junior lawyer so that's why we had shared this role together with LF2, she was the right person in the firm.

Within this role, it is significant to note that LF2 took behavioural and interactive initiatives to assert herself in ways that conflict or contradict with the institutional expectations of the mentoring system of the law firm. For instance, she adopted different ways of communicating her legal review of Bidder 1 and Bidder 2 to the other representatives based on the complexity and time constraints of the bidding process. These discursive choices and strategies are based on the high degree of experience and expertise that LF2 had acquired for M&A transactions (Karsten et al., 2014).

The complexity of having to communicate with so many representatives participating in this deal also created a new role and identity for LF2 to control communication channels and manage discursive interaction between the different participants. For this review and negotiation process, LF2 was empowered to negotiate with bidders on behalf of the other Sellers' representatives and vice-versa, and exchange concessions either agreed to or rejected by the bidders in communication with the representatives. In taking on this role, LF2 utilised both telephone and email communication and a variety of discursive strategies to counsel and persuade the counterparties to agree to negotiated outcomes.

This pivotal role of LF2 was supported by the law firm as a professional strategy to maintain hegemonic control over negotiation discourse and the provision of legal services:

> I mean as the firm, so this is what we do from time to time ... I mean it's related to the strategy of course of negotiation, so sometimes you may wish to take the lead and the control over the process so that is why ... I mean if you engage someone else or if you let them do it then you may lose the control at the end of the day (LF1, Round 2 interview).

It is also due to the practical complications that can arise from having to deal with so many representatives working on a commercial deal of this size and complexity:

> Because it is difficult then if the person who is dealing with that is not capable of dealing with that then it will take hell of a time, right, dealing with so many people at the same time and if I were to say something the other is something else so it will be impossible to have things very quick (LF1, Round 2 interview).

The social practice result is that LF2 was positioned by the law firm at the centre of frontstage communication exchanges in order to both maintain the firm's institutional control over legal discourse activities and to ensure that the process is managed more efficiently and effectively. Maintaining this control is ultimately beneficial for the law firm's professional reputation in the legal service market, especially if it can realise successful outcomes in less time and at less expense. This pivotal role of LF2 was also supported by the other representatives of the Sellers through the increasing reliance they placed on her to manage interactional communication throughout the negotiation process. Further analysis in Chapter 8 demonstrates how pivotal and crucial this role was for managing discursive activities for the co-construction and negotiation of the Sale & Purchase Agreement (SPA) during Stage Two.

CHAPTER EIGHT

STAGE TWO: DEAL-MAKING

Stage Two of the negotiation process is defined as the *deal-making* phase, which primarily involved the evaluation of formal bids and negotiation of the Sale and Purchase Agreement (SPA). Chapter 8 focuses on the discursive activities undertaken during Stage Two, which consists of seven sections. As with Chapter 7, I begin by discussing the social/institutional perspective (Section 8.1), before turning to the social practice perspective (Section 8.2). The deal-making phase of Stage Two has unique social and linguistic characteristics and I briefly introduce and discuss the main discursive activities in Section 8.3.

Once again using the integrated perspectives of the MP model, I begin my closer textual analyses in Section 8.4 by examining the co-construction of the Second Stage Process Letter by the legal and financial representatives of the Sellers, which regulates the transition from Stage One (Initiating the Bidding Process) to Stage Two (Deal-Making). I then examine the protracted co-construction of the Sale and Purchase Agreement (SPA) by the Sellers' representatives in Section 8.5. This was the key contractual document used in the purchase of the Company and I analyse how the Sellers' representatives negotiated operative terms of the SPA with the eventual winning bidder in Section 8.6. In Section 8.7 I examine how the SPA formalised intertextual provisions for the regulation of certain discursive activities during the finalisation of the deal (Stage Three, to be described in Chapter 9). For the convenience of readers, details of the different analytical foci (i.e. sub-sections) in Sections 8.4, 8.5, 8.6 & 8.7 are repeated below:

Section 8.4	**Second Stage Process Letter**
8.4.1	Different standards of discourse expertise and communicative competence for different professional roles
8.4.2	A more collaborative approach for co-construction of the Second Stage Process Letter
8.4.3	The use of attachments in contract construction
8.4.4	Discursive strategies to manage disagreement among the representatives
Section 8.5	**Co-construction of the Sale & Purchase Agreement (SPA)**

8.1 The social-institutional perspective on Stage Two

From a social-institutional perspective, the two-stage bidding process included a gate-keeping function to exclude those bidders not prepared to agree to the confidential and regulatory procedures determined by the Sellers in the Process Letter and Confidentiality Agreement during Stage One. This reduced potential risk for the Sellers by excluding bidders not amenable to the pre-conditions and processes established for purchasing the Company. Limiting the number of bidders also effectively saved the Sellers considerable time and expense as they had only to allocate professional resources to negotiate with bidders committed to purchasing the Company during this deal-making phase of Stage Two.

Also significant from a social/institutional perspective was the repeated use of the formal caution to bidders (henceforth referred to as *investors*) to minimise any changes to the SPA during the negotiation process in Stage Two (see Sections 8.6.1 & 8.6.2) and to maximise competitive advantage and give a better likelihood of success:

> *You should consider carefully the extent of any proposed changes, since this will be a significant factor which the Selling Shareholders will take into account when considering the attractiveness of final proposal.*

The same caution was previously used in the Process Letter during Stage One (see Section 7.1) and represents a consistent strategy used by the Company to exert hegemonic control over the bidding process. The advice to minimise proposed changes to the SPA, with the explicit setting out of the advantages of doing so, in effect became part of the competitive struggle between the individual investors, forcing them to carefully consider only making the most essential amendments or risk ruining their prospects of being selected as the winning bidder. This ability to exploit competition among the bidders was a sign of the significantly greater bargaining power of the Sellers, while also helping to ensure that the evaluation and negotiation process during Stage Two was not overly complex or protracted – thus saving the Sellers time and money.

8.2 The social practice perspective on Stage Two

Despite these institutional controls imposed by the Sellers over the bidding process, Stage Two represented the most intensive period of negotiation activity from a social practice perspective (compare Jensen, 2009; Koerner, 2014). As the key component of the bidding evaluation process to determine the successful purchaser of the Company, the legal and financial representatives of the Sellers now had to review and negotiate proposed amendments made by each investor to different versions of the SPA. In doing so, the Sellers' representatives shared a genre set of closely related email genres and text types to accomplish repeated, structured activities and regulatory processes (as noted by Devitt, 1991, in a somewhat different context). This genre set also involved shared discourse types and discursive strategies for addressing professional tasks and problems (as members of the same community of practice). The MP model is used to capture a detailed ontology of this genre set, the relevant discourses, and the types of professional interactions that occurred during this important collaborative process.

8.3 Main discursive activities in Stage Two

The main discursive activities in Stage Two were jointly or collaboratively formulated in the provisions of the Second Stage Process Letter, the co-construction of which is analysed in Section 8.4 below. In accordance with customary practices for this type of

M&A bidding system, Clause 2 of the Letter requests in very formal terms (note the use of passive voice) that investors submit three formal documents: (i) a final written proposal with (ii) a marked-up version of the SPA highlighting proposed amendments and (iii) a memorandum explaining such amendments (as underlined below):

> *The Virtual Data Room will shortly contain a copy of the draft Sale and Purchase Agreement. You are requested to submit, with your final proposal, a Markup of the Sale and Purchase Agreement which you would be prepared to sign and a note summarising the principal issues in relation to your Markup. To the extent that you have any significant concerns/issues, you would be encouraged to raise them with the Joint Financial Advisors prior to your remittance of your final and binding proposal.*

This excerpt from the Second Stage Process Letter first refers to a copy of the SPA that is retrievable from the Virtual Data Room. This is the finalised version that was co-constructed by the legal and financial representatives of the Sellers and this important discourse activity is analysed in Section 8.5 below. The Second Stage Process Letter then requires investors to Markup any proposed amendments to this original version of the SPA for negotiation with the Sellers' representatives (along with the intertextual explanatory memorandum) and this critical process is analysed in Section 8.6 below.

It is important to note that these discursive activities were not performed as a linear, chronological chain of discrete events. Instead, many activities occurred simultaneously as the participants were required to complete multiple tasks or events within pre-defined deadlines. Analysis is designed to account for this process of interaction and the repeated use of an intertextual set of genres to achieve concurrent discourse activities.

8.4 Second Stage Process Letter

The Second Stage Process Letter contained the same generic structure and rhetorical features as the first Process Letter in Stage One. The Sellers' representatives also appropriated sections of the first Process Letter verbatim, especially the contractual terms that excluded liability for the Sellers and those terms that regulated confidentiality. For this reason, little collaboration was required for co-construction of the Second Stage Process Letter and analysis in Section 8.4 focuses on the interaction between the Sellers' representatives to finalise specific issues and resolve differences in professional opinion with the use of *facework* (Brown & Levinson, 1987).

8.4.1 Different standards of discourse expertise and communicative competence for different professional roles

When the template version of the Second Stage Process Letter was first distributed by FA1 on 5 October, FA3 sought answers to certain questions that had been raised by the Secretary to the Board of the Company. FA3 participated in the deal as the Manager of Corporate Finance of the Turkish investment bank representing the individual shareholders of the Company in Istanbul and this sub-section focuses on the advice prepared independently by LF2 and FA1 in response to those questions, as a way to examine how discourse expertise and communicative competence are characteristic of different roles and identities. What makes this comparison particularly interesting is the fact that FA1 was not aware of the legal advice prepared earlier by LF2 due to the fact that he was travelling during the time that she distributed her email to the other representatives. Hence, the texts set out in Table 8.1 below are not contrived or corrupted in any way and they provide an authentic record of two different professional discourses and vocabularies, differing standards for rhetorical intimacy and modes of expression. My detailed analysis and commentary follows the Table.

Table 8.1: Discursive identity as defined by discourse expertise and communicative competence

FA3	LF2	FA1
5 October 17:00pm	**6 October 16:46pm**	**9 October 16:40pm**
Dear All, The secretary to the Board of the Company called today and raised following questions: I look forward to receive your responses. Regards, FA3	Dear All, Please find attached our response confirmed with LA1. Regards, LF2	FA3 [name], I am not sure if anyone responded to your email (I was travelling at the end of last week), but the answers are as follows: Regards, FA1
1- Article 3: To whom the original proposal (not the copies to be sent to each of the joint advisors) will be sent to on 19th?	The original proposal needs to be sent to the Selling Shareholders. However, as there are many shareholders, it would be advisable to state that the original shall be sent to those advisors who are included in the "Notice" section of the Confidentiality Agreements.	The original can be sent to any of the advisors, i.e. yourselves for example.

2- Article 2: What would be the language of the proposal and its annexes.	As per Article 1 of the Law Regarding Usage of Turkish Language by Commercial Establishment, the correspondences of a Turkish company within Turkey must be in Turkish. Therefore, the proposals to be given by the Turkish investors and their annexes must be in Turkish.	Ideally the proposal should be written in English so that all the shareholders can review them.
3- Shall the power of attorney be notarized? If yes the power of attorney has to be in Turkish!	The power of attorney to be given by a Turkish company should be notarized in Turkey. Therefore, it must be in Turkish language. Please find attached a Turkish translation of the power of attorney for the convenience of Turkish investors.	The power of attorney should be notarised - this can be in Turkish. If they wish to get the version attached in Turkish, then LF2 could you please provide them with such a version.
4- Article 2 (iv): What is meant by "the level of approval obtained for the indicative proposal"? Is it a Board resolution to be taken by the potential investor?	The investors may need to have prior approval from their authorized organs, as per the legislation applicable to them, to give an indicative proposal. The organ, which is authorized to give such an approval, may differ from one country to another depending on their legislation. The investors should specify which body's approval is obtained to enable them to give the indicative proposal. For Turkish Companies, it will depend on the provisions of the Articles of Association of the related company. If there is no special regulation in the Articles of Association to that effect, the persons authorized by the Board of Directors of the Company (who has proper signature authority to give such a proposal) can give the indicative proposal. However, if it is stated that such an investment decision needs to be decided by the Board of Directors, the affirmative decision of the Board of Directors needs to be taken.	Yes, i.e. has it been approved by the Board of Directors, but also, do they require any CMB or other regulatory approvals to acquire the business, and if so what are they and when do they expect to obtain them.

In terms of rhetorical intimacy, FA1 addresses his email directly to FA3, using his name as a term of address. In other words, he is treating FA3 as a financial professional peer. This decision further influences the register and style of the written discourse. For instance, FA1 uses the personal pronouns 'I' to introduce a very personal reason for writing, "you", "your" and "yourselves" to refer to FA3, and "they" to refer to other involved persons. FA1 also uses an abbreviation ("i.e. yourselves") to involve FA3 and the other persons in hypothetical examples that are designed to explain possible

scenarios and contingencies. However, the overall effect is of a conversational register that presumes a considerable degree of equality and familiarity.

In contrast, LF2 adopted a very formal style and attached a formal letter to her email to provide more detailed legal advice. The only pronoun used in the email was "our", to frame the advice as the institutional view of the law firm. Otherwise, LF2 uses formal third person nouns to refer to "advisors", "Turkish companies" and "the investors" when detailing the legal processes in the advice letter. Unlike the conversational register of FA1's email, LF2 uses the formal *performative* style of legal language (Tiersma, 1999) to prescribe necessary action, along with the use of deontic modals such as "must" and "need". She also uses the *if* construction in Item 4 to define with maximum clarity two possibilities, referring to circumstances that were not entirely clear at this stage of the negotiation process. In comparison FA1 merely uses rhetorical questions to try and clarify the uncertain issues at Item 4 but provides no substantive advice.

There are other differences in the way advice was provided by LF2 and FA1. While FA1 is non-committal in saying that the the power of attorney "can" be notarised in Turkish at Item 3, LF2 is quite definite about the "need" to notarise in Turkish and attaches a Turkish translation of the power of attorney for the "convenience of Turkish investors". FA1 is similarly vague about this issue, stating that the original proposal "can be sent to any of the advisors" at Item 1. In contrast, LF2 uses her intertextual knowledge of the Confidentiality Agreement to advise sending the original proposal to those specific advisors included in the "Notice" provision of the contract. More significantly, FA1 contradicts LF2 in proposing that the original proposals should be written in English at Item 2. In contrast, LF2 refers to the legal requirement of *Article 1 of the Law Regarding Usage of Turkish Language by Commercial Establishment*, stating that the proposals "must" be written in Turkish.

To summarise, this analysis highlights the way LF2 foregrounds her technical discourse expertise, using the impersonal language of legal statutes to provide comprehensive and accurate advice about the legal issues raised by clients. This type of textual response is the discursive product of a particular disciplinary culture, the culture of legal practice, which has developed its own discourses and genres for specific communicative purposes and functions over many centuries (Breeze, 2009). In contrast, the

conversational register of FA1's response can seem overly casual and he provides incomplete and incorrect advice at times. The outcome of this rhetorical choice, in conjunction with incorrect or inadequate advice, could be extremely detrimental for the client if the incorrect course of action were to be undertaken in reliance on his advice.

8.4.2 A more collaborative approach to the co-construction of the Second Stage Process Letter

This section examines the use of positive facework (Brown & Levinson, 1987) by LF1 in an attempt to collaborate more fully with the other legal representatives in co-constructing the Second Stage Process Letter. This is especially significant when we consider the confrontational nature of exchanges between the alliance of lawyers representing Seller 1 and those representing Seller 2 during Stage One (see Section 7.5). This struggle for professional authority was resolved in recognition of LF as the primary legal service provider for the M&A transaction and the appointment of LF2 to the pivotal role of managing discourse activities among the collective representatives.

FA1a initially sent the Second Stage Process Letter to LF1 as a template document for legal review on 26 October, and LF1 then forwarded it on to LA2 and LA3 for consideration. LF1 sent the following covering email:

> Dear All,
>
> Kindly note that I have received the below e-mail message regarding the second stage process letter. I will review the letter and provide my comments, if any today. I will appreciate it if you could kindly provide your comments during the day.
>
> Best regards,
> LF1

In the email above, LF1 uses formal and polite language to request the participation of the other lawyers, language exemplified by the adjuncts of entreaty to "kindly note" and "I will appreciate it if you could kindly provide your comments during the day". These expressions of almost excessive goodwill or politeness were conspicuously missing from the emails exchanged in Stage One and signifies that LF1 is now seeking to inaugurate a better professional relationship with the other lawyers. The rhetorical features of this email align with much other research into successful business

negotiations that shows that interaction between participants tend to become more personalised as the negotiation process develops over time and that email communication represents an effective communication system for the maintenance of informal interpersonal relationships (Sokolova & Szpakowicz, 2006; Galin et al., 2007).

It is also significant to note that LF1 provided the following legal advice in an email sent to FA1a, FA1, S1, and S1a, *but not sent* to LA1, LA2 or LA3. This is an effective strategy to ensure that the other lawyers critically considered the Second Stage Process Letter independently from LF1, thus potentially improving the outcome of the process of co-construction.

> Section 2- As the proposal shall be final and binding for the investors, at this stage instead of confirmation of the internal approvals, it would be advisable to request notarized (and if notarized abroad apostilled or consullarised) copies of such internal approvals together with the submission of the proposal as in case of a dispute we will have a proof in hand.

This legal advice from LF1 was significant because it ensured that final proposals submitted by investors were legally binding in Turkey and that their validity could not be challenged in court. This highlights the importance of local legal knowledge of the specific jurisdiction of the particular deal under negotiation. It also demonstrates how generic contract templates are "historically sedimented practices" (Berkenkotter, 2001, p.338) that require careful consideration for re-use in future professional settings and purposes. The proposed change was evidently accepted by FA1 and S1 due to the fact that the subsequent version of the Second Stage Process Letter contained the intertextual reference that "a power of attorney in the form attached hereto as Exhibit A, which should be signed by the authorised signatories and legalised, and should be attached to your final proposal".

8.4.3 The use of attachments in contract construction

This legal advice about power of attorney involved the intertextual use of Exhibit A[13], which was attached by LF1 to the main body of the contractual document as follows:

[13] Other common expressions used in legal practice include *Attachments, Schedules* and *Annexures*.

Exhibit A

POWER OF ATTORNEY

In connection with our final and binding proposal for the acquisition of "the Company", by way of a sale of stock (a "Transaction"), we hereby authorise

_____ to submit a final proposal on our behalf including the information requested in the Process Letter dated 13 November 2006 provided by the Joint Financial Advisors.

Attached texts, schedules or annexures are an important feature of contract construction, used to re-classify contractual terms into simpler language and provide detailed information for highly technical, specialised legal processes, practices and/or relations that are reflected in and constructed through the provisions in the main body of the contract. The functional rationale of this legal practice is to ensure that the operational meaning of the main contractual provision is not adversely affected by too many details or textual clutter. Instead, the more precise language of the main provision refers to an attachment in a textual style similar to the power of attorney. See, for example, Exhibit A above.

The effective use of attachments to contracts is a salient feature of legal discourse expertise, involving competence in both intertextuality (Devitt, 1991; O'Connor, 2002; Cheng, 2009; Warren, 2013) and interdiscursivity (Bhatia, 2008; 2010). The reference to Exhibit A in the main body of the contract achieves both referential and functional intertextuality in the way that both texts with legal authority interact and interoperate for a common set of professional purposes. As a textual artefact, Exhibit A then embodies the genre conventions and discursive practices for obtaining a power of attorney in Turkey, something that comes within the meaning of *generic intertextuality* (Devitt, 1999). Exhibit A is also *interdiscursive* in the way that LF1 appropriates, for the Power of Attorney, lexico-grammatical resources from other template documents used for other legal practice dealings and used it for the purposes of this deal by changing relevant details.

FA1 also relied on the attachment feature to make the price payable for the Company more detailed and explicit in the final proposal. He did this by inserting a new Clause (Exhibit B below) in the Second Stage Process Letter that requires investors to provide "the value attributed to 100% of the Company stated in € (Euros):

Exhibit B

	€ in millions
The Company Enterprise Value (100%)	
+ Net Cash Position	
- Minority Interests (27.1% of subsidiary company)	
= The Company Equity Value (100%)	
The Company Equity Value Attributable to Seller 1 (50%)	
The Company Equity Value Attributable to Seller 2 (49.79%)	
The Company Equity Value Attributable to Individual Shareholders (0.21%)	
The Company Equity Value Attributable to Seller 2 (49.79%)	
+ Net Cash & Net Working Capital Position at Seller 2 at Close	
= Total Equity Value of Seller 2 (100%)	
Equity Value Attributable to Individual Shareholders in Seller 2 (99.33%)	

From a social practice perspective, this new table-type format compels the investors to clearly specify the amounts they were prepared to pay for both Seller 1 and Seller 2 of the Company, thus making it easier for the Joint Financial Advisors to evaluate this crucial consideration for each bid. This detailed statement of prices functions as the key reference or anchor value of the final proposal from investors (Kristensen & Gärling, 1997), which enables the representatives of the Sellers to evaluate their performance and potential payoffs or losses within a positive or a negative frame of perception (Paavola, 2014). Previous negotiation research indicates that M&A negotiating parties working with a "loss frame" tend to experience more impasses and are less likely to achieve integrative, successful solutions compared to parties working with a "gain frame" (De Dreu & Carnevale, 2006; Thompson, Neale & Sinaceur, 2004). The theoretical premise is that a carefully formulated price will create integrative perceptions in the Sellers' representatives, which can lead to reciprocal integrative behaviour during the ensuing negotiation process (Paavola, 2014). An integrative approach to negotiation means that both parties are willing to make concessions and to "value add" during the negotiation process (Paavola, 2014), since a favourable purchasing price can result in other beneficial gains for the purchaser. The use of the rhetorical format illustrated in Exhibit B is a demonstration of the professional knowledge and expertise that FA1 had acquired from previous, successful experiences in M&A transactions and underlines the importance of collaboration with both financial

and legal professionals for this type of complex international M&A deal.

8.4.4 Discursive strategies to manage disagreement among the representatives

This section examines the discursive strategies used by the Seller's representatives to resolve differences of professional opinion involved in the co-construction of the Second Stage Process Letter. The analysis shows how participants formulated and reformulated proposals through a process that can be defined as an "epistemological emotionality-loop" to "hypothesize about the other parties' projected experiences (and respond accordingly), and then consult emotional sense to evaluate the success of his/her projections (and modify as necessary)" (Ryan, 2005, p.262). The analysis also demonstrates the dialogic nature of email communication when it is used to overcome disagreements, a finding which challenges claims that emails reduce the ability to manage interpersonal relations in professional contexts (Murphy & Levy, 2006). The use of facework in this context functioned as a strategic challenge to the proposal initially made by LA1 and represents a further finding that Stage Two was characterised by a stronger register of positive (and/or polite) collaboration.

In reviewing the Second Stage Process Letter, LA1 amended the document in Markup to propose that bidders be given additional due diligence opportunities. However, FA2 (the investment banker representing Seller 1 based in France) objected to this proposal, and this objection initiated a chain of email communication on 14 November as follows:

> 13:20 PM
> I agree with the final draft sent by FA1.
>
> LA1, I would not advise to add the paragraph vi) "a detailed list of any outstanding due diligence..." since we are expecting offers as binding as possible and, in practice only subject to the signature of the SPA.
>
> We probably do not want to open the way to additional conditions in the final offers.
>
> I am available to discuss anyway.
> Best regards,
> FA2

Before disagreeing with LA1, FA2 first uses positive politeness, in the form of a very blunt assertion of agreement, to show solidarity with the stance taken by FA1 in his

earlier draft of the Second Stage Process Letter - which did not contain provisions for additional due diligence. Solidarity is shown when writers claim common ground with others (Scollon & Scollon, 1995; Gil-Salom & Soler-Monreal, 2009). Then, in the second paragraph of the email, FA2 highlights the limitations and difficulties associated with LA1's proposal (highlighted by FA2 in quotation marks in the email above), albeit in a fairly constructive way. Introducing his criticisms with the expression "I would not advise" can be interpreted as strategic hedge that softens the effect of this criticism. FA2 then (in the third paragraph) expresses solidarity with the other representatives (using "we") while providing legal and practical justifications for opposing LA1's proposal and uses the adverb "probably" to mitigate his disagreement. The fact that the second paragraph addresses LA1 directly, in the context of a message to a wider audience represents a very interesting negotiation strategy that puts considerable pressure on LA1 to abandon his proposal – doing so in front of the wider audience in fact gives LA1 more face (shows more respect) than a private rebuke would have done.

S1 then became involved in the disputed issue by sending the following email:

> 16:40 PM
> Why invite an additional DD? I share FA2's concern regarding [sic] binding nature of [sic] final bid and [sic] risk of compromising signature before year end.
> S1

This email from S1 is significant for his more direct, critical questioning of the proposal, which on the face of it constitutes a face-threatening act (FTA) vis-a-vis LA1. However, the extent to which these types of apparent FTA negatively impact on professional relationships depends on the professional roles and identities of the protagonists in and across legal contexts (Archer, 2011). S1 is the in-house legal counsel for Seller 1 and this professional role establishes an equal, if not higher, power relationship with LA1. This difference in the hierarchical pecking order can legitimise criticism and thus mitigate its negative impact. Indeed, criticism can by regarded as necessary and appropriate in certain circumstances and professional contexts (Myers, 1989, 1992; Gil-Salom & Soler-Monreal, 2009). Note that notwithstanding the professional legitimacy for S1 to directly challenge LA1, he was also mindful to align his "concern" with the legal justifications provided earlier by FA2 as a repeated expression of solidarity with FA2.

As the main financial representative of Seller 1, operating in a type of professional alliance with S1, FA1 then sent the following email:

> 18:47 PM
> I think that it may be unrealistic not to expect / grant a request for additional limited diligence.
> Let's take it out of the letter but consider any proposals accordingly.
> Does this work with everyone?
> FA1

FA1 now suggests the face-saving strategy of compromise, hoping to settle the dispute between LA1 and the other Sellers' representatives. While FA1 implicitly aligns with FA2 and S1 by recommending that they take LA1's proposed amendment "out of the letter", he also acknowledges the practical reality that bidders will want such an opportunity to carry out further due diligence. His suggested compromise, to consider "any proposals accordingly", achieves maximum social benefit for all participants at minimum cost to the ongoing negotiation of the contract.

FA2 responded quickly to accept LA1's compromise as a further polite solidarity strategy in the following email:

> 18:54 PM
> Agreed, we would consider their request if it comes but let us not invite them to do so.
>
> In addition, they still have almost three weeks to complete their due diligence: if they hear today that they will have further due dil [sic] after final offers, they may slow down...
> FA2

In Sifaniou's terms, the proposed and agreed compromise between FA1 and FA2 represents a "dispreferred" second option "in contrast to preferred actions which are structurally simple, explicit and typically immediate" (Sifianou, 2012, p.1556). FA2 was also mindful to support the preferred action with the practical justification that additional due diligence opportunities will delay the evaluation process and sale of the Company. As is typical of dispreferred actions, a proffered account of one's reasons (as explanation or justification) can function to legitimise them.

In her pivotal role, which is to co-ordinate and manage discursive activity between the Sellers' representatives, LF2 sent the following email as a way to amend the Second Stage Process Letter, and return to the original wording to enforce a final resolution to

this dispute:

> 19:10 PM
> We agree with the latest decision on not inserting a section for additional due diligence.
> Best regards,
> LF2

The final response from LF2 is also polite in the way that she chooses not to acknowledge the compromise proposed by FA1, but just to focus on the agreed stance, which was not to include provisions for additional due diligence. This represents a type of *negative politeness* (Brown & Levinson, 1987), which is defined as non-imposing or non-intrusive distancing behaviour (Holmes, 1995).

The analysis in this section highlights the utility of email communication in resolving potential disputes in cross-cultural and multidisciplinary professional contexts. The dialogic nature of emails enables participants to interact and use complex facework, solidarity and politeness strategies in order to avoid conflict in collaborative activities and to advance the task at hand. The findings also suggest that disagreements should not always be regarded as face-threatening, especially in professional settings where the protagonists share similar status roles and power relations (Myers, 1989, 1992; Gil-Salom & Soler-Monreal, 2009).

8.5 Co-construction of the Sale & Purchase Agreement (SPA)

The SPA represents the key legal contract for M&A transactions. Sometimes in legal practice it is referred to as the *Share Purchase Agreement* but, in the present transaction, the discourse participants referred to it as the *Sale & Purchase Agreement*. Compared to the more procedural and 'transactional' nature of the other documents, the SPA deals with significant legal and financial issues that requires comparatively more specialised negotiation discourse. In this Section 8.5, I will first investigate the co-construction of the document by the legal and financial representatives of the Sellers. I then examine the negotiation of proposed amendments with the eventual purchaser of the Company in Section 8.6 below.

8.5.1 Generic features of the SPA

At this preliminary stage of analysis, it is constructive to first identify the generic features of the draft template SPA with some brief explanation of the operational meaning of the main provisions. This discussion will assist in understanding the negotiated amendments that are analysed in more detail throughout this chapter.

Contracts are constructed of provisions that define the legal rights and obligations of the parties executing the contract, and the contract thus represents the exchange of agreed promises as formulated through and by negotiation processes. These provisions are commonly referred to as "terms and conditions", which is a common, somewhat tautological legal doublet[14]. Individual provisions, referred to as *Clauses, Sections* or *Articles* in professional legal practice, are commonly numbered in contracts (sometimes with titles or headings) in order to help users navigate easily through the document. These numbers also assist in clearly referencing specific provisions under negotiation.

The preliminary part of the SPA (like most contracts) is referred to as the *Preamble*, and this is designed to set out details of the commencement of the contract and the parties to the contract, as well as giving some contextualisation and explanation as to why the parties are forming the contract. This is followed by the *Definition* Article 1[15], which defines key terms and/or concepts highlighted in capital letters throughout the agreement to signify that they have been defined in Article 1. This type of referential intertextuality (Devitt, 1999) functions to remove description and/or explanation from the main body of the contract and makes it easier to understand the precise meaning and inter-operability of the terms and conditions.

The same intertextual function is achieved by defining and explaining other contractual terms or concepts in schedules, annexures or exhibits attached to the main body of the contract. This textual practice was used for the Second Stage Process Letter described in Section 8.4.3 above, with the Power of Attorney attached in Exhibit A and the pricing

[14] Either word can be used in isolation to refer to provisions of a contract, but they are commonly used together as an artefact of the time when Anglo Saxon and Norman were both commonly spoken languages in England: "term" is of Saxon origin and "condition" is of Norman origin.

[15] The term 'Article' is used to refer to specific sections of the Sale & Purchase Agreement in preference to the term 'Clause' previously used for analyses of the Process Letters and Confidentiality Agreement. This is due to the fact that the template SPA makes use of this "Article' term and the Sellers' representatives also use it to refer to the SPA in communication with each other.

schedule included in Exhibit B. It is customary practice to remove such detailed processes or textual artefacts from the main body of the contract by referring to them in attached schedules. Again, the legal practice rationale is to define the terms and conditions as clearly as possible in the numbered Articles of the contract, without excessive detail that might confuse the reader. The contents of the schedules are nevertheless binding, and operate with functional intertextuality to the schedule number references embedded in the relevant Article of the contract. We can see this in operation in the excerpt from Article 1.2 of the SPA below, which refers to details about the share ratios of the Sellers in Schedules 1.23 and 1.29 that determine the amounts payable for the "Total Purchase Price" and the relevant bank details in Schedule 2.4 as follows (intertextuality references are highlighted in bold):

> The Total Purchase Price shall be paid by the Purchaser according to the share ratios of the Sellers **as listed in Schedule 1.23. and Schedule 1.29** respectively in cash [by transfer from the Purchaser's bank account in the same bank to the bank accounts of the Sellers at [_____] bank **as shown in Schedule 2.4**. on Closing.

The main body of the SPA is referred to as the operative part of the contract, which consists of the terms and conditions. The most important provisions are principally defined first as set out in Table 8.2 (Articles 2 – 7). It is then customary to insert terms that apply to most commercial contracts at the end of the operative part, which are sometimes referred to as *boilerplate* and are listed in Table 8.3 (Articles 8 – 10).

Table 8.2: Operational meaning of the material provisions of the SPA

Article	Description
ARTICLE 2 - Sale and Purchase of the Company and the Total Purchase Price	This article sets out the basic requirements for the sale and purchase of the Company, including details about the shareholding, the purchase price and bank transfer process.
ARTICLE 3 - Conduct of Business Between Signing and Closing	This article is designed to regulate the obligations of the Sellers in relation to the ordinary management of the Company for the duration of this contract, which is referred to as the *Interim Period* and defined in Article 1 as **"**the period from the date of this Agreement until the Closing Date". In turn, the *Closing Date* is defined in Article 5.1 of the *Closing* article discussed below. The important function of this article 3 is to compel the Sellers "*to refrain from taking any measures, performing any transactions, entering into any agreement, or incurring any obligation, liability or indebtedness outside the ordinary course of business without the prior approval of the Purchaser*" and provides a list 17 specific regulated business practices that LF explains in a footnote are designed to "to give an idea of a potential purchasers' expectations".

ARTICLE 4 - Conditions Precedent to Closing	This article lists the agreed items that must be finalised before the sale of the Company is legally effectuated (referred to as *Closing*) and non-compliance can result in termination of the deal.
ARTICLE 5 - Closing	This article enables the parties to stipulate the specific date for finalising the sale (referred to as *Closing*) and lists the variety of legal transactions that must be finalised simultaneously on this date in order to finalise the sale and transfer of ownership to the Purchaser. There are also undertakings that need to be finalised "as soon as practicable" after this date.
ARTICLE 6 - Representations and Warranties of the Seller Existence/ Title/ Authorization/ Non-Conflict/ Information Provided/ Financial Statements/ Taxes/ Licenses/ Compliance with Laws/ Agreements and Loan Agreements/ Employees/ Lease Agreements/ Real Properties/ Movable Assets/ Information regarding Operation/ Environmental Obligations/ Insurance/ Intellectual Property/ Banks, Signature Authorities and Powers of Attorney/ Related Party Transactions/ Absence of Certain Changes/ Litigation	These *Representations and Warranties* operate as guarantees made about the Company by the Sellers, breach of which can result in financial compensation for the Purchaser and termination of the deal. The template draft of the SPA contained the entire list in the left-column on the basis that these warranties are applicable to most M&A transactions. However, analysis in Section 8.5.4 below demonstrates that many of these warranties were removed by the legal and financial representatives in Version 3 of the SPA based on the collaborative opinion that they were not relevant for the particular deal under negotiation.
ARTICLE 7 - Representations and Warranties of the Purchaser	Similarly, these *Representations and Warranties* operate as performance obligations of the Purchaser, breach of which can result in financial compensation for the Sellers and termination of the deal. In comparison to list in Article 6, there were only three warranties listed here that relate to (i) Organization and Authorization; (ii) Accuracy as of the Closing Date; and (iii) Responsibility of the Purchaser to "amend the Company's Articles of Association latest within 1 (one) month as of the Closing Date to amend the trade name of the Company to exclude "Seller 1".

The most contentious (and most intensely negotiated) terms relate to the *Representations and Warranties* in Articles 6 and 7, which function as types of legal warranties or guarantees provided by the Sellers and the Purchaser. Article 6 includes warranty representations made by the Sellers about the quality or performance of the Company, which also function intertextually with the information about the Company made available to the Purchaser in the Information Memorandum during Stage One. However, all of the Sellers' representations and warranties were hedged with the

qualifier “to the extent of the Sellers’ best knowledge”, and are “unenforceable unless the Purchaser can prove that the Purchaser was aware of a warranty violation” (Freund (1975). This use of embedded caveats is a discursive strategy designed to decrease the potential liability of the Sellers for incorrect warranty statements while increasing the degree of risk for the Purchaser. The concept of *risk* here relates to potential financial or legal risks associated with the Company that were not correctly divulged to the Purchaser and these types of hedged warranty provisions are normally subject to considerable negotiations for M&A transactions (Gilson & Schwartz, 2005; Martinius, 2005; Freund, 1975).

Risk for the Purchaser can also occur between the signing date of the SPA and completion of the M&A transaction (referred to as *Closing* in the SPA), which makes Articles 3 and 4 contentious provisions often subject to negotiation as well. If an event occurs during this period that substantially reduces the target value or affects the operation of the Company, the Purchaser may want to terminate the deal or be compensated. The negotiative goal of the Purchaser is to include as many *Conditions Precedent to Closing* as possible under Article 4. Conditions Precedent operate as contractual obligations to ensure that the Sellers have finalised all agreed matters, including regulatory approvals, for the transfer of the Company to the Purchaser. The period between signing the SPA and Closing is regulated under Article 5 and the Purchaser will usually prefer a shorter closing period due to the fact that the purchase price has already been contractually finalised and the Sellers “remain in control of the Company and can exploit this by acting opportunistically” (Karsten et al., 2014, p.13). Shorter periods also reduce the risk of adverse events affecting the Company between the time of signing the SPA and Closing.

The boilerplate provisions set out in Table 8.3 are generic to most commercial arrangements and rarely require negotiation between the parties to the contract. However, the template wording of Article 9 is evidently problematic for the Purchaser on the basis that it operates to unilaterally to exclude all legal liability for the Sellers to pay any “compensation for damages, losses, obligations, liabilities, tax, expenses or costs arising against the Purchaser” under the SPA, except for acts of “fraud or gross negligence”. Perhaps most contentious is the explicit reference in Article 9 to the Seller Warranties and Representations under Article 6 (highlighted in the excerpt of Article 9

in Table 8.3 below). This intertextual exclusion of liability functions to negate the intended operation of Article 6 to protect the Purchaser from potential risk and loss while the Sellers remain in control of the Company until Closing and completion of the M&A transaction. Perhaps not surprisingly, these perceived problems with the operational meaning of Article 9 were raised for negotiation during the co-construction of the SPA by the Sellers' representatives (see Section 8.5.5) and negotiation with the Purchaser (see Section 8.6.2).

Table 8.3: Generic provisions of the SPA [boilerplate]

Article	Description
ARTICLE 8 - Confidentiality	This article is a standard provision in most commercial contracts to ensure that all information related to the deal and the parties is kept confidential between the parties.
ARTICLE 9 - Limitation of Liability	This is a unilateral provision that excludes liability for the Sellers to pay any *"compensation for any damages, losses, obligations, liabilities, Tax, expenses or costs arising against the Purchaser and/or its Affiliates or their directors, managers, agents etc. resulting from this Agreement, including but not limited to the representations and warranties made by the Sellers within the scope of Article 6, except in the event of fraud or gross negligence in which case they will be severally liable".* There is also another provision that excludes liability for one Seller when the other Seller breaches the contract and states that *"the breaching Seller shall be solely liable and this shall not cause the termination or invalidity of the whole Agreement or any liability for a non-breaching Seller."*
ARTICLE 10 – Miscellaneous 10.1 Expenses and Taxes 10.2 Notice 10.3 No Waiver 10.4 Entire Agreement 10.5 Binding on Successors 10.6 Governing Law and Dispute Resolution 10.7 Severability 10.8 Acceptance of Terms; Further Acts 10.9 Language	These miscellaneous or *general* provisions are inserted into most commercial contracts with the same operational meaning and purpose. These will only be analysed when modified by the participants during the negotiation process.

As noted above, this discussion of the terms and conditions of the SPA will assist in understanding the negotiated activities examined in more detail throughout Chapter 8. Analysis begins by tracing the process of co-construction by the Sellers' representatives once the template version was distributed by the law firm LF below.

8.5.2 Template contract

The negotiation process for the SPA began when LF2 (and LF1 joined as co-author) distributed a template contract to the main legal and financial representatives of the Sellers for review and comment on 9 October. The fact that LF was appointed to prepare the SPA again signifies the primary legal services role that the law firm now maintained among the other representatives of the Sellers.

> Dear All,
>
> Please find attached a first draft of the SPA for your comments. Kindly note that we have provided some square bracketed wordings and inserted many footnotes in the draft where we provided language possibly to be requested by a purchaser and at some places i.e section 6, [sic] provided alternative provisions according to the structure that is contemplated by the sellers.
>
> We suggest that as the first draft is a very general one based on information taken from Information Memorandum and process letter and previous conversations, we hold a meeting with LA1, S1a and LA2 (and have S1 on a con call perhaps) to go over the agreement, their comments and any possible amendments to the first draft to save time rather than waiting to collect everyone's comments via e-mails.
>
> Awaiting your instructions.
>
> Regards
> LF2
> LF1

My analysis in this section will demonstrate that the template SPA required much more collaborative activity to co-construct due to the particular exigencies of the M&A deal under negotiation, compared to the more simplistic template documents used for the Process Letters and the Confidentiality Agreement. Two strategies were employed by LF2 to expedite the co-construction process. For instance, LF2 acknowledges in the email above that the first draft is a "very general one based on information taken from Information Memorandum and process letter and previous conversations" and recommends holding a conference call to "save time rather than waiting to collect everyone's comments via e-mails" to redraft provisions. A second strategy was the use of "square bracketed wordings" and "footnotes" by the law firm to identify provisions that could possibly be amended by bidders and to provide alternative wording for these provisions.

8.5.3 Main discursive activities for co-construction of the SPA

The co-construction of the SPA involved a series of interactional activities between the Sellers' representatives, and these are set out in Table 8.4. For analytical purposes below, each main activity is identified as a *Discursive Event*. Most of these events involved the exchange of email messages, sometimes with attached letters and/or versions of the SPA under negotiation. The practice was to send email correspondence to all of the main legal representatives of the Sellers, including LF1, LF2, LF5, S1, S1a, LA1, LA2, and LA3. FA1 was also included in the CC facility to enable him to contribute financial expertise to the co-construction of the SPA.

The co-construction process was also punctuated by a face-to-face meeting and two conference calls (highlighted in bold in Table 8.4). While there were no written transcripts of these meetings, the timing of them was clearly important as they were used to discuss proposed amendments to the SPA, proposals negotiated by email communication prior to the meeting. In discussing the significance of these meetings from the participant perspective during the Round 3 interview, LF2 confirmed that oral discussions are a "more fruitful" way of resolving any outstanding issues that cannot be finalised effectively by email communication.

Table 8.4: Discourse activities involved in the co-construction of the SPA

Discursive Event	Date	Discourse activity: process or product	SPA Version
1	Monday 9 October	LF1 distributed template Version 1 of SPA.	1
2	17	LA3 proposed minor changes in an email.	
3	18	LF2 distributed Version 2 that incorporated some of the amendments proposed by LA3.	2
4	30	LA3 proposed more detailed amendments in an email.	
5	**Tuesday 31**	**S1 visited Istanbul to have a face-to-face meeting with LF1, LF2, LF5, S1a, LA1, LA2, and LA3 to discuss the SPA.**	
6	2 November	LF1 distributed Version 3 that incorporates amendments agreed to during the meeting.	3
7	3 & 6	Emails exchanged between S1, FA1 and LA1 about the agreed wording of the Purchase Price provisions in Article 2, which refers to detailed calculation processes in Annexes 2.1, 2.2, and 2.3.	
8	7	The final wording for Article 2 was incorporated into Version 4 by LF2 and distributed by email.	4

9		Emails exchanged between LF1 and LA2 regarding amendments proposed to Article 4 and the Performance Bond and Version 4 is redistributed by LA2, which "includes amendments that we have agreed on [sic] principle".	
10	8	LA1 provided detailed comments about the wording of the contractual provisions pertaining to the Purchase Price under Article 2 as drafted by LF1 on 7 November.	
11	9	LA1 provided detailed points to clarify meaning of many other provisions of Version 4 of the SPA in a letter attached to email.	
		LA2 proposed changes to the wording of Article 2.4 regarding payment of Purchase Price.	
12		S1 responded to LA1's comments and distributed Version 5 incorporating "LA1's comments" and significant changes to Article 9".	5
13	10	S1 distributed wording for Article 5.3(d) regarding Intellectual Property "following comments from out Intellectual Property department. Please amend accordingly".	
14		LF2 also responded to LA1's proposed amendments and distributed Version 6 with S1's changes "tracked on" to V5 distributed by S1 on 9 November.	6
15		S1 distributed wording for specific Article 9 regarding Limitation of Liability based on the intervention of FA1 to change the wording of Version 5.	
16		**Conference call organised by S1 to discuss recent amendments with LF2 and FA1.**	
17		LF1 distributed Version 7 that resemiotised discussions during conference call.	7
18	13	LA1 and LA3 sent emails that provide written justification for amendments that they marked-up to Version 8.	8
19		**Conference call organised by FA1 to discuss proposed changes.**	
20		LF1 redistributed Version 8 that resemiotised discussions during conference call.	
21		LF2 attached Article 9 redrafted in response to FA1's proposed changes in email on 10 November.	
22		LA1 marked-up proposed changes to Articles 2.3, 5.3(d) and (9.1) in a modified Version 8, which are agreed to by LF2.	
23	14	LF2 distributed Version 9 for a final review, which involved a series of minor amendments proposed by a variety of representatives.	9
24	15	Final Version 10 distributed by LF2.	10
25	22	Turkish language version of SPA distributed by LF2.	

Most of Section 8.5 will examine the use of (a) email communication and (b) Markup to negotiate proposed changes to the draft SPA. The similar use of email communication and Markup for the Process Letter and the Confidentiality Agreement during Stage One

indicates that these had become institutionalised discursive practices that stabilised negotiation activities across multidisciplinary and multicultural contexts for this type of international M&A transactions. Section 8.5 will also examine the interactional roles, practices, and behaviours of the different participants. These contextual features have implications for discourse expertise and the deployment of skilled interactional routines and conventional discourse types (Sarangi, 2000; Candlin, 2006) in recognition of the fact that they often serve shared communicative functions in situated contexts.

8.5.4 Preliminary negotiations (Discursive Events 2 - 5)

LA3 was primarily involved during this preliminary stage of negotiation, acting to propose amendments to the draft SPA. After a number of minor amendments were accepted unilaterally by LF2, and drafted to Version 2 of the SPA in her pivotal role (Discursive Events 2 & 3 - Table 8.4), more detailed and extensive amendments were proposed by LA3 in an email sent on 30 October (Discursive Event 4) in preparation for a meeting on 31 October (Discursive Event 5). The rhetorical structure of this email genre consists of a number of separate paragraphs with headings that clearly identify the specific Article of the SPA under negotiation. A similar type of rhetorical structure and intertextual referencing was used by LF2 in email communication when providing legal review analysis of contract negotiation with bidders during Stage One (see Section 7.6.1.3), and the same strategy is also evidenced in legal letters of advice (as determined in a previous study; see Townley & Jones, 2016). The primary activity for LA3 here was to propose making changes to the SPA to the joint representatives, and this email example supports the view that professionals can use their discourse expertise to exploit conventionalised features of recognised genres to create novel variations (Berkenkotter & Huckin, 1995) for different discursive purposes and situations.

From a social practice perspective, LA3 used sophisticated discourse types and strategies to legitimise proposed amendments to the SPA. As demonstrated in excerpts from her email in Table 8.5 below, LA3 begins two proposals with an impersonally framed positive evaluation of the proposed amendment, deploying the powerful socio-moral term “appropriate” with “it” as subject, e.g. saying “it would be appropriate to….”. However, these proposals are clearly not polite requests and in fact can be defined as hedged directives or commands, partly as a function of the role and power of

LA3 and partly as a feature of her communicative purpose here to persuade or compel the other representatives to adopt her proposed amendments. In comparison, the third proposal is hedged with the modal of ability "could" to soften this request and foster a more egalitarian and collaborative relationship with the other representatives.

The language of LA3's proposed amendments can also be characterised as interdiscursive in the way that she blends the technicality of contractual terms with interactional features of formality and politeness to frame her strong advice on how to redraft the SPA. For instance, LA3 goes to some lengths to justify, or legitimise, proposals to amend Articles 2.3 and 6, in order to appeal to legal sensibilities of her colleagues. She then uses the modal "could" to politely suggest how the proposed amendments can be redrafted and integrated into the SPA (for Article 2.3) – or alternatively, realised in an ancillary "side agreement" (for Article 6). For the other proposed amendments to Article 6.7(a), LA3 provides no justification or explanation for adopting them on the basis that the rationale will be obvious to the other representatives. These findings align with the view that the deployment of discourse types and strategies is contingent and dynamic, reacting responsively and innovatively to situated communicative purposes (Jones, 2014).

Table 8.5: Linguistic strategies for legitimising proposed amendments

Paragraph Heading	Hedged directives	Proposed amendment(s)	Justification	Proposed redrafting
Article 2.3:	It would be appropriate …	… to indicate the total purchase price as "net purchase price" OR " …….Euros excluding VAT and taxes"	There should be a short explanation regarding the process took place [sic] before the SPA during the determination of the selling price. For example, submission of Information Memorandum, Virtual Data Room and Due Diligence process should be included in this explanation.	This short paragraph could take place in this article or as an introduction part at the beginning of the SPA.

Article 6:	It would be appropriate …	… to separate this section for the BoD members and the shareholders.	Thus [sic], they carry different liabilities according to the Turkish Commercial Code.	If it is not possible, a side agreement could be made between the sellers to protect the rights of the sellers who are not in the management of the company.
Article 6.7.(a):	(+ could)	The following sentence could be added to the end of the paragraph…		"… according to the Uniform Chart of Account (Tek Duzen Hesap Plani) and the Turkish Tax Regulations."

Most of the proposals from LA3 were redrafted by LF2 to Version 3 and not highlighted in Markup, which indicates that they were agreed to unproblematically by the other representatives during the meeting on 31 October (Discursive Event 5 – Table 8.4). However, LA3's proposal to draft separate warranties for the Sellers and the Individual Shareholders under Article 6 involved significantly more negotiation activity beyond the scope of her email. This was anticipated in section 8.5.1 above due to the fact that the hedged wording of the *Representations and Warranties* in Articles 6 and 7 involve different degrees of risk for the Sellers and the Purchaser. This issue was raised at the meeting on 31 October and the collective decision was made to reduce the 22 original warranties to just seven (Existence/ Title/ Authorization/ Non-Conflict/ Information Provided/ Financial Statements/ and Taxes). In support of LA3's proposal, these warranties were restructured in Version 3 of the SPA to apply to both the Sellers and Individual Shareholders separately. From a social-institutional perspective, these contractual changes limit the guarantees provided by the Sellers and thus reduce their risk of legal liability. Conversely, these contractual amendments increase the risk of the Purchaser due to a lack of transparency about the potential financial or legal risks associated with the Company.

From an integrated social practice and semiotic resource perspective of the MP model, these discursive events demonstrate how negotiation activity progresses from email proposals to oral discussions during meetings or conference calls. Written records of such meetings are then formalised into agreed terms and conditions written to the SPA in Markup. This process is obviously intertextual in the way that the terms and

conditions of the contract ties back into antecedent discourse (both written and spoken) at the same time that they anticipate subsequent discourse for the representatives to formally approve or challenge the marked-up provisions. It is also interdiscursive in the way that lawyers recontextualise the *expository* or *persuasive* style of emails proposals and oral discussions into the *operative* or *performative* style of contractual language (Tiersma, 1999). This cognitive process is germane to the dynamic nature of contract negotiation and the ways in which contract templates are recycled and reworked into new contractual documents within or across institutions or professional settings and for different purposes, which constitute a type of *genre ecology* with other genres more routinely enacted during the entire M&A transaction (Spinuzzi & Zachry, 2000).

8.5.5 Interdisciplinary intervention and collaboration (Discursive Events 12, 15 & 17)

The legal and financial representatives did not only function within their own specialised domains of professional expertise, but also used interdisciplinary knowledge and communicative competence to collaborate on the co-construction of the SPA. For instance, FA1 intervened to propose redrafting the legal operation of Article 9 (Limitation of Liability) in response to amendments that S1 made to Version 5 on 9 November (Discursive Event 12 - Table 8.4). While the original wording of Article 9 in Version 1 of the template excluded all liability for the Sellers except for "fraud or gross negligence", the new wording proposed by S1 to Version 5 makes the Sellers liable for all "losses, liabilities, damages or expenses incurred by any of the Sellers … arising out of or as a result of any breach of any of the representations and warranties under Article 6 and 7 of this Agreement ("Damage"). In response to S1's proposed amendment, FA1 sent him the following email on 10 November (the frequent deontic modals are bolded):

> I was away yesterday, but having reviewed the draft, Article 9 frankly **needs to be** completely re-drafted. **In no way** should the Selling Shareholders be required to indemnify and hold harmless anyone. The draft as it stands is too buyer friendly and unacceptable.
>
> The drafting **should** reflect the following:
>
> * [sic] Sole and exclusive remedy can be either a Purchase Price reduction of [sic] max 5% of [sic] total (to be held in escrow). [sic] Alternative is not to hold any amount in escrow and to just limit your liability to 5% of the Purchase Price and for the claims to be severally made on a pro-rata economic basis to the shareholders of the Company and Seller 2.
> * The Seller **should NOT** be liable for anything which has been disclosed to the Purchaser

in the virtual data room
* Claim [sic] with sufficient particulars and the claim **has to be** made within 30 days of the event taking place or [sic] Purchaser being made aware
* **Under no circumstances** are any forward looking business plans / budgets or anything signifying a forecast of any sort [to] be covered - the Purchaser **should** make their own evaluation of such facts
* [sic] Minimum size of a claim is 0.1% of the Purchase Price and there will **need to be** a minimum aggregate amount of claims totalling 1% of the Purchase Price before they can seek remedy
* [sic] Duty to mitigate loss and [sic] Sellers **should be** given the option of defend [sic] any claims

The above is just a summary of some of the items that **should be** reflected in the Limitation of Liability Article. We should have a call to discuss this afternoon ASAP. **Let me know** your availability and I can circulate a dial in number.

Thanks and regards,
FA1

Unlike other joint representatives who might have been more tentative in mounting such a challenge to S1's legal authority, the register of this email message is direct, even blunt in tone, and the relatively mild force of *should* is made so much stronger by its being used in the passive voice without use of any hedging or politeness strategies. The tone is also uncompromising, as indicated by the use of "frankly" and "in no way" to reject some of the amendments proposed to Article 9 by S1. However, any potential threat to authority or face needs of S1 is mitigated by the fact that the institutional roles and status of S1 (as primary lawyer) and FA1 (as primary banker) are roughly equal. They are both representing the best interests of the same company client (Archer, 2011), and both are aware of this. The fact that FA1 appears compelled to frame these opposing views in direct and potentially confronting language can be regarded as a necessary part of the exchange of constructive criticism between professional equals as they discuss an alternative approach for this particular type of situated discourse activity (Myers, 1989, 1992; Gil-Salom & Soler-Monreal, 2009).

To support his stance towards S1's proposal and his alternative approach, FA1 inserts a bullet-point list of "items that "should be reflected in the Limitation of Liability Article". It is important to emphasise that most of these proposals are couched in legal terms and do not reflect financial or banking considerations. This demonstrates the interdisciplinary and interdiscursive competence of FA1 to appropriate and exploit lexico-grammatical resources across different professional practices and contexts (Bhatia, 2012) in the new context of an M&A negotiation activity. FA1 had developed

operational knowledge of these legal terms from his experience working on similar types of deals and was able to use that knowledge on this occasion to ensure that the different stakeholders constructed an effective SPA (Palmeri, 2004; Candlin, 2006).

As was so strongly urged by FA1 in his email, S1 organised a conference call to discuss these issues with the other representatives with the objective to "reach an acceptable balance between the first draft SPA (no liability for r&w[16]) and the second draft (too buyer-friendly)". In order to save any perceived damage to his professional face, S1 attempted to justify his earlier suggested amendments by criticizing the original terms of the SPA for specifying no liability for the Sellers' representations and warranties, and he frames the conference call as a way "to reach an acceptable balance". In Table 8.6, we can see how some of these written proposals by FA1 were redrafted by LF2 into the contractual terms of Article 9 in a new Version 7 of the SPA (Discursive Event 17 - Table 8.4).

Table 8.6: Intertextual and interdiscursive process of redrafting proposals into contractual terms

Proposed amendments by FA1 [excerpts taken from email sent on 10 November above]	**Wording of proposed amendments as redrafted into contractual terms by LF2**
* Minimum size of a claim is 0.1% of the Purchase Price and there will need to be a minimum aggregate amount of claims totalling 1% of the Purchase Price before they can seek remedy.	**9.2.1** The Purchaser shall not be entitled to claim any Damage unless; **(i)** the amount of any individual claim of Damage exceeds Euro 100,000 (one hundred thousand Euros) and **(ii)** the aggregate of all amounts exceeding all individual claim of Damage pursuant to (i) exceeds Euro 1. 000.000 (one million Euros); and
* Claim with sufficient particulars and the claim has to be made within 30 days of the event taking place or Purchaser being made aware	**(iii)** the Purchaser gives a notice in writing of any such Damage accompanied by reasonable particulars thereof specifying the nature of the Damage and, as far as practicable, the amount of the claimed Damage, to the Sellers or Individual Sellers, as the case may be, within fifteen (15) days from the date when the Purchaser or any of the Companies became or should have become aware of the circumstances giving rise to the claim, and in any event no later than one year

[16] Representations & Warranties of the Sellers – see Table 8.2.

	after the Closing.
* The Seller should NOT be liable for anything which has been disclosed to the Purchaser in the virtual data room	No claim may be made if the facts, matters, occurrences or events which gave rise to the breach underlying the claim have been disclosed to the Purchaser or its representatives in the Virtual Data Room or otherwise during the Due Diligence or in this Agreement, or which were otherwise known to the Purchaser or the Purchaser's advisors prior to the Closing Date.

This interdiscursive ability to recontextualise the *expository* or *persuasive* style of negotiated proposals into the *operative* or *performative* style of contractual terms (Tiersma, 1999) represents a key feature of the legal discourse expertise of LF2 and possibly marks the limits of FA1's communicative competence in the different disciplinary contexts of contract law. While FA1 is familiar with the legal significance of these terms, the actual drafting process is entrusted to LF2 who possesses more specialised knowledge and communicative competence for this specific discourse type of contract amendment. In Table 8.6 we can see how LF2 uses a definitional frame to prohibit the Purchaser from making a claim *unless* a list of numbered of legal requirements are satisfied for Article 9.2.1. The sub-articles (i) and (ii) then formalise the "minimum size" and "aggregate amount" of claims requested by FA1 in the performative style of legal language for contracts. For Article 9.2.1(iii), LF2 uses a complex sentence structure of embedded clauses to precisely set out the requirements for making claim within 15 days of becoming "aware of the circumstances giving rise to the claim". This is shorter period of time than the 30 days originally proposed by FA1 is determined by LF2 as more appropriate for this contractual issue. The other proposal by LA1 to exclude all liability for "anything which has been disclosed to the Purchaser in the virtual data room" is more clearly defined by LF2 to include "facts, matters, occurrences or events" and extended to apply to the Purchaser and the Purchaser's advisors. LF2 also uses the all-inclusive expression "or which were otherwise known" to achieve a much broader scope for the original proposal for anytime from the process of due diligence until completion of the deal. The exploitation of precise terms and indeterminate language for specific legal objectives is recognised as is a key feature of legislative drafting that are "expertly used members of the legal profession" (Bhatia & Bhatia, 2011, p.14). LF2 is able to use this type (inter)discursive expertise to achieve

clearly defined legal outcomes for the proposals initially raised by the banker FA1 in simpler, more general terms.

8.5.6 Negotiation of final amendments to the SPA (Discursive Event 23)

The final process in the co-construction of the SPA involved 69 emails and a number of attached ancillary documents being exchanged between the Sellers' representatives between 10 and 15 November. These emails were exchanged to finalise a series of minor negotiated changes. According to the participant perspective of LF2 (Round 3 interview), the final process of negotiating key contracts is often characterised by intensive, interactional activities to finalise outstanding issues between collaborators:

> Normally when the deadlines [sic] is just a few hours ahead or just a few days ahead everybody is in kind ... some kind of a rush because at last minute something comes up, something is not forgotten but noticed and brought up by someone and okay, did we discuss this before, check the files, okay, that's finalised or we didn't discuss this before, someone check it out, someone provide the legal documents, etc, and in order not to leave any issues open or anything that might hurt the clients in a further step.

LF2 acknowledged that she had a "few nights in the office", i.e. where she did not go home until early morning due to being involved in the types of negotiation activities mentioned. In discussing the same topic during the Round 3 interview, LF1 rued the fact that this process of "last minute" hyperactivity is beyond the control of the law firm in deals that involve multiple participants in an electronically-mediated collaboration:

> Let's say in that specific transaction you have the individual sellers, you have us, you have the other party, you have the financial advisors and you send a draft and let's say that [sic] send me your comments by tomorrow and you will receive them the next day. So no matter when you say that you need them it will be the last minute changes.

Section 8.5.6.1 analyses the intertextual nature of some of the emails exchanged on 14 November (Discursive Event 23 - Table 8.4) to enable the Sellers' representatives to collaborate on the co-construction of the SPA. Section 8.5.6.2 examines the pivotal role of LF2 for managing this negotiation activity.

8.5.6.1 Embedded emails

The email records in Tables 8.7 and 8.8 below will help demonstrate the utility of using what has been called "embedded" email communication (Gimenez, 2005, 2006) to

finalise the amendments to the SPA. Also referred to as "chain emails" (Evans, 2012; Warren, 2013) and "threaded emails" (Nickerson, 2000), the concept of embedded emails is based on the proposition that business emails have become a more complex genre, embedding a series of internal messages. Gimenez (2005) defines embedded emails as messages "which are made up of an initial message which starts the communication event, a series of internal, subordinated messages which depend on the first message to make sense, and a final message which brings the communication event to an end" (pp.235-36). Thus emails and messages within the emails connect intertextually to one another and each one is thus dependent on the others to make complete communicative sense in the context of the specific discourse activity.

In Tables 8.7 and 8.8 below, emails from the Sellers' representatives are presented in the left-hand column and emails from LF2 are given in the right-hand column along with an individual email identifier (A-M), time stamp and the author (in bold). The chain of messages can be divided into "phases", in which the representatives resolve different contractual issues that collectively relate to the shared purpose to co-construct the SPA.

Embedded email chains customarily begin with a main message, called the "chain initiator", which is followed by a series of subordinate emails containing embedded messages until a final main message is sent, called the "chain terminator" (Gimenez, 2006, p.159). By applying these rhetorical features to Table 8.7, we can see that emails from LF2 represent both the chain initiator and chain terminator for different phases of negotiation discourse within the same extended chain of emails. For instance, emails (A) and (F) represent the main messages used by LF2 to initiate and terminate the first phase, which is constituted by four subordinate emails used by FA1 (B), S1 (C), LF2 (D) and LA1 (E) to negotiate proposed amendments to the wording of specific Articles of the SPA. In particular, these embedded emails focus on the operational meaning of Article 5.3(d) at the request of FA1 in email (B). This phase was terminated when LF2 distributed a revised version of the SPA attached to email (F), which recorded the most recent contractual wording from LA1 in Markup.

Table 8.7: The use of embedded emails to make final amendments to the SPA, illustrating LF2's pivotal discourse role (emails A-E)

Proposed amendments by the representatives	Pivotal discourse role of LF2
	(A) 7:30 Please find attached the latest draft and do you have any questions or comments to make before finalizing **[LF2].**
(B) 08:42 page 11: Article 2.3.2 (c) - since the derivative financial instrument will cease to exist, I would just delete this sentence all together. It does not enter in any of the definitions above. [sic] Can be as between both B/S they exist. page 12: Article 2.3.4 (c) – delete same as above page 15: Article 4.2.1 - Defence rather than defense. The former is the noun, the latter is just a misspelling. Same applies to practice and practise in 9.4 (a), where the former is the noun and the latter the verb. Please also delete the extra full stop at the end of the article. page 20: Article 5.3 (d) - There needs to be a reasonable transition period for the trademark. I don't think that it will be acceptable to buyers to have no trade name transition period. I am not suggesting a long period, but at around 3 to 6 months. Most of the comments below should not be controversial. We do need a decision regarding article 5.3 (d) from Seller 1 though. **FA1**	
(C) 09:11 Please leave 5.3 (d) as is. This will form part of separation issues which will vary for each buyer and can be dealt with in negotiations **[S1]**	
	(D) 09:11 According to our opinion made [sic] changes are acceptable. **[LF2]**
(E) 11:11 After our conversation with S1 today, last amendments for the SPA are: 5.3.d) at the end, change the remark as: Reasonable Transition Period to be discussed/negotiated between Seller 1 and the Purchaser as a separation issue. 9.1. 2nd paragraph, delete: "including interest and reasonable attorney's fees," Please format the last SPA including these comments on top of FA1's and distribute it. Regards, **LA1**	

	(F) 13:35 Dear All, Please find attached the last draft. I suggest that everone [sic] takes a one last look at it before submitting it to the VDR. I changed the TL in 6.1.2 to YTL upon LA1's comment. regards **LF2**

Attaching this new version of the SPA to email (F) also functions to initiate a new phase of negotiated proposals with the directive from LF2 that "everone [sic] takes a one last look at it before submitting it to the VDR" as recorded in Table 8.8 below. As recorded in Table 8.8 below, this second phase is terminated by LF2 by attaching a new version of the SPA to email (H) that incorporates Markup of the negotiated changes proposed by LA1 in email (G). This email initiates a third phase of embedded email terminated by email (J) and so on. Each of the four phases recorded in Tables 8.7 and 8.8 are not necessarily contingent on the others because they involve negotiation of different Articles of the SPA, often by different representatives, which are subsequently marked-up to consecutive versions of the SPA by LF2 to initiate the next phase. However, we can see that FA1 used email (L) to negotiate changes to Article 9.1, which was first raised for consideration by LA1 in email (E). Email embeddedness therefore implies that at least one or more parts of the email chain relate to others to make complete communicative sense.

Table 8.8: The use of embedded emails to make final amendments to the SPA, illustrating LF2's pivotal discourse role (emails F-M)

Proposed amendments by the representatives	Pivotal discourse role of LF2
(G) 15:24 On page 2 and 3 delete: "7" in Article 2, a) and b) after Article 6.2.8, And also the sentence in Article 7, And "12" in Article 8. Article 1.21: 99,34% 2.4: forgot to ask yesterday, but is not a word missing in here? 6.2.2: ,00 (decimals) as in 6.1.2 7.2: sentence to start next paragraph 9.2.1-9.2.4: Bold **LA1**	

	(H) 15:43 Please find attached. LA1, I checked 2.4 but could find no missing word. Regards **LF2**
(I) 16:08 9.6.a. madde 30 günlük süre olarak kalmış. Karışıklığa yol açmamak amacıyla ilgili maddede belirlenen tüm sürelerin 15 gün olması gerektiği görüşündeyiz. Ayrıca; 9.2.1/2/3/4. maddelerde format hatası oluşmuş (bold değil) ve 5.3. maddede 2 adet " f " var. Saygılar, **LA3**	
	(J) 16:40 Please find attached the latest draft of the SPA. Upon LA3 Hanım's comments we have changed the 30 day period to 15 days in Article 9.6 a and we have corrected the format of some articles. Please note that S1a Hanım has approved such changes. Best Regards, **LF2**
	(K) 17:18 Please find attached one last time the last draft of SPA where we inserted by TL and YTL numbers in article 6. As discussed with LA1 schedules 1.21 and 1.26 can be put in VDR later on. The other schedules that we had prepared and the schedule list is attached. Regards **LF2**
(L) 20:12 I would suggest we make one change, namely that we reiterate the point in 9.1 that the Sellers are only liable for a period of 1 year. We can do this in the 4th line of Article 9.1 after "Closing Date" by adding "for a period of one year from this date" or something to that effect. **FA1**	
	(M) 20:53 According to me we can do the change and it may be advisable to do so. Regards, **LF2**

The close textual proximity of these embedded emails means that there is little or no requirement to address the other representatives or to refer to intertextual and/or extra-textual interactions. Each email is an intertextual move such as can be found in the other email genres used for negotiation activities and described elsewhere in this study. The one exception is identified in email (E) when LA1 refers to "our conversation with S1

today". Otherwise, the representatives, authors of the individual emails, only refer to the specific Article under negotiation, sometimes with the relevant page number of the SPA. Other exceptions are identified in email LF2, who relies on preliminary genre moves (see Table 3.1) to refer the latest version of the SPA attached to the email and to the most recent negotiation activity embedded in the previous antecedent emails – see email (J) and (K) as examples. These discursive strategies relate to LF2's specific role discussed in Section 8.5.7.2 below.

The register of the embedded emails is dialogic and informal, which aligns with other research findings that email communication seems to associate itself more readily with other oral genres, such as the telephone call (Eklundh & Macdonald, 1994; Gimenez, 2006). As noted above the participants do not address each other, which is customary in other email genres with specific and independent communicative purposes. Instead, they begin each email by simply stating or responding to the topic raised in the previous email, such as FA1's direct response in email (B) to the request from LF2 request in email (A) and S1's direct response in email (C) to the request from FA1 in email (B). Similarly, LA1 proposes further amendments in email (G) in response to LF2's request for collaboration in email (F) and LF2 provides legal agreement (M) for LA1's proposal in email (L) in a seamless chain of communication. Unlike the formal register that characterises other email discourse analysed in this study, many of the emails in Tables 8.7 and 8.8 can also be characterised as having a conversational tone due to the use of incomplete sentences and consistent grammatical errors (Gains, 1997). The participants also hedge proposed action with the expression such as "we can do…" in emails (L) and (M) and the use of pragmatic suggestion in emails (B) (F) and (L) as features of a "low-power" communication style to foster a relationship of respect and trust (cf. Jensen, 2009). Another textual feature of respect is the use of "Hanım" by LF2 in email (J) to refer to her female colleagues LA3 and S1a. This possessive suffix is commonly used in conjunction with a woman's first name to signify respect and affection for that person in Turkish culture (see also Section 9.3.3).

From a social practice perspective, the intertextual functions of embedded emails also increase levels of trust between the participants, especially "when the complexity of the topic being discussed by a geographically dispersed team calls for team decision-making" (Gimenez, 2006, p.162). Each of the representatives CC'ed to the chain of

emails was able to monitor the exchange of proposals and counter-proposals as they are retextualised in Markup in successive versions of the SPA by LF2. Each representative could then contribute professional expertise to propose additional changes to a particular amendment, thus improving its contractual wording. This is evidenced in email (L) when FA1 recommends a further limitation of liability for Article 9.1, which was earlier amended by LA1 in email (E). Furthermore, the ability to negotiate complex contractual terms and conditions without the risk of being misunderstood or interrupted during the cadence of oral conversation makes embedded email an effective communication type to formalise contractual issues in writing (Townley, 2010).

Embedded email communication also increases levels of transparency and accountability among the group of discourse participants as they collaborate on the co-construction of contractual documents. The proposed amendments are entirely provisional, pending challenge and/or ratification by the other representatives CC'ed to the chain of email communication. In email (C), for example, S1 rejected FA1's earlier proposal to amend Article 5.3(d) in the preceding email (B). S1's justification that this issue should be negotiated on an individual basis was then formalised by specific wording proposed by LA1 in email (E). For other proposed amendments, acceptance was implicitly ratified by the other representatives making no comment about them in subsequent email communication. In terms of transparency, these embedded emails provided the Sellers with a written record of the negotiation activity of the representatives, including the professional reasons or justification for making changes to contractual documents. In this way, the emails are transformed from an intertextual communication medium into an archiving utility for storage and retrieval of information, knowledge and professional discourse activity. It is important to note here that emails are now given the same legal status and evidential validity as letters and recorded phone calls in international jurisdictions (Gimenez, 2006).

8.5.6.2 The pivotal discourse role of LF2

As can be seen in Tables 8.7 and 8.8, the main representatives of the Sellers (FA1, S1, LA1, and LA3) used email communication to exchange proposals and counter-proposals regarding the wording of specific Articles of the SPA. However, at critical times in this complex interaction, LF2 was responsible for redrafting agreed

amendments in Markup in a revised version of the SPA. This frontstage leadership role was crucial for this "last minute" negotiation activity. The only alternative was to let individual representatives make changes in Markup for the other representatives to deliberate upon and respond to, and this would have been extremely time-consuming and difficult to track among so many participants. To avoid these difficulties, LF2 was designated as the only person to Markup changes to the same 'master' version the contract. She would then redistribute this to the other representatives for further deliberation and negotiated agreement.

LF2 also used this semi-institutionalised pivotal role to encourage the other participants to carefully consider specific amendments she highlighted in Markup to the SPA in emails (E) (F) (J) and (K). On one other occasion, in email (I), LF2 was required to translate proposed amendments that LA3 had made in Turkish, in email (H), into English for the benefit of the other representatives. All of these discourse activities underline the importance of having an experienced lawyer (not to mention a bilingual one) undertake this role to ensure that email communication is managed coherently and proposed amendments are agreed to and expertly written to the contract under negotiation.

8.6 Negotiation of the SPA with the Purchaser

From my researcher perspective, I assumed that there would be significant negotiation activity for the SPA on the basis that it represents the most critical process for the Sellers to choose the winning bid. Indeed, the operational meaning of some terms of the SPA were left rather general on purpose, with the acknowledgement from S1 that some "issues will vary for each buyer and can be dealt with in negotiations". However, the social/institutional reality was that the scope for negotiation activity was significantly limited by the repeated use of the formal caution to bidders to minimise any changes to the SPA during the evaluation and negotiation process (see Section 8.1). At this moment in time on 8 November, S1 again urged the Joint Financial Advisors to clearly state that investors "must re-submit an SPA as close as possible to the Sellers' original draft in all respects". This strategic move was then reiterated by FA1 in an email sent to all of the Sellers' representatives on 10 November before negotiation of the SPA commenced. This move is underlined in the following excerpt taken from his email:

> In agreement with S1, please find attached the guidelines to our original SPA, which should be distributed (the bold comments on the concept side to be deleted before) and also verbally spoken by the Financial Advisors with the Bidders. The message should clearly contain that whoever comes up earlier with an agreeable SPA should have the competitive advantage.

The Joint Financial Advisors were also instructed to distribute guidelines to all investors to assist them with negotiation of the SPA. A key component of these guidelines was the following statement made in relation to the Seller Representations and Warranties under Article 6 as follows:

> Please note that the Sellers have afforded you the opportunity to conduct an extensive due diligence process of 5 weeks. In addition, they have proposed to warrant the accuracy (in all material respects) of the information contained in the VDR (to the best of the Sellers knowledge). Therefore, you should carefully consider the Sellers' proposal and you should note that the scope of Reps & Warranties sought will have a material impact on your proposal's success.

These emails provide important insight into the social/institutional strategy of persuading or strongly suggesting to investors that they should agree to the terms and conditions of the SPA constructed by the Sellers, especially in relation to the Seller Representations & Warranty provisions under Article 6. The extent to which amendments were proposed by investors also determined whether a meeting was held or not to consider their bid further. Below I reproduce the excerpted text of the email sent by S1 to all of the Sellers' representatives on 16 November:

> Either [the Investor] provides a Markup of the SPA asap, and highlights questions arising out of such Markup, or provides a written list of questions arising out of their review of the draft SPA to which they seek answers before submitting a marked-up SPA. On the basis of their response we then decide on the usefulness of such a meeting with our lawyers.

These social-institutional mechanisms were designed to effectively compel investors to submit *conformist* bids, which significantly reduced the number of companies participating in the final negotiation process. From the list of 20 companies that submitted indicative proposals at the end of Stage One, only seven companies submitted formal bids during Stage Two and just four companies were given the opportunity to negotiate amendments they had proposed to the SPA. The focus of analysis in Section 8.6 of this chapter relates to negotiation activities between the Sellers' representatives and the winning investor company based in Portugal (referred to as the Purchaser).

8.6.1 SPA evaluation and negotiation activities

In accordance with the procedural terms of the Second Stage Process Letter, the Purchaser first submitted a marked-up copy of proposed amendments to the SPA on 1 December 2006 to begin the evaluation and negotiation process. The main discourse activities are set out in Table 8.9 with some brief description of the interactional participants and outcomes. Table 8.9 also identifies the documents that were used as a part of a genre set for the shared purposes of these negotiation activities. Compared to Stage One, the Sellers' representatives used different genre types during this stage of the negotiation process in order to achieve different professional discourse objectives in a broader system of activities with professional representatives of the Purchaser and other investors (more on this in Section 8.6.2).

Table 8.9: Discourse activities and genre types used for negotiation of the SPA

Discursive Event	Date	Discursive activity	Documents
1	30/11	S1 internally distributed a tabulated document to help facilitate the Sellers' representatives evaluate amendments proposed by investors to the SPA (the Evaluation Form).	• Evaluation Form template
2	1/12	The Purchaser submitted a Formal Bid, which included a memo briefly explaining the amendments made to the SPA in Markup (the Explanatory Memo).	• SPA (v1) • Explanatory Memo
3	Monday 4/12	LF2 used the Evaluation Form to review the marked-up SPA (v1) in conjunction with the Explanatory Memo and distributed the Evaluation Form (v1) to the Sellers' representatives via email.	• Evaluation Form (v1)
4	5/12	LA2 undertook an independent review of the amended SPA (v1) and LF2 collated her comments into a collaborative review summarised in a new version of the Evaluation Form (v2).	• Evaluation Form (v2)
5	9/12	The Sellers' representatives considered the Evaluation Form (v2) in conjunction with the SPA (v1) to reach consensus about the negotiative stance of the Sellers regarding the amendments proposed by the Purchaser during a conference call. LF2 then recontextualised this negotiative stance to another document labelled with corporate logos (Key SPA Points for Resolution). This memo genre listed the reasons for either rejecting or accepting the proposed	• Key SPA Points for Resolution

		amendments to be used for further negotiation of outstanding issues with the Purchaser.	
6	Sunday 10/12	LF2 also recontextualised the negotiative stance of the Sellers into a new marked-up version of the SPA (v2) for further negotiation with the Purchaser. This involved the deletion of many proposed amendments deemed unacceptable by the Sellers and the agreed wording of acceptable amendments was highlighted in Markup for the Purchaser to consider further.	• SPA (v2)
7	13/12	Both the SPA (v2) and the Key SPA Points for Resolution documents were used for oral negotiations during a face-to-face meeting with the representatives of both the Sellers and the Purchaser. Attendees include S1, LF1, LF2, LA1, LA2, FA1 and Turkish lawyers working for a multi-national law firm representing the Purchaser in Turkey.	• Key SPA Points for Resolution • SPA (v2)
8	14/12	LF2 recontextualised the outcomes of the face-to-face meeting and the negotiated stance of the Sellers and Purchaser representatives into a new marked-up version of the SPA (v3) and distributed it to all the representatives for further negotiation.	• SPA (v3)
9	Friday 15/12	The executed copy of the SPA was distributed by LF2.	• Executed SPA

8.6.2 Intertextual use of different genres during the evaluation process

Analysis in this section is focused on the epistemological and functional relationships between the emails exchanged and some of the main documents identified in Table 8.9. This analysis primarily involves examination of the intertextual links between emails and the documents and the different resources and discursive factors that were used to influence the way the texts were utilised for shared negotiation activities (Bhatia, 2010). The interactional use of these texts depends upon what Berkenkotter (2001) calls "historically sedimented practices" (p.338) that enabled a number of different lawyers and financial professionals to negotiate the SPA in a short period of time and across different situated contexts. Negotiation with the Purchaser involved five additional discourse participants detailed in Table 5.5, including three managers of the winning investor company based in Portugal and two Turkish lawyers who worked for the multinational law firm in Istanbul that was commissioned to provide legal services for the Purchaser in Turkey. As noted in Section 2.3.1, this recontextualisation process is germane to the intertextual and interdiscursive nature of negotiating a complex M&A

transaction. Across an extended sequence of time, this transaction acts as a type of *genre ecology* that hybridizes and adapts different textual artefacts for specific discourse activity and professional purposes (Spinuzzi & Zachry, 2000). The concept of distributed workplace-wide cognitions also has significance for the concept of "generic competence" in terms of the ability of these professionals "to respond to recurrent and novel rhetorical situations by constructing, interpreting, using and often exploiting generic conventions embedded in specific disciplinary cultures and practices to achieve professional ends" (Bhatia, 2004, p.144).

8.6.2.1 Explanatory Memo

In Discursive Event 2 on 1 December, the Purchaser submitted an Explanatory Memo that identified and explained amendments proposed in Markup to Version 1 of the SPA. This ancillary document was required in accordance with the directive under Clause 2 of the Second Process Letter (see Section 8.3), used by the Sellers' representatives to evaluate formal bids more effectively. The Explanatory Memo was rhetorically structured in paragraphs with amended Article headings, which included the following excerpts:

> **Article 4 Conditions Precedent to the Closing:** This article has been amended to ensure that the Closing mechanics is fairly and clearly reflected in order to avoid any misinterpretation between the Parties.
>
> **Article 6 Representations and Warranties:** This article has been amended and additional representations and warranties were included. We believe that the representations and warranties which are included in with our amendments are customary and standard, that a seller would normally agree to give in these type of transactions.

However, if we compare these excerpts to the extensive changes marked-up to Articles 4 and 6 by the Purchaser, it is evident that the Explanatory Memo comments only provided perfunctory justification for the proposed amendments and the Sellers' representatives had to primarily consider the marked-up provisions of the SPA document. The same intertextual function could have been more effectively achieved with the use of Comments software feature inserted alongside the marked-up amendments within Version 1 of the SPA. The use of two separate documents, involving the Explanatory Memo with the SPA(v1), appears to be a *relic* of "historically

sedimented practices" (Berkenkotter, 2001) that fails to effectively achieve the communicative goals for this evaluation and negotiation activity.

8.6.2.2 Evaluation of the SPA using a tabulated genre

At the time of Discursive Event 1 on 30 November, S1 had earlier distributed a tabulated template document constituting a specific genre that is designed to "facilitate a swift analysis of the competing bids by the Sellers with respect to the SPA". Both LF2 and LA2 then used this document to provide a collaborative legal review of the amendments proposed by the Purchaser. LF2 first completed her review on 4 December before collating the results from LA2's review on 5 December into a single table for distribution to the other Sellers' representatives. These discourse genres and LF2's discursive strategies are documented in Table 8.10 below, which only includes excepts of the collaborative review for Articles 9 and 10 for further analysis below in the present section.

Table 8.10: Tabulated evaluation form to review proposed amendments to SPA

Draft SPA's Articles	Seller's Proposal	Purchaser	LF
Article 9 Liability		• It is determined that to the extent damage has occurred within the periods, the parties may claim such damage even after expiration of the determined periods.	• Seller's decision
	• Liability cap is 10.000.00 Euros.	• Liability cap is 20 % of the Purchase Price.	• Acceptable
	• Minimum aggregate liability amount is 1.000.000 Euros.	• In case the limit of 1.000.000 Euros is exceeded the Purchaser shall be able to claim entire amount from 1 Euro and not just the excess.	• Title to shares can be acceptable but the other exception cannot be.
	• If the damage is a tax deductible item or an untaxed reserve, the reimbursement	• Limitation of liability shall not be applicable to breach of the following representations and warranties: title to shares and consequences of sale.	• Not acceptable • Not acceptable.

	shall be reduced by the tax rate at the time of reimbursement.	• Deleted from the text. • Specific indemnities are inserted and there is no limitation of liability for those items. Defense [sic] rights of the Sellers against third party claims shall not be applicable.	It will weaken the Seller's position against third party claim. • Can be acceptable based on other items on limitation of liability suggested by the Sellers to be accepted by the Purchaser or not.
Article 10 Other Covenants	No such clause in our draft Non-solicitation obligation for 3 years	• Non-Competition – For a period of three years following the Closing Date, the Individual Sellers shall not and shall cause their Affiliates not to, directly or indirectly be engaged in the production or commercialization in Turkey. In the event of violation of this limitation, the breaching Individual Seller, or in the event of a breach by an Affiliate the relevant Individual Seller shall pay 50% of the Purchase Price he/it has received pursuant to this Agreement, upon receipt of first written demand from the Purchaser. • Non-solicitation obligation for 2 years.	• The highlighted parts can not be acceptable. Sellers should decide whether to accept the penalty clause or not. • Acceptable. Sellers' decision

From a social practice perspective, the rhetorical structuring of the *Seller's Proposal* column is used by LF2 to remind the other Sellers' representatives of the wording and contractual intent of the SPA provisions they co-constructed. This column is positioned next to the amendments proposed in the *Purchaser* column in order to help facilitate a comparative analysis of the amended meaning by the Sellers' representatives. LF2 also uses interdiscursive expertise to summarise and simplify the contractual wording in both columns to make the operational effect of the proposed amendments as clear as possible. The exception is the amendments proposed to the Non-Competition provisions under Article 10, which are quoted verbatim. LF2 then highlights sections that she

believes are unacceptable for the Sellers in yellow. In the final right-hand column, LF2 summarises the legal opinion and negotiative stance of both LF and LA2 in providing justification for either accepting the amendments or not. She also defines some proposals as "Seller's decision" [see underlined sections in Table 8.10 above] on the basis that even though they may be acceptable from a legal perspective, they relate to commercial or corporate law issues for the Joint Financial Advisors to ultimately determine. This rhetorical structure and associated discourse types and strategies help codify and achieve the primary purpose of this tabulated genre to communicate a collaborative review of all of the amendments proposed by the Purchaser.

8.6.2.3 The textualisation of oral negotiation discourse

The Evaluation Form was then used by the Sellers' representatives during a conference call on 9 December to reach negotiative consensus about the proposed amendments. For this type of "deadlock situation" when the different representatives must all agree on range of matters in a short period of time, LF2 acknowledged that conference calls or face-to-face meetings are "more fruitful than just sending an email and waiting a reply" (Round 3 interview). The professional practice institutionalised within the law firm is to transcribe the interactional discussions during these conference calls or meetings, which is then distributed among the other participants as a transparent record for negotiation:

> I would put that into the form of a minute of the call and then circulate to everyone and say do you have any comments, this is the minute so then you can have it as a written record of or evidence of what has been discussed. So ... but I mean we always tell our colleagues to take very seriously notes during meetings, during negotiations and during conference calls (LF1, Round 3 interview).

The approved transcript of the agreed outcomes from this conference call were then recontextualised by LF2 into two documents that were used for the final stage of negotiation with the Purchaser. The primary document was a new version of the SPA(v2) that recorded the revised wording of agreed provisions and the deletion of amendments deemed unacceptable by the Sellers' representatives in Markup. The other document was another memo genre that provided brief intertextual justification for either accepting or rejecting the amendments proposed by the Purchaser, which was entitled the *Key SPA Points for Resolution* (see Discursive Events 5 & 6 in Table 8.9).

Both of these documents were related either implicitly or explicitly to all of the other textual and oral discourse resources and practices of the participants represented in Figure 8.1, as one text draws from one another and creates the purpose for one another (Devitt, 1991). For example, functional intertextuality is observed when the Key SPA Points for Resolution document summarises the negotiative stance of the Sellers' representatives, which was formulated during their conference call to discuss the collaborative legal review of the SPA(v1) undertaken by LF2 and LA1 in conjunction with the Explanatory Memo. In terms of referential intertextuality, which is observed when a text refers to a pre-existing text or to specific aspects of that text (Devitt, 1991), the Key SPA Points for Resolution document explicitly refers to the marked-up provisions of the SPA(v2) to clearly communicate to the Purchaser what proposed amendments had been agreed, amended and/or rejected by the Sellers.

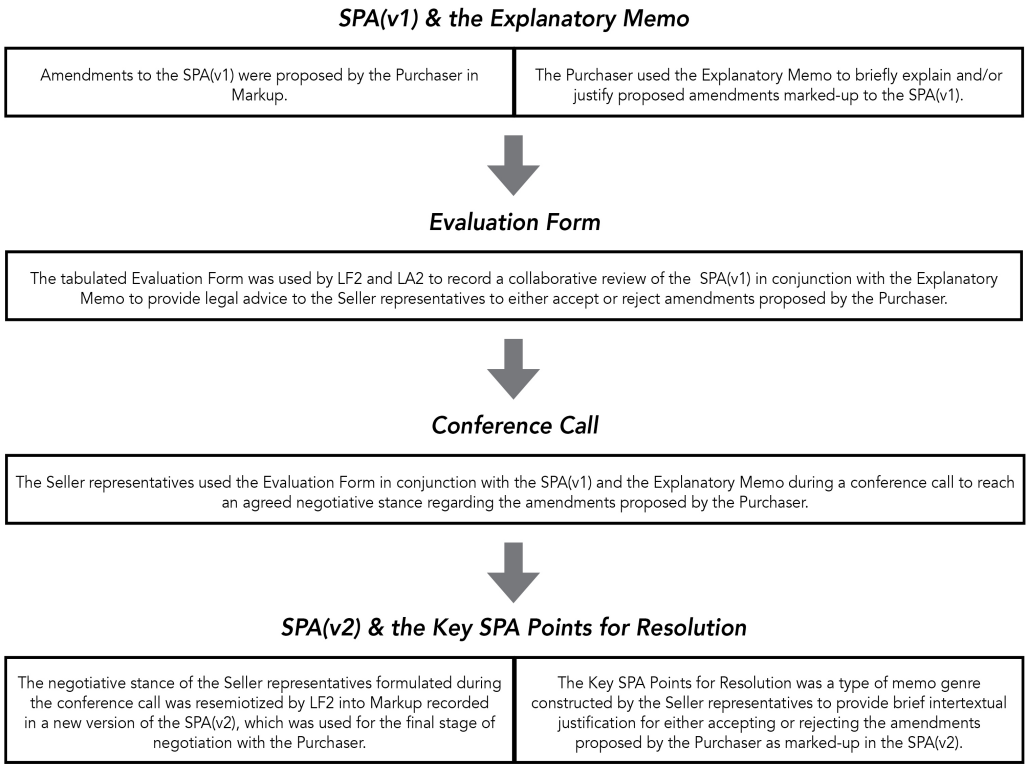


Figure 8.1: Intertextual and interdiscursive process of legal review and negotiation of the SPA

The intertextual use of the Explanatory Memo, the Evaluation Form and the Key SPA Points for Resolution documents with successive versions of the SPA demonstrates how the relevant genre ecology imports, hybridizes, and adapts different genres for specific discourse activity. The cognitive work of the Sellers' representatives is spread among

all of these genres and through this cognitive process, the collaborative use of the genres accomplishes repeated, structured activities for evaluation of proposed amendments and contract negotiation.

8.6.2.4 The intertextual limitations of using of the Key SPA Points for Resolution document for negotiation of the SPA

The SPA(v2) and the Key SPA Points for Resolution document were primarily used for the final process of negotiation between the Seller and Purchaser. Analysis in this section will show that use of the Key SPA Points document had serious limitations, from the point of view of evaluating and negotiating the proposed amendments to the SPA, and I will suggest that there is a more effective textual alternative to the use of two separate documents for this negotiation activity. Here I focus on the amendments made to Article 6.1.5 of the SPA by the Purchaser, which relate to the Seller's Representations and Warranties about the Financial Statements of the Company. The Sellers notified the Purchaser that the proposed amendments had been rejected giving only the brief explanation that is set out in the following excerpt from the Key SPA Points for Resolution document:

Reps & Warranties (Article 6.1.5)	► **Language must conform with audit language**

This brief explanation was designed to be read in conjunction with the SPA, which was marked-up to reflect this stance of the Sellers' representatives as shown in Exhibit 8.1:

Exhibit 8.1: The use of Markup to negotiate Article 6.1.5 of the SPA(v2)

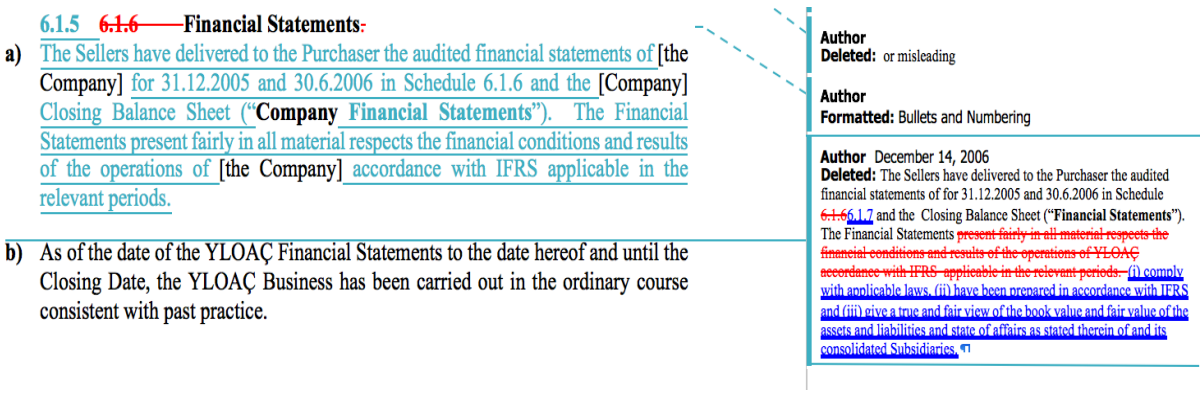


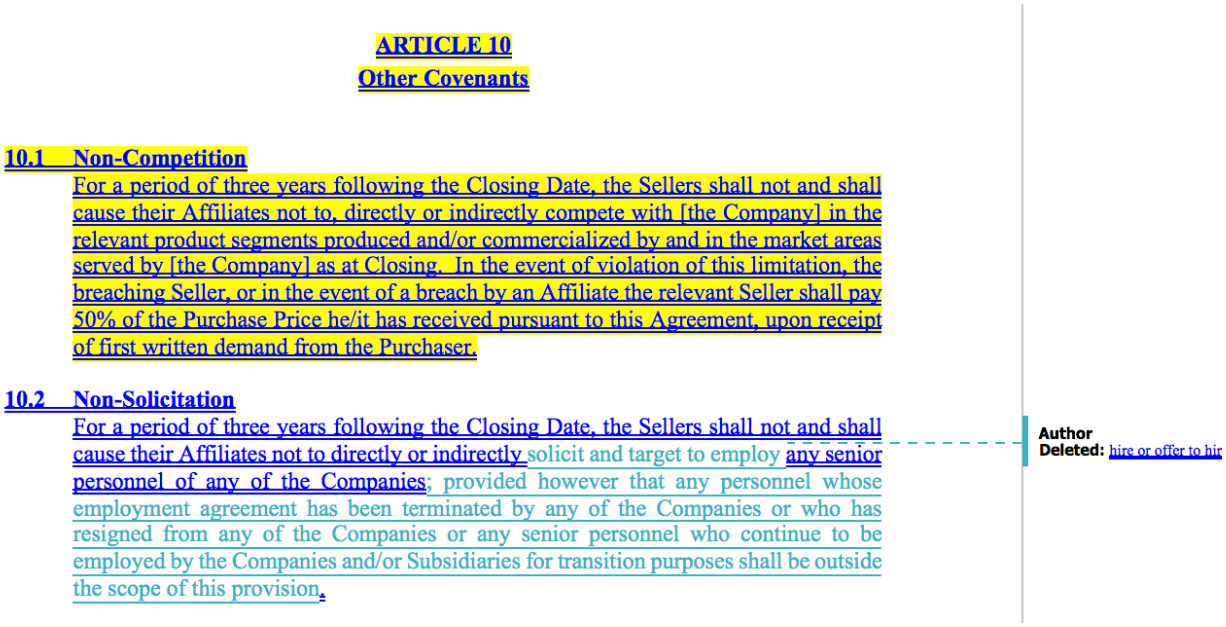
Exhibit 8.1 demonstrates the utility of Markup in maintaining a transparent record of negotiation activity. The coloured text in the "Deleted" box in the right-hand margin of the document records how the Purchaser first deleted the original wording of the SPA (highlighted in red strike-through text) and then drafted proposed amendments to extend the scope and liability of the Seller warranties about financial statements of the Company (highlighted in blue underlined text). However, in accordance with the position of the Sellers that the language for these warranties "must conform with audit language" (as set out in the Key SPA Points for Resolution document), LF2 then deleted these amendments entirely and replaced them with the original wording of Article 6.1.5, which is now highlighted in turquoise coloured underlined text in the main body of the contract (I have replaced the name of the Company with the term Company for confidentiality reasons). The use of Markup functions as a textual record of this entire discursive process and the fact that Article 6.1.5 remains highlighted in coloured Markup means that the Purchaser must either ratify the proposed amendment or continue to challenge it until a mutually acceptable formulation has been agreed to over successive draft versions of the SPA.

A further example of the intertextual nature of the negotiation activity at this point relates to the Purchaser's proposed inclusion of additional provisions under Article 10 to enforce non-competition and non-solicitation. The Sellers' representatives responded by accepting these proposed amendments, but subject to clarification, as set out in the following excerpt from the Key SPA Points for Resolution document:

Other Covenants (Article 10.1)	► **Language needs to be clarified as it should only refer to the market area**
Other Covenants (Article 10.2)	► **To be clarified in conjunction with the Transition Agreement**

Based on the intertextual function of the Key SPA Points for Resolution document, LF2 then used Markup to interpollate this negotiative stance of the Sellers' representatives into the SPA(v2) as demonstrated in Exhibit 8.2:

Exhibit 8.2: The use of Markup to negotiate Article 10 of the SPA(v2)



ARTICLE 10
Other Covenants

10.1 Non-Competition

For a period of three years following the Closing Date, the Sellers shall not and shall cause their Affiliates not to, directly or indirectly compete with [the Company] in the relevant product segments produced and/or commercialized by and in the market areas served by [the Company] as at Closing. In the event of violation of this limitation, the breaching Seller, or in the event of a breach by an Affiliate the relevant Seller shall pay 50% of the Purchase Price he/it has received pursuant to this Agreement, upon receipt of first written demand from the Purchaser.

10.2 Non-Solicitation

For a period of three years following the Closing Date, the Sellers shall not and shall cause their Affiliates not to directly or indirectly solicit and target to employ any senior personnel of any of the Companies; provided however that any personnel whose employment agreement has been terminated by any of the Companies or who has resigned from any of the Companies or any senior personnel who continue to be employed by the Companies and/or Subsidiaries for transition purposes shall be outside the scope of this provision.

Author Deleted: hire or offer to hir

In conjunction with the Sellers' view that the language of Article 10.1 "needs to be clarified as it should only refer to the market area", LF2 uses yellow highlight to indicate that the proposed amendments (highlighted in blue underlined text) need to be redrafted by the Purchaser until a mutually acceptable formulation has been agreed. In the executed[17] copy of the SPA this was redrafted to state the "market areas served by the Company as attached to the Agreement under Schedule 10.1". This involves the strategic use of an attachment (see Section 8.4.3) to detail the specific market areas and protect the interests of the Sellers to compete in other market areas.

In relation to Article 10.2, LF2 uses Markup to delete the wording "hire of offer to hire", as proposed by the Purchaser (in blue underlined text), and inserts additional provisions (in turquoise underlined text) to clarify the intertextual implications of non-solicitation "in conjunction with the Transition Agreement". The use of different coloured text is assigned automatically by the Markup software to indicate changes made by different authors to the same draft document, which remain highlighted while being challenged and/or redrafted by the negotiating parties. The Track Changes software is only used to reformat the colour coded text in standard black letter font only when proposed amendments are entirely accepted by the counterpart lawyers.

[17] To remind the reader, an *executed* contract means that the contract has been finalised, often with the parties' signatures and/or company stamps, and is legally-enforceable.

A strong case can be made that the referential and functional intertextuality (as defined in Chapter 2 by discussing Devitt, 1991) linking the Key SPA Points for Resolution document and the SPA(v2) is not as effective as using the Comment function of the Track Changes software to insert justifications or explanations for proposed amendments next to the relevant contractual provisions within the same document. We also observed this in relation to the use of the Explanatory Memo in conjunction with the SPA(v1) in Section 6.2.1, and these findings support the view that certain discursive practices will evolve to become more effective in professional communication activities. When questioned about this issue, LF2 acknowledged that use of the Comment function (and professional recognition of its effectiveness) has become increasingly embedded in legal practice since 2007 when this M&A deal was negotiated. She noted that the use of the Key SPA Points for Resolution document with corporate letterhead and company logos was a genre used for "official" or "ceremonial" discourse purposes with the Purchaser, whereas LF2 now personally prefers the use of the Comment feature to justify the rejection or ratification of proposed amendments during negotiation activity.

8.6.3 A face-to-face meeting and execution of the SPA

In preference to a conference call, the parties held a face-to-face meeting in Istanbul on 13 December to negotiate the outstanding issues identified in the Key SPA Points for Resolution document and marked-up in the SPA(v2). Even though this involved considerable travel time and expense for many of the representatives based in different countries, the meeting was a strategic choice for such a crucial stage of negotiation on the basis they "improve the chances that the parties will be able to find ways of resolving complex issues that may arise" (Maude, 2014). Successful outcomes at meetings are partly due to the ability for the counterparties to engage in self-presentation and impression management tactics and to respond to each other's negotiative moves and strategies more effectively in person (Kumar & Patriotta, 2011). Face-to-face meetings have also been recognised as the most effective communication medium to build interpersonal relationships through micro-behaviours such as taking turns in speaking, using nods and other signs of understanding and unconsciously matching the verbal and nonverbal communication of the other participants, including

tone of voice and facial expressions (Nadler, 2007). Despite these perceived advantages for interactional communication at meeting, a number of issues remained unresolved under the SPA for further negotiation.

In her pivotal discourse role, LF2 textually recorded the negotiated outcomes of the face-to-face meeting by resemiotising the ratified amendments in black letter font and marking-up unresolved amendments in yellow highlight to make them very clear within a new SPA(v3). She then distributed this new version to the Sellers and Purchaser representatives with the following email on 14 December:

> Please find attached the LF mark up made in accordance with the discussion of today to be reviewed and commented by the Sellers and the Purchaser. The open points are left as is and other open points that had not been included in the draft to be discussed among the parties.
>
> The yellow highlighted issues are open points as stated at the end of today's meeting.
>
> Best regards
> LF2
> LF1

In this email LF2 refers to unresolved amendments as "open points" for further negotiation, which mainly related to calculation and payment of the Purchase Price under Article 2 and issues related to the use of *Escrow* to provide financial security for successful completion of the M&A transaction. Even though there are no records of the ensuing oral negotiations between the counterpart representatives, comparative analysis of Markup in the SPA(v3) and the final version of the SPA executed on 15 December indicates that most of these unresolved amendments proposed by the Purchaser were agreed to without any further amendment by the Sellers in favour of the Purchaser.

In discussing this final negotiation process with LF1, the Sellers' representatives preferred to resolve the few outstanding issues orally now that power and trust relations had been formalised with the Purchaser. The social-institutional reason why there was no further negotiation of these proposed amendments to the SPA mainly relates to the use of compromise to maintain a positive relationship with the Purchaser for a successful outcome at this late stage of negotiation. Compromise is a common strategy for negotiation activity that involves offering concessions in return for other possible gains. As noted earlier in Section 6.3.4, LF1 stated that the institutional culture of the law firm is to avoid taking a hard-line or confrontational stance when there is no

significant advantage to be gained from denying the contractual rights of the other party:

> I must admit we have the ethics and we respect the other party and our way of doing law is not trying necessary outdo them... this is not a race, this is not a game, so we are not trying to win, they are trying to protect their client, we are trying to protect our client and we need to find some compromise so that's how we see it (Round 1 interview).

The other reason for not negotiating the SPA further was due to the fact that ancillary contracts were being prepared by the Sellers' representatives to regulate the calculation and payment of purchase monies and the use of escrow during the integration planning and implementation phase for closing the deal in Stage Three, which are analysed in Chapter 9.

8.7 Intertextual relationship between executed SPA and Stage Three

Even though execution of the SPA was a very significant event in the negotiation process, it does not represent the completion of the deal and cessation of negotiation activities for the Sellers and the Purchaser. The penultimate event is referred to as "Closing" in the SPA and is defined by Article 5.1 of the SPA as follows:

> The Closing shall take place at the offices of LF, at 10:00 a.m. local time on the seventh (7th) Business Day following the date on which the last of the conditions set out in Article 4 has been fulfilled by the Parties or waived by the Parties, or at such other place, date and time as the Parties may determine by mutual agreement (the "Closing Date"), (the "Closing").

The reference to "Closing" in Article 5 is more specifically defined as the complete performance of all the "conditions precedent" defined under Article 4.1:

> **a)** The Parties shall have performed and complied with, in all material respects, all obligations and covenants required by this Agreement to be performed or complied with by the Parties on or prior to the Closing Date.
> **b)** The Parties shall have received the original or a notarized copy of a certificate or letter (or certificates or letters) from the Competition Board, giving clearance to the transaction contemplated in this Agreement. It is hereby agreed that a conditional clearance of the Competition Board shall bind the Parties to the transaction unless the decision causes material deviation in the Company Business or may affect the Purchase Price.

c) The Parties shall have received the Governmental approvals from any other applicable Governmental body in any jurisdiction (to the extent such an approval or clearance is mandatory).

d) The Parties shall have received the independently audited Seller 2 Closing Balance Sheet.

e) The Party who has received the relevant approval or clearance shall have delivered to the other Party or Parties a copy of the same as certified by the legal counsel of the Purchaser or the Sellers, as the case may be, bearing the expression "true and correct copy of the original" (the approvals and clearances contemplated above are hereinafter collectively referred to as the "Clearance") within two (2) Business Days of the receipt of the relevant Clearance.

From a social practice perspective, most of these Closing obligations can be characterised as *procedural* or *administrative* in obtaining Competition Board (Article 4.1(b)) and other governmental approvals (Article 4.1(c)) or auditing reports (Article 4.1(d)), some of which will be analysed in Chapter 9. Article 4 also defines the legal consequences for failing to perform these obligations, taking into account default reasons attributable to both the Sellers and the Purchaser. The primary consequence is that the non-defaulting party has the right to terminate the deal and receive a financial penalty (the amount of a Performance Bond for the Sellers and 10% of the Purchase Price for the Purchaser). Where non-performance is due to reasons beyond the control of the parties, the deal is terminated without penalty.

The SPA imposed other contractual obligations on the parties from the time of executing the SPA on 15 December 2006 until the Closing Date on 27 February 2007. Article 3 of the SPA refers to this period as the "Interim Period", which functions as a form of contractual protection for the Purchaser by requiring the Sellers to "refrain from taking any measures, performing any transactions, entering into any agreement, or incurring any obligation, liability or indebtedness that is not on an arms length basis and outside the ordinary course of business without the prior written approval of the Purchaser". Article 5 then details "Events to Occur at Closing" and "Post-Closing Undertakings", which includes an extensive list of reciprocal rights and obligations for the Purchaser, the Sellers and the Individual Shareholders.

From a semiotic resource perspective, the SPA functioned intertextually to clearly define all of the legal and administrative processes that need to be completed in order to finalise the M&A transaction. This also involves referential and functional links to a

number of schedules attached to the SPA and a variety of other contractual documents that need to be finalised during Stage Three. For instance, the contractual obligations of the Purchaser during the "Interim Period" under Article 3 of the SPA are subsequently formalised in detail in a separate Transition Agreement prepared by the parties. From a social practice perspective, these discursive practices involve considerable professional knowledge and experience with M&A transactions to be able to anticipate and clearly define the discursive activities and processes that are required during the final Stage Three of the negotiation process.

CHAPTER NINE

STAGE THREE: FINALISING THE TRANSACTION

Chapter 9 is focused on discursive activities pertaining to integration planning and implementation processes for finalising the M&A transaction during Stage Three. Similar to the analytical approach taken in the preceding Chapters 7 and 8, this chapter begins by examining the contextual phenomena of the social-institutional perspective (Section 9.1) and social practice perspectives perspective (Section 9.2) of Closing. Chapter 9 then examines the most significant discursive events and activities by deploying the multi-perspectival analytical tools of the MP model. This includes analysis of the preparation and submission of the Competition Board application in Section 9.3 and negotiation of the Escrow Agreement in Section 9.4. Chapter 9 concludes by examining the intertextual and interdiscursive complexity of the Closing Agenda to complete all legal requirements to transfer ownership of the Company to the Purchaser in Section 9.5. For the convenience of readers, details of the different analytical foci (i.e. sub-sections) in Sections 9.3, 9.4 & 9.5 are repeated below:

Section 9.3 Competition Board Application

9.3.1 The intertextual relationship between the SPA and the TCB application process
9.3.2 Generic features of the TCB Application Form
9.3.3 The reliance on specialised legal expertises

Section 9.4 Escrow Agreement

9.4.1 Co-construction of the Escrow Agreement by the Sellers' representatives
9.4.2 Negotiation of the Escrow Agreement
9.4.2.1 Proposed amendments by the Purchaser
9.4.2.2 Re-negotiation by the Sellers' representatives
9.4.2.3 Negotiated outcomes
9.4.3 The social-institutional role and identity of the Escrow Agent

Section 9.5 Closing Agenda

9.5.1 The *Minutes of Closing* document
9.5.2 The Closing Checklist
9.5.2.1 The collaborative review of the Closing Checklist
9.5.2.2 The on-going collaborative use of the Closing Checklist
9.5.3 The Waiver Letter
9.5.3.1 Intertextuality
9.5.3.2 Interdiscursivity
9.5.3.3 Other intertextual and interdiscursive activities for Closing
9.5.4 The final use of the *Minutes of Closing* document

9.1 The social-institutional perspective on Stage Three

After the *deal-making* phase of Stage Two, the *finalisation* phase of Stage Three commenced with the signing of the SPA and the establishment of the business relationship between the Sellers and the Purchaser for completion of the transaction (compare Jensen, 2009; Koerner, 2014). However, distinct from the negotiation activities that feature in the previous stages, Stage Three was characterised more by the co-operation of the Sellers' and the Purchaser's representatives in finalising the legal, financial and administrative processes for transfer of ownership in the Company to the Purchaser. This was partly due to the fact that the bargaining positions and institutional roles of the contracting parties had become more aligned as they collaborated to finalise the deal. Failure to complete the deal would also result in financial losses for both parties. The Purchaser would not be able to profit from a significant business opportunity and the Sellers would suffer damage to corporate reputation, thus adversely impacting on the commercial value of the Company for any subsequent deals. These social-institutional factors therefore influenced a stronger commitment to collaboration between the during Stage Three.

9.2 The social practice perspective on Stage Three

A significant process of collaboration in the interests of both parties occurred in the process of obtaining approval for the sale of the Company from the Turkish Competition Board (TCB). The social-institutional rationale for this TCB review and approval process is to invalidate any proposed mergers & acquisitions that distort, restrict or prevent competition in the relevant market through the abuse of its dominant position. The same approval mechanisms are used by quasi-financial and governmental institutions throughout the world and the concomitant legal requirements and mechanisms for obtaining approvals have become standardised in most jurisdictions.

Another significant social practice in Stage Three related to finalising the legal mechanisms for Escrow. Escrow requires that a percentage of the purchase price for the target company or asset is deposited in an independent bank account to function as a type of financial incentive or security for successful completion of the deal; if one party

defaults on obligations to transfer ownership in the company or asset, the other party is entitled to payment of this escrow money as compensation. From a social practice perspective, the use of escrow has become standardised in most legal jurisdictions that adhere to similar commercial law regulations and practices.

Stage Three involved the most diverse discursive interaction of professionals as they collaborated for the purposes of obtaining TCB Clearance and establishing Escrow arrangements. There were also a number of other governmental approvals and auditing reports required for "Closing" that involved the expertise of other lawyers who did not participate in Stages One or Two of the negotiation process. These administrative and regulatory processes were not performed as a linear, chronological chain of discrete events. Instead, many activities occurred simultaneously as the participants were required to complete multiple tasks or events within pre-defined deadlines during Stage Three. Chapter 9 uses the MP model to analyse how the representatives of the Sellers and the Purchaser interacted with these additional professionals and their discursive roles and activities.

9.3 Competition Board Application

This section examines the legal requirement for the parties to jointly file an application to the Competition Board seeking a "clearance" in respect of the sale "within fifteen (15) Business Days after execution date of this Agreement". *Clearance* means that any company acquiring another firm, merging with another firm or establishing a joint venture in Turkey must first obtain authorization from the Turkish Competition Board (TCB)[18]. The "Communiqué on the Application Procedure for Infringements of Competition" numbered 2012/2 (the Application Communiqué) establishes the formal and substantive requirements for clearance applications to be filed with the TCB as well as regulations and explanations concerning the assessment of the applications and the notifications to be made to the relevant persons concerning the application. Thus, the discursive process for submitting the prescribed form was heavily regulated and discursively constrained, without the opportunity for lawyers to negotiate terms and conditions. Section 9.3 will now analyse how the representatives of both the Sellers and

[18] http://www.rekabet.gov.tr/en-US/Mainpage

the Purchaser collaborated to ensure that all the regulatory requirements were adhered to in submitting a successful application for sale of the Company.

9.3.1 The intertextual relationship between the SPA and the TCB application process

As noted in Section 8.7, many of the SPA provisions functioned intertextually to foresee and regulate the legal and administrative processes that needed to be completed in order to finalise the deal after execution of the SPA. The necessity to obtain TCB approval was first addressed by Article 2 of the SPA as follows:

> **2.7** Within fifteen (15) Business Days after execution date of this Agreement, the Parties shall jointly file an application to the **Competition Board** as described in Article 4.1(a) below seeking a Clearance in respect of the provisions of this Agreement.

This provision imposed a contractual obligation on both the Sellers and the Purchaser ("the Parties") to collaborate in filing a "Clearance" application with the Competition Board. However, the intertextual reference to Article 4.1(a) was in fact erroneous and Article 4.1(b) provided no details as to how this application was to be made. Instead the representatives had to rely on knowledge and prior experience with this institutional legal practice to follow the correct procedures for TCB application submission.

The necessity to obtain TCB Clearance was repeated in Article 4 of the SPA as a "Condition Precedent to Closing":

> **4.1 (b)** The Parties shall have received the original or a notarized copy of a certificate or letter (or certificates or letters) from the Competition Board, giving clearance to the transaction contemplated in this Agreement. It is hereby agreed that a conditional clearance of the Competition Board shall bind the Parties to the transaction unless the decision causes material deviation in the Company Business or may affect the Purchase Price.

In simple operational terms, this provision states that the deal cannot be finalised without notarised proof of official TCB approval for the sale of the Company.

Article 4.1(b) also makes the deal enforceable based on "conditional clearance", but only when this does not cause "material deviation" in the operations of the "Company Business" or the "Purchase Price" for the Company. The use of the legal term "hereby"

indicates that this agreed provision was formalised at the time of executing the SPA, but the meaning and function of this provision intertextually connects to other provisions of the SPA and ties back to antecedent discourse (both written and spoken) exchanged between the Sellers and Purchaser during Stages One and Two. Any impact that Clearance conditions imposed by the TCB would have on the Purchase Price could be evaluated by considering the calculation methodology under Article 2 of the SPA. However, any impact on the business operations of the Company would have to be evaluated by first examining the meaning of the "Representations and Warranties of the Sellers" drafted to Article 6 during Stage Two and then more indirectly, considering the information about the Company operations provided by the Sellers for evaluative bidding purposes during Stage One.

In turn, this process of examination is contingent on the agreed meaning of "material deviation". The contracting parties left this term deliberately vague and indeterminate as a strategy for negotiating the acceptable limits of any conditions imposed by the TCB (Bhatia & Bhatia, 2011; Rear & Jones, 2013). Reaching consensus about the interpretation of this contractual term thus becomes a type of bargaining, involving a consideration of costs and benefits, i.e. profits and losses potentially resulting from conditions imposed by the TCB.

9.3.2 Generic features of the TCB application form

The TCB application form is designed to help prove to the TCB that the proposed sale of the Company will not "create or strengthen a dominant position and thus effective competition will not be significantly impeded in the relevant product markets in the Republic of Turkey". The form begins with a textual warning to applicants that "A fine will be applied in the frame of the article 16 of the Law concerning the Protection of Competition no: 4054 dated 7.12.1994 to the persons giving wrong or misleading information in the Notification Form", which currently amounts to one hundred million Turkish Liras (approx. AUD $350, 000 as at the date of this study).

In order to achieve its generic purpose of facilitating the evaluation of Clearance applications, the TCB form exercises control over the applicant's discursive input by

stipulating the type of information to be provided. This is often done by means of tables which prescribe that certain statistical and factual information will be provided in specific rows and columns in the form. Due to the fact that all of the information contained in the form is confidential, the completed TCB form is not included in this study as an appendix. Instead, some main sections of the form with specific sub-sections are set out in Table 9.1 to demonstrate the types of prescribed information that the Sellers and the Purchaser had to provide:

Table 9.1: Rhetorical structure and contents of TCB application form

1. Information concerning the identity of the Party (Parties) making the Notification.	1.3. Name/Trade name, address, field of activity of the other undertakings which are Parties to the merger or acquisition.
2. Information concerning the merger or acquisition	2.1. Indicate shortly the characteristic, scope and objective of the merger or acquisition that is the subject matter of the notification.
	2.2. Describe the legal framework of the merger or acquisition that is the subject matter of the notification and the economic and financial structure of the Parties before and after the merger or acquisition.
	2.3. Indicate the turnover of each of the Parties to the merger or acquisition and their total turnover.
3. Personal and financial information concerning the Parties and the undertakings and persons.	3.1. Indicate the persons and undertakings that directly or indirectly, individually or collectively possess 10% of the voting rights, the capital or assets of other undertakings or persons belonging to the same group as the parties and operating in the affected market, and indicate in percentage the values they possess.
4. Information concerning the relevant market	4.1. Indicate the relevant product market where the merger or acquisition is effective and which you think the Administration should take into account when assessing this Notification; and the products and services that you think will be directly or indirectly affected by the merger or acquisition.
	4.2. Define the relevant geographical market where the merger or acquisition is effective and that you think should be taken into account by the Administration when assessing this Notification.
	4.3. Define the affected markets where the merger or acquisition is effective and that you think should be taken into account by the Administration when assessing this notification.

Even though the TCB application form must be submitted in Turkish, an English version was developed by LF so that the participants representing Seller 1in Paris and managers of the Purchaser in Lisbon could all contribute to completing the prescribed items of the form based on their specific knowledge and expertise across multidisciplinary and jurisdictional contexts.

Many of the prescribed items in the form simply require factual information that can be understood in operational terms. For Items 1 to 3, the TCB form uses the textual prompts "name" "indicate" and "describe" to elicit factual information from the applicants without making any rhetorical requirement on them to analyse or explain these financial and market-orientated issues pertaining to the Sellers and the Purchaser. By restricting the applicants' input to this type of factual and statistical information, the form theoretically enables the TCB to undertake an objective evaluation of key financial and corporate parameters, without taking heed of rhetoric and argumentation. This serves the social-institutional purpose of this genre to only approve proposed mergers and acquisitions that do not have a negative impact on competitive economics in Turkey. Only the use of the "define" prompt in Item 4 allows the representatives to provide some evaluative argument, which is analysed in Section 9.3.3 below.

9.3.3 The reliance on specialised legal expertise

LF1 delegated the task of completing the TCB application form to a specialized competition lawyer working as an employee of law firm (LF3). LF3 began the application process on 23 December by using the English language version of the TCB form to provide as much information about the Sellers as possible, based on her access to files of the deal within the law firm. She then highlighted sections that required additional information or confirmation and distributed the TCB form to the other representatives of the Sellers and the Purchaser for collaborative input.

As part of her role within the law firm commissioned by the Purchaser, P5 was primarily responsible for TCB items that related to the Purchaser. On 27 December, LF3 reported on an issue raised by P5 in an email sent to the other Sellers and Purchaser representatives. LF3's email went as follows:

> I just spoke to P5 Hanım and she stated that they are going over the Turkish version to see that nothing is missed and also they still insist that the relevant product market should include [Product A and B]. I told her that as we have been informed by S1a Hanım, Seller 1 had made in the past applications to the Competition Board and the relevant product market has always been defined as "Cement" and clearance was provided for such. She stated that the Purchaser is of the opinion that as the companies taken over have also business and assets in relation to Cement and Cllnker they should be included in the relevant product market and she is personally of the opinion that even we do not [sic] state it so the Board will deemed [sic] them to be in the relevant product market.
>
> I believe that as S1a Hanım has made the previous applications and is in the business it could be advisable for her to discuss the issue with P5 and P4 and solve it once and for all.
>
> Regards, LF2

This email provides an interesting insight into the different roles and professional identities of S1a and P5, which are largely defined by their expertise in connection with the TCB application and approval process. S1a was also a Turkish national and the Chief Legal Counsel for Seller 1 in Turkey, and she is identified by LF5 as having been "in the business" of making TCB applications in the past. This type of practical experience is regarded as a crucial factor in determining the correct definition of the "product market" for the proposed merger of the Company with the Purchaser (see Item 4 in Table 9.1). P5 believes that this market should be defined as including both Product A and Product B for the purposes of transparency in communication with the TCB. However, the social-institutional concern is that the anti-competitive impact of the deal on a broader market of two products could influence the TCB to reject the application. In contrast, S1a prefers naming only Product A based on her experience submitting successful TCB Clearance applications for Seller 1 in the past.

In order to resolve this impasse, the representatives collectively agreed to rely on the experience of S1a in naming only *cement* as the "product market" in response to Item 4.1 of the TCB application. In response to Item 4.2 (see Table 9.1), S1a then uses her expert knowledge of the specific product market of the Sellers in Turkey to narrow the geographical market to "Central Anatolia, including Ankara and Black Sea Regions" with the intertextual use of a map attached as Annex 4.2. Here are her responses (footnotes in the text highlighted in bold):

> *4.1. Indicate the relevant product market where the merger or acquisition is effective and which the Administration should take into account when assessing this Notification; and the products and services that you think will be directly or indirectly affected by the merger or acquisition.*

> The relevant product market where the acquisition is effective is the market of cement.
>
> *4.2. Define the relevant geographical market where the merger or acquisition is effective and that you think should be taken into account by the Administration when assessing this Notification.*
>
> Cement is marketed in whole of the country and thus is a homogeneous product. However, due to the nature of cement and especially due to the costs, which arise from transportation expenses, a natural market, which is centralized around cement factories is constituted. As a matter of the nature of ready mixed concrete, it is a product which requires to be consumed quickly. Due this characteristics, ready mix concrete cannot be transported to long distances. This approach is also accepted by the established precedents of the Competition Board[19]. Due to such nature, the parties to the transaction have identified the geographic product market as the market of Central Anatolia, including Ankara and Black Sea Regions as shown in the map attached hereto as Annex 4.2.
>
> *4.3. Define the affected markets where the merger or acquisition is effective and that you think should be taken into account by the Administration when assessing this Notification.*
>
> The markets, which may be affected following the realization of the Transaction are the markets of cement, aggregate and ready mixed concrete[20].

The strategy used by S1a in her response to 4.2 is to reduce the size and scope of the relevant market in order limit the negative impact on competition in Turkey and improve the prospects for the TCB to approve the application. S1a relies on her knowledge of the unique characteristics of the cement market in Turkey and also uses TCB precedents (see footnote 19) to justify and strengthen this argument. S1a then epistemically hedges her response to Item 4.3, noting that cement, aggregate and ready mixed markets "may be" affected, but specifically excludes the *clinker* product that P5 wanted to include in the TCB application (see footnote 20 for S1a's expert justification).

The TCB approved the application and issued a Clearance certificate for the M&A deal on 29 December. It is not possible to determine how influential S1a's professional expertise and discourse strategies were in realising this successful outcome. However, it is likely that the alternative approach of P5, i.e. to include both *cement* and *clinker* in the product market and extend the geographical market to include all of Turkey, would have been detrimental to the TCB application. Even the possibility of an alternative negative outcome underlines the critical importance of specialised legal expertise for

[19] See the decision of the Competition Board dated [xxx] and numbered [xxx] and the decision dated [xxx] and numbered [xxx].
[20] Clinker is not a product produced to be sold to third parties. Cement factories produce clinker for their own use. Therefore, the word "clinker" has been deleted.

successful outcomes for these types of major deals (Karsten et al., 2014).

9.4 Escrow Agreement

The Escrow Agreement negotiated between the Sellers and the Purchaser was designed to legally incentivize the performance of the Sellers' obligations under the SPA by depositing 5% of the Purchase Price for the Company into a specific *Escrow* bank account as security for possible liability under Article 9 of the SPA. The social-institutional process requires these secured funds to be deposited into a bank account that is managed by an appointed Escrow Agent (in this case the same investment bank representing Seller 1 in London), who is obligated to return an amount to the Purchaser that covers the liability for any breach of the Sellers' obligations under the SPA or otherwise make pro rata payments of the 5% total amount to the different Sellers when all obligations of the SPA are completely performed. This contractual arrangement is described in the preamble of the Escrow Agreement with intertextual reference to the antecedent SPA as follows:

> **(A)** The Purchaser, Seller 1, Seller 2 and Individual Parties have executed a Share Purchase Agreement ("Share Purchase Agreement") dated December 14, 2006 whereby Seller 1, Seller 2 and Individual Parties have agreed to sell all of their respective, directly and indirectly owned, shareholdings in the Company.
>
> **(B)** In the Share Purchase Agreement it had been agreed that the Purchaser deposit five per cent (5%) of the Purchase Price ("Company Escrow Moneys") into the Company/Purchaser Escrow Account, as established under this Agreement, for security of the liability of Seller 1, Seller 2 and Individual Parties under Article 9 of the Share Purchase Agreement and the Transaction Parties hereby accept appointment of the Purchaser as its affiliate to be a party to this agreement.
>
> **(C)** The Transaction Parties wish to appoint the Escrow Agent and establish the Company/Purchaser Escrow Account, pursuant to the terms hereof; and the Escrow Agent has agreed to provide certain services to the Transaction Parties as set out in this Agreement.

Escrow arrangements have become standardized in most legal jurisdictions that adhere to the same international legal regulations. Nevertheless, there is still the scope and opportunity for parties to negotiate contractual provisions, as shown in Section 9.4.1 below.

9.4.1 Co-construction of the Escrow Agreement by the Sellers' representatives

A template escrow agreement was first distributed to the Sellers' representatives by a colleague of FA1, who specialised in escrow services for the investment bank in London. However, this template was regarded by LF2 as too generic for this particular deal and unsuitable for some aspects of Turkish jurisdiction. In the excerpt of an email she sent to the other Sellers' representatives on 9 January, reproduced below, LF2 sets out three main legal reasons for not adopting the original template contract:

> We reviewed the draft [investment bank] Escrow agreement. We are of the opinion that it has to be revised mainly to reflect the structure of the escrow in the SPA i.e the fact that it will be deposited for security purposes, 2 different escrow accounts to be placed etc.
>
> Also though the provisions of section 3 are very straight forward in these kinds of agreement we think that escrow agents [sic] liability shall not be limited with gross negligence and willful [sic] misconduct by virtue of definition of escrow under Turkish Code of Obligations but it shall be liable of all of its slight negligence and any acts where it does not act a sa [sic] prudent merchant.
>
> There are also other technical issues i.e notification provision to be [sic] in accordance with Turkish Commercial Code, [sic] provision regarding settlement of disputes.

From a semiotic resource perspective, her email has a less formal tone, and includes grammatical and spelling errors and the use of contractions and abbreviations (etc., and i.e.). This lends the legal advice a conversational tone that is probably appropriate now that the Sellers' representatives have been collaboratively working together for five months. From a social practice perspective, this discursive event demonstrates how ineffectual template contracts can be and with the approval of the other representatives, LF2 distributed a completely different escrow agreement on 13 January that she developed for the specific exigencies of the deal using a template contract retrieved from the law firm's database in Istanbul. The lack of ensuing negotiation activity to amend this template agreement prepared by LF2 demonstrates the extent of her legal discourse expertise across disciplinary contexts to successfully challenge the professional services provided by the escrow specialist in the bank in London.

S1 approved the revised template agreement on 19 January and directed LF2 to "send a copy to the Purchaser for their comments unless anyone else has comments". LA1 then intervened to extend the collaborative review and co-construction process in this email he sent the same day:

Dear S1 and LF2,

I believe that this is not our final draft agreed among both parties and legal advisors as in this version I still have some amendments, which need to be addressed, e.g. the Seller 2 Escrow Moneys where there is no other Transaction Parties involved.

Could we please review these [sic] again under these highlights and in coordination with our legal advisors [sic]. Therefore I suggest we wait until we have a final agreed version- hopefully during the first days of next week- before sending it out to the Purchaser.

Kind Regards, LA1

The alliance between LA1 and LA2/LA3 in representing the specific interests of Seller 2 emerges from LA1's request to involve the others in the co-construction of the Escrow Agreement. As an indication of the stronger sense of trust and collaboration between the Sellers' representatives during Stage Three (compared to Stage One), LA1 is careful to hedge this proposal with epistemic hedges such as "I believe" and "I suggest" as well as the very polite request (in the 1st person plural): "Could we please review….". These facework discourse strategies are widely recognized as important means of facilitating communication, supporting a writer's position and building a positive relationship with an audience (Brown & Levinson, 1987; Charles, 1996; Hyland, 1998, 2005; Nickerson, 2000; Planken, 2005; Hyland, 2005).

Notwithstanding the call for more extended collaboration and review, LA2 and LA3 did not propose any amendments to the template contract prepared by LF2 and LA1 raised only one question about the need for the individual shareholders to join Seller 1 and Seller 2 in giving notice under Article 2.2.1. The legal advice response from LF2 and her discourse interaction with LA1 concerning the wording of the notice provisions is represented in Table 9.2 as follows:

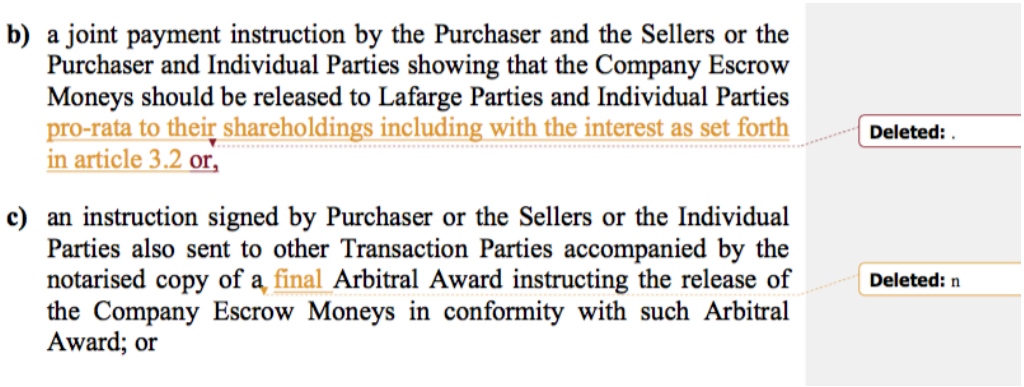
Table 9.2: Negotiation of Article 2.2.1 of the Escrow Agreement

Wording of Escrow Agreement drafted by LF2	**Legal issue raised by LA1**	**Legal response by LF2**
2.2.1(b) a joint payment instruction by the Purchaser and the Sellers **or** by the Purchaser and Individual Parties showing that the Company Escrow Moneys should be released to the	2.2.1 (b) and (c) – the instruction on behalf of the Company owners should surely be a joint instruction?	Particularly, in 2.2.1 (b) and (c) the reason why we did not have joint instruction of the sellers was that in (b) in case any of the two parties give instruction the moneys should be able to be released to the sellers i.e if agreed with the Purchaser Individual sellers shall be waiting for Seller 1 to give the instruction for release of the

Sellers and Individual Parties. 2.2.1(c) an instruction signed by the Purchaser **or** the Sellers **or** the Individual Parties also sent to other Transaction Parties accompanied by the notarised copy of an Arbitral Award instructing the release of the Company Escrow Moneys in conformity with such Arbitral Award; or		moneys to themselves and Seller 1 and vice versa. In 2.2.1 c any party having the arbitral award should be able to give the instruction for release as such award is final and not wait [sic] for instruction of any other party. If it still sounds incomplete we may discuss it in a con call if requested.

In her wording of Articles 2.2.1(b) and (c), LF2 used the disjunctive conjunction "or" to anticipate a number of possible scenarios for different parties to give notice to pay the Company Escrow Money. In response to LA1's proposal to make this a joint requirement on all parties, LF2 uses the discourse strategy of using plainer English in the concomitant email to advise LA1 why such a joint requirement is not legally required and that it would be practically more beneficial for the parties to be entitled to escrow compensation sooner rather than having to wait for each party to issue a joint notice. As a way to legitimise this legal advice, LF2 also uses the email to invite the other representatives to discuss this issue by way of a conference call to be held on 22 January. The discussions engaged in on the 22nd resulted in certain amendments to the Escrow Agreement. These are shown in the excerpt given in Exhibit 9.1 below, with retextualisations in Markup:

Exhibit 9.1: Markup of Escrow Agreement



These amendments do not challenge the legal opinion of LF2, but function to clarify the amount of Escrow Money payable to each of the parties in accordance with the

intertextual processes detailed in Article 3.2. From a social practice perspective, these findings underline the discourse-strategic expertise of LF2 in first drafting a more appropriate Escrow Agreement for the particular deal in Turkish jurisdiction and then justifying the provisions with expert legal knowledge. These findings also substantiate the importance of establishing a trusting collaboration among the Sellers' representatives to co-construct the best possible textual product for distribution to the Purchaser on 25 January.

9.4.2 Negotiation of the Escrow Agreement

This section examines the final negotiation activities of the Sellers' and Purchaser's representatives as they resolve issues concerned with the contractual wording of certain provisions of the Escrow Agreement. Now that the parties had moved into the final phase of the deal, negotiations are characterized more by a "low-power" communication style without the use of assertive language to signal strength or bargaining power over the other party (cf. Jensen, 2009).

9.4.2.1 Proposed amendments by the Purchaser

Without considering the co-construction process that lay behind the Escrow Agreement, it is important to note that lawyers representing the Purchaser also focused heavily on the wording of the notice provisions under Article 2.2.1(b). As a consequence of such scrutiny, P4 sent a revised version of the Escrow Agreement to the Sellers' representatives on 2 February with a number of proposed amendments in Markup. These are shown in the excerpt given in Exhibit 9.2 below:

Exhibit 9.2: Markup of Company Escrow Moneys (Purchaser)

2.2.1 Company Escrow Moneys.

The Escrow Agent shall hold the Company Escrow Moneys to the order of the Sellers and Individual Parties, and shall only release the Company Escrow Moneys if it receives

a) a joint payment instruction by all the Transaction Parties ~~for release of the Company Escrow Moneys to the Purchaser~~

~~**b)** a joint payment instruction by the Purchaser and the Sellers or the Purchaser and Individual Parties showing that the Company Escrow Moneys should be released to the Sellers and Individual Parties pro-~~

~~rata to their shareholdings in the Company including with the interest as set forth in article 3.2 or~~,

b) ~~c)~~ an instruction signed by the Purchaser or the Sellers or the Individual Parties also ~~sent~~copied to other Transaction Parties accompanied by ~~the notarised~~a certified copy of a final Arbitral Award instructing the release of the Company Escrow Moneys in conformity with such Arbitral Award; or

c) ~~d)~~ an instruction signed by the Sellers or the Individual Parties also sent to other Transaction Parties after 13 months following depositing of the Company Escrow Moneys to the Company Escrow Account requiring release of such Company Escrow Moneys pro-rata to their shareholdings in the Company including ~~with~~ the interest as set forth in article 3.2 to the Sellers and Individual Parties (each such instruction ~~to be deemed to be a "~~in sub sections (a) (b) and (c) a "**Company Release Notice**") .

The Escrow Agent shall within 2 Business Days of receipt of the Company Release Notice ~~and it shall send a copy of the Release Notice to the other Transaction Parties~~transfer funds as instructed; provided that there are no ~~outstanding~~ unpaid claims of the Purchaser outstanding notified to the Sellers and the Individual Parties and the Escrow Agent ("**Company Claim Notice**") until such date of instruction stated herein.

In case a Company Claim Notice had been sent by the Purchaser to the Transaction Parties and the Escrow Agent until ~~…… ; such~~[last day of 13 month period following the Closing Date] and is remaining unpaid (including any applicable interest); such Company Release Notice ~~in 2.2.1 (d) above~~ shall be deemed to be given for any amount that has not been included in such Company Claim Notice and thus shall be released to the Sellers and the Individual Parties.

From the excerpt it is clear that the negotiative demands of the Purchaser (P4) have been clearly communicated by way of the institutionalized mechanisms of Track Changes and Markup. Article 2.2.1(b) has been deleted completely to remove any possibility for separate parties to issue notices for payment of Company Escrow Money without the consent of all "Transaction Parties". The Purchaser has then attempted to make this position even clearer by deleting some redundant verbiage in Article 2.2.1(a), wording that referred to the Purchaser. The legal discourse strategy here was to remove any ambiguity in the contractual language in order to formulate a single notice process that attempts to anticipate all possible real world scenarios (Hafner, 2014) and protects the legal rights and interests of the Purchaser. While Most of the deletions (underlined and in red) and the proposed amendment (underlined and in blue) are of minor importance in clarifying the meaning of the existing language of the Escrow Agreement. However, P4 also seeks to extend the time for the Purchaser to bring a Company Claim Notice to 13 months after the Closing Date.

9.4.2.2 Re-negotiation by the Sellers' representatives

LA1 and LF2 were primarily involved in preparing the Sellers' response to these proposed amendments. They were forced to devise a number of less-technicalised communication strategies due to technical problems with the use of the Track Changes and Markup software on different personal computers. This was explained by LF2 in the following excerpt from her email to LA1 on 8 February:

> Could you (LA1) provide me with a copy of your revisions made upon the cc copy that is sent attached hereto as the revisions made by you of the attached cannot be tracked (or you may highlight your changes) and also the revisions made by S1 is not seen on your version? I will re-send the revised mark up to P4 and P5 after I received your comments.

LF2 and LA1 then used other software options, such as highlighting and footnotes, to clearly differentiate proposed changes made by either LF2 or LA1 from those proposed earlier by the Purchaser, as evidenced in the excerpt from the Escrow Agreement in Exhibit 9.3 below. This relates to discourse expertise and the ability for LF2 and LA1 to respond to discursive challenges by using "a range of contingent and dynamic discursive-communicative strategies that cope with unexpected scenarios or problems" (Jones, 2014, p.31).

Exhibit 9.3: Markup of Company Escrow Moneys (Sellers)

> **2.2.1 Company Escrow Moneys**.
>
> The Escrow Agent shall hold the Company Escrow Moneys to the order of the Sellers and Individual Parties, and shall only release the Company Escrow Moneys if it receives
>
> **a)** a joint payment instruction by all the Transaction Parties,
>
> **b)** a joint payment instruction by the Purchaser and the Sellers or the Purchaser and the Individual Parties showing that Company Escrow Moneys should be released to the Sellers and Individual Parties pro-rata to their shareholdings in the Company including with the interest as set forth in article 3.2 or,[21]
>
> **c)** an instruction signed by the Purchaser or the Sellers or the Individual Parties also copied to other Transaction Parties accompanied by a certified copy of a final Arbitral Award instructing the release of the Company Escrow Moneys in conformity with such Arbitral Award; or
>
> **d)** an instruction signed by the Sellers or the Individual Parties also copied to other Transaction Parties after 13 months following the Closing as set forth in

[21] We find this article necessary as in case any one of the Sellers or individual seller gives such instruction with the Purchaser the moneys can be released without waiting for the signature of the other selling party.

article 9.2.5.(c) of the Share Purchase Agreement depositing of the Company Escrow Moneys to the Company Escrow Account requiring release of such Company Escrow Moneys pro-rata to their shareholdings in the Company including the interest as set forth in article 3.2 to the Sellers and Individual Parties (each such instruction in sub sections (a) (b), (c) and (d) a "**Company Release Notice**").

The Escrow Agent shall within 2 Business Days of receipt of the Company Release Notice transfer funds as instructed; provided that there are no unpaid claims of the Purchaser outstanding notified to the Sellers and the Individual Parties and the Escrow Agent ("**Company Claim Notice**") until aforementioned period in article 2.2.1.(d).

If a Company Claim Notice has been sent by the Purchaser to the other Transaction Parties and the Escrow Agent by the last day of 13 month period following the Closing Date and remains unpaid (including any applicable interest); such Company Release Notice shall be deemed to be given for the whole amount that has not been included in such Company Claim Notice and thus shall be released to the Sellers and the Individual Parties.

In case there is any dispute between the Transaction Parties regarding payment of a claim in a Company Claim Notice received prior to the end of the period in (d) above, the Transaction Parties shall show all best efforts and good faith to obtain the Arbitral Award regarding the disputed claim in such a Company Claim Notice to avoid any undue delay by any Transaction Party in submitting information and /or release of outstanding Company Escrow Moneys following the end of the 13 month period in (d) above.

[Note: We should make sure that the Claim Notice is followed by a Arbitral decision as soon as possible thereafter so that there is no undue delay by any party in submitting information and / or release of moneys post the 13th month]

In relation to the contentious Article 2.2.1(b), LF2 uses the Track Changes software to reject the deletion proposed by the Purchaser. By clicking on the "reject deletion" prompt, as LF2 has done, the software has automatically reinserted the original wording of the provision, which is now highlighted in red and underlined in the Markup. In view of the software problems involved with using the Comment software function, LF2 then relies on a hybridized strategy of using a footnote plus highlighting to explain the legal and practical justifications for re-inserting Article 2.2.1(b). She uses blue highlight in both the proposed Article 2.2.1(b) and the footnote to focus attention on the important parties that participate in this notice process.

LF2 accepted all of the amendments proposed by the Purchaser to Articles 2.2.1(c) and (d) by reformatting the colour coded text in standard black letter font. And she has inserted additional wording to improve the meaning of Articles2.2.1(d), in Markup, for the Purchaser to consider. More significant are the amendments proposed by LA1. For these, LF2 used highlighting to identify comments from LA1 (in yellow) that supported the insertion of new provisions for arbitral proceedings (in blue). All of the discursive

strategies described above are generally felt to be comparatively more direct and effective forms of negotiation than trying to justify any and all proposed amendments in accompanying emails or explanatory memos, as was traditionally used for negotiation of the SPA. These (re)textualisation strategies also signify that the relationship between the Sellers and the Purchaser had become less formal during Stage Three after certain tacit power relations had been accepted as a fait accompli by the various parties.

9.4.2.3 Negotiated outcomes

The negotiated outcome of the discursive exchanges described above is evidenced in the final version of the Escrow Agreement executed on 27 February. While the Purchaser agreed to all of the proposed amendments in the version sent by LF2 (see Section 9.4.2.2) above, the wording for the process of issuing a Company Claim Notice was redrafted to intertextually account for the possibility of an Arbitral Award as proposed by LA1 as follows:

> If the Escrow Agent receives a Company Claim Notice by the last day of 13 month period following the Deposit Date, it shall continue to hold the corresponding amount in the Company Escrow Moneys until such time it receives a joint payment instruction by the Purchaser and the Individual Parties or a notarized copy of an Arbitral Award in relation to the amount included in such Company Claim Notice.

Without any other textual records to explain these textual changes, the assumption must be that these issues were resolved during a conference call. As noted by LF1 and LF2 for other critical sites of engagement (see Section 8.6.3), oral discourse was used by the Sellers' representatives as the preferred medium to reach final agreement on certain outstanding matters and expedite the negotiation process.

9.4.3 The social-institutional role and identity of the Escrow Agent

Negotiation of the Escrow Agreement also involved the participation of two colleagues of FA1, who specialized in escrow services (FA1c and FA1d). From a social-institutional perspective, it is common practice for global investment banks to dedicate professional resources to escrow services for M&A transactions. As a neutral third party, the escrow agent holds assets, invests funds, and oversees distribution of funds under the Escrow Agreement.

While FA1 was based in London as the chief financial advisor for the Sellers, both FA1c and FA1d were Turkish nationals based at the investment bank's office in Istanbul to provide local expertise in managing the escrow arrangements in Turkey. Their professional roles primarily involved administrative duties involved in collecting all necessary documentation from the Sellers and the Purchaser to establish the escrow bank account in Turkey and deposit the funds. As the *Resident Vice President of Corporate & Investment Banking* in Turkey, FA1c also reviewed the final versions of the Escrow Agreement as shown in this excerpt of the email she sent to LF1 and LA1 on 21 February:

> As agreed with FA1, in order to decrease the admin [sic] work, all Seller 1 parties in the escrow agreement will be reduced to a single party and Seller 2 will represent all others. We expect to see the final agreement covering this amendment.
>
> Secondly, we have all the necessary documents with regard to Seller 2 & the Purchaser and waiting for the below documents for each individual sellers [sic] to complete the account opening.
> - ID card or passport copy,
> - Tax Number,
> - Notarized Signature Declaration
>
> Finally, just to inform you once again, the agreement will [sic] subject to 0.75% of stamp tax, which will have a ceiling amount.
>
> Pls [sic] let us know, should you have further queries.
> Thanks for your co-operation.
> Regards,
>
> [FA1c]

From a social practice perspective, FA1c demonstrates her specialised knowledge of escrow arrangements by the way she supports the strategy to reduce the amount of administrative work (and cost) by naming the Seller entities as two parties to the Escrow Agreement. More specifically for Turkish jurisdiction she is then able to clearly identify the documents required for establishing the escrow bank account and the applicable tax rate for the escrow money. However, she also acknowledges her subordinate role vis-à-vis FA1 by her opening phrase ("As agreed with FA1"), perhaps drawing from FA1 a sense of her own authority in this matter.

This email thus provides interesting insight into the communicative competencies of FA1c and her sense of her professional identity. Since social identities are extensively

(re)produced in language, a lexico-grammatical analysis of her interactional discourse with the Sellers' representatives can reveal a great deal about FA1c. Unlike the more formal standards of professional communication that the law firm normally maintains with its clients (see Chapter 6), this email is written in a conversional register. Having acknowledged FA1 in the third person as an absent "referee" (Bell, 1992), FA1c addresses her audience bluntly if not quite rudely as "you" (and "your") – while referring to herself somewhat incongruously with the institutional "we" (and "our"). The style is also marked as informal by FA1c's use of contractions, which is usually more congruent with informal communications between acquaintances and familiars. As another example, the way she signs off the email with the phrases: "Pls let us know, should you have further queries" and "Thanks for your co-operation" seems inappropriate when we consider that the purpose of this email is to provide specialized legal advice to professionals that she has not interacted with previously. There is evidence of LF2 also using these textual features in Section 9.4.1 above, but this is more acceptable between professionals who have been working together collaboratively for five months. It may well be that the legal profession maintains a formal register in client communication as a marker of discourse expertise and an exclusive professional culture, and that this is a convention that is not adhered to by other communities of professional practice, such as the financial one to which FAc1 belongs.

The recommendations that FA1c made were agreed to by the other representatives and drafted to the Escrow Agreement by LF2. However, the issue of stamp duty tax was raised by P4 for clarification and FA1c responded in this email she sent on 26 February as follows:

> We double-checked with our tax advisor and agreed that the final version of the escrow agreement will still be subject to stampduty tax [sic].
> (Since we can easily figure out the value by calculating the 5% of the purchase price mentioned in SPA)
> As [sic] bank, we are obliged to collect the tax amount on the transaction date to sign the agreement and to make the escrow accounts active.
>
> We'll [sic] appreciate your attention to the subject,
> Kind regards,
> FA1c

From a social practice perspective, this email further demonstrates the reliance on other specialists - in this case a "tax advisor" - as a feature of legal practice across

multidisciplinary boundaries in pursuance of a shared communicative purpose. The consistent grammatical and syntactic errors in the email above also reaffirm the social identity of FA1c as a Turkish financial professional more concerned with providing specialist services than exhibiting a high degree of communicative competence in English.

9.5 Closing agenda

The analytical focus of Section 9.5 will be to examine how the Seller and Purchaser representatives collaborated to fulfil their contractual obligations under Articles 2 (*Sale and Purchase of the Company Shares and the Purchase Price*), 3 (*Conduct of Business Between Signing and Closing*) and 4 (*Conditions Precedent to Closing*) of the SPA for Closing and the legal transfer of the Company to the Purchaser. This was an extremely complex process, involving a variety of financial and legal activities that had to be completed often concurrently until the deal was finalised on 27 February. This section examines the main textual genres used to bring together the different representatives to facilitate and formalise some of these discourse activities and the intertextual and interdiscursive nature of the Closing process. The dynamic interaction of these genres and the way that one genre is connected and coordinated with the others is characteristic of the way that genre ecologies are constantly importing, hybridizing, and adapting genres to respond to different rhetorical situations and achieve discursive goals (Spinuzzi & Zachry, 2000).

9.5.1 The *Minutes of Closing* document

The main representatives of the Sellers and the Purchaser attended a face-to-face meeting on 6 February to plan for Closing with the use of the *Minutes of Closing* document. By common definition, the *minutes* of a meeting is a written record or transcript of what transpires at the actual meeting, i.e. the issues that were orally discussed and/or issues raised for further discussion subsequent to the meeting by the participants. However, the *Minutes of Closing* document used at this particular meeting (see Appendix E) had been prepared earlier by S1 and LF2 who had thus pre-determined the topics to be discussed. The Minutes of Closing as used here can hence be defined as a specialised genre that can be used in negotiating a contract to clearly

state the necessary activity obligations for Closing and is prepared in advance so that the Sellers' and Purchaser's representatives can discuss the terms of these obligations and sign the document as a type of legal agreement to fulfil them before Closing.

To make the communicative purpose and function of the Minutes of Closing clear, the document first states that the capitalized terms used in the document are prescribed the "same meaning given to them under the Share Purchase Agreement dated December 14, 2006 ('Agreement')". In terms of rhetorical structure, the contractual obligations from the SPA are then listed in separate numbered paragraphs. These paragraphs often make intertextual references to the relevant Articles of the SPA when detailing the specific activity obligations as shown in the following except taken from the Minutes:

> The Parties held a meeting on _____ 2007 at 10.00 local time at [LF offices in Istanbul], in order to proceed with the Closing pursuant to the Agreement.
>
> I. Pursuant to Article 2.3.1. of the Agreement, the independently audited Consolidated Balance Sheet of the Company for 31 December 2006 which has been prepared in accordance with Turkish generally accepted accounting principles and Turkish tax and commerce legislation ("Company Closing Balance Sheet") has been delivered to the Purchaser.

The main interdiscursive feature of the Minutes is to define the obligations of the SPA as activities in simpler terms for the respective parties to understand and perform. This includes the use of parenthesis at the end of each paragraph term to clearly indicate who must do what as in the following example:

> (e) Resignation letters of the members of the board of statutory auditors of COMPANY have been delivered to the Purchaser and the resolutions regarding appointment of new statutory auditors have been duly taken with due quorums and delivered to the Purchaser (to be performed by Seller 1 and Seller 2).

The Minutes of Closing are examined further in Section 9.5.3 but I first analyse the use of the Closing Checklist in Section 9.5.2 below.

9.5.2 The Closing Checklist

After the Minutes of Closing had been signed by the parties attending the meeting, a lawyer representing Seller 2 (LA3) collaborated to recontextualise the document into a more simplified tabulated genre referred to as the *Closing Checklist*. This document was

formatted into two numbered sections that first dealt with "(A) Matters to be attended to before the Closing Meeting" and then dealt with "(B) Matters to be attended to at the Closing Meeting". In Table 9.3 I include some of the matters from both sections, for analysis further below.

Table 9.3: The tabulated genre of the Closing Checklist

Item	Action	Responsible Party	Due Date	Status
1.	Delivery of duly notarized copies of the board of directors resolutions of the Sellers approving the sale of their Company and Seller 2 Shares to Purchaser and authorizing specified persons to sign, deliver and perform the SPA and all other relevant agreements and documents, to Purchaser.	Sellers	on Closing Date	
2.	Delivery of duly notarized copy of the resolution of the relevant board of Purchaser approving the purchase of Compnay [sic] Shares and Seller 2 Shares from the Sellers and authorizing specified persons to sign**,** deliver and perform the SPA and all other relevant agreements and documents to the Sellers.	Purchaser	on Closing Date	
3.	Calculation of the adjustment to the Initial Purchase Price, if needed, in accordance with Article 2.2.4 of the SPA.	Purchaser & Sellers	Prior to Closing	
4.	Notification to the Sellers in case Purchaser wishes to replace the board of directors of the Subsidiaries.	Purchaser	Five (5) Business Days prior to Closing	
5.	Approval from the Competition Board.	Purchaser & Sellers	Within fifteen (15) days from the execution of the Share Purchase Agreement	Filing has been submitted to the Competition Authority on December 29, 2006.

The construction of this document is based on the experiential knowledge and legal practice perspectives of LA3, but now becomes part of the genre repertoire used by the professional representatives in this ad hoc community of commercial law practice. The document indirectly helps to establish social relations as well as organizational policies, and it assists in the accomplishment of specific work practices (Orlikowski and Yates, 1994b). For instance, columns and rows are very effective in setting out each

contractual obligation or *Action*, which they do more transparently than the use of numbered paragraphs in the Minutes of Closing document. The table format also includes a *Responsible Party* column to identify who is responsible for each obligation and a *Due Date* column to define a specific timeframe for completion. The final *Status* column is used to clearly indicate whether or not the obligation activity has been completed at a specific time in the process.

Furthermore, from a pragma-linguistic perspective, LA3 has simplified the language sourced from of the Minutes of Closing document to express the activities and obligations in the form of succinct nominalisations. Nevertheless, she has adhered to the traditional legal discourse strategy of using capital letters for key terms that derive their substantive meaning intertextually from the SPA. For example, we can clearly see at Items 1 and 2 that both the Sellers and the Purchaser must deliver duly notarized copies of their respective board of directors' resolutions approving the sale of their Company on the "Closing Date". Item 3 requires the collaboration of both parties to calculate any adjustment to the "Initial Purchase Price prior to Closing" and Item 4 specifies that any request to replace the board of directors of the Company subsidiaries must be communicated by the Purchaser to the Sellers "five (5) Business Days prior to Closing". In relation to the "Approval from the Competition Board" requirement in Item 5, we can clearly see that it was submitted by both parties on 29 December in the *Status* column.

9.5.2.1 The collaborative review of the Closing Checklist

In comparison to the obligations imposed by the *Minutes of Closing* contractual genre, the formatting and discursive features of this table genre are arguably more effective in achieving the rhetorical purpose of inviting collaboration among the participants to manage these Closing activities. P4 used the CC email function to distribute the Closing Checklist to the main representatives of the Sellers and the Purchaser on 13 February inviting them to review and comment on the document. LF1 was the first to contribute to the review by commenting on certain issues with footnotes and highlighting others issues to compel further collaboration from the other representatives, as explained in this excerpt from an email she sent on 14 February:

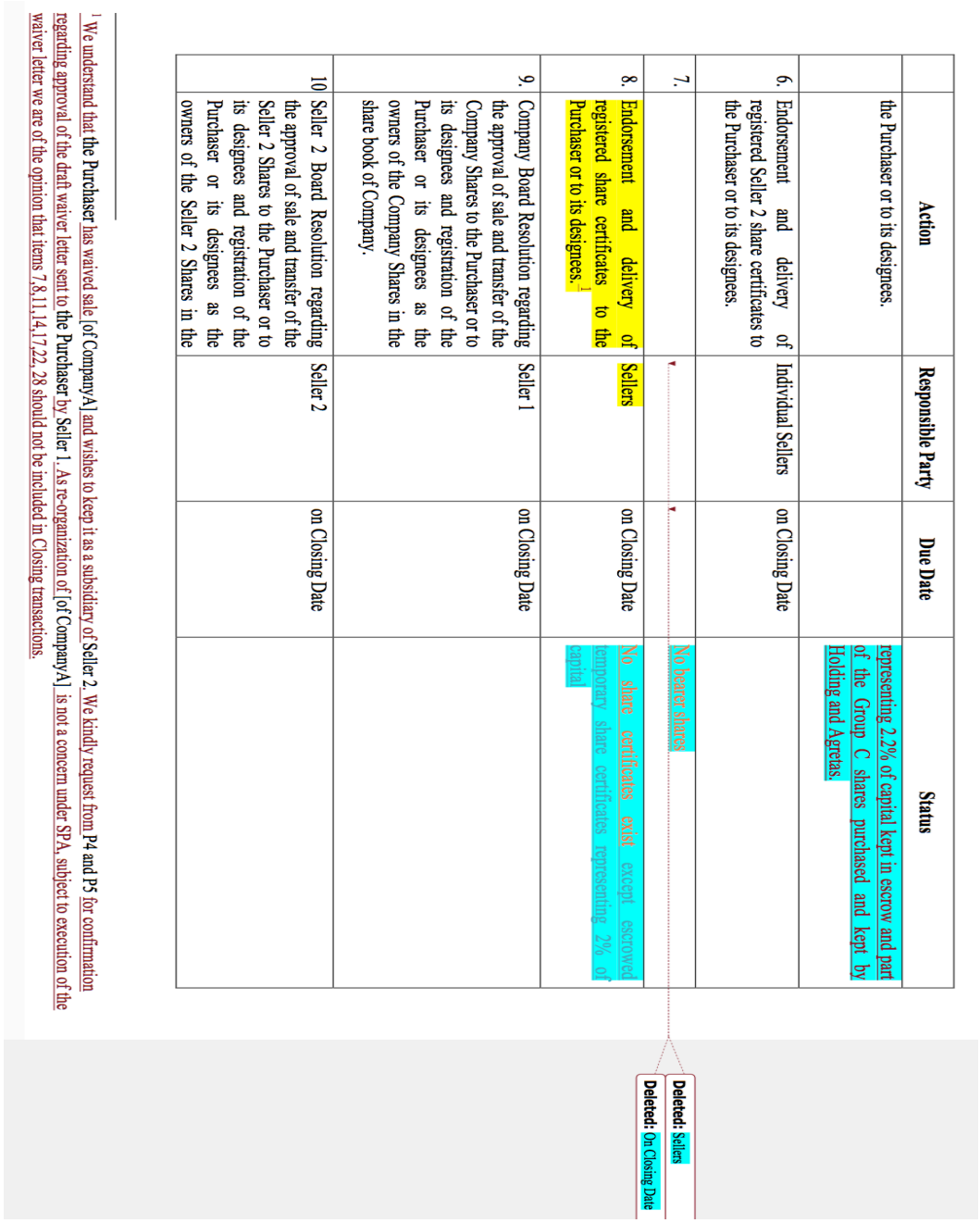
> Please find attached the closing agenda we have revised. We have included our comments as footnotes. We also need your input on certain issues as highlighted in the attached document. Please also provide your comments so that we can get back to P4 and P5.

LF2 then assumed her pivotal discourse role to consolidate the amendments proposed by individual reviewers in email exchanges and marked-up to different versions of the Closing Checklist into one version that she distributed to both Seller and Purchaser representatives on 15 February.

As shown in the except of the Closing Checklist in Exhibit 9.4, LF2 used a number of discourse strategies in conjunction with Track Changes software functions to account for this collaborative review process as follows:

- LF2 first used yellow highlight to identify Item 8 as an issue for consideration by the other representatives.
- LA1 then responded in an email to state that "no share certificates exist…."
- LF2 inserted this comment into the Checklist in red Mark-up and then used blue highlight to identify this as an issue for the other representatives to consider further.

Exhibit 9.4: Markup of Closing Checklist review



	Action	Responsible Party	Due Date	Status
	the Purchaser or to its designees.			representing 2.2% of capital kept in escrow and part of the Group C shares purchased and kept by Holding and Agretas
6.	Endorsement and delivery of registered Seller 2 share certificates to the Purchaser or to its designees.	Individual Sellers	on Closing Date	
7.		Sellers		No bearer shares
8.	Endorsement and delivery of registered share certificates to the Purchaser or to its designees.[1]	Sellers	on Closing Date	No share certificates exist except escrowed temporary share certificates representing 2% of capital
9.	Company Board Resolution regarding the approval of sale and transfer of the Company Shares to the Purchaser or to its designees and registration of the Purchaser or its designees as the owners of the Company Shares in the share book of Company.	Seller 1	on Closing Date	
10	Seller 2 Board Resolution regarding the approval of sale and transfer of the Seller 2 Shares to the Purchaser or to its designees and registration of the Purchaser or its designees as the owners of the Seller 2 Shares in the	Seller 2	on Closing Date	

Deleted: Sellers

Deleted: On Closing Date

[1] We understand that the Purchaser has waived sale [of CompanyA] and wishes to keep it as a subsidiary of Seller 2. We kindly request from P4 and P5 for confirmation regarding approval of the draft waiver letter sent to the Purchaser by Seller 1. As re-organization of [of CompanyA] is not a concern under SPA, subject to execution of the waiver letter we are of the opinion that items 7,8,11,14,17,22, 28 should not be included in Closing transactions.

As we see, LF2 also used footnotes by to explain why Item 7 should be deleted on the basis that a subsidiary company of the Company will not be sold to the Purchaser and that all items that relate to this expected sale (including Items 7,8,11,14,17,22, 28) should be deleted from the original Closing Checklist prepared by LA3. Once these issues were resolved through written and/or oral consensus by the representatives, certain items and comments were deleted and other colour coded text was reformatted into standard black letter font.

9.5.2.2 The on-going collaborative use of the Closing Checklist

The fixed rhetorical structure and discursive features of this table genre also enabled the representatives to update the terms of the Closing Checklist and account for discourse activities as a process of on-going collaboration. LF1 distributed an updated version of the Closing Agenda on 22 February in preparation for Closing scheduled to take place on 27 February. The intervention by LF1 here is significant from a social-institutional and social practice perspective. For most of the negotiation process LF1 had maintained a backstage role, consulting with and advising LF2 in support of her frontstage, pivotal role vis-a-vis the other representatives. I have characterized LF1's role as "ceremonial" in the sense that LF1 only became involved in negotiation activities with other participants when it was necessary to represent the law firm and its full institutional authority. This happened for instance when LF1 was called upon to use her status as a partner in the law firm to exert pressure on the other representatives to finalize activities critical to completion of the deal in a short period of time.

The excerpt in Exhibit 9.5 demonstrates how the *Status* of Items 3 and 4 (see Table 9.3) were updated and highlighted in different colours to indicate the significance of these activities. While the colour blue is used to used to indicate that Item 4 has been completed, the use of the brighter yellow colour signals that the Purchaser must complete Item 3 now that is is "five (5) Business Days prior to Closing".

Exhibit. 9.5: Closing Checklist updates

Item	**Action**	**Responsible Party**	**Expected Timing / Due Date**	**Status**
3.	Notification to the Sellers in case Purchaser wishes to replace the board of directors of the Subsidiaries.	Purchaser	Five (5) Business Days prior to Closing	[To be provided confirmation of Purchaser is awaited]
4.	Approval from the Competition Board.	Purchaser & Sellers	Within fifteen (15) days from the execution of the Share Purchase Agreement	Approval has been obtained on February 15, 2007

Item	Action	Responsible Party	Expected Timing / Due Date	Status
5.	Waiver letter regarding sale of [subsidiary company]	Individual Sellers	Prior to Closing	Waiver letter to be sent to LA2 by P4.

Item 3 also relates to the new Item 5 requirement that the Individual Shareholders of Seller 2 prepare a "waiver letter" and for LA2 to send it to P4 for signing by the Purchaser, which is analysed in Section 9.5.3 below.

9.5.3 The Waiver Letter

The Waiver Letter is particularly significant because of the way it exemplifies the intertextual and interdiscursive nature of the Closing process.

9.5.3.1 Intertextuality

The sale of the subsidiary company was initially determined as a *Condition Precedent to Closing* for the "relevant Individual Sellers" to complete under Article 4.1(f) of the SPA as follows:

Exhibit 9.6: SPA provision for sale of subsidiary company

> Sale of [subsidiary company] shall be concluded such that there shall be promissory note(s) from the relevant Individual Seller(s) issued and/or endorsed by their participation in their entities that shall be cashed in at payment of Purchase Price on Closing.

However, the Purchaser then decided to *waive* or give up this reciprocal right to have the subsidiary company sold and agreed to have the sale price for this subsidiary added to the calculation of the Purchase Price. We can trace this intertextual process back to an oral discussion that the lawyers representing the Purchaser had with the Sellers' representatives on 12 January. This waiver issue was then formalised by LF2 in a footnote written to the Closing Checklist that she distributed on 15 February (see Exhibit 9.4 above) and reproduced in Exhibit 9.7 as follows:

Exhibit 9.7: Closing Checklist footnote explaining need for waiver letter for sale of subsidiary Company

> We understand that the Purchaser has waived sale of [subsidiary company] and wishes to keep it as a subsidiary of the Company. We kindly request from P4 and P5 for confirmation regarding approval of the draft waiver letter sent to the Purchaser by Seller 1. As re-organization of [subsidiary company] is not a concern under SPA, subject to execution of the waiver letter we are of the opinion that items 7,8,11,14,17,22, 28 should not be included in Closing transactions.

LF1 raised this issue again on 20 January, highlighting the obligation on the Individual Shareholders to finalise the Waiver Letter in the updated version of the Closing Checklist (see Exhibit 9.5). In response, LA2 reviewed the draft letter prepared by LF2 and then she forwarded it to P4 and P5 for approval and signing by the Purchaser. An except from the executed version of the Waiver Letter is set out in Exhibit 9.8 as follows:

Exhibit 9.8: Waiver Letter provisions (1)

> Reference is made to the condition precedent set out under Article 4.1 (f) of the Agreement requiring Seller 2 to sell its interest in [subsidiary company] prior to the Closing, as well as to Article 4.2.5 and Article 6.2.11 of the Agreement.
>
> The Purchaser wishes to keep [subsidiary company] as 100% subsidiary of the Company. To accomplish this purpose, the following transactions shall be effected on the Closing date at the latest:
>
> 1) Seller 2 shall sell and transfer its interest in [subsidiary company] to the Company at the nominal value of the shares i.e. YTL 30,000; and
> 2) Two Individual Shareholders shall sell and transfer their interest in [subsidiary company] to the Company at a value of YTL 100.

The different excerpts in Exhibits 9.6 – 9.8 above demonstrate the intertextual nature of the process of regulating the sale of the subsidiary company, from the signing of the SPA on 14 December to the execution of the Waiver Letter on 23 January, with the use of the textual comments inserted into successive versions of the Closing Checklist on 14 and 20 January.

The first paragraph of the Waiver Letter (see Exhibit 9.8) contains an intertextual reference back to the relevant *Conditions Precedent* under Article 4 of the SPA (see Exhibit 9.6). It is a key function of legal contractual negotiations to formulate rules and achieve legally binding outcomes. In other words, the provisions of the Waiver Letter do not function in isolation but derive operational meaning from the substantive

entitlements conferred by the legal and procedural rules of the SPA that enable these rights and obligations to be vindicated (Galanter, 1984). We can see this type of intertextual function in another excerpt of the Waiver Letter below (marked terms are in bold and underlined for analysis further below in the present section):

Exhibit 9.9: Waiver Letter provisions (2)

> In conformity with Article 4.2.5 of the Share Purchase Agreement the Purchaser **hereby** waives the fulfilment of condition precedent with relation to sale of [subsidiary company] shares as stated under Section 4.1 (f) of the Share Purchase Agreement and the Purchaser **hereby** releases irrevocably the Individual Shareholders from their "Representation and Warranty" relating to [subsidiary company] shares given under article 6.2.11 of the Share Purchase Agreement.

The adverb "hereby" (in bold above) is used to formulate two different legally binding outcomes i.e. to first waive the condition precedent to sell the subsidiary company and to then release the Individual Shareholders from obligations that pertain to this subsidiary company from the time of executing the Waiver Letter on 23 January. However, the entire meaning of both of these legal outcomes is only realized by the referential and functional intertextuality that contribute to the specific meanings of Articles 4.2.5 and 4.1(f) and 6.2.11 of the SPA (as underlined).

9.5.3.2 Interdiscursivity

The intertextual strategies described above, from signing the SPA to execution of the Waiver Letter, combine with the strategic use of interdiscursivity to modify language to achieve different rhetorical purposes in and through different discourse events. Both the SPA and the Waiver Letter (see Exhibits 9.6, 9.8 and 9.9) are drafted in the performative legal discourse of the contract genre, which is highly impersonal and extremely technical, rich in legal terms (Goodrich, 1986; Tiersma, 1999). In Exhibit 9.6, for instance, the obligation for the Individual Sellers to sell the subsidiary company as a *Condition Precedent to Closing* under Article 4.1(f) of the SPA is constituted by three different requirements embedded in one complex sentence that is constructed in the passive voice with *shall* as follows (marked terms are in bold and underlined for analysis further below):

i) Sale of [subsidiary company] **shall** be concluded

ii) such that there **shall** be promissory note(s) from the relevant Individual Seller(s) issued and/or endorsed by their participation in their entities

iii) that **shall** be cashed in at payment of Purchase Price on Closing.

By deconstructing this provision, we can see that the meaning is, in simpler terms, that the Individual Shareholders must arrange for the relevant persons to endorse promissory notes to sell the subsidiary company, and that the promissory note must be cashed in (the aim being to reduce the amount of the total Purchase Price before Closing). The endorsement of promissory notes is a specific legal process that is precisely defined in an objective and rule-based way with these language choices. In terms of sentence structure, the modal auxiliary *shall* is used to clearly mark the different legal obligations as such, but the clauses are not connected in a logical, procedural order. Instead, the primary obligation to sell the subsidiary is stated first; but this is subsequently made contingent on obtaining "promissory note(s) from the relevant Individual Seller(s) issued and/or endorsed by their participation in their entities", with the subordinate clause marker "such that" used to introduce the condition on the conclusion of the sale. Procedurally, the conditions need to be met before the sale can be concluded. In turn, the final obligation, to reduce the Purchase Price, is also made contingent on obtaining the promissory note(s) and the sale of the subsidiary with a similar relative clause. This type of syntactic structure is characteristic of legal practice and serves to classify a particular register of English that is used for "highly technical, specialised legal processes and relations" (Goodrich, 1986, p.151), i.e., here, within the negotiation activities concerning contracts.

In comparison, in the footnote LF2 attached to the Closing Checklist (see Exhibit 9.2), LF2 has striven to maintain a good interpersonal relationship with the Purchaser while simultaneously advancing the transactional requirements of Closing. This type of interdiscursivity is what marks the language of the footnote as legal-professional rather than technically legal. Below I list four salient grammatical features that reflect the interpersonal and transactional goals of the footnote while lending it a legal-professional and authoritative tone:

i) use of plural pronouns “we” to indicate that LF2 represents the Sellers’ representatives when accounting for legal negotiation and requesting collaborative action;
ii) use of the hedging phrase “we understand” to express a tentative stance and a recognition that her colleagues might challenge her premises;
iii) use of the present perfect to describe actions taken (e.g. the Purchaser has waived sale of [subsidiary company] and wishes to keep it as a subsidiary of the Company);
iv) use of formal and polite phraseology to request participation by the other representatives, such as the adjuncts of entreaty to “we kindly request”.

But LF2 then reverts to more performative style of contractual language in the final sentence of the footnote to justify her advice to remove a number of items listed in the Checklist for Closing (7, 8, 11, 14, 17, 22, and 28) “subject to execution of the waiver letter”.

9.5.3.3 Other intertextual and interdiscursive activities for Closing

Analysis of the Waiver Letter issue above is just one example of the kinds of intertextual and interdiscursive activities required for Closing and finalization of the deal during December and January. The Waiver Letter represents just one type of contractual genre that connects and interacts with other contractual genres to form a *genre set* (Devitt, 1991) that the legal representatives relied upon to accomplish this final phase of the negotiation activity. Another significant legal genre and concomitant activity involved drafting board resolutions to formally approve the sale and purchase of Company as required by Article 5.2 of the SPA and the Minutes of Closing.

Other discourse activities specifically required the expertise of the financial professionals, such as the calculation of the financial amounts prescribed by Article 2 of the SPA as follows (marked items in bold and underlined):

- **The Consolidated Balance Sheet for 31 October 2006 of the Company** in accordance with International Financial Reporting Standards ("IFRS");

- **The Company Opening Balance Sheet and the Company Closing Balance Sheet**, including the (i) Net Cash Position and (ii) Net Working Capital Position;
- (i) The "Net Cash Position" is the Cash and Cash Equivalents less Bank Loans and Shareholders Loans as referenced in the Company Opening Balance Sheet and Company Closing Balance Sheet.
- (ii) The "Net Working Capital Position" is the sum of (i) Trade Receivables (Net); (ii) Trade Receivables from Related Parties; (iii) Inventories; and (iv) Other Receivables and Current Assets, less the sum of (v) Trade Payables to Related Parties; (vi) Trade Payables (Net); (vii) Other Payables and Current Liabilities; (viii) Short term provisions; and (ix) Current tax liabilities as referenced in the COMPANY Opening Balance Sheet

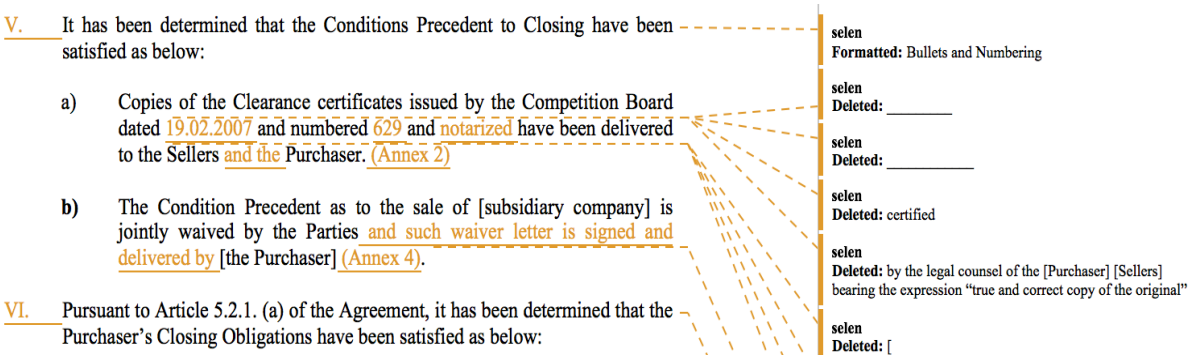
Preparation of the Balance Sheets (in bold above) involved established financial processes and practices for M&A transactions (underlined above) that only the investment bankers could complete. In conjunction with *the legal genre set* identified above for Closing, this *financial genre set* forms part of a multidisciplinary sequence of discourse activities within the meaning of a *genre system* (Bazerman, 1994). The concept of a genre system refers to the use of multiple genre sets to coordinate and enact the work of multiple professional groups within larger systems of activity. While analysis of all of the genres used for Closing activities is beyond the scope of this study, the complexities described for the Waiver Letter in Section 9.5.3 above are indicative of the intertextual and interdiscursive nature of coordinated activity during the finalisation phase of the deal during Stage Three. As established by Orlikowski and Yates (1994a), these genres do not just sequence, but tend to overlap and interact over time, forming a *genre repertoire* that the community of legal and financial practitioners routinely use to accomplish work. By further analytical extension, certain genres used for Closing are also connected and used in different ways across different institutions and professional settings to meet new discourse contingencies as important functional features of a broader *genre ecology* for this M&A transaction (Spinuzzi & Zachry, 2000). These hybridized genres are not simply "performed or communicated", but represent the collaborative "thinking out of a community as it cyclically performs an activity" (Spinuzzi, 2004, p.5).

9.5.4 The final use of the *Minutes of Closing* document

This final section is designed to analyse how the *Minutes of Closing* document was used to formalise the completion of the obligations for sale and purchase of the Company. While the tabulated genre of the Closing Checklist was designed to enable all of the representatives to interact and coordinate performance of the obligation activities for Closing, the Minutes was a contractual instrument designed to legally ratify completion of them.

On 22 February, S1 distributed a revised version of the Minutes of Closing contract first used at the face-to-face meeting of the representatives on 6 February. This updated version included the use of Markup to account for all of the Closing activities that were completed and recorded in successive versions of the Closing Checklist. For instance, the fact that the Competition Board Clearance certificates (dated 19/2/2007 and numbered 629) were notarised and sent to the Sellers and Purchaser was recorded under Clause V(a) of the Minutes, as demonstrated in the excerpt in Exhibit 9.10 follows:

Exhibit 9.10: Markup of the Minutes of Closing (1)

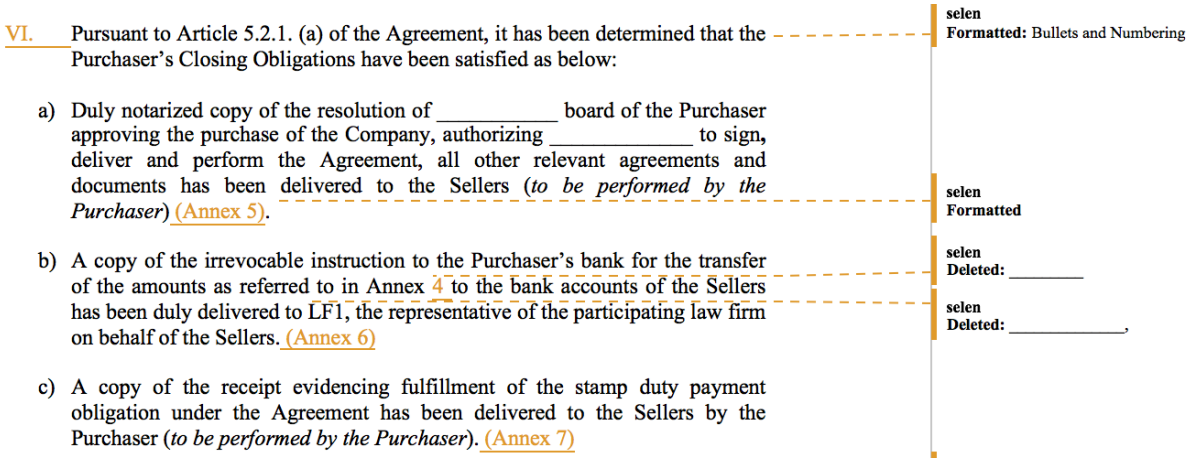


Clause V(a) makes intertextual reference to Annex 2, which includes a copy of the notarized TCB certificates. As noted in Section 8.4.3, the use of annexes is important in contract construction to provide detailed information for highly technical, specialised legal processes. For this particular discourse activity, the use of annexes enables the representatives to provide textual proof that the relevant obligation has been completed in achieving the purpose of the Minutes of Closing to ratify completion. The same discursive process is repeated in Clause V(b) to record the fact that the Waiver Letter

was signed and delivered by the Purchaser and to refer to an authorised copy of the agreement attached in Annex 4.

In both Exhibits 9.10 and 9.11 we see the institutionalized use of Markup to record discourse interactions that update the terms of the original version of the Minutes of Closing. This process enables all of the representatives to trace and approve the completion of the obligations for Closing. In Exhibit 9.4 above we see that S1 also uses italics for text in parenthesis at the end of Clauses VI(a) and (c) to highlight and inform the other representatives that the Purchaser is yet to deliver a notarized copy of the board resolution or a copy of stamp duty payment to the Sellers.

Exhibit 9.11: Markup of the Minutes of Closing (2)



In order to finalize these types of outstanding obligations, there was lot of interactional discourse during the final week of the negotiation process. For instance, 45 emails were exchanged between the representatives on both Thursday 22 and Friday 23 February. These exchanges involved the use of embedded emails (Gimenez, 2006) and mainly functioned to clarify or contribute to the co-construction and completion of the documents identified in the Minutes of Closing. As noted in Section 9.2, these administrative and regulatory processes were not performed in a linear, chronological chain of discrete events. Instead, many activities occurred simultaneously as the participants were required to complete multiple tasks or events within pre-defined deadlines for Closing.

It is significant to note that a lot of the communication in these emails was written in Turkish by and for the Turkish lawyers (LF1, LF2, LA2, LA3, S1a, P4 and P5) and junior associates working under their supervision. This is due to the fact that the non-Turkish participants (such as FA1 and S1) were not involved in these discourse activities and the Turkish lawyers could communicate more efficiently and effectively in their native language. The analysis of Turkish texts is beyond the scope of this study.

CHAPTER TEN

SUMMARY & CONTRIBUTIONS

Chapter 10 reviews the analytical approach taken in this study of legal negotiation discourse before focusing on the key research findings. It then discusses the significance of these research findings for professional discourse pedagogy with a particular focus on teaching English for Legal Purposes (ELP). Chapter 10 concludes by acknowledging the limitations of this study and outlining plans for future research.

10.1 Review of the analytic approach

The present study has explored the discursive realities of negotiating an international M&A transaction across different professional and cultural contexts in Turkey, France, the United Kingdom and Portugal. In doing so, it relied on the discourse and genre analytical concepts discussed in Chapter 2, which have been applied to other studies of legal and business discourse that were examined in Chapter 3. These analytical concepts were used within a multi-perspectival analytical framework that has been developed to account for the complex role of language in social discursive contexts (Fairclough, 1989, 1992; Cicourel, 1992; Firth, 1995; Martin, 1997; Bhatia, 2002b, 2004; Martin & White, 2005; Hausendorf & Bora, 2006; Handford, 2010). The present study adopted a version of the model that was recently developed by Christopher Candlin and Jonathan Crichton (see Candlin, 1997, 2006; Crichton, 2003, 2011; Candlin & Crichton, 2011). The five different analytical perspectives used for this MP model were explored in Chapter 4. This model has enabled me to take an integrated approach to understanding (a) the form and function of language as it is used to achieve discursive goals for this M&A transaction and (b) the discourse roles and interactional behaviours of those different participants involved in these specific discursive activities – all within the contextual environment of this particular international legal practice. The data collection and research processes for this study were then explained in Chapter 5, before the actual analysis began in Chapter 6.

The analytical chapters of this study (Chapters 6 – 9) begin, in accordance with the epistemological methodologies of the MP model, by examining my own pre-conceived

perspectives as researcher, shaped and constrained as these were by the social-institutional realities of the M&A transaction and the social (professional) practices of the law firm collaborating with me in ethnographic research. The M&A transaction was then divided into three stages, and I focused on the preliminary phase of *initiating the bidding process* in Chapter 7, the *deal-making* phase in Chapter 8 and the *finalisation* phase of the M&A transaction in Chapter 9. Analysis of each of these three stages began with examination of its unique macro aspects as seen under the social-institutional and social practice perspectives of the MP model. I then used the potential of the model to identify interrelated perspectives defined along the macro-micro nexus, linking the *social-institutional, social practice* and *semiotic resource* perspectives. This has allowed me to integrate analysis of the main *site-specific discursive practices* and activities in each stage (Candlin 1987, 2006; Crichton, 2003; 2011; Candlin and Crichton 2011). This process is designed to produce a comprehensive ontology or "thick description" of each discursive activity (Geertz 1973; Bhatia, 2002a; Sarangi, 2007) by investigating where and how it takes place, its institutionally determined objectives and stylistic constraints, and the types of professional interactions that are involved in the collaborative process. Each stage is not entirely distinct or discrete from the others, and analysis also focused on the conceptual and pragmatic connections between discursive events and activities in the different stages.

10.2 Summary of key findings

The present study has contributed significantly to enhancing our knowledge of the professional discourse realities entailed in negotiating one particular international M&A transaction. As reported in Section 1.1.5, the study was guided by the following research questions (reproduced here for convenience):

1) What are the chief discursive features of the authentic, contract negotiation discourse that was involved in a particular Merger-and-Acquisition transaction involving Turkish and European lawyers as well as other business professionals and that was carried out in the medium of English?
2) What are the main discursive/communicative practices that underpin these discursive features?
3) What are the main discourses and genres deployed in the M&A negotiation?

4) What are the intertextual and interdiscursive features of the relevant discourses and genres?
5) What are the different discursive identities and roles of the participants and how do they operationalise professional discourse expertise and communicative competence across the negotiation process?

Firstly, it has been shown that the strategic use of an international bidding system for the Merger-and-Acquisition transaction promoted a favourable outcome for the Sellers from a social-institutional perspective. It forced a competitive struggle between more than 20 initial bidders across Europe and the United States of America during Stage One and enabled the Sellers' representatives to choose the winning Purchaser from four investors entirely committed to buying the Company during Stage Two. This competitive negotiation process with investors was not overly protracted due to the repeated use of the formal caution to minimise any changes to the SPA, thus saving the Sellers time and expense spent on professional legal services. In terms of outcomes, LF1 reported that the final Purchase Price for the Company "exceeded the expectations" of the three investment banks that represented the Sellers (Round 3 interview).

As a functionally structured process, the M&A transaction was divided into three stages of negotiation activity which resonate with the three stages identified by Jensen (2009) for business emails (see Section 3.3.2) and by Koerner (2014) more specifically for M&A transactions (see Section 6.2). Each stage was significant for the social-institutional goals that were achieved through particular social practices and interactional activities. The Sellers' representatives were first required to collaborate and prepare key contractual documents to initiate the bidding process (the Process Letter) and to regulate confidentiality for the entire deal (the Confidentiality Agreement) during Stage One. Stage One also involved the first negotiation activities with individual bidders as they proposed amendments to the Confidentiality Agreement. The *deal-making* phase of Stage Two was primarily defined by negotiation of the terms and conditions for purchasing the Company pursuant to the Sale & Purchase Agreement (SPA). Once the successful Purchaser was selected, the *finalisation* phase of Stage Three was characterised more by the co-operation of the Sellers' and the Purchaser's representatives in finalising the legal, financial and administrative processes for transfer of ownership in the Company to the Purchaser.

The complexity of the international bidding process across different jurisdictional contexts was mediated by standardised international commercial laws and institutionalised practices that typically characterise such M&A transactions. This enabled such a diverse group of legal and financial professionals across a wide range of multilingual and multicultural contexts to collaborate on the deal, relying on shared experience and knowledge of the recognised laws and the discursive practices entailed.

The diverse group of professionals also shared knowledge and experience of a specific *genre repertoire* of email communication and a broader *genre system* of interrelated contractual documents and other texts – sometimes grouped together as a type of *genre set* (Devitt, 1991) for particular recurrent activities. While emails were routinely exchanged to accomplish a variety of work activities based on shared norms and expectations about professional communication, the rhetorical organization and lexico-grammatical properties of the main contractual documents (i.e. the Confidentiality Agreement, both bidding Process Letters, the SPA and the Escrow Agreement) were co-constructed in accordance with specific genre conventions and linguistic strategies, which, in turn, were a part of the discursive expertise of the legal and banking professions (see Section 9.5.1).

Certain contractual genres are also defined as reflecting a broader *genre ecology* (Spinuzzi & Zachry, 2000) in recognition of the way that not all genres sequence or overlap as part of a *genre system* or *genre repertoire*, but can be hybridized and adapted for new contingencies and discursive goals (see Sections 8.6.2 and 9.5.3). These genres are intertextually connected and coordinated with the other genres used for negotiation of the M&A transaction, but the differentiating emphasis here relates to the ability for genre ecologies to evolve and to improvise new functional forms. These genres are not "simply performed or communicated" (Spinuzzi, 2004, p.5), but are co-constructed within a specific work context to mediate a specific goal-oriented activity or respond to a new contingency, involving the collaboration and interaction of different legal and banking professionals.

The co-construction and negotiation of contractual documents was primarily undertaken with the institutionalised use of Track-Changes and Markup to insert proposed amendments and marginal comments, pending challenge and/or ratification. This

discourse type was consistently used throughout the negotiation process in conjunction with a range of particular discourse types and strategies which altogether make up a time-stable and conventional legal practice (Jones, 2014). Another unifying discursive feature was the use of English as the lingua franca of international legal practice and the research findings indicate that all of the legal and financial professionals possessed a competent standard of English language communication. Even though in the course of my analyses I did identify a number of linguistic anomalies and typing errors, attributable to different members of this multilingual and interdisciplinary community of practice, these did not seriously interfere in communication. There were also no instances of language-focused corrections or rebukes, a finding which aligns with other research that argues that errors in email communication are more acceptable in multicultural contexts using English as a second language (Jensen, 2009).

However, this study also shows significant differences between the legal and financial discourse expertise in the contextualised linguistic performance of the participants. As (re)produced in the authentic texts, the financial or shareholding representatives tended to make more linguistic and typing errors than the legal professionals (see Section 7.5.2 and Section 8.5.6.1) and communicated in a more colloquial register with the consistent use of contractions and expressions congruous with interpersonal communication (see Section 8.4.1 and Section 9.4.3). These differences in English language abilities and styles were identified in the thesis as characteristic of different discursive roles and identities of the participants in this study. As noted in Chapter 1, identity is a social phenomenon that emerges from the dialectic between the individual and the role that he/she is called on to perform in professional work settings (Berger & Luckmann, 1967), and different professional roles and identities were entextualised and reproduced in the various authentic texts analysed in this study. To understand these roles and identities better, the organizational culture of the law firm (LF) was examined from the social-institutional and social practice perspectives involved in negotiating this type of international M&A deal, and the experiential perspectives of the lawyers LF1 and LF2 were also taken into account in Chapter 6. This research revealed that the law firm uses a mentoring system to help lawyers develop professional experience and knowledge of discursive skills and repertoires in M&A-related tasks and professional interaction. The firm also devotes significant professional resources to developing and maintaining high standards of English communication skills as a key strategy in their efforts to compete

for foreign clients in the competitive legal service market in Turkey. In comparison, it is apparent that the investment bankers and other financial individuals who participated in this deal did not aim to uphold the same high standards of communication in English. This is arguably due to different professional ideologies and institutional values and different discourse relationships with clients and peers.

The legal professionals also deployed different communicative modalities that often embodied several distinct or even hybrid discourses – and that can thus be described as interdiscursive – to co-construct and negotiate the contractual documents. While the bankers were able to use a certain interdisciplinary knowledge of contractual terms to collaborate on the co-construction of contracts, the ability to retextualise the *expository* or *persuasive* style of negotiated proposals into the *operative* or *performative* style of contractual terms (Tiersma, 1999) represented a key feature of legal interdiscursive expertise and marked the boundary of the bankers' communicative competence across disciplinary contexts (see Section 8.5.5). The lawyers also used this interdiscursive expertise to redefine contractual obligations in simpler terms for the financial representatives (see Section 7.6.1.3; Section 8.5.4 and Section 9.5.1). These interdiscursive practices and abilities were also evident in the recontextualisation process, that is, the recycling and reworking contract templates into new contractual documents within or across institutions or professional settings and for different purposes (see Section 7.4.3 and Section 8.4.3).

This study also revealed a lot about crucial intertextual aspects of the contract negotiation process, both within and across the three stages of the M&A transaction. Like the complex and protracted process of obtaining a patent in the United States (Bazerman, 1999), the entire M&A transaction was constituted by "interrelated genres where each participant makes a recognizable act or move in some recognizable genre, which then may be followed by a certain range of appropriate generic responses by others" (pp.96-97). Integrated analysis using the MP model shows how the co-construction and negotiation of the different contractual documents formed a "complex network of interaction, a structured set of relationships among texts, so that any text is understood within the context of other texts. No text is single, as texts refer to one another, draw from one another, create the purpose for one another" (Devitt, 1991, p.336). As a key feature of discourse expertise O'Connor, 2002; Cheng, 2009; Warren,

2013), the legal and financial professionals were able to interact and connect back to antecedent discourse (both written and spoken), and to anticipate subsequent discourse (see Sections 7.4.4 and 7.6.1; Sections 8.5.6.1 and 8.6.2; and Sections 9.3.1 and 9.5).

One participant who was involved in this intertextual and interdiscursive process more than any other was LF2, in her role as a principal lawyer within the M&A department of the law firm representing Seller 1. As noted in Section 7.7, the complex demands of having to communicate with the large number of representatives who were participating in this deal effectively created a new role and identity for LF2 as she attempted to control the communication channels and manage the discursive interactions between the different representatives of the Sellers (see Sections 8.4.1 and 8.5; and Section 9.5). For many of the negotiative activities throughout the deal, LF2 was empowered to negotiate with counterparties on behalf of the other Sellers' representatives and vice versa (see Section 7.6; Section 8.6 and Section 9.4.2). While this study recognises the important, expert contributions made by many of the different professionals in this more or less extempore community of commercial law practice, one of the most compelling findings is that a deal of this complexity depends upon having someone to function in the professional/communicative role that was here filled by LF2 in order for it to be successful.

10.3 Contributions and limitations

As noted in Section 4.7, this study is the first of its kind to undertake a multi-perspectival analysis of contract negotiation in the multicultural context of international legal practice. In doing so it makes a contribution to applied linguistics and especially to the emergent field of professional discourse studies in situated legal contexts. As noted in Section 3.1.4, most other studies of legal negotiation have been concerned with the analysis of disputes and remedies, costs and benefits, profits and losses, but in contexts and for purposes not entirely relevant for ELP pedagogy. Hollander-Blumoff (2005) found that the most relevant articles typically "have at least some descriptive elements (e.g., how legal negotiation does work) and some prescriptive elements (e.g., how legal negotiation should work - that is, how practitioners should negotiate or how scholars ought to conceptualize the legal negotiation process)" (p.151). However, none of these articles rely on the systematic application of genre analysis to contract negotiation. The

hope is that findings from this study will also be used to develop a more effective pedagogy for teaching English for Legal Purposes (ELP) by situating learning in real-world scenarios. More specifically, this study can effectively assist both native users of English and lawyers from non-English speaking backgrounds and contexts, who increasingly need to negotiate contracts in English as the primary lingua franca across a wide range of multilingual and multicultural contexts (see Breeze, 2014).

Effective ELP is not simply a matter of teaching linguistic skills but of teaching students how to assume a certain type of professional identity and a way of interacting based on a type of contextual discourse (Jones & Sin, 2013). This study has been designed to achieve these outcomes by using discourse and genre analytical methodology to examine textual findings grounded in the authentic professional context to produce a thick description of the legal negotiation process (Geertz, 1973). This analytical nexus between text and context is what Cicourel (1992) would call "ecologically valid" applied linguistic research, i.e. research that accurately describes, interprets and explains "intrageneric" professional activity, involving typically enchained texts, that focuses "both on the integrity of the individual legal genres, and on their intertextuality and interdiscursivity" (Candlin et al., 2002, p.311). My research approach based on the MP model has also enabled me to explore the professional roles and identities of the research participants and understand how they construct, interpret and use language, along with other semiotic signals and behavioural practices, to achieve their community goals and why they communicate the way they do in their legal practice (Candlin & Hyland, 1999).

10.3.1 Contributions to understanding the ecology of M&A legal practice

At the textual level, genre analysis was able to demonstrate how each contractual genre or text type can be defined in terms of the specific rhetorical organization and lexico-grammatical properties of the textual artefact (i.e. the Process Letters for both Stages One and Two; the Confidentiality Agreement; the Sale & Purchase Agreement; the Turkish Competition Board application form; the Escrow Agreement; and the *Minutes of Closing* and *Closing Checklist* documents). Another key function of genre analysis was to explain how the rhetorical structures and associated linguistic forms of these

genres were used to achieve specific objectives throughout the M&A transaction. For each stage of the negotiation process, analysis shows how the participants used *genre sets* made up of closely-related genres that enabled the legal and financial professionals to accomplish repeated, structured activities for a particular rhetorical audience, purpose, subject, and occasion (Devitt, 1991). For example, analysis shows the interaction of both legal and financial representatives using the same genre set of documents to evaluate and negotiate the SPA during Stage Two (see Section 8.6) and the use of the *Minutes of Closing* and *Closing Checklist* documents to finalise the deal during Stage Three (see Section 9.5). For more specialised activities, such as the preparation of balance sheets and other financial reports for Closing (see Section 9.5.3.3), the investment bankers used a specialised type of financial genre set independently from the lawyers. These different genre sets were connected to other genre sets in a sequential chain of activity to form a type of *genre system* for the M&A transaction (Bazerman, 1994), which involved the interaction of users with different levels of communicative competence and authority over an extended period of time.

Distinct from the relatively discrete and sequential understandings of genres implicit in the concepts of *genre sets* and *genre systems*, I have tried in this study to take cognizance of the dynamic ways in which new genres can be hybridized and adapted, or can simply evolve, to meet new contingencies as part of the broader notion of *genre ecology* (Spinuzzi & Zachry, 2000; Spinuzzi, 2004), in this case for negotiation of complex M&A transactions. For example, negotiation of the key SPA contract involved the use of a number of different genres by the Sellers' representatives to evaluate and either challenge or ratify amendments proposed by the Purchaser (see Section 8.6.2). Similarly, the unpredictable contingencies that emerged during the complex process for Closing and finalization of the deal were mediated by the intertextual and interdiscursive use of a variety of different discourses, and genres were recontextualised and reworked across different social contexts, involving the interaction of the legal and banking professionals (see Section 9.5.3).

Genre analysis also shows that all of the participants used a *genre repertoire* for email communication (Orlikowski & Yates, 1994b), assisting them to interact and collaborate efficiently and effectively in achieving a variety of different work tasks throughout the deal. Email communication has now become the standard communication medium for

participants dispersed in different countries to actively contribute to the development of the communication event in "real-time" (Gimenez, 2006, p.162). The bulk of this work, in the negotiation studied, involved the co-construction of legal documents and then a process to negotiate terms and conditions with counterparties, which were mediated by three main email genres used to:

- *explain or justify proposed amendments* to contractual documents as a fundamental practice of contract negotiation (see Section 7.4.5; Section 8.5 and Section 9.4). The exchange of these email genres also required the counterparties to ratify the proposed amendment or continue to challenge it until a mutually acceptable formulation was agreed to and finalised;
- *report legal review* of proposed amendments (see Section 7.6.1.3) and negotiation activity (both written and spoken) (see Section 7.6.1.4). The use of these email genres (using the CC software function) enabled participants not directly involved in the specific negotiation activity to trace the negotiation process and to ratify the proposed amendment or continue to challenge it until a mutually acceptable formulation was agreed to and finalised; and
- *provide legal opinion or advice* about a specific issue (see Section 9.3.3), which was often embedded in a specific provision of a contract (see Section 7.5 and Sections 8.4.2 and 8.4.4).

While functioning to institutionalise recurrent communication norms for specific work activities, analysis also shows that the rhetorical structures and socio-linguistic features of these email genres changed at times in response to task demands, time pressures, and different audiences. The changes observed often took the form of "adopting and integrating characteristics of both written and oral modes of communication" (Orlikowski & Yates, 1994b, p.19), within the meaning of intertextuality and interdiscursivity. Most often these changes were evinced in the dialogic nature of embedded emails exchanged between the participants (see Sections 7.4.4 and 7.4.5; Section 8.5.6.1; and Section 9.5.4). The language of these informal, almost backstage genres typically blends elements of a highly specialised technical discourse with a less technical, more interpersonal professional discourse.

The function of emails exchanged was sometimes simply to attach specific versions of the contract under review and/or negotiation. In these instances, the contents of the emails almost invariably functioned intertextually to provide explanation about contractual provisions highlighted in Markup in the attached contract (see Section 7.6; Sections 8.5 and 8.6; and Section 9.4.2.2). In other instances, formal letters of advice were attached to emails exchanged between the participants (see Section 7.5.5 and Section 8.4.1) and documents that facilitated complex review and negotiation activities (see Section 8.6.2.2 and Section 9.5). Many of these interactional activities were ultimately retextualised in the form of written amendments to the text of the contractual document using Markup. As a key feature of discursive expertise for this type of legal practice, Markup was one of the dominant communicative resources or functions, and it frequently supported the deployment of important discourse types like advising, and informing, and by numerous discourse strategies (such as indirectness and hedging). The discursive resources deployed for these negotiation activities thus involved a range of particular discourse types and strategies, all of which were made visible throughout many sections of analysis in the present study.

This study also provides important insights into the professional and interpersonal relationships of the discourse participants. These relationships are defined to some extent by the strategic use of linguistic choices to construct and maintain relational features that align with the communicative purpose of the text. For example, we can see how the different legal stakeholders competed for discursive control and authority over providing legal advice in Section 7.5. Using a formal letter genre to provide the most comprehensive legal advice during the preliminary stages of the deal in Stage One advice (see Section 7.5.5), established LF as the primary legal service provider for the entire deal, thus enhancing its professional reputation in the Turkish market for potential international clients in the future. In Sections 8.4.4 and 8.5 we can also see how the legal and financial representatives of the Sellers then used complex facework, solidarity and politeness strategies to resolve differences of professional opinion and negotiate amendments to the SPA as they collaborated more closely during Stage Two. Discursive strategies for interactive collaboration were also used for the discursive activities for *Closing* in Section 9.5.

Genre analysis was also used to help link the semiotic resources perspective of the analysis with the social-institutional and social practice perspectives, as per the MP model, so as to understand the broader, contextual realities of the M&A deal. For instance, we can see how the Sellers' representatives used textual cautions in both Process Letters for Stage One and Stage Two to maintain hegemonic control over the bidding and negotiation process and promote a favourable outcome for the Sellers. Once negotiation activities with the Purchaser had progressed favourably for the Sellers, we see in Section 8.6.3 that the Sellers were then willing to compromise on certain outstanding issues, since an executed SPA represented a more significant gain for the Sellers. As explained by LF1 during the research interviews (see Section 8.3.4), this type of conciliatory approach to negotiation represents an institutionalised strategy used by the law firm to realise positive outcomes for both contracting parties. Further compromise and collaboration between the Sellers and Purchaser representatives was evidenced during negotiation of the Escrow Agreement (see Section 9.4) and Closing activities (see Section 9.5) as social practice features relevant to the finalising of the deal in Stage Three.

10.3.2 Limitations

As noted in Chapter 5, I was denied access to more recent records of the contract negotiation due to confidentiality constraints associated with legal communication. Since the time this M&A deal was brought to completion in 2007, it cannot be ascertained whether any of the discursive/communicative practices and rhetorical features of contract and email communication for M&A transactions that were identified in this study have been modified in current practice. The possibility of such changes was discussed with LF2 after analysis identified the ineffectual use of a) a memo genre and b) the Key SPA Points for Resolution document that aimed to provide explanation for proposed amendments highlighted in Markup in the SPA (see Sections 8.6.2.1 and 8.6.2.4). LF2 explained that the rationale for Sellers using these documents was to project an "official" identity to the Purchaser, whereas LF2 now personally prefers the use of the *Comment* software feature in conjunction with Markup to justify the rejection or ratification of proposed amendments. This study is also unable to comment on current activity types or discourse types in M&A negotiations or on the ongoing nature of professional role and identity construction across the

multidisciplinary contexts involved in this type of legal practice. This leaves us to wonder if lawyers are doing anything differently these days? In raising this question with LF1 and LF2 during the recent interviews, they both reported that the intertextual and interdiscursive use of email and Markup are still the dominant communicative functions for contract negotiation. However, further research and more recent data are needed to investigate any possible changes, preferably using the same discourse and genre analytical methodology (i.e. based on the MP model) as was used here.

Another significant limitation is that this study was focused on the textual aspects of contract negotiations, merely referring in passing, as it were, to specific communication events that took place over the telephone or during meetings and conference calls over the course of this M&A transaction (see Sections 8.5 and 8.6; and Section 9.5). The reality of legal practice is that both frontstage and backstage interactions that take place orally around the textual co-construction of contracts can be critically important to the negotiated outcomes. Additional analyses of these oral discourse activities are therefore essential to provide a truly complete (intertextually and interdiscursively oriented) ontology of legal negotiation discourse. For ELP pedagogy, these research findings can produce empirically grounded materials throwing important light on on how to manage real-life oral negotiation discourse and the professional relationships that exist between lawyers and other professionals in multidisciplinary legal practice contexts.

10.4 Concluding remarks

Notwithstanding the above limitations, this research study is seemingly the first of its kind to provide linguistic-based analysis of commercial legal practice in the very specific context of an authentic international M&A transaction. It is always almost prohibitively difficult to gain access to legal discourse records due to their inherently confidential nature and this has made it extremely difficult for researchers to conduct this type of ethnographic case study of actual legal practice. The present doctoral study therefore makes a significant contribution to our understanding of the socio-pragmatic role of language in contract negotiation.

The complexity and protracted nature of this M&A deal provided me with an extensive body of textual products, including hundreds of (embedded) emails and a number of successively negotiated versions of many contractual documents. Having access to this body of work has enabled me to examine the intertextual process of co-construction and negotiation of the main contractual documents, which provides insight into the type of discursive expertise that is required of lawyers and other financial professionals for M&A legal practice. Using the MP model has also enabled me to investigate the extent to which these discourse activities are shaped by regulatory and customary practices in producing a comprehensive ontology of each key discursive activity by investigating where and how it takes place, its institutionally determined objectives and stylistic constraints, and the types of professional interactions that are involved in the entire deal.

My agenda is now to transform the findings of this study into effective ELP pedagogical materials for the law undergraduates in my own classroom in Turkey, so that as novices these can experience professional ways of thinking and using language in preparation for the written discourse challenges they will face upon their entry into real-world legal practice. Also, by publishing further on the most salient findings from this study, my hope is to reach a broader audience of legal English learners and teachers, and to contribute something truly useful to their professional work-lives in this globalised world of business and legal practice.

REFERENCES

Archer, D. E. (2011). Facework and im/politeness across legal contexts: An introduction. *Journal of Politeness Research Language Behaviour Culture, 7*(1*)*, 1-19.

Argenti, P. A. (2006). How technology has influenced the field of corporate communication. *Journal of Business and Technical Communication*, *20*, 357–370.

Ashcraft, K. L. (2008). Appreciating the 'work' of discourse: Occupational identity and difference as organizing mechanisms in the case of commercial airline pilots. *Discourse and Communication*, *1*(1), 9-36.

Atkinson, J. M., & Drew, P. (1979). *Order in Court: The Organisation of Verbal Interaction in Judicial Settings.* London: Macmillan.

Bak, T., & Murphy, H. (2008). Reconceiving an approach to teaching legal discourse: A community of practice project. *Journal of the Australian Law Teachers Association*, 197-202.

Bakhtin, M. M. (1981) *The Dialogic Imagination*. Austin: University of Texas Press.

Bazerman, C. (1994). Systems of genres and the enactment of social intentions. In A. Freedman and P. Medway (Eds.), *Genre and the New Rhetoric* (pp. 79-101). London: Taylor & Francis Ltd.

Beck, J., & Young. M. F. D. (2005). The assault on the professions and the restructuring of academic and professional identities: A Bernsteinian analysis. *British Journal of Sociology of Education 25*(2), 183-197.

Bell, A. (1992). Hit and miss: Referee design in the dialects of New Zealand television advertisements. *Language & Communication*, *12*(3), 327-340.

Berger, P. L., & Luckmann, T. (1967). *The Social Construction of Reality*. Harmondsworth: Penguin.

Berkenkotter, C. (2001). Genre systems at work: DSM-IV and rhetorical recontextualization in psychotherapy paperwork. *Written Communication, 18*(3), 326–349.

Berkenkotter, C., & Huckin, T. C. (1995). *Genre Knowledge in Disciplinary Communication*. Mahwah, NJ: Lawrence Erlbaum Association.

Bernstein, B. (1996). *Pedagogy, Symbolic Control and Identity: Theory, Research, Critique.* London: Taylor & Francis.

Bhatia, V. K. (1993). *Analysing Genre: Language Use in Professional Settings*. London: Longman.

Bhatia, V. K. (1994). Cognitive structuring in legislative provisions. In J. Gibbons (Ed.), *Language and the Law* (pp. 136-155). Philadelphia: Longman.

Bhatia, V. K. (1997a). Genre-mixing in academic introductions. *English for Specific Purposes*, *16*(3), 181-196.

Bhatia, V. K. (1997b). Power and politics of genre. *World Englishes*, *16*(3), 359-372.

Bhatia, V. K. (2002a). Professional discourse: Towards a multi-dimensional approach and shared practice. In C. N. Candlin. (Ed.), *Research & Practice in Professional Discourse* (pp. 39-60). Hong Kong: City University of Hong Kong Press.

Bhatia, V. K. (2002b). Applied genre analysis: A multi-perspective model. *Iberica, 4*, 3-19.

Bhatia, V. K. (2004). *Worlds of Written Discourse: A Genre-Based View*. London: Continuum.

Bhatia, V. K. (2008). Genre analysis, ESP and professional practice. *English for Specific Purposes, 27*, 161-174.

Bhatia, V. K. (2011). Judicialisation of international commercial arbitration practice: Issues of discovery and cross-examination. In T. Salmi-Tolonen, I. Tukiainen, & R. Foley (Eds.). Law and Language in Partnership and Conflict, *Lapland Law Review* (pp. 15-29).

Bhatia, A., & Bhatia, V. K. (2011). Discursive illusions in legislative discourse: A socio-pragmatic study. *International Journal for the Semiotics of Law*, *24*(1), 1-19.

Bhatia, V. K., Candlin, C. N., & Engberg, J. (Eds.). (2008). *Legal Discourse across Cultures and Systems*. Hong Kong: Hong Kong University Press.

Bhatia, V. K., Flowerdew, J., & Jones. R. (2008). *Advances in Discourse Studies.* Routledge: New York.

Birkett, W. P. (2003). *Competency Based Standards for Professional Accountants in Australia and New Zealand.* Sydney: Link Publishing.

Breeze, R. (2009). Issues of persuasion in academic law abstracts. *Revista Alicantina de Estudios Ingleses 22*, 11-26.

Breeze, R. (2014). The discursive construction of professional relationships through the legal letter of advice. In R. Breeze, M. Gotti, and C. Sancho Guinda (Eds.), *Interpersonality in Legal Genres* (pp. 280-302). Bern: Peter Lang.

Bremner, S. (2008). Intertextuality and business communication textbooks: Why students need more textual support. *English for Specific Purposes*, *27*, 306-321.

Brinkmann, S. (2011). Qualitative research between craftsmanship and McDonaldization. A Keynote Address from the 17th Qualitative Health Research Conference. *Qualitative Studies, 3*(1), 56-68.

Brown, P., & Levinson, S. (1987). *Politeness: Some Universals in Language Usage*. Cambridge: Cambridge University Press.

Candlin, C. N. (1987). Towards task-based language learning. In C. N. Candlin and D. F. Murphy (Eds), *Language Learning Tasks* (pp. 5-22). Englewood Cliffs, New Jersey: Prentice Hall International.

Candlin, C. N. (1997). General Editor's Preface. In B. L. Gunnarsson, P. Linell, and B. Nordberg (Eds.), *The Construction of Professional Discourse* (pp. 8-14). Harlow: Longman.

Candlin, C. N. (1999). How can discourse be a measure of expertise? Unpublished address. *International Association for Dialogue Analysis, Symposium: Expert Talk*. University of Birmingham, April 8th-10th, 1999.

Candlin, C. N. (2002). Alterity, perspective & mutuality in LSP research and practice. In M. Gotti, D. Heller & M. Dossena (Eds.), *Conflict & Negotiation in Specialized Texts* (pp. 1-19). Bern: Peter Lang.

Candlin, C. N. (2006). Accounting for interdiscursivity: challenges to professional expertise. In M. Gotti and D. Giannoni (Eds.), *New Trends in Specialized Discourse Analysis.* (pp. 21-45). Bern: Peter Lang.

Candlin, C. N., & Bhatia, V. K. (1998). *Strategies and Competencies in Legal Communication*. Project Report submitted to the Law Society of Hong Kong.

Candlin, C. N., Bhatia, V. K., & Jensen, C. (2002). Developing legal writing materials for English second language learners: Problems and perspectives. *English for Specific Purposes*, *21*, 299 – 320.

Candlin, C. N., & Candlin, S. (2002). Discourse, expertise, and the management of risk in health care settings. *Research on Language and Social Interaction, 35*(2), 115-137.

Candlin, C. N., & Crichton, J. (2011). *Discourses of Deficit*. Basingstoke: Palgrave Macmillian.

Candlin, C. N., & Hyland, K. (Eds). (1999). *Writing Texts, Processes and Practices*. London: Longman.

Candlin, C. N., & Maley, Y. (1997). Intertextuality and interdiscursivity in the discourse of alternative dispute resolution. In B. L. Gunarsson, P. Linnel & B. Nordberg (Eds.), *The Construction of Professional Discourse* (pp. 201-222). London: Longman.

Candlin, C. N., Maley, Y., Crichton, J. & Koster, P. (1995). *Lawyer Talk: The Language of Lawyer-Client Conferencing*. Macquarie University: Centre for Language in Social Life. (Commissioned as a monograph by the Law Foundation of NSW).

Carbonara, G., & Rosa, C. (2009). Mergers and acquisitions: Causes and effects. *The Journal of American Academy of Business 14*, 188-194.

Charles, M. (1996). Business negotiations: Interdependence between discourse and the business relationship. *English for Specific Purposes*, *15*(1), 19–36.

Charles, M. (2003). 'This mystery. . .': a corpus-based study of the use of nouns to construct stance in theses from two contrasting disciplines. *Journal of English for Academic Purposes, 2*, 313–326.

Chartrand, M, Millar, C & Wiltshire. (2003). *English for Contract and Company Law*. London: Sweet & Maxwell.

Cheng, W. (2009). Professional communicative competences: Four key industries in Hong Kong. In W. Cheng and K. C. C. Kong (Eds.), *Professional communication: Collaboration between Academics and Practitioners* (pp. 31–50). Hong Kong: Hong Kong University Press.

Cheng, W., & Mok, E. (2008). Discourse processes and products: Land surveyors in Hong Kong. *English for Specific Purposes, 27*, 57-73.

Cicourel, A. V. (1981). Language and the structure of belief in medical communication. *Studia Linguistica, 35*(1-2), 71-85.

Cicourel, A. V. (1987). The interpenetration of communicative contexts: Examples from medical encounters. *Social Psychology Quarterly, 50*(2), 217-226.

Cicourel, A. V. (1992) The interpenetration of communicative contexts: Examples from medical encounters. In A. Duranti & C. Goodwin (Eds.), *Rethinking Context* (pp. 291–310). Cambridge: Cambridge University Press.

Clandinin, D. J., & Connelly, F. M. (2000). *Narrative Inquiry: Experience and Story in Qualitative Research*. San Francisco: Jossey-Bass.

Conley, J., & O'Barr, W. M. (1990). *Rules Versus Relationships: the Ethnography of Legal Discourse*. Chicago: The University of Chicago Press.

Conrad, S., & Biber, D. (2000). Adverbial marking of stance in speech and writing. In S. Hunston and G. Thompson (Eds.), *Evaluation in Text* (pp. 56-73). Oxford: Oxford University Press.

Cook, G. (1989a). *Discourse.* Oxford: Oxford University Press.

Cook, G. (1989b). Transcribing infinity: Problems of context presentation. *Journal of Pragmatics*, *15*, 1–24.

Cortés de los Ríos, M. (2010). A combined genre-register approach in texts of business English. *LSP Journal*, *1*(1), 13-28.

Crichton, J. (2003). *Issues of Interdiscursivity in the Commercialisation of Professional Practice: The Case of English Language Teaching.* Unpublished Doctoral Thesis, Macquarie University, Sydney.

Crichton, J. (2011). *Discourses of Commercialization: A Multi-perspectived Analysis.* London: Palgrave McMillan.

Curl, T., & Drew, P. (2008). Contingency and action: a comparison of two forms of requesting. *Research on Language and Social Interaction, 41*(2), 129-153.

De Dreu, C. K. W., & Carnevale, P. J. (2006). Disparate methods and common findings in the study of negotiation. In P. Carnevale and C. K. W. de Dreu (Eds.), *Methods of Negotiation Research* (pp. 351-360). Leiden: Koninklijke Brill.

De Fina, A. (2009). Narratives in interview: The case of accounts. For an interactional approach to narrative genres. *Narrative Inquiry, 19*(2), 233–258.

De Fina, A., & Georgakopoulou, A. (2008). Analysing narratives as practices. *Qualitative Research, 8*(3), 379-387.

Devitt, A. (1991). Intertextuality in tax accounting: Generic referential and functional. In C. Bazerman & J. Paradis (Eds.), *Textual Dynamics of the Professions: Historical and Contemporary Studies of Writing in Professional Communities* (pp. 336-357). Madison: University of Wisconsin Press.

Devitt, A. (2004). *Writing Genres*. Carbondale: Southern Illinois University Press.

Dressen-Hammouda, D. (2003). Contributions of an integrated genre theory of text and context to teaching LSP. Retrieved July 30, 2011 from http://asp.revues.org/1306

Dudley-Evans, A. (1994). Genre analysis: an approach for text analysis for ESP. In M. Coulthard (Ed.) *Advances in Written Text Analysis* (pp. 219-228). London: Routledge.

Edelman, J. (18 July 2013). *The Role of Status in the Law of Obligations: Common Callings, Implied Terms and Lessons for Fiduciary Duties.* Paper presented at the University of Alberta.

Eggins, S. (1994). *An Introduction to Systemic Functional Linguistics*. London: Pinter Publishers.

Eklundh, S. K., & Macdonald, C. (1994). The use of quoting to preserve context in electronic mail dialogues. *IEEE Transactions on Professional Communication, 37*(4), 197–202.

Engeström, Y. (1999). Innovative learning in work teams: analysing cycles of knowledge creation in practice. In: Y. Engeström, R. Miettinen and R. L. Punamäki-Gitai (Eds.), *Perspectives on Activity Theory* (pp. 377-406). Cambridge: Cambridge University Press.

Engeström, Y. & Miettinen, R. (1999). Activity theory: A well-kept secret. In Y. Engeström, R. Miettinen and R. L. Punamäki-Gitai (Eds.), *Perspectives on Activity Theory* (pp 1- 15). Cambridge: Cambridge University Press.

Evans, S. (2012). Designing email tasks for the business English classroom: Implications from a study of Hong Kong's key industries. *English for Specific Purposes, 31*, 202–212.

Fairclough, N. (1989). *Language and Power*. London: Longman.

Fairclough, N. (1992). *Discourse and Social change*. Cambridge: Polity Press.

Fairclough, N. (1993) Critical discourse analysis and the commodification of public discourse. *Discourse and Society, 4*(2), 133-68.

Fairclough, N. (1995). *Critical Discourse Analysis: The Critical Study of Language*. London: Longman.

Fairclough, N. (2002). Language in new capitalism. *Discourse & Society, 13*(2), 163-166.

Fairclough, N. (2011*). Discursive Hybridity and Social Change in Critical Discourse Analysis*. Unpublished lecture, Naples.

Felstiner, W. L. & Sarat, A. (1986). Law and strategy in the divorce lawyer's office. *Law and Society Review, 20*(1), 93-134.

Fenyő, S.S. (2003). The function of the English language in the European Union. *European Integration Studies, 2*(2), 53-64.

Firth, A. (1995). *The Discourse of Negotiation: Studies of Language in the Workplace*. Oxford: Elsevier Science Ltd.

Firth, A. (Ed.). (2004). *The Discourse of Negotiation: Studies of Language in the Workplace*. Oxford: Pergamon.

Flowerdew, J., & Wan, A. (2006). Genre analysis of tax computation letters: How and why tax accountants write the way they do. *English for Specific Purposes*, 25, 133–153.

Foucault, M. (1972). *The Archaeology of Knowledge and the Discourse on Language* (A. M. Sheridan-Smith, Trans.). New York: Pantheon Books.

Foucault, M. (1977). *Discipline and Punish.* London: Tavistock.

Foucault, M. (1980). *Power/Knowledge*. Brighton: Harvester.

Freund, J. (1975). *Anatomy of a Merger: Strategies and Techniques for Negotiating Corporate Acquisitions.* New York: Law Journal Press.

Gains, J. (1999). Electronic mail - A new style of communication or just a new

medium?: An investigation into the text features of email. *English for Specific Purposes*, *18*(1), 81-101.

Galanter, M. (1984). Worlds of deals: Using negotiation to teach about legal process. *Journal of Legal Education*, *34*(2), 268-276.

Galin, A., Gross, M., & Gosalker, G. (2007). E-negotiation versus face-to-face negotiation what has changed – If anything? *Computers in Human Behavior*, 787–797.

Galpin, T. J., & Herndon, M. (2000). *The Complete Guide to Mergers and Acquisitions*. San Francisco: Jossey-Bass Publishers.

Gee, J. P. (1989). Literacy, discourse, and linguistics: Introduction. *Journal of Education, 171*(1), 5-17.

Gee, J. P. (1990). *Social Linguistics and Literacies: Ideology in Discourses*. London: Falmer Press.

Gee, J. P. (1996). *Social Linguistics and Literacies: Ideology in Discourses (2nd ed.)*. London: Taylor & Francis.

Gee, J. P. (1999). *An Introduction to Discourse Analysis: Theory and Method*. New York, NY: Routledge.

Gee, J. P. (2001). Reading as situated language: A sociocognitive perspective. *Journal of Adolescent & Adult Literacy, 44*, 714-725.

Geertz, C. (1973). *The Interpretation of Cultures*. New York: Basic Books.

Gilmore, A. (2007). Authentic materials and authenticity in foreign language learning. *Language Teaching*, *40*, 97-118.

Gil-Salom, L., & Soler-Monreal, C. (2009). Interacting with the reader: Politeness strategies in engineering research article discussions. *International Journal of English Studies,* 175-189.

Gilson, R. J., & Schwartz, A. (2005). Understanding MACs: Moral hazard in acquisitions. *Journal of Law, Economics and Organization, 21*, 330-358.

Gimenez, J. (2000). Business e-mail communication: some emerging tendencies in register. *English for Specific Purposes*, *19*(3), 237-251.

Gimenez, J. (2005). Unpacking business emails: Message embeddedness in international business email communication. In M. Gotti and P. Gillaerts (Eds.), *Genre Variation in Business Letters. Linguistic Insights: Studies in Language and Communication* (pp. 235-255). Bern: Peter Lang.

Gimenez, J. (2006). Embedded business emails: Meeting new demands in international business communication. *English for Specific Purposes*, *25*(2), 154-172.

Goffman, E. (1959). *The Presentation of Self in Everyday Life.* New York: Doubleday Anchor.

Goffman, E. (1961). *Encounters: Two Studies in the Sociology of Interaction*. Indianapolis: Bobbs-Merrill.

Goffman, E. (1967). *Interaction Ritual*, Chicago: Aldine.

Goffman, E. (1974). *Frame Analysis*. New York: Harper & Row.

Golann, D., & Golann, H. S. (2003). Why is it hard for lawyers to deal with emotional issues? *Dispute Resolution Magazine, 9*, 20–48.

Goodrich, P. (1986). *Reading the Law.* Oxford: Basil Blackwell.

Gotti, M. (2008). The formulation of legal concepts in arbitration normative texts in a multilingual, multicultural context. In V. K. Bhatia, C. N. Candlin, and P. Evangelisti Allori (Eds.), *Language, Culture and the Law: The Formulation of Legal Concepts Across Systems and Cultures* (pp. 23-45). Bern: Peter Lang.

Gotti, M. (2011). Developments in the discourse of conflict resolution. In T. Salmi-Tolonen, I. Tukiainen, & R. Foley (Eds.). Law and Language in Partnership and Conflict, *Lapland Law Review* (pp. 30-51).

Gotti, M. (2014). Interpersonality in mediation discourse. In R. Breeze, M. Gotti, & C. Sancho Guinda (Eds.), *Interpersonality in Legal Genres*. (pp. 303-327). Bern: Peter Lang.

Gunnarsson, B. L. (2000). Discourse, organizations and national cultures. *Discourse Studies*, *2*(1), 5-33.

Hafner, C. A. (2008). *Designing, Implementing and Evaluating an Online Resource for Professional Legal Communication Skills.* Unpublished Doctoral Thesis, Macquarie University, Sydney.

Hafner, C. A. (2010). A multi-perspective genre analysis of the barrister's opinion: Writing context, generic structure, and textualization. *Written Communication*, *27(4)*, 410–441.

Hafner, C. A. (2011). Professional reasoning, legal cultures, and arbitral awards. *World Englishes*, *30*(1), 117-128.

Hafner, C. A. (2012). Legal contexts. In J. Jackson (Ed.), *The Routledge Handbook of Intercultural Communication* (pp. 525–538). London: Routledge.

Hafner, C. A. (2014). Professional communication in the legal domain. In V. K. Bhatia & S. Bremner (Eds.), *The Routledge Handbook of Professional Communication* (pp. 349–362). London: Routledge.

Halliday, M. A. K. (1994). *An Introduction to Functional Grammar*. London: Edward Arnold.

Halliday, M. A. K. (2006). Applied Linguistics: thematic pursuits or disciplinary moorings? A conversation between Michael Halliday and Anne Burns. *Journal of Applied Linguistics, 3*(1), 113-128.

Halliday, M. A. K., & Hasan, R. (1976). *Cohesion in English.* London: Longman.

Halliday, M. A. K., & Hasan, R. (1989). *Language, context and text: Aspects of language in a social- semiotic perspective*. London: Oxford University Press.

Halliday, M. A. K., McIntosh, A., & Strevens, P. (1964). *The Linguistic Sciences and Language Teaching.* Longman: Londres.

Handford, M. (2010). *The Language of Business Meetings*. Cambridge: Cambridge University Press.

Harris, S. (1997). Procedural vocabulary in law case reports. *English for Specific Purposes*, *16*(4), 289–308.

Haspeslagh, P. C., & Jemison, D. B. (1991). *Managing Acquisitions: Creating Value through Corporate Renewal*. New York, NY: Free Press.

Hausendorf, H. & Bora, A. (Eds.). (2006). *Discourse Approaches to Politics, Society and Culture*. Amsterdam: John Benjamins.

Hernández-Flores, N. (2008). Politeness and other types of facework: communicative and social meaning in a television panel discussion. *Pragmatics*, *18*(4), 689–706.

Hewitt, P. (2006). Electronic mail and internal communication: A three-factor model. *Corporate Communications*, *11*, 78–92.

Ho, V. C. K. (2011). A discourse-based study of three communities of practice: How members maintain a harmonious relationship while threatening each other's face via email. *Discourse Studies*, *13*(3), 299-326.

Hocking, J. (2010). The discursive construction of creativity as work in a tertiary art and design environment. *Journal of Applied Linguistics and Professional Practice, 7*(2), 235-255.

Hollander-Blumoff, R. (2005). Legal research on negotiation. *International Negotiation, 10*, 149-164.

Holmes. J. (1988). Doubt and certainty in ESL textbooks. *Applied Linguistics, 9*, 20-44.

Holmes, J. (1995). *Women, Men and Politeness*. London: Longman.

Huang, Y. H. (2016). Examining the usefulness of an ESP textbook for information technology: Learner perspectives. *International Journal of Social, Behavioral,*

Educational, Economic, Business and Industrial Engineering, *10*(8), 2549-2556.

Hutchison, T., & Waters, A. (1984). How communicative is ESP? *ELT Journal, 38*, 108-113.

Hyland, K. (1994). Hedging in academic writing and EAF textbooks. *English for Specific Purposes, 13*(3), 239-256.

Hyland, K. (1998). Persuasion and context: The pragmatics of academic metadiscourse. *Journal of Pragmatics*, *30*, 437–455.

Hyland, K. (1999). Disciplinary discourses: writer stance in research articles. In: C. N. Candlin & K. Hyland (Eds.), *Writing: Texts, Processes and Practices* (pp. 99–121). London: Longman.

Hyland, K. (2005). *Metadiscourse: Exploring Interaction in Writing*. London: Continuum.

Hyland, K. (2012). *Disciplinary Identities Individuality and Community in Academic Discourse.* Cambridge: Cambridge University Press.

Infante, D. A. & Rancer, A. S. (1996). Argumentativeness and verbal aggression: A review of recent theory and research. *Communication Yearbook, 19*, 319–351.

Jensen, A. (2009). Discourse strategies in professional e-mail negotiation: A case study. *English for Specific Purposes, 28(1)*, 4–18.

Johns, A. M. (1997). *Text, Role, and Context: Developing Academic Literacies*. Cambridge: Cambridge University Press.

Jones, A. (2009). Business discourse as a site of inherent struggle. In A. Mahboob, & C. Lipovsky (Eds.), *Studies in Applied Linguistics and Language Learning* (pp. 84-105). Cambridge: Cambridge Scholars Publishing.

Jones, A. (2014). Communicative dimensions of professional accounting work. In V. K. Bhatia & S. Bremner (Eds.), *Routledge Handbook of Professional Communication* (pp. 321–348). London: Routledge.

Jones, A., & McCracken, S. (2007). Teaching the discourse of legal risk to finance professionals: foundations for a linguistically scaffolded curriculum. In R. Wilkinson & V. Zegers (Eds.), *Researching Content and Language Integration in Higher Education* (pp. 122-136). The Netherlands: Maastricht University.

Jones, A., & McCracken, S. (2011). Crossing the boundary between finance and law: The collaborative problematisation of professional learning in a postgraduate classroom. In C. N. Candlin & S. Sarangi (Eds.), *Handbook of Communication in Organisations and Professions* (pp. 499-518). Berlin: De Gruyter Mouton.

Jones, A., & Sin, S. (2013). Achieving professional trustworthiness: Communicative expertise and identity work in professional accounting practice. In C. Candlin and J.

Crichton, (Eds.), *Discourses of Trust*. Basingstoke, Hampshire, UK: Palgrave Macmillan.

Karsten, C. G. J., Malmendier, U., & Sautner, Z. (2014). *M&A Negotiations and Lawyer Expertise.* Retrieved January 9, 2016 from: http://econ.columbia.edu/files/econ/content/malmendier_takeover_negotiations_feb2014.pdf\

Kavanagh, M. H., & Drennan, L. (2008). What skills and attributes does an accounting graduate need? Evidence from student perceptions and employer expectations. *Accounting and Finance, 48*(2), 279-300.

Klee, K.N. (2003). Teaching transactional law. *Law Review: University of California Law School Research Paper Series*, 1-16.

Koç University. (2007). *LAW 107: Legal Writing*. Unpublished Course Book, Koç University, Istanbul, Turkey.

Koerner, J. (2014). The M&A process revisited – Identifying a suitable phase model. *Mendel University Research Paper*. Retrieved October 22, 2016 from: http://www.pefka.mendelu.cz/predmety/simul/PEFnet13/prispevky/Korner.pdf

Koester, A. (2010). *Workplace Discourse.* London: Continuum.

Krause-Jensen, J. (2011). Ideology at work: Ambiguity and irony of value-based management in Bang & Olufsen. *Ethnography, 12*, 266-289.

Kress, G. & van Leeuwen, T. (1996*). Reading Images: The Grammar of Visual Design*. London: Routledge.

Kristensen, H. & Gärling, T. (1997). Adoption of a cognitive reference points in negotiations. *Göteborg Psychological Reports*, *26*, 2-18.

Krois-Lindner, A., & TransLegal. (2008) *International Legal English: a Course for Classroom or Self-study Use.* Cambridge: Cambridge University Press, 5th Print.

Kumar, R., & Patriotta, G. (2011). International alliance negotiations: A sense making perspective. *International Negotiation, 16*, 511-533.

Lakoff, R. T. (1989). The limits of politeness: Therapeutic and courtroom discourse. *Multilingua*, *8*(2/3), 101-29.

Lave, J. (1993). The practice of learning. In S. Chaiklin & J. Lave (Eds.), *Understanding Practice: Perspectives on Activity and Context* (pp. 200-208). New York: Cambridge University Press.

Leech, G. (1983). *Principles of Pragmatics*. Longman: London.

Lesiak-Bielawska, E. D. (2015). Key aspects of ESP materials selection and design. *English for Specific Purposes World*, *46,* 1-26.

Levinson, S. C. (1979). Activity types and language. *Linguistics*, *17*, 365-399.

Levinson, S. C. (1992). Activity types and language. In P. Drew, & J. Heritage (Eds.), *Talk at work: Interaction in Institutional Settings* (pp. 66-100). Cambridge: Cambridge University Press.

Locher, M. & Watts, R. (2005). Politeness theory and relational work. *Journal of Politeness Research, 1*, 9–33.

Macgilchrist, F., & Van Hout, T. (2011). Ethnographic discourse analysis and social science. *Forum: Qualitative Social Research***,** *12*(1), 1-24.

Markee, N. (2001). The diffusion of innovation in language teaching. In D. R. Hall & A. Hewings (Eds.), *Innovation in English Language Teaching* (pp. 118-126). London and New York: Routledge.

Martin, J. R. (1993). Literacy in science: learning to handle text as technology. In M. A. K. Halliday and J. Martin (Eds.), *Writing Science: Literacy and Discursive Power* (pp. 166-202). Pittsburgh: University of Pittsburgh Press.

Martin, J. R. (1997). Analysing genre: functional parameters. In F. Christie and J. R. Martin (Eds.) *Genre and Institutions: Social Processes in the Workplace and School*. (pp. 3-39). London and Washington: Cassell.

Martin, J. R. (2001). Language, register and genre. In A. Burns & C. Coffin (Eds.), *Analysing English in a Global Context: A Reader* (pp. 149-166). London: Routlege/Macquarie University/The Open University.

Martin, J. R., Christie, F. & J Rothery, J. (1987). Social processes in education - a reply to Sawyer & Watson. *Working Papers in Linguistic*s *5*, 117-152. Linguistics Department. University of Sydney.

Martin, J. R. & White, P.R.R. (2005). *The Language of Evaluation: Appraisal in English*. Basingstoke: Palgrave.

Martinius, P. (2005). *M&A- Protecting the Purchaser.* The Hague, Netherlands: Kluwer Law International.

Maude, B. (2014). *International Business Negotiation: Principles and Practice*. Basingstoke: Palgrave Macmillian.

Mayes, P. (2003). *Language, Social Structure, and Culture: A Genre Analysis of Cooking Classes in Japan and America*. Philadelphia: John Benjamins Publishing Company.

Maynard, D. W. (1984). *Inside Plea Bargaining: The Language of Negotiation.* New York: Springer.

Merry, S. E. (1990). *Getting Justice and Getting Even*. Chicago: University of Chicago Press.

Miles, M. B., & Huberman, A. M. (1994). *Qualitative Data Analysis: An Expanded Sourcebook* (2nd ed.). Thousand Oaks, CA: Sage Publications.

Molod, A. H. (1994). Forms and paperwork, Chapter 30. In M. L. Rock, R. H. Rock and M. Sikora (Eds.), *The Mergers and Acquisitions Handboo*k (pp. 42–68). New York: McGraw-Hill, Inc.

Morrow, K. (1977). Authentic texts in ESP. In S. Holden (Ed.), *English for Specific Purposes* (pp. 13-16). London: Modern English Publications.

Murphy, M., & Levy, M. (2006). Politeness in intercultural email communication: Australian and Korean perspectives. *Journal of Intercultural Communication (Vol. 12)*. Retrieved July 16, 2015 from: http://www.immi.se/intercultural/nr12/murphy.htm

Myers, G. (1989). The pragmatics of politeness in scientific articles. *Applied Linguistics*, *10*(1), 1-35.

Myers, G. (1992). "In this paper we report..." Speech acts and scientific facts. *Journal of Pragmatics*, *17*(4), 295-313.

Nadler, J. (2004). Rapport in legal negotiation: how small talk can facilitate e-mail deal making. *Harvard Negotiation Law Review, 9*, 223-251.

Nadler, J. (2007). Build rapport and a better deal. *Negotiation, 3*, 9-11.

Nadler, J., & Shestowsky, D. (2006). Negotiation, information technology, and the problem of the faceless other. In L. L. Thompson (Ed.), *Negotiation Theory and Research* (pp. 145–172). New York: Psychology Press.

Newton, T. (1998) Theorising subjectivity in organisations: The failure of Foucauldian studies?, *Organisation Studies, 19*(3), 415–447.

Nickerson, C. (1999). The use of English in electronic mail in a multinational corporation. In F. Bargiela-Chiappini & C. Nickerson (Eds.), *Writing business: Genres, Media and Discourses* (pp. 35–56). Harlow: Longman.

Nickerson, C. (2000). *Playing the Corporate Language Game. An Investigation of the Genres and Discourse Strategies in English used by Dutch Writers Working in Multinational Corporations*. Amsterdam: Rodopi.

Norris, S. (2004). *Analyzing Multimodal Interaction*. London and New York: Routledge.

Nunan, D. & Lamb, C. (2001). Managing the learning process. In D. R. Hall & A. Hewings (Eds.), *Innovation in English Language Teaching* (pp.27-45). London and New York: Routledge.

O'Connor, E. (2002). Storied business: Typology, intertextuality, and traffic in entrepreneurial narrative. *Journal of Business Communication, 39*(1), 36-54.

Orlikowski, W. J., & Yates, J. A. (1994a). Genre repertoire: Structuring of communicative practices in organizations. *Administrative Science Quarterly*, *39*(4), 541–574.

Orlikowski, W. J., & Yates, J. A. (1994b). Genre repertoire: Norms and forms for work and interaction. *MIT Sloan School Working Paper 3671-94: Center for Coordination Science Technical Report, 166*.

Orr, T. (1999). Genre in the field of computer science and computer engineering. *IEEE Transactions on Professional Communication, 42*(1), 32–37.

Paavola, A. (2014). *Negotiation Strategies and Offers: Perceptions of Merger and Acquisitions Advisors.* Published dissertation thesis, University of Jyväskylä, Finland. Retrieved February 2, 2016 from: https://jyx.jyu.fi/dspace/bitstream/handle/123456789/42942/URN%3ANBN%3Afi%3Ajyu-201402121226.pdf?sequence=1

Pablo, A. L., Sitkin, S. B., & Jemison, D. B. (1996). Acquisition decision-making processes: The central role of risk. *Journal of Management*, *22*(5), 723–746.

Palmeri, J. (2004). When discourses collide: A case study of interprofessional collaborative writing in a medically oriented law firm. *Journal of Business Communication, 14*(1), 37-65.

Park, R. E. (1950). *Race and Culture*. Glencoe, Illinois: The Free Press.

Pinto dos Santos, V. B. M. (2002). Genre analysis of business letters of negotiation. *English for Specific Purposes, 21*, 167- 199

Planken, B. (2005). Managing rapport in lingua franca sales negotiations: A comparison of professional and aspiring negotiators. *English for Specific Purposes*, *24*, 381–400.

Putnam, L. L. (2004). Dialectical tensions and rhetorical tropes in negotiations. *Organizational Studies, 25*(1), 35-53.

Putnam, L. L. (2005). Discourse analysis: Mucking around with negotiation data. *International Negotiation, 10*, 17-32.

Putnam, L. L., & Wilson, S. R. (1990). Interaction goals in negotiation. In J. Andersen (Ed.), *Communication Yearbook* (pp. 374– 406). Newbury Park, CA: Sage.

Rampton, B., Tusting, K., Maybin, J., Barwell, R., Creese, A. & Lytra, V. (2004). *UK Linguistic Ethnography: A Discussion Paper.* A paper prepared for the UK Linguistic Ethnography Forum.

Rear, D., & Jones, A. (2013). Discursive struggle and contested signifiers in the arenas of education policy and work skills in Japan. *Critical Policy Studies*, *7*(4), 375-394.

Riessman, C. K. (2003). *Narrative Analysis*. London: Sage.

Riessman, C. K. (2008). *Narrative Methods for the Human Sciences*. Los Angeles: Sage.

Roberts, C., & Sarangi, S. (1999). Hybridity in gatekeeping discourse: Issues of practical relevance to the researcher. In S. Sarangi & C. Roberts. (Eds.), *Talk, Work and Institutional Order: Discourse in Medical, Mediation, and Management Settings* (pp. 473–503). Berlin: Mouton de Gruyter.

Roberts, C., & Sarangi, S. (2005). Theme-oriented discourse analysis of medical encounters. *Medical Education, 39*, 632–640.

Ryan, E. (2005). The discourse beneath: Emotional epistemology in legal deliberation and negotiation. *Harvard Negotiation Law Review, 10*, 231-285.

Sacks, H. (1992). *Lectures on Conversation.* Oxford: Basil Blackwell.

Sacks, H., Schegloff, E. A., & Jefferson, G. (1974). A simplest systematics for the organization of turn-taking for conversation. *Language, 50*, 696–735.

Salmi-Tolonen, T. (2008). Negotiated meaning and international commercial law. In V. K. Bhatia, C. N. Candlin & P. E. Allori (Eds.), *Language, Culture and the Law: The Formulation of Legal Concepts across Systems and Cultures (Linguistic Insights. Studies in Language and Communication)* (pp. 117-139). Berlin: Peter Lang.

Salmi-Tolonen, T., Tukiainen, I., & Foley, R. (2011). Law and language in partnership and conflict. *Lapland Law Review, 1*(1), 1-270.

Salus, N. P. (1989). Public relations before and after the merger. *Bottomline*, *6*, 47–49.

Sarangi, S. (2000) Activity types, discourse types and interactional hybridity: The case of genetic counselling. In S. Sarangi and M. Coulthard (Eds.) *Discourse and Social Life* (pp. 1-27). London: Pearson.

Sarangi, S. (2002). Discourse practitioners as a community of interprofessional practice: Some insights from health communication research. In: C. N. Candlin (Ed.), *Research and Practice in Professional Discourse* (pp. 94–135). Hong Kong: City University of Hong Kong Press.

Sarangi, S. (2005). The conditions and consequences of professional discourse studies. *Journal of Applied Linguistics, 2*(3), 371-394.

Sarangi, S. (2007). The anatomy of interpretation: Coming to terms with the analyst's paradox in professional discourse studies. *Text & Talk, 27*(5-6), 567-584.

Sarangi, S. (2008). The conditions and consequences of professional discourse studies. *Journal of Applied Linguistics*, *2*(3), 371–394.

Sarangi, S. (2010). Reconfiguring self/identity/status/role: The case of professional role performance in healthcare encounters. In J. Archibald and G. Garzone (Eds.), *Actors, Identities and Roles in Professional and Academic Settings: Discursive Perspectives*

(pp. 27–54). Berne: Peter Lang.

Sarangi, S., & Roberts, C. (Eds.). (1999). *Talk, Work and Institutional Order: Discourse in Medical, Mediation, and Management Settings*. Berlin: Mouton de Gruyter.

Schiffrin, D. (1996). Interactional sociolinguistics. In S. McKay & N. Hornberger (Eds.), *Sociolinguistics and Language Teaching* (pp. 307– 328). Cambridge: Cambridge University Press.

Scollon, R. (1997). Handbills, tissues, and condoms: a site of engagement for the construction of identity in public discourse. *Journal of Sociolinguistics*, *1*(1), 39-61.

Scollon, R. (1999). Mediated discourse and social interaction. *Research on Language and Social Interaction, 32*(1), 149-154.

Scollon, R. (2001). Action and text: towards an integrated understanding of the place of text in social (inter)action, mediated discourse analysis and the problem of social action. In R. Wodak & M. Meyer (Eds.), *Methods of Critical Discourse Analysis* (pp. 139-195). London: Sage.

Scollon, R. (2008). Discourse itineraries: Nine processes of resemiotization. In V. K. Bhatia, J. Flowerdew, & R. Jones (Eds.). *Advances in Discourse Studies* (pp. 233-244). Routledge: New York.

Scollon, R., Bhatia, V. K., Li, D. C. S., & Yung, V. (1999). Blurred genres and fuzzy identities in Hong Kong public discourse: Foundation ethnographic issues. *Applied Linguistics*, *20*(1), 22-43.

Scollon, R., & Scollon, S.W. (1995). *Intercultural Communication. A Discourse Approach*. Oxford: Blackwell.

Searle, J. (1995). *The Construction of Social Reality*. New York: The Free Press.

Sheldon, L. (1988). Evaluating ELT textbooks materials. *ELT Journal, 42*(4), 237-246.

Shuy, R.W. (2011). Applied linguistics in the legal arena. In C. N. Candlin & S. Sarangi (Eds.) *Handbook of Communication in Organisations and Professions* (pp. 83-102). Berlin: Mouton de Gruyter.

Sifianou, M. (2012). Disagreements, face and politeness. *Journal of* Pragmatics, *44*, 1554-1564.

Sitkoff, R. H. (2011). The economic structure of fiduciary law. *Boston University Law Review, 91*, 1039-1049.

Smart, G. (2008). Ethnographic-based discourse analysis: Uses, issues and prospects. In V. K. Bhatia, J. Flowerdew & R. H. Jones (Eds.), *Advances in Discourse Studies* (pp. 56-66). Abingdon: London.

Smart, G. (2012). Discourse-oriented ethnography. In J. Gee & M. Handford (Eds.), *The Routledge Handbook of Discourse Analysis* (pp. 147-159). Abingdon, UK: Routledge.

Sokolova, M., & Szpakowicz, S. (2006). Language patterns in the learning of strategies from negotiation texts. In L. Lamontagne & M. Marchand (Eds.), *Canadian AI, LNAI 4013* (pp. 288–299).

Spinuzzi, C. (2004). Describing assemblages: Genre sets, systems, repertoires, and ecologies. *Computer Writing and Research Lab*. White Paper Series. Retrieved October 6, 2016 from: http://www.dwrl.utexas.edu/sites/www.dwrl.utexas.edu/files/assemblages.pdf

Spinuzzi, C., & Zachry, M. (2000). Genre ecologies: An open system approach to understanding and constructing documentation. *Journal of Computing Documentation*, *24*(3), 169–181.

Swales, J. M. (1990). *Genre Analysis: English in Academic and Research Settings*. Cambridge: Cambridge University Press.

Swales, J. (2004). *Research Genres: Explorations and Applications*. New York: Cambridge University Press.

Talmy, S. (2011). The interview as collaborative achievement: Interaction, identity, and ideology in a speech event. *Applied Linguistics, 32*(1), 25-42.

Tessuto, G. (2012). *Investigating English Legal Genres in Academic and Professional Contexts.* Newcastle upon Tyne: Cambridge Scholars Publishing.

Thompson, L., Neale, M. & Sinaceur, M. (2004). The evolution of cognition and biases in negotiation research: An examination of cognition, social perception, motivation, and emotion. In M. J. Gelfand & J. M. Brett (Eds.), *The Handbook of Negotiation and Culture* (pp. 7–44). Stanford, CA: Stanford University Press.

Tiersma, P. M. (1999). *Legal Language.* Chicago: University of Chicago Press.

Townley, A. R. (2010). *Genre Analysis of Email Contract Negotiation for the Development of an Undergraduate LESP Writing Course in Turkey*. Unpublished MA dissertation thesis, Macquarie University, Sydney, Australia.

Townley, A. R., & Jones, A. (2016). The role of emails and covering letters in negotiating a legal contract: A case study from Turkey. *English for Specific Purposes, 44*, 68–81.

Townley. A. R., & Riazi, M. (2014). Analysis of authentic legal negotiation: Implications for teaching contract negotiation to undergraduate law students. *International Journal of Language Studies, 8*(4), 49-76.

Townley, B. (1994). *Reframing Human Resource Management: Power, Ethics and the Subject at Work*. London: Sage.

Tracy, K. & Coupland, N. (1990). Multiple goals in discourse: An overview of issues. *Journal of Language and Social Psychology*, *9*(1-2), 1-13.

Tracy, K. & Eisenberg, E. (1990/1991). Giving criticism: A multiple goals case study. *Research on Language and Social Interaction*, 37-70.

Van Dijk, T.A. (1988). *News as Discourse*. Hillside, New Jersey: Erlbaum.

Van Dijk, T. A. (2008). *Discourse and Power*. Houndsmills: Pallgrave-McMillan.

Vuorela, T. (2005). *Approaches to a Business Negotiation Case Study: Teamwork, Humour and Teaching.* Helsinki: Helsinki School of Economics Print.

Wagner, A., & Cacciaguidi-Fahy, S (Eds.). (2008). *Legal Language and the Search for Clarity: Practice and Tools.* Berlin: Peter Lang.

Warren, M. (2013). "Just spoke to...": The types and directionality of intertextuality in professional discourse. *English for Specific Purposes, 32*(1), 12-24.

Watts, R. J. (2003). *Politeness*. Cambridge University Press, Cambridge.

Wenger, E. (1998). *Communities of Practice: Learning, Meaning, and Identity.* New York: Cambridge University Press.

Wenger, E., McDermott R. A., & Snyder. W. (2002). *Cultivating Communities of Practice.* Boston, MA: Harvard Business School Press.

Wolf, L., & Cohen, A. (2009). Modal adverbs as negotiation chips. *International Journal for Language Data Processing, Sprache Datenverabeitung*, *33*(12), 169-177.

Yates, J. A., & Orlikowski, W. J. (1992). Genres of organizational communication: A structurational approach to studying communication and media. *The Academy of Management Review*, *17*(2), 299-326.

Zucchermaglio, C., & Talamo, A. (2003). The development of a virtual community of practices using electronic mail and communicative genres. *Journal of Business and Technical Communication*, *17*(3), 259–84.

LIST of APPENDICES

APPENDIX A

Round 1 interview questions

1. How does LF define expertise as an institution?

2. How does LF maintain this level of expertise and its reputation as one of the best law firms in Turkey?

3. How does LF maintain high standards for legal English proficiency within the law firm?

4. What type of legal activities does this law firm undertake with legal counterparts in Europe in English?

5. What is the legal and commercial significance of these legal English activities for the law firm?

6. Describe the structure and composition of the corporate law department and LF in terms of the total number of senior and junior lawyers in 2007.

7. Has the structure changed significantly since this deal was finalised in 2007?

8. How would you describe the professional role of the firm's principal, LF5 within the law firm?

9. What factors determine the different professional levels of senior and junior lawyers within the law firm?

10. Can you describe the professional relationship that different levels of lawyers have with the client and counterpart lawyers?

11. How are communication problems that may arise between the firm and counterpart lawyers and clients managed or resolved?

12. Are these problems mainly due to communication skills or legal commercial content issues of substance?

13. What do you think are the professional requirements and/or standards of your law firm that law graduates should be aware of when they are involved in professional communication, writing and email correspondence?

APPENDIX B

Round 2 interview questions

Preliminary

1. Is the SPA deal under analysis considered as an M&A deal? What kinds of commercial transaction come within the definition of an M&A deal?
2. Please explain the dynamics of negotiating an international M&A deal involving participants in different countries?
3. What laws regulate these deals?
4. What type of knowledge and professional skills do lawyers need working on this type of deal?
5. Do you have internal professional development training for lawyers participating in this type of deal?
6. Are there always several lawyers working on this type of deal or can one lawyer undertake all of the work?
7. Why did you use a tendering process for the deal under analysis?
8. What are the legal and commercial benefits or advantages of using a tendering process?
9. Is it usual to use a tendering process for SPA agreements?
10. In relation to the deal, do you think there is any significant negotiation of terms in the traditional sense of the word of bargaining over issues?
11. How would you describe the role of lawyers under M&A deals?
12. Are these roles different to the other financial professionals working on the negotiation of the deal?
13. Who had the most authority in negotiating terms – who had the final decision in deciding on the successful bidders? How is this authority established or recognized by the other participants?
14. The previous interview you talk about the significant role of FA1… and what about S1?
15. We have the written records and how much negotiation activity is undertaken over the phone or at meetings. When does it become necessary and what is the operational relationship between oral and written?

Stage One

1. Please look at the 3 stages that I have defined on the data records and tell me whether you think it is appropriate to divide the entire negotiation process into these parts? Do you think there are other parts?
2. Do most M&A deals follow this staged process?
3. Can you discuss the process of developing the PL and CU from the initial IM, which looks like a marketing document prepared by the financial professionals? Who works on first developing these documents?
4. How are the CU's different to the IP's? I can't see any records for the IP?
5. How were the bidders short-listed? I have no records of the Evaluation Materials referred to under the CU's. Can I get copies for 2 or 3 main bidders?
6. Who is usually responsible for preparing the tables in the data room checklist?

Stage Two

1. The SPA is initiated by you – can you please explain the process of first developing this contract?
2. There first seems to be a process of negotiation between all the parties representing the sellers from 9 October until 14 November. What types of terms are being negotiated here between commercial and legal partners?

3. For example, there seems to be consideration negotiation of post-sale undertakings under article 5 and the liability of the Sellers post sale under article 9 (13/11/06).
4. What were the main issues to resolve with bidders under the SPA?
5. Was the evaluation criteria table developed by S1 (30/11) instrumental in deciding the winning bidder? I can see that you and LA2 were involved in providing critical responses under this table.
6. What party was responsible for ultimately determining acceptance of the outstanding negotiation issues under this table?
7. What is the function of the SPA draft guidelines issued by S1 on 6 December?

Stage Three

1. Stage Three involves the largest number of different contracts and other documents designed to facilitate the legal sale of the Company and the transfer of shares from the sellers to the purchaser. Most of these documents are procedural in operation and you, as lead counsel don't seem to be involved so much… would you agree?
2. There is the involvement of other lawyers who specialize in competition and tax issues? Is this usual practice within the law firm? How is this shared work facilitated between these different lawyers?
3. Do these lawyers only work on these specialized issues for different deals or do they participate in the completion of a particular deal as well?
4. Can you explain the legal issues for tax?
5. Can you explain the legal issues for competition?
6. The Competition Notice Form is first distributed in Turkish and then in English – why? What is the purpose of this document?
7. Who does the translation in the office? Would you say this is a key professional skill for lawyers within the firm? Are these skills developed under supervision in the law firm?
8. Can you also explain what is involved in meetings with the Competition Board?
9. The most 'negotiated' document involving both commercial and legal parties seems to be the Escrow agreement issued by FA1 – why? What is the purpose of this contract?

Final

1. I know we have talked about this before but LF2 seems to be in charge of the project and you, as lead lawyer, only become involved at certain times for certain issues or purposes. In some ways your role seems *ceremonial* in representing the law firm.
2. For instance, you are the lawyer to distribute the SPA but then are not involved so much in the negotiation of its terms. Furthermore, there are a couple of examples when you resend an email request (sent earlier by LF2) in order to get some response/action from the other participants.

APPENDIX C

Excerpt of transcript of Round 3 interview questions

I: I can see in the data that LF2 has a very central role in co-ordinating communication between all the parties?

LF1: Yes.

I: And how is this role delegated and managed? What ... why did LF2 adopt that very central role?

LF1: I think it's more a psychological issue because the clients wants to see a qualified person, so they usually ... the clients usually don't want to deal with the juniors although they may be very talented and they may be doing things very good having a more senior lawyer in the picture, I mean helps.

LF1: But why was LF2 ... why not LA2 or LA3 or why didn't financial advisors take that? She seemed to be there in the middle trying to ...

LF1: Oh, no, that's fine. One of the reasons is that sometimes you don't want to lose control ...

I: Who?

LF1: I mean as the firm, so this is what we do from time to time ... I mean it's related to the strategy of course of negotiation, so sometimes you may wish to take the lead and the control over the process so that is why ... I mean if you engage someone else or if you let them do it then you may lose the control at the end of the day.

I: And what's the problem with losing control?

LF1: It depends. It depends.

(Third party interruption, not related to the interview)

I: I think we were talking about losing that ...

LF1: Yeah, control ...

I: ... control in the deal.

LF1: ... and what does it mean. It means ... I mean you on the timing, on the negotiation, power, I mean if ...

I: Well, why don't you want to lose ... why ... with so many parties involved why don't you want to lose control?

LF1: Because it is difficult then if the person who is dealing with that is not capable of dealing with that then it will take hell of a time, right, dealing with so many people at the same time and if I were to say something the other is something else so it will be impossible to have things very quick.

I: I know what you mean, yeah, because there are times when people are trying to ... and LF2's there trying to manage it or negotiate the condition and that reflects bad on the law firm too in terms of reputation if you lose control do you think?

LF1: No, I don't think ... I mean it's not like the power of negotiation but still ...

I: The process.

LF1: ... in respect of the reputation people may think that you are more capable of handling people and having ... this gives them ... this may give your client a comfort in a sense, so my lawyer she knows what she's doing, so that feeling, support it.

I: In terms of managing people as well, knowing what to do at the right time.

LF1: Yes. And LF2, as I said, I mean LF2 was ... she is very good at negotiation, she's ... and she knows mainly where to stop, when to say things so ... and also we have this work share between us and we had this in so many deals together with her, because we were like replacements to each other when one of us was not available so that is the policy. I mean just not to create any interruption in the service you have two people who can manage the file at the same level and you cannot do that with a junior lawyers so that's why we had shared this role together with LF2, she was the right person in the firm.

I: Yeah, and we've talked about the senior partner not having to be involved every step ...

LF1: Yes.

I: ... of ... and we talked about this role, this, what did we call it, you play a part when it's really critical so there's no need for your ... for you to be involved as much ...

LF1: Yes.

I: ... is there. It's interesting because you were working with other lawyers such as LA1, LA2 and LA3?

LF1: Yeah.

I: And there were a number of times when you disagreed over legal advice.

LF1: Yes.

I: For example at the beginning there was advice about the individual sellers for example, so how is that managed with another law firm?

LF1: Well it was quite difficult because in a sense you are also parties, although you may have a certain benefit in the transaction in the same line at the same time one's benefit may not fit to the others as com ... I mean individual sellers versus the main legal shareholder so that is important. Of course she was seeing things only I think that was the main issue; she was only acting like the lawyers to the individuals whereby we were trying to be the lawyers to the sellers including the individual lawyers. So from time to time I remember that it took a long time to convince her and she has of course a different way of doing things, she's from another firm and she's personally also ... it was problematic for us but I think it was all managed and safe and sound. We did the transaction.

APPENDIX D

Covering letter of advice dated 22 September 2006

Dear All,

Please find herein below our comments regarding the draft SPA before the meeting.

1) Article 1.16: Tax and Taxes are defined as the obligations of the Companies. However, it is not clear whether the definition includes the taxes which arisen from the SPA and the selling transaction or not.

2) Article 2.3. : It would be appropriate to indicate the total purchase price as "net purchase price" OR " …….Euros excluding VAT and taxes" . There should be a short explanation regarding the process took place before the SPA during the determination of the selling price. For example, submission of IM, Virtual Data Room and Due Diligence process should be included in this explanation. This short paragraph could take place in this article or as an introduction part at the beginning of the SPA.

3) Article 2.4.: Our suggestion regarding to this Article is: "The Total Purchase Price shall be paid by the Purchaser according to the share ratios of the Sellers as listed in Schedule 1.23. in cash [by transfer from the Purchaser's bank account to the bank accounts of the Sellers as shown in Schedule 2.4.] on closing.

4) Article 2.5.: It would be more convenient to require two separate guarantee letters for Lafarge Sellers and Individual Sellers.

5) Proposed Article 2.6.: "Within seven (7) business days after execution date of this Agreement: The Purchaser OR the Parties shall file an application to the Rekabet Kurumu (anti-trust authority) in Turkey as described in Section 4.1.(a) below seeking a clearance in respect of the transaction contemplated by this Agreement with the application form to be approved by the Sellers within three (3) days upon receipt." It would be more accurate and practical if we state the exact periods of each process before and after the closing.

6) Article 4.1. We propose to add this sentence at the beginning of Article 4.1. "The Parties acknowledge that the transfer of title to the Shares and the payment of the Purchase Price as of the Closing Date are conditioned upon the fulfillment of the following conditions precedent ("Conditions Precedent")."

7) Article 4.2.2: We propose to change the article as in the following: "In the event that Closing is not completed on the date as determined in Section 5.1. following the execution of this Agreement and due to the reasons attributable to the Purchaser, the Sellers have the right to unilaterally terminate this Agreement, record the Performance Bond as income and demand compensation for all their losses from the Purchaser."

8) Article 5: The liabilities of the Parties should be stated separately in the SPA. And the exact dates and periods of each process should be stated in the SPA.

9) Article 5.2.: The kind of the shares to be transferred (e.g. registered or bearer shares) should be stated. Because, according to the Turkish Commercial Code the shares are subjected to different legal process during their transfer.

10) Article 6: It would be appropriate to separate this section for the BoD members and the shareholders. Thus, they carry different liabilities according to the Turkish Commercial Code. If it is not possible, a side agreement could be made between the sellers to protect the rights of the sellers who are not in the management of the company.

11) Article 6.7.(a) : The following sentence could be added to the end of the paragraph "… according to the Uniform Chart of Account (Tek Duzen Hesap Plani) and the Turkish Tax Regulations."

Best Regards,
LA3

APPENDIX E
The Minutes of Closing

The capitalized words hereof shall have the same meaning given to them under the Share Purchase Agreement dated December 14, 2006 ("Agreement").

The Parties held a meeting on _____ 2007 at 10.00 local time at [LF offices in Istanbul], in order to proceed with the Closing pursuant to the Agreement.

II. Pursuant to Article 2.3.1. of the Agreement, the independently audited Consolidated Balance Sheet of the Company for 31 December 2006 which has been prepared in accordance with Turkish generally accepted accounting principles and Turkish tax and commerce legislation ("Compnay Closing Balance Sheet") has been delivered to the Purchaser.

III. Pursuant to Article 2.3.4. of the Agreement, the adjustment to the Initial Purchase Price and [pursuant to Article 2.5 the Second Purchase Price Adjustment] had been agreed and made.

IV. Pursuant to Article 5.2.1. (a) of the Agreement, it has been determined that the Purchaser's Closing Obligations have been satisfied as below:

a) Duly notarized copy of the resolution of _____ board of the Purchaser approving the purchase of COMPANY Shares and Seller 2 Shares, authorizing _____ to sign**,** deliver and perform the Agreement, all other relevant agreements and documents has been delivered to the Sellers (*to be performed by the Purchaser*).

b) A copy of the irrevocable instruction to the Purchaser's bank for the transfer of the amounts as referred to in Annex _____ to the bank accounts of the Sellers has been duly delivered to _____, the representative of the LF Law Firm on behalf of the Sellers.

c) A copy of the receipt evidencing fulfillment [sic] of the stamp duty payment obligation under the Agreement has been delivered to the Sellers by the Purchaser (*to be performed by the Purchaser*).

V. Pursuant to Article 5.2.1.(b) of the Agreement, it has been determined that the Sellers' obligations at Closing have been satisfied as below:

a) COMPANY shares have been transferred to the Purchaser free from all Encumbrances and the share certificates representing _____ % of Seller 1 shares are duly endorsed and delivered to the Purchaser.

b) Duly notarized copies of the board of directors [sic] resolutions of the Lafarge Sellers approving the sale of their COMPANY Shares have been delivered to the Purchaser (*to be performed by Seller 1*).

c) COMPANY Board of Directors resolved for approving the sale and transfer of the COMPANY Shares to the Purchaser and registration of the Purchaser as the owner of the COMPANY Shares in the share book of COMPANY (to be performed by Seller 1 and Seller 2).

d) Resignation letters of members of the COMPANY Board of Directors have been delivered to the Purchaser and the Board resolutions regarding resignation and appointment of new directors and cancellation of the signature authorities of the resigned members have been duly taken with due quorums and delivered to the Purchaser (to be performed by Seller 1 and Seller 2).

e) Resignation letters of the members of the board of statutory auditors of COMPANY have been delivered to the Purchaser and the resolutions regarding appointment of new statutory auditors have been duly taken with due quorums and delivered to the Purchaser (to be performed by Seller 1 and Seller 2).

f) [The Purchaser has not yet requested for resignation of Subsidiaries board members or auditors. If it does 5 days prior to Closing then the above items will include such Subsidiaries.]

VI. Pursuant to Article 5.2.2. of the Agreement, the Escrow Agreement between the Parties has been executed.

APPENDIX F

Macquarie University Ethics Review Committee (Human Research) final approval

OFFICE OF THE DEPUTY VICE-CHANCELLOR (RESEARCH)
Research Office
CSC East Research HUB, Level 3

MACQUARIE University
SYDNEY·AUSTRALIA

6 March 2017

Dr Alan Jones
Department of Linguistics
Faculty of Human Sciences
Macquarie University NSW 2109

Reference: 5201300322

Dear Dr Jones,

FINAL APPROVAL

Title of project: Analysis of authentic legal negotiatioin discourse in a cross-cultural context: Implications for ELP pedagogy

Thank you for your recent correspondence. Your response has addressed the issues raised by the Faculty of Human Sciences Human Research Ethics Sub-Committee and approval has been granted, effective ***14th June 2013.*** This email constitutes ethical approval only.

This research meets the requirements of the National Statement on Ethical Conduct in Human Research (2007). The National Statement is available at the following web site:

http://www.nhmrc.gov.au/_files_nhmrc/publications/attachments/e72.pdf.

The following personnel are authorised to conduct this research:

Dr Alan Jones
Mr Anthony Richard Townley
Prof Chris Candlin

Please note the following standard requirements of approval:

1. The approval of this project is conditional upon your continuing compliance with the National Statement on Ethical Conduct in Human Research (2007).

2. Approval will be for a period of five (5) years subject to the provision of annual reports.

Progress Report 1 Due: 14th June 2014
Progress Report 2 Due: 14th June 2015
Progress Report 3 Due: 14th June 2016
Progress Report 4 Due: 14th June 2017
Final Report Due: 14th June 2018

NB. If you complete the work earlier than you had planned you must submit a Final Report as soon as the work is completed. If the project has been discontinued or not commenced for any reason, you are also required to submit a Final Report for the project.

Progress reports and Final Reports are available at the following website:

http://www.research.mq.edu.au/current_research_staff/human_research_ethics/application_resources

Macquarie University
NSW 2109 Australia

T: +61 2 9850 7987
www.research.mq.edu.au

ABN 90 952 801 237 | CRICOS Provider 00002J

OFFICE OF THE DEPUTY VICE-CHANCELLOR (RESEARCH)
Research Office
C5C East Research HUB, Level 3

MACQUARIE University
SYDNEY·AUSTRALIA

3. If the project has run for more than five (5) years you cannot renew approval for the project. You will need to complete and submit a Final Report and submit a new application for the project. (The five year limit on renewal of approvals allows the Committee to fully re-review research in an environment where legislation, guidelines and requirements are continually changing, for example, new child protection and privacy laws).

4. All amendments to the project must be reviewed and approved by the Committee before implementation. Please complete and submit a Request for Amendment Form available at the following website:

http://www.research.mq.edu.au/current_research_staff/human_research_ethics/managing_approved_research_projects

5. Please notify the Committee immediately in the event of any adverse effects on participants or of any unforeseen events that affect the continued ethical acceptability of the project.

6. At all times you are responsible for the ethical conduct of your research in accordance with the guidelines established by the University. This information is available at the following websites:

http://www.mq.edu.au/policy

http://www.research.mq.edu.au/current_research_staff/human_research_ethics/managing_approved_research_projects

If you will be applying for or have applied for internal or external funding for the above project it is your responsibility to provide Macquarie University's Research Grants Officer with a copy of this letter as soon as possible. The Research Grants Officer will not inform external funding agencies that you have final approval for your project and funds will not be released until the Research Grants Officer has received a copy of this final approval letter.

Yours sincerely,

Dr Peter Roger
Chair
Faculty of Human Sciences Ethics Review Sub-Committee
Human Research Ethics Committee