Re-imagining retail and CPG relationships as an eco-system of contracts

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"Everything we had previously talked about as an organization came to the forefront: digitization, agility, resilience, and sustainability. What the pandemic did for organizations and for Unilever is to accelerate that future."

Chief Human Resources Officer, Unilever

Introduction: Re-thinking supply chains

Facing an unparalleled challenge during the pandemic, individuals and organizations in retail, food and CPG rose to the occasion, adapting and adjusting at a remarkable pace.

In a series of roundtables and interviews conducted in the first half of 2021, supply chain and legal executives, including retail, food and CPG leaders, shared their experiences of managing through the pandemic. They told us that the pace of change shows no sign of slowing, that the need to re-think operating models and supply relationships remains urgent – and that technology will continue to lie at the heart of these new models.

More than 30 organizations were represented, almost all with annual sales of $15 billion plus and most with global operations. Technology – both good and bad – was an overwhelming theme. Accelerating and expanding digitization is a massive priority, streamlining data flows, supporting analytics, empowering decisions.

Contracts – the invisible thread that ties organizations together – also featured prominently. For some, escaping obligations or cancelling agreements was essential to survival. For others, there was a pressing need to enter into new agreements or amend existing contracts. For many, establishing new or expanded relationships became even more urgent. And, those who had digitized their contracts and had access to contract intelligence were more able to take the swift action needed to pivot their contractual relationships and respond to this fluid landscape.

This report examines the drivers and the journey to this new and more adaptive future. In this report, we describe the actions being taken, with particular focus on how 'intelligent contracting' can create an eco-system of data and intelligence for supply chain operations and management for CPG and retail organizations. These retail and CPG organizations described immediate steps, like contract digitization, and some described more advanced technologies, to create this automated, data-rich, and efficient eco-system. Drawing on the words of the Stanford Center for Legal Informatics, "imagine operating a system based on every order coming in and being fulfilled via an emailed PDF form in natural language, with manual back-up for payment processing, exception approvals and tracking. The computable purchase contract is the backbone on which other advances can be deployed".

While major retail platforms such as Amazon and Alibaba may be at the forefront of this integrated commerce, others throughout the consumer sector are fast developing capabilities and aligning systems to compete. But key questions and critical decisions remain – and many are answered better and faster by organizations that think in terms of integrated contract intelligence – a renewed approach to contracting that re-imagines CPG and retail as ecosystems where contracts are placed at the center of these global organizations and connect critical information. 'Intelligent contracting' is enabling dynamic review and approval, proactive performance monitoring and aggregation of data to support rapid response to risks and opportunities.

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Is the supply chain about to fall over?

The COVID-19 pandemic had a dramatic impact on the retail, food and CPG sectors. It exposed risks, yet also revealed hidden capabilities. It created financial headaches, yet for some generated windfalls. It accelerated trends, compressing changes that might normally take 7 to 10 years into a matter of months.[1]

One universal effect was a surge in Board-level interest in supply chains – an appreciation of their criticality to business success, together with a sudden realization about how little is really known or understood about their health and resilience.

Our interviewees told us that supply relationships became stronger and more collaborative, especially in the food and consumer goods sectors, as in most cases organizations worked together to overcome problems and disruptions caused by the pandemic. This sense of shared interest is supported by a report from October 2020, where 92% of grocery/CPG retailers and 85% of suppliers said that collaboration had improved.[2]

There were some notable and high-profile exceptions to this, such as large-scale claims of Force Majeure regarding leases in the fast-food industry,[3] and of repudiation of contractual norms and obligations in the fashion sector.[4]

Unfortunately, many organizations lacked the technology that would give rapid access to key data, to identify rights and obligations or to better anticipate and respond to supply risks. Some interviewees acknowledged that even when the impacted contracts could be identified, the contract language provided little guidance for these organizations because the terms and conditions embedded in such contracts were never designed to deal with such dramatic events and levels of uncertainty.

When emergence is complete, many old challenges and opportunities will return. Yet commercial frameworks will not be the same. With agility and adaptability paramount to success, businesses will depend on the quality of intelligence, insight and expertise. This report captures the challenge and highlights how the leaders in each sector are preparing for their future – including the role that contracts and contract technology must play in an environment that demands increased control, expanded visibility, faster innovation and stronger relationships.

Interview feedbacks

Relationships matter – regular meetings came to the front of the queue and transactional behavior went to the back.

Without guidance from contracts, we were forced into unplanned action.

To survive and ultimately thrive, most consumer companies will want to rethink their supply chain operating models to become more resilient, responsive, and agile.[5]

COVID-19 accelerated intelligent contracting trends, compressing changes from years to months.

1. Sanford Stein, Founder, Retail Speak.

2. Precima, *Retailer-Supplier Collaboration: It's Time to Step up the Game*, a study of 210 retailers and suppliers from grocery/FMCG/CPG, October 2020.

3. Holland & Knight, *Real Issues Facing Retail Landlords in Light of COVID-19*, April 2020.

4. NC State University, *Catastrophic Impacts of COVID-19 in Bangladesh Apparel Supply Chain*, May 2020.

5. McKinsey, *Can your supply chain deliver what your consumer wants?* a study of supply chain operating models in the retail and food sector, April 2021.

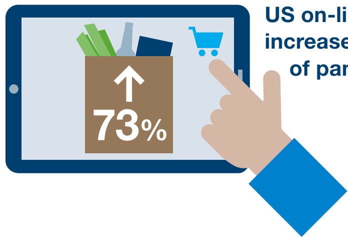
Supply chains and contracts for retail and CPG

The pandemic has been a lesson in agility. For all those that we interviewed, the nature and level of supply and demand fluctuated wildly, placing unprecedented pressures on the supply chain. While some sectors faced near-collapse, others surged – and often required rapid redeployment of resources. At Unilever, for example, thousands of staff shifted from units such as Food Solutions to growth areas, such as sanitizers.

As an example of the volatility, in the United States, on-line grocery revenues increased by 72.7%,[6] a surge mirrored in most other advanced economies. This placed tremendous pressure on the existing models for distribution, logistics and warehousing, requiring major adjustments to existing contracts and the formation of new agreements. One example is the heightened need for cold storage facilities to support food distribution, where current networks and buildings are often outdated.[7] As a result, there is increased consolidation and growing investment in this field, yet until new facilities become available, contracts are becoming harder to negotiate and prices are rising.

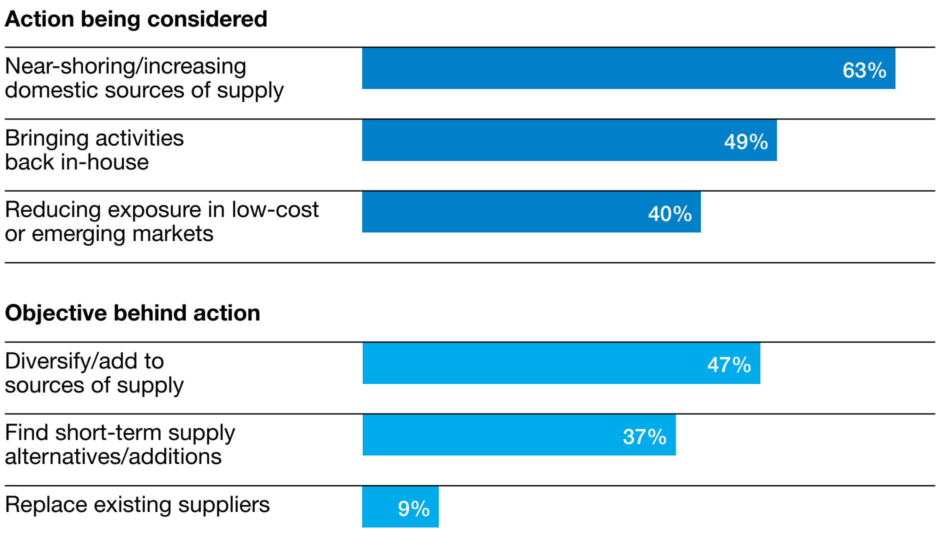
Early in the pandemic, there were early forecasts of mass disruption and change within supply chains. As the chart, right, shows, back in April and May 2020, researchers (including World Commerce & Contracting) were forecasting large-scale shifts through on-shoring, near-shoring or identifying alternative sources of supply. These anticipated changes would have proven massively disruptive to global supply chains and were clearly unachievable on anything near this scale.

By the time we concluded our interviews in early 2021, many participants felt that their organizations weathered the impending supply chain storm, and went so far as to share their optimism that these massive changes were unfounded. But as evidence of the continued volatility of the market, only just a few weeks after the interviews were completed, organizations were once again experiencing supply distortions and shortages. The media once again highlighted how global shortages of many goods – from consumer electronics to lumber to clothing – reflected the disruption of the pandemic combined with companies limiting their inventories over decades.[8] These ongoing shortages illustrate just how fragile the industry has become – and just how important it is to have effective control of contracts.



US on-line grocery revenues increased by nearly 73% – an example of pandemic induced volatility.

Proportion re-evaluating sourcing strategies (2020)



Source: WorldCC report *Emergence: Commerce & Contracting post-COVID-19*, May 2020

6. Source: IBISWorld, 2020.

7. Colliers, *State of the Food Industry Report*, 2021.

8. The New York Times, *How The World Ran Out of Everything*, June 2021.

Supply chains and contracts for retail and CPG *(continued)*

The need for speed extends into contracting and legal processes. The quote, right, came from one of our executive roundtables in April 2021, where representatives from companies such as Kraft and Mondelez Global discussed the challenges created by current contracting process and practice. An absence of ownership, lack of clear decision rights and inefficient data flows are issues that were highlighted by the pandemic and which need focus in order to streamline decision-making. As others have found, speed and adaptability are rapidly improved when contracts are digitized and accessible to others around the business through a single contracting tool. Approval processes are streamlined or reimagined when cycles, aided by technology, no longer need to be sequential.

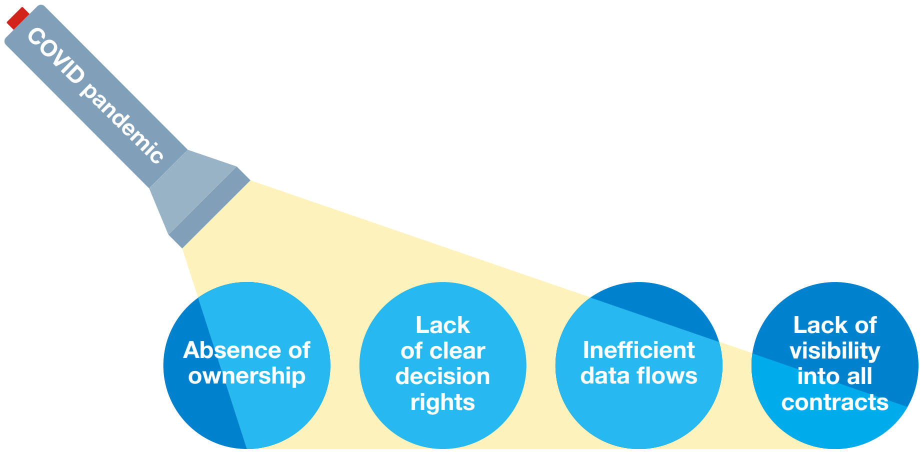
Some executives acknowledged that agility and adaptability exercised during the unprecedented pandemic was achieved through the strength of established relationships. For instance, Procter & Gamble, with almost 70,000 suppliers, did not record any instances of Force Majeure.

However, others were not so fortunate and were forced to address uncertainty and contract issues, like Force Majeure, as best they could. For instance, contract manufacturing, which experienced labor disruptions and shortages of key components like resins for plastic production, experienced a high volume of Force Majeure claims. Rather than moving with agility to address these issues, time and other resources were spent manually identifying impacted contracts and aggregating data across portfolios of contracts; this resulted in delay of decision making and responding to the changing landscape.

A common theme is that remedial actions often required organizations to work around their contracts, either because they had not envisaged such a disruptive event or because they were too difficult to access and search. These factors, together with the need to capture new or renegotiated terms, highlighted the importance of a robust, easily searched repository and the benefit to be gained from rapid portfolio analysis. Hence, the urgency of digitizing contracting has gathered pace.

Interview feedback

We must accelerate decision making and escape our 'approval culture'.



The COVID-19 pandemic highlighted a number of issues.

Data-driven simplification

The need for more agile and adaptive capabilities accelerated the digitization of processes – it also led to increased understanding of the sources of complexity and delay. Therefore, our interviews with both manufacturers (for example, Danone) and retailers (for example, the Co-op Group) revealed an array of focus areas, which included initiatives such as reducing the number of stock keeping units, re-thinking inventory management, altering distribution frequency and pallet sizes, in addition to the 'bigger thinking' on diversifying supply chains, increasing visibility and digitizing process and supplier interactions.

The critical simplification issue for most is the timeliness, accuracy of and ease of access to data, to support improved planning and analysis.

Interview feedback

The contract parties should be agreeing an operational process, a shared governance model.

The data from contracts and contract performance, at both transactional and portfolio level, is key to enabling change.

All sectors of the industry face on-going tensions in supply and demand, with suppliers wanting accurate long-term commitments and customers wanting flexibility and rapid response.

There are critical areas for continuing improvement and simplification:

- Dynamic insight to service levels
- The elimination of waste
- The ability to undertake in-depth analytics of performance across the entire contract lifecycle
- Challenges to the established 'just-in-time' supply models.

Organizations that have digitized their contracts, integrated their systems, use advanced tools like artificial intelligence, and ultimately simplified their processes are at a strategic advantage to mine this critical data.

As an example, one $20 billion food retailer described their focus on digitization and its impacts. They explained how their supply management process previously involved data from 29 different systems. Over the last year, the number of interfaces required has been reduced to three. The insights provided by a more integrated data flow, together with the scale of workload reduction, is generating a monthly improvement to the bottom line of $102 million.

Transparency

While supply chains in many cases managed to adapt faster than was at first anticipated, this was often by luck rather than judgment. Unpredictable disruptions kept appearing – shortages of specific components, shortages of the right containers, shortages of drivers and warehouse staff. Recent events show that these problems and challenges remain unresolved, leaving supply chains exposed.

Hence supply chain visibility and transparency have become big topics and many again are turning to technology as the source of intelligence and control. Blockchain providers such as IBM Corporation reported an upturn in interest and use, in particular, during the pandemic for pre-vetting suppliers and supply provenance.

While transparency remains an immediate priority, these organizations also described challenges. However, as the example of Farmers Connect illustrates,[9] blockchain is a 'team sport'. It typically requires shared rules of engagement across a network of ecosystem of supply, so does not offer a rapid solution to the immediate issues of transparency.

Early in the pandemic there were shortages of components, the right containers, drivers and warehouse staff, but the real issue was unpredictability.

9. IBM News Room, *Farmer Connect Uses IBM Blockchain to Bridge the Gap Between Consumers and Smallholder Coffee Farmers*, January 2020.

Digitization

In an April 2021 report, McKinsey observed:

"Those that have navigated the [COVID-19] crisis better and withstood the initial economic shock generally were quick to adapt their operating models. But we find that most companies' supply chain operating models have evolved largely through inertia – a series of well-intended but isolated decisions – rather than through a deliberate, systematic process to determine whether the chosen model is right for the organization's needs. To survive and ultimately thrive, most consumer companies will want to rethink their supply-chain operating models to become more resilient, responsive, and agile."

Herein, for many, lies the problem – an urgent need to digitize processes, but often those processes are not 'fit for purpose' and must first be re-designed. Contracting is a clear example of this. By addressing its fragmentation through digitization, enterprises are able to create the organizational and data discipline needed to drive market performance. In many cases, this urgency is increasing. On top of this, many of those we interviewed face the challenge of growing market diversity and multiple channels, each requiring its own distinct operating model. For example, the shift from large stores to more local 'convenience retail', the growing need to co-habit with major platforms such as Amazon and the emergence of new service models like 'subscription groceries'.

Pricing models

In this more volatile and more fragmented market, pricing models and their adaptability (including through rebates and promotions) become even more critical. Leading retailers must respond to the growing segmentation of channels, while at the same time confronting the possibility of sudden surges in supply and demand. For some, there is also a growing threat from innovative start-up businesses, responding to changes in consumer expectations and values.

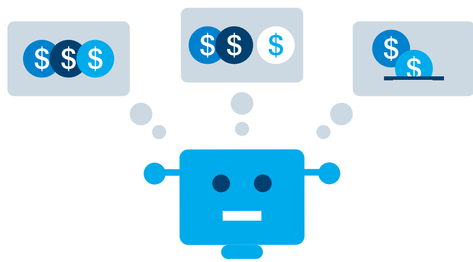
For instance, in the United States especially, grocery prices are surging, in part through higher costs (in particular labor and transport), but also due to reduced discounting. The CEO of Albertsons Companies, owner of more than 2,000 supermarkets, observed that elevated demand is translating to less need to undertake promotions.

But for those retailers and CPG companies that continue to use discounts, rebates and promotions, this process remains contractually complex, highly manual in its management and inefficient for partners.

For many in this volatile environment, targeted discounting and promotions have become both more important and more difficult to plan and manage.

The need for reliable and up-to-the-minute data is essential, both in terms of how pricing initiatives are performing, but also with regard to updates on supply, distribution or competitive actions. This again links to the speed and integrity of data flows and availability. Among those interviewed, several have deployed artificial intelligence systems to assist in both monitoring and predicting the impact of pricing actions. Others have turned to CLM, which has been integrated into POS and ERP systems, to better negotiate these discount, rebate and promotion programs. And on an advanced front, these systems accelerate the settlement process between the parties through the automatic triggering of revised terms when specific quotas or volumes have been met.

Artificial intelligence systems are starting to assist in both monitoring and predicting the impact of pricing actions.

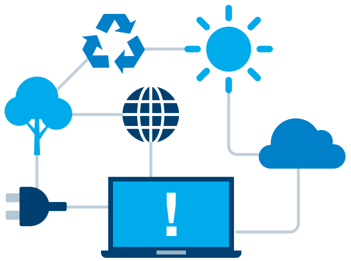


Environmental, Social and Governance

Not only are retailers having to manage accelerating changes on the supply side, they must also address consumers' rapidly changing expectations on the demand side. As an example, consider that younger generations are showing interest and need for sustainable fashion products:

"Nine in ten Generation Z consumers believe companies have a responsibility to address environmental and social issues." [10]

While this changing sentiment is growing, has the demands of responding to the disruption caused by the pandemic relegated Environmental, Social and Governance (ESG) principles to a back seat? The answers to this appear mixed. For example, in the United States, the drivers of consumer behavior continue to be price, quality and brand. While ESG is beginning to be a factor, its importance varies across categories – it is, for instance, much more important in areas like household cleaning products where consumers understand the benefits of eliminating toxic ingredients than it is in many others.



Gathering reliable ESG information isn't easy with fragmented systems and limited supply chain visibility.

Our interviews indicated that corporations consider it important to avoid negative publicity in this area and also to respond to those market segments where ESG principles have growing influence on consumer choice. Equally, there is growing concern over possible regulatory infringements and fines, made more complicated by inconsistent standards across geographies and within jurisdictions. For instance, supply chain professionals are closely following a new EU directive on Corporate Due Diligence and Corporate Accountability that would require companies to identify, address and remedy the ESG risks in their supply chains. It is therefore a major topic on the supply management agenda, with a recent report from the consultants EY highlighting that visibility into supply networks is the number one issue over the next 24 months.[11]

Much of that visibility will depend on contracts – both the terms and their process management – requiring systems that can deliver transparent data flows and support advanced analytics. Gathering reliable information and undertaking effective measurement is not easy with fragmented systems; integrating technology is key to addressing these weaknesses and according to one provider "Blockchain is becoming very popular in the food and drink industry as it helps to address ESG principles and consumer confidence through determining the provenance of ingredients, helping with recall if products are defective, connecting consumers with producers".

Interview feedback

Be commercial and compassionate.

In one of our interviews, an executive explained that being commercial does not mean you cannot also be compassionate. In his experience, rather than market demand, employee engagement and morale are often compelling factors that encourage ESG adoption by corporations. In our interviews, we encountered numerous examples of the motivating impact of 'purpose' and a sense of pride in corporate values. This increasingly extends to initiatives that offer direct support and investment in the supply chain – for example, the Co-op's Pioneer program or AB InBev's Smart Agriculture support offerings, both of which are generating greater wealth and quality through the supply chain, as well as increased employee engagement.

10. McKinsey, *The influence of 'woke' consumers on fashion*, February 2019.

11. EY, *COVID-19: Why real-time visibility is a game changer for supply chains*, June 2020.

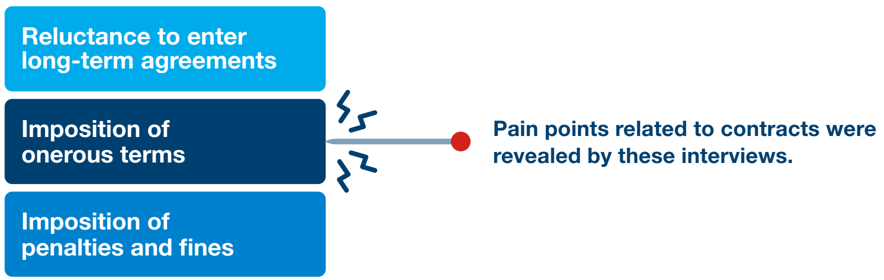
Contracts and contract lifecycle management

An interesting aspect of almost all our interviews is that organizations are making substantial changes to their business contracts – who they do business with, the terms within those agreements, the way that obligations and commitments are managed and controlled. Yet very few articulate these relationships as driven by contracts, in part because it remains difficult to extract consolidated data from static documents.

In our interviews, executives talk about change much more in terms of supply management and relationships. When they discuss digitization, they rarely appreciate that what they are digitizing is in most cases the flow of contract-related data and decision making. As previously highlighted, when the pandemic hit, organizations lacked contract accessibility and visibility; and once impacted contracts were discovered, these same professionals realized that the contract language was insufficient to flex to meet this unprecedented crisis.

Business conditions together with weaknesses in existing systems forced many organizations to work around the contract, amending and adjusting commitments and obligations in manual and mostly cooperative fashion. However, this mode of operations is not a sustainable approach and compliance, risk and opportunity management are pushing the need for better contracts and better contract management. This will only be achieved through upgraded technology, including contract lifecycle management, that addresses effective and consolidated data management.

As retail and CPG organizations undertake digital transformation initiatives, in order to solve their business challenges, leaders should appreciate the eco-system of contracts that make-up their businesses. Our interviews revealed pain points related to contracts: a reluctance to enter into long-term agreements, a tendency by more powerful players to impose onerous terms and to deploy technology to measure service levels and impose penalties and fines. On one hand, many leading retailers believe that their business relationships and processes have been left unscathed, but on the other hand they proceed to talk about how contractual elements in their supply chain have been adjusted – for example, distribution models, warehousing, shipping, promotions, etc.



And that, perhaps, explains McKinsey's observation that:

"To survive and ultimately thrive, most consumer companies will want to rethink their supply-chain operating models to become more resilient, responsive, and agile."

One way they can achieve this is by grasping the critical role of contract data management and the fact that different contracting models require – and are indicative of – different supply-chain operating models.

Conclusion

Contracts are the golden thread – not just within a transaction or relationship, but across interdependent transactions and relationships. Today, this point is frequently missed because the data from contracts is fragmented across multiple systems and contracts are not yet designed to act as operational tools.

Complexity and fragmentation mean that too few retail and CPG executives appreciate contracts as important business instruments. Yes, they celebrate when a contract is won and they seek protection from its terms when there is a dispute, but they have not fully grasped how contracts act as critical sources of business intelligence and value creation.

As the retail, food, and CPG sectors continue to wrestle with uncertain and volatile market conditions, a move to digital and 'computable contracts' represents an invaluable source of increased agility and adaptability. The right technologies can now enable leaders to increase control and transparency by re-imagining the business as an eco-system of contracts.

Call-to-actions

Supply chains within retail and CPG must become more agile, adaptive, and resilient. To achieve this, organizations need to develop operating models that are supported by appropriate forms of contract and relationship management systems, including contract lifecycle management technologies.

As this report has highlighted, integrated system capabilities must enable businesses to manage:

- **Variability of contracts within and between markets**
- **The need to adjust terms and relationships at increased speed to respond to threats and opportunities**
- **An evolving combination between technology and people to drive improved data management and analysis, combining control and creativity**
- **Integration of enterprise systems and their underlying data, including CLM and contract intelligence, and organizational design to empower and accelerate decision-making**
- **Changes to supply chain relationships based on changing consumer sentiment and ever-changing regulatory environment**
- **A shift from cost-based to value-based measurements of performance as articulated in contracts and the monitoring of contract outcomes.**

One CPG executive, speaking in the context of one of the world's largest companies, explained the future this way:

"Digitization has accelerated. Our immediate focus has been on better connection across existing systems – pricing, discounts, service levels. We understand the importance of true end-to-end contract management and smart contracts will soon become a component of that. For the future, this will allow supply relationships to concentrate on outcomes and to ensure that contract terms are continually adjusted to support the outcomes we need."

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World Commerce & Contracting is a not-for-profit association dedicated to helping its global members achieve high-performing and trusted trading relationships. With 70,000 members from over 20,000 companies across 180 countries worldwide, the association welcomes everyone with an interest in better contracting: business leaders, practitioners, experts and newcomers. It is independent, provocative and disciplined existing for its members, the contracting community and society at large.

About Icertis

With unmatched technology and category-defining innovation, Icertis pushes the boundaries of what's possible with contract lifecycle management (CLM). The AI-powered, analyst-validated Icertis Contract Intelligence (ICI) platform turns contracts from static documents into strategic advantage by structuring and connecting the critical contract information that defines how an organization runs. Today, the world's most iconic brands and disruptive innovators trust Icertis to fully realize the intent of their combined 7.5 million+ contracts worth more than $1 trillion, in 40+ languages and 90+ countries.

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