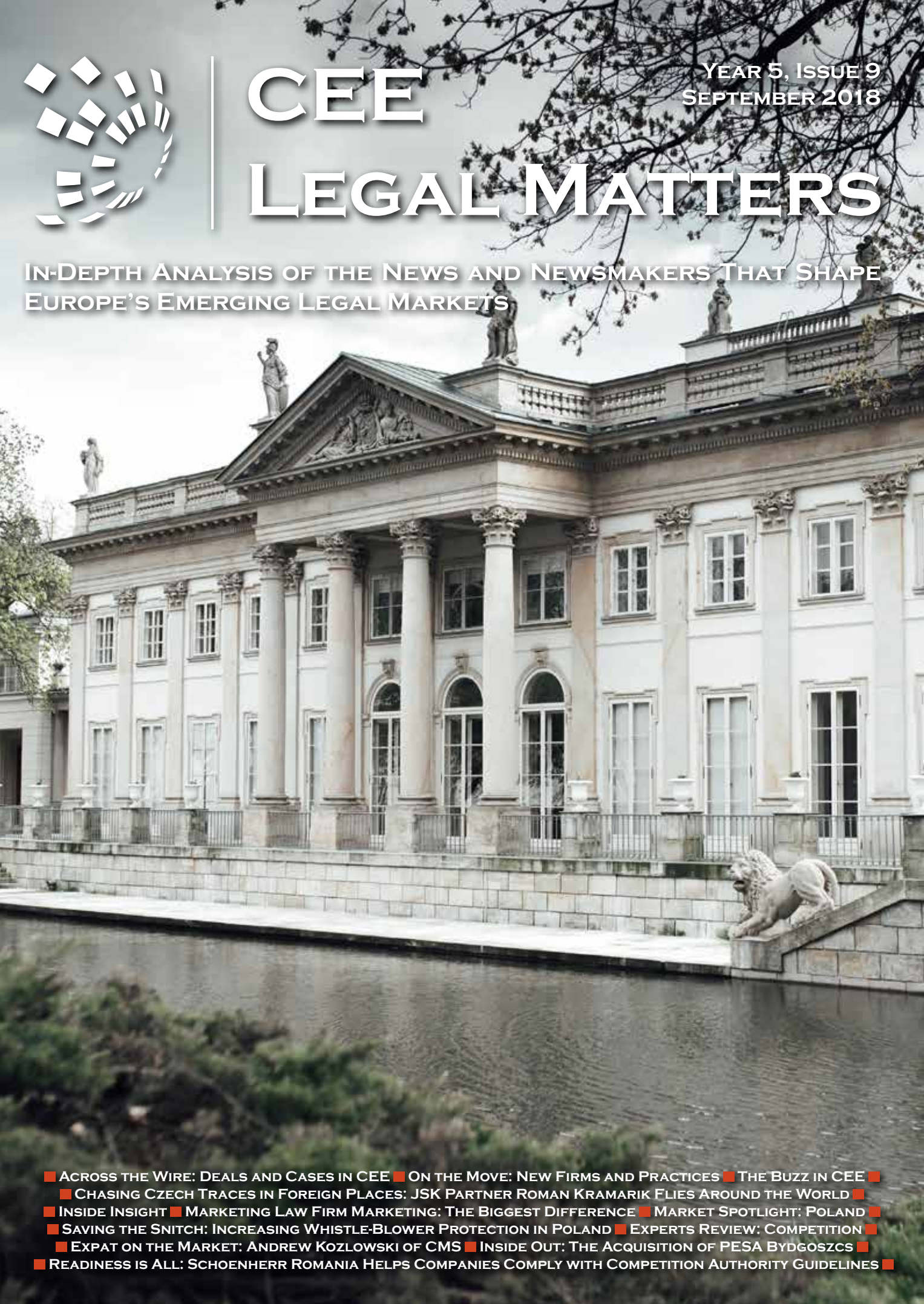

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CEE Legal Matters

In-Depth Analysis of the News and Newsmakers That Shape Europe's Emerging Legal Markets

A ground-breaking partner for an ever-changing market

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CEE LEGAL MATTERS

In-Depth Analysis of the News and Newsmakers That Shape Europe's Emerging Legal Markets

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If you like what you read in these pages (or even if you don't) we really do want to hear from you. Please send any comments, criticisms, questions, or ideas to us at:

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EDITORIAL: A SMALL SHARE OF THE WORLD

I am blessed to be a 50-50 co-owner in a business with a partner who, for all his quirks, is one of the less than 1% of this world's population who is capable of putting up with my ample set of idiosyncrasies. I say blessed – and I recognize that I am – because twice in this last week I had conversations with friends in other lines of work who own minority stakes in small- or mid-sized businesses that they are struggling to get out of. In the most unfortunate of the two scenarios, my friend's decision was prompted by his exclusion from any real decision-making as a minority shareholder and, now that his decision to exit has been made, he is facing real difficulties in agreeing with the other partners on an exit strategy (or even having the semblance of a semi-civilized conversation in the process of finding one).

These micro-level instances might seem like small problems to have. In fact, holding shares in a company that you are looking to sell quickly would not seem like a real challenge to many. Just in the last couple of weeks CEELM has reported on Blackstone's EUR 1 billion acquisition by a consortium of private equity funds it manages of a 60% stake in Luminor from Nordea bank AB and DNB Bank ASA – reportedly, the deal is the largest M&A transaction in Baltic history. In fact, a quick scan of our reporting over the last 12 months shows just under 50 deals that were either the largest transaction in that jurisdiction's history, or in that sector in the country, or the largest since 2007-2008. Selling off shares seems to be good business these days, in a climate of intense buyer appetite. Indeed, a recent article in the Financial Times pointed to a study according to which "globally, about half of private equity deals last year were priced at over 11 times the target company's earnings before interest, taxes, depreciation and amortization."

Of course, I am not comparing apples and oranges; I am not claiming straight parallels between the types of whale-sized deals we tend to cover on the CEELM website and the sale of a minority share in, say, a local pub. But you'd assume market conditions should be, at least broadly speaking, indicative of whether one is looking to exit at a loss or a gain from his/her initial investment into a company that's generally doing the same now as it did when it was bought into a few years ago.

The difference? The partners. Neither of the two friends I mentioned are looking to exit their shares as a result of an economic calculus. Heck, for them, even advice along the lines of "just sit on your shares until you find a real buyer" generates visceral negative reactions. Being tied to the wrong person(s) in a business and seeing your livelihood tied, at least in part, to decisions you have no control over, and to someone you can't seem to have a functioning working relationship with is probably one of the more toxic working situations out there – even more so than having a job you hate, or working for a manager you loathe, as in both those instances it is easier, generally, to "exit" without serious financial repercussions.

At CEE Legal Matters we both write about and work in a world of partnerships in the legal sector, and I do not intend to offer clichéd advice along the lines of "choose your partner carefully" (nor would I really be able to offer advice on how to identify the right partners – I was lucky enough more or less to stumble upon mine). But the conversations I had recently with the two friends trying to exit their circumstances made me realize that it can be all too easy not to appreciate those partners that we have a healthy working relationship with (negative observation bias, I guess) … and a mistake not, occasionally, to acknowledge our good fortune out loud. So allow me to take this opportunity to take the literary walk up to my business partner and simply say: "Thanks for being a good partner, partner." I recommend you do the same.

Radu Cotarcea

Erratum: *In the article on the growth of the Act Legal alliance that appeared in the August 2018 issue of the CEE Legal Matters magazine the the alliance was incorrectly credited with having 13 members. In fact, Act Legal currently has 8 member law firms, with 13 offices in total. In addition, we misidentified Sven Tischendorf as working for "Frankfurt's act AC Tischendorf Rechtsanwalte." The firm has informed us that the proper formulation is "act legal Germany, AC Tischendorf Rechtsanwalte." We regret the errors.*

GUEST EDITORIAL: THE FUTURE IS NOW

Ever since "legal tech" became a thing, lawyers have been dreadfully anticipating the time when technology will disrupt the legal profession. The media has been fuelling lawyer worries, and attention-grabbing headlines like "*The robot lawyers are here – and they are winning*" or "*Lawyers could be replaced by artificial intelligence*" have kept lawyers awake at night. Artificial intelligence (AI) and machine learning in law has become the talk of the town, and for good reason, as the use of legal technology helps lawyers to get things done more efficiently and cost-effectively. Thus, it does not come as a surprise that legal tech start-ups are becoming the Starbucks of the legal profession – they are popping up on every corner. It is estimated that there are over 1000 legal tech start-ups worldwide and that the legal tech industry is worth USD 15.9 billion globally.

There is no doubt that legal tech is here to stay. Is there a reason for lawyers to be concerned that legal tech will entirely automate the legal profession in the future? I don't think so. The future is now. Lawyers face increasing pressure from clients to deliver more value at a reduced cost, and legal tech is the key ingredient of the solution to this problem. Many law firms are already using legal tech to drive efficiencies and productivity by automating routine tasks on due diligence, legal research, transaction management, and document management. Legal tech is indeed transforming the legal profession. However, it does not pose a threat to law firms that are embracing technology to provide technology-assisted services to become more efficient and effective. They will be the preferred choice of Increasingly sophisticated clients who will appreciate the efficiency gains of technology-enhanced services. In contrast, law firms that are slow to adopt legal tech in their organizations will most likely face a competitive disadvantage in the long run as they will be unable to provide services as cost-effectively as those law firms which have embraced legal tech.

The above is also true for law firms operating in CEE. The CEE legal market is becoming increasingly competitive due to the influx of new competitors and increased price competition. However, at the same time, conventional CEE law firms are generally inefficient in providing services. Although international law firms develop and use legal tech tools in more developed markets, it appears that the implementation of such tools is lagging in their CEE offices. Language barriers (because AI and machine learnings are primarily developed for use in English-speaking jurisdictions), the size of the markets, and local lawyers' reluctance to use legal tech tools when providing legal advice seem to be the main reasons for this situation. The reluctance of lawyers to embrace legal tech tools when providing legal services (to be fair, lawyers seem to be curious about the prospects) and the general resistance of conventional CEE law firms to innovate proactively has already opened room for alternative service providers to enter the legal market.

Clients want conventional law firms to be more tech-savvy and to be able to provide cross-border advice on the basis of alternative fee arrangements. It seems that the Big Four have recognized this and are muscling in on CEE's legal markets by embracing technology to provide cost-effective legal services by offering packages that bundle accounting, audit, and legal services for a cut cost. They are using technology to gain a competitive advantage over conventional CEE law firms, and it seems that they are winning. Now, this is a genuine reason for CEE lawyers to be concerned about the future of the legal profession. The Big Four have the financial power, motivation, and presence to make an impact on the CEE legal market. To compete with the Big Four, conventional CEE law firms will have to build a culture that embraces the use of legal tech to be able to deliver faster, better, and cheaper legal services to clients.

Conventional CEE law firms and legal departments who adopt legal technology will be well-positioned to deliver services to clients more efficiently and effectively. The improvement of AI will likely decrease the need for human intervention on routine legal work in the future. However, lawyers' perspective, creative-thinking, and judgment on complex legal work cannot be replicated by technology. Therefore, lawyers will continue to do their job quicker, more accurately, and better by using technology.

Gjorgji Georgievski, Managing Partner, ODI Law Macedonia

Readiness is All:
Schoenherr Romania Helps Companies Comply with Competition Authority Guidelines (p. 28)

Saving the Snitch:

Increasing Whistle-Blower Protection in Poland (p. 35)

Experts Review:

CEE Experts Review Round-up on Competition/Antitrust (p. 48)

The Lighter Side:

Chasing Czech Traces in Foreign Places (p. 64)

ACROSS THE WIRE: FEATURED DEALS

Sarhegyi and Partners Advise on MKB Bank NPL Portfolio Sale

Sarhegyi and Partners advised MKK Zrt. on the acquisition of a non-performing retail mortgage loan portfolio, secured mostly by residential mortgages, from MKB Bank. The face value exceeded EUR 300 million.

The transaction consisted of a two-phase auction sale bidding process organized among international and Hungarian institutional players on the NPL market, including banks, investment banks, and loan management firms.

HBK Partners advised MKB Bank.

SÁRHEGYI & TÁRSAI
ügyvédi iroda

Avellum Advises EBRD on Senior Secured Loan to Kyiv Cardboard and Paper Mill

Avellum acted as Ukrainian legal counsel to the EBRD in connection with a senior secured loan of up to EUR 10 million, made with the option to increase the loan up to EUR 25 million, to Private Joint-Stock Company Kyiv Cardboard and Paper Mill.

According to Avellum, the loan will be partially financed by the Global Environment Facility and will be used by KCPM to boost energy efficiency and reduce CO2 emissions. The project will be one of the first project financing deals to comply with Industrial Emissions Directive 2010/75/EU, Integrated Pollution Prevention and Control. It will essentially create the first production cycle in the country that implements the EU principles of using fewer resources and increases energy efficiency. Overall, the project will reduce KCMP's annual CO2 emissions by up to 11,000 tonnes.

KCPM is part of the Austrian Pulp Mill Holding. In terms of

total output, the facility is responsible for approximately 30% of all paper products manufactured in Ukraine.

The Avellum team was led by Senior Partner Glib Bondar and included Counsel Maria Tsabal and Associates Orest Franchuk and Anna Mykhalova.

AVELLUM
INTERNATIONALLY UKRAINIAN

JPM Advises VTB Bank on Sale of Business in Serbia

Jankovic Popovic Mitic advised VTB Bank on the sale of 100% of its stake in VTB Banka a.d. Beograd to AZRS Invest doo Beograd.

VTB has been operating in the Serbian market since 2008 and owns branch offices in Belgrade and Novi Sad.

PNSA Advises on Dedeman Acquisition of Bucharest Office Project from Forte Partners

Popovici Nitu Stoica & Asociatii advised Dedeman on its acquisition of The Bridge, a new office project in Bucharest offering approximately 80,000 square meters of leasable area, from Forte Partners.

Dedeman was fouded by entrepreneurs Dragos and Adrian Paval, and PNSA describes it as "the biggest Romanian entrepreneurial company, with a turnover above EUR 1 billion."

The seller was advised by PeliFilip.

Wolf Theiss Advises AEW on Sale of Warsaw's Atrium Tower

Wolf Theiss advised AEW on the sale of the Atrium Tower office building in downtown Warsaw to the Vienna Insurance Group.

"I'm proud that our firm could play a role in the sale of this building, which contributed so much to Warsaw's emergence as a business and financial hub during the past two decades. This deal shows that, thanks to its central location, elegant design and quality workmanship, Atrium Tower remains attractive to tenants and investors two decades after its completion."

– Tomasz Stasiak, Partner, Wolf Theiss

The Atrium Tower, which was completed in 1998, is part of the Atrium complex in Warsaw's financial district, one of the first Western-standard office developments in the Polish capital. Atrium was the first PPP project between the City of Warsaw and a private investor, with Skanska acting as both the investor and the general contractor. The complex played a key role in the transformation of the Polish capital's working-class Wola borough into an office district during Poland's post-communist economic transformation.

The Wolf Theiss team was led by Partner Tomasz Stasiak and included Lawyers Iwona Huryn and Ewa Parczewska.

Schoenherr advised the Vienna Insurance Group on the deal.

WOLF THEISS

Maravela & Asociatii Advises on Romanian Petfood Producer Sale

Maravela & Asociatii assisted a majority shareholder of Romanian petfood producer Nordic Petfood, on the sale of the entire business to United Petfood. The share purchase agreement was signed in mid-August.

Nordic Petfood is a Romanian producer and supplier of private labels for modern and specialized retail partners in Romania, with over 40,000 tons of dry food for cats and dogs produced and delivered annually.

"It was a pleasure to be in this transaction alongside Nordic Petfood, part of the Nordic Group, the leading Romanian producer of pet food, in terms of both sales and quality. Besides the broad experience of all lawyers involved, the clear objectives of the sellers and decisiveness of the buyer were key factors in making this a smooth and successful transaction."

– Dana Radulescu, Partner, Maravela & Asociatii

Belgian group United Petfood, a family business, began operations in 1994. It operates eight factories in Belgium, France, the Netherlands, Spain, and Poland, and it sells in over 40 countries across Europe, as well as in China, Japan, and the US.

The Maravela & Asociatii team consisted of Founding Partners Alina Popescu and Gelu Maravela and Partners Dana Radulescu and Razvan Pele.

Schoenherr advised United Petfood on the acquisition.

MARAVELA | ASOCIAȚII

Schoenherr Advises Societe Generale on Sale of Bulgarian and Albania Subsidiaries

Schoenherr's Sofia office advised Societe Generale on the sale of subsidiaries SG Expressbank Group, Sogelife Insurance Company, and SG Banka Albania, for over EUR 600 million, to the OTP Bank Group. The deals are expected to complete next year due to regulatory and merger clearance filings in five jurisdictions, with the possibility of an additional Phase II filing.

"This major deal takes place in the heavily regulated financial services industry. This requires the intensive involvement and coordination from the regulatory teams on both sides of the table."

– Ilko Stoyanov, Partner, Schoenherr Sofia

The Schoenherr team was led by Sofia-based Partner Ilko Stoyanov.

Kalo & Associates advised Societe Generale on Albanian elements of the deal. CMS and Jones Day advised the OTP Bank Group.

schönherr

Karanovic & Partners Advises Zijin Mining on RTB Bor Privatization

Karanovic & Partners advised Zijin Mining on its successful participation in a privatization procedure that resulted in the company becoming a strategic partner in Serbia's sole copper complex, RTB Bor. As a result, Zijin Mining pledged to invest USD 1.46 billion in return for a 63% stake.

Zijin Mining is a Chinese gold, copper, and non-ferrous metals producer and refiner.

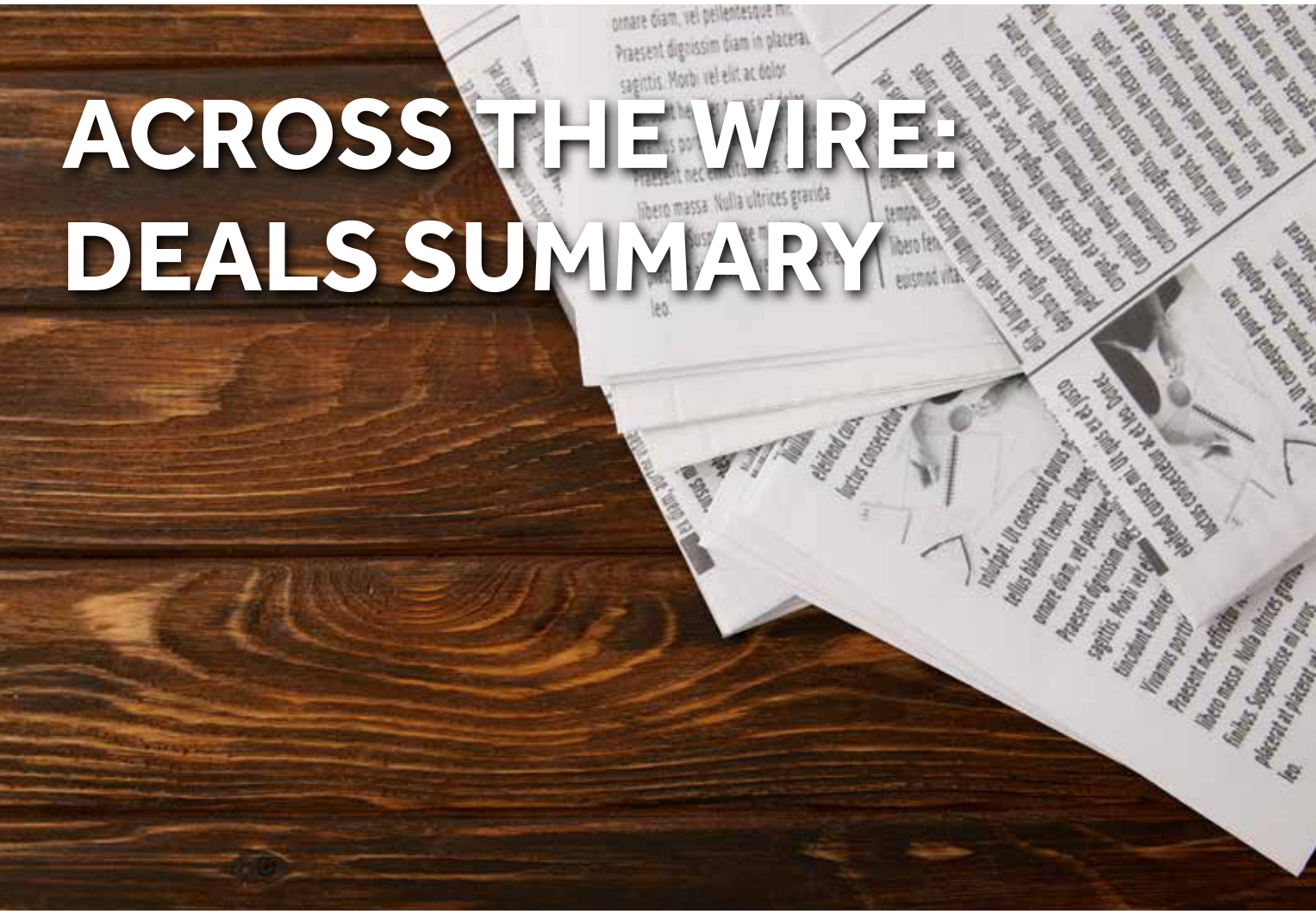
"The privatization of RTB Bor is a significant transaction in the Balkan mining sector, and we are delighted to see it move towards completion. We are seeing increasing levels of Chinese investment into Serbia and this emphasizes the trend."

– Milos Vuckovic, Senior Partner, Karanovic & Nikolic

RTB Bor is a copper mining and smelting complex located in Bor, Serbia. Copper ore has been excavated and melted for more than 100 years in RTB Bor, and the company contributes 0.8% of Serbia's GDP.

The Karanovic & Partners team was led by Senior Partner Milos Vuckovic and Partner Ivan Nonkovic.

karanovic/partners



ACROSS THE WIRE: DEALS SUMMARY

Date covered	Firms Involved	Deal/Litigation	Value	Country
29-Aug	CMS; Jones Day; Kalo & Associates; Schoenherr	CMS acted with lead counsel Jones Day in advising the OTP Bank Group on its acquisition of Societe Generale subsidiaries SG Expressbank Group, Sogelife Insurance Company, and SG Banka Albania, for over EUR 600 million. Schoenherr and Kalo & Associates in Tirana advised Societe Generale on the sale.	EUR 600 million	Albania; Bulgaria; Hungary
27-Aug	Brandl & Talos; Clifford Chance; Heuking Kuhn Luer Wojtek; Willkie Farr & Gallagher	Brandl & Talos, Willkie Farr & Gallagher, and Heuking Kuhn Luer Wojtek advised Ring International Holding AG on its acquisition of the BOA Group, a global manufacturers of flexible metal components. Clifford Chance advised the BOA Group on the sale.	N/A	Austria
3-Sep	Arnold Rechtsanwalte; Eisenberger & Herzog; Fellner Wratzfeld & Partner; Gleiss Lutz; Hadley & McCloy; Milbank, Tweed; Preslmayr; Schoenherr; Urbanek Lind Schmied Reisch; Wolf Theiss	Eisenberger & Herzog, in cooperation with the London office of Milbank, Tweed, Hadley & McCloy, advised a group of creditors of Steinhoff Holdings' subsidiary Hemisphere Properties on its sale of Kika/Leiner property assets in Austria and several other CEE countries to the Signa Group. Steinhoff was counseled by Fellner Wratzfeld & Partner and Gleiss Lutz, and Hemisphere was advised by Clifford Chance and Wolf Theiss. The Signa Group was advised by Arnold, while Kika/Leiner was represented by Schoenherr, Urbanek Lind Schmied Reisch, and Preslmayr.	N/A	Austria

Date covered	Firms Involved	Deal/Litigation	Value	Country
6-Sep	Schoenherr	Schoenherr advised crowdinvesting company CONDA AG on digitalizing the shares and enabled registered shares to be managed via blockchain technology.	N/A	Austria
14-Sep	Saxinger, Chalupsky & Partners; Vavrovsky Heine Marth	Vavrovsky Heine Marth advised the Buwog Group on its entrance into a partnership with WIK/IES Immobilien Group to develop the Marina Tower residential building in Vienna. Saxinger, Chalupsky & Partner advised WIK/IES Immobilien Group on the deal.	N/A	Austria
22-Aug	Sorainen	Sorainen advised Zubr Capital and the EBRD in their equity investment in the Targetprocess company group, a Belarusian developer of Agile-based project portfolio management systems.	N/A	Belarus
22-Aug	Sorainen	Sorainen acted as Belarusian and Lithuanian counsel for the EBRD on its USD 15 million loan to the Modus Group.	USD 15 million	Belarus; Lithuania
28-Aug	Baker McKenzie; Cobalt; Sorainen	Sorainen and Baker McKenzie advised Hewlett Packard Enterprise on its agreement to have Swiss-based ALSO Holding run its sales and services business in Lithuania, Ukraine, and Belarus. ALSO was represented by Cobalt.	N/A	Belarus; Lithuania; Ukraine
30-Aug	DME Law; Kambourov & Partners	Kambourov & Partners advised PREEMZ on Bulgarian IP law and the U.S.'s DME Law advised PREEMZ on US law regarding ROW8, a consumer premium video on-demand platform.	N/A	Bulgaria
30-Aug	Weinhold Legal	Weinhold Legal advised LEEL Electricals on the sale of Janka Engineering s.r.o. to the Ostrava-based Multicraft Group.	N/A	Czech Republic
3-Sep	KSD Legal; Weinhold Legal	Weinhold Legal advised Austrian building contractor PORR on its acquisition of all shares in Alpine Bau CZ from PSJ Holding. The seller was represented by KSD Legal.	N/A	Czech Republic
4-Sep	CEE Attorneys	CEE Attorneys assisted the founders of the Vnimave Hracky/Toyeto toy stores on a joint venture with an unidentified new investor.	N/A	Czech Republic
31-Aug	Clifford Chance	Clifford Chance lawyers from Prague and Warsaw were on the multi-jurisdictional team advising FlaktGroup, a portfolio company of Triton, on the sale of DELBAG, a specialist for air filtration, to Hengst SE.	N/A	Czech Republic; Poland
21-Aug	Allen & Overy; Kinstellar	Allen & Overy advised Aegon on the EUR 155 million divestment of its insurance businesses in the Czech Republic and Slovakia to the NN Group. The buyer was advised by Kinstellar.	EUR 155 million	Czech Republic; Slovakia
29-Aug	Ellex (Raidla); Eversheds Sutherland	Ellex Raidla advised GrECo JLT, a risk and insurance manager in Central and Eastern Europe, on the acquisition of a stake of over 57% in IIZI Group AS.	N/A	Estonia
31-Aug	TGS Baltic	TGS Baltic advised Estonian electricity and gas system operator Elering on agreements worth approximately EUR 60 million for the construction of the Paldiski compressor station, which will serve the Estonia-Finland Balticconnector gas link, and for the Puiatu compressor station, which will serve the Estonia-Latvia connection.	EUR 60 million	Estonia
6-Sep	Sorainen	Sorainen advised the Baltic Horizon Fund on listing its 5-year unsecured bonds on the Nasdaq Baltic Bond List.	EUR 30 million	Estonia
11-Sep	Ellex (Raidla)	Ellex Raidla advised AS Infortar, the majority owner of Estonian shipper Tallink Grupp, on the sale of Pirita Spa Hotel to Purje Vara OU.	N/A	Estonia
12-Sep	Cobalt	Cobalt Estonia advised Alexela Kuumasinkitys Oy, a subsidiary of Alexela Group, on the acquisition of Finland's Helon Kuumasinkitys Oy.	N/A	Estonia
13-Sep	Sorainen	Sorainen advised the Kaamos Group on the sale of its majority stake in Estonian veneer producer Valmos to Poland's Paged Group.	N/A	Estonia
24-Aug	Sorainen	Sorainen Partner Eva Berlaus was appointed one of the four liquidators of ABLV Bank, following the European Central Bank's February, 23, 2017 determination that ABLV was failing or likely to fail in accordance with the Single Resolution Mechanism Regulation.	N/A	Latvia
4-Sep	Ellex (Klavins)	Ellex Klavins advised Baltic Retail Properties Latvia on its merger with its three subsidiaries, on related reorganizational matters, and on the registration of the resulting changes in relevant public registers.	N/A	Latvia
10-Sep	Cobalt; Sorainen	Sorainen advised Medilink, a medicine and laboratory product supplier in Latvia, on the sale of its product distribution businesses – Roche diagnostics solutions and Sysmex haematology solutions – to Roche Latvija. Cobalt advised the buyers	N/A	Latvia
12-Sep	Primus	Primus successfully represented the interests of Latvia's "I support sports!" sports federation initiative at the meeting of the Sports Sub-Committee of the Parliamentary Commission for Education, Culture, and Science.	N/A	Latvia
14-Sep	Primus	Primus represented Novira Capital, an Estonian real estate financing and development company, on its financing of a real estate and company share acquisition in relation to undeveloped property in the central part of Riga.	N/A	Latvia
23-Aug	Sorainen	Sorainen advised Mobilieji Mokejimai, a company founded by three competitors in the Lithuanian telecommunications sector – Telia Lietuva, Tele2, and Bite Lietuva – on launching and managing MoQ, the first mobile payment platform in the Baltics.	N/A	Lithuania

Date covered	Firms Involved	Deal/Litigation	Value	Country
27-Aug	Tvins	Tvins assisted Domestique Asset Management UAB with its successful application for an asset management company license under the Law on Collective Investment Schemes Designed for Qualified Investors of the Republic of Lithuania.	N/A	Lithuania
29-Aug	Cobalt	Cobalt advised the Stemma Group on the sale of 100% of shares in private limited liability companies Vejo Vatas and Vejo Gusis, which operate three wind farms, to Lietuvos Energija.	N/A	Lithuania
31-Aug	Sorainen	Sorainen assisted retail footwear chain Batu Kalnas in a case involving the company's claim that its trademark had been fraudulently used on Instagram to set up a fake Batu Kalnas profile and invite people to become influencers for the footwear brand.	N/A	Lithuania
6-Sep	Eoedl & Partner; Sorainen	Sorainen advised travel planning tools provider Kayak on the acquisition of a business unit from software development company NFQ Technologies in Lithuania. The seller was represented by Roedl and Partner.	N/A	Lithuania
10-Sep	Ellex (Valiunas); Schoenherr; Sorainen	Sorainen and Schoenherr helped the Vienna Insurance Group obtain Lithuanian Competition Council approval for its acquisition of 100% of Seesam Insurance shares from Finnish financial services company OP Financial Group. Ellex Valiunas advised the OP Financial Group on the underlying sale.	N/A	Lithuania
12-Sep	Cobalt; Deloitte :egal	Cobalt advised Furniture1, UAB, a company operating in Lithuania under the Baldai1.lt trademark, on the sale of 30% of its shares to the Bygghemma Group. The buyers were advised by Deloitte Legal.	N/A	Lithuania
31-Aug	Dentons; TGS Baltic	TGS Baltic and Dentons Warsaw advised AUGA group AB and shareholder Baltic Champs Group UAB on implementing a secondary public offering of shares in the company in Lithuania.	N/A	Lithuania; Poland
21-Aug	Eversheds Sutherland	Wierzbowski Eversheds Sutherland successfully represented the Polish Association of Construction Employers before Poland's National Appeal Chamber in a challenge to the award of a public contract by the PKP PLK SA railway company.	N/A	Poland
22-Aug	Schoenherr; Wolf Theiss	Wolf Theiss advised AEW on the sale of the Atrium Tower office building in downtown Warsaw to the Vienna Insurance Group. Schoenherr advised the buyers.	N/A	Poland
24-Aug	Act (BSWW)	Act BSWW advised Europart International GmbH on its acquisition of the remaining 49% of the shares of Europart Polska S.A. from Vesta Fundusz Inwestycyjny Zamkniety Aktywow Niepublicznych and Protyl-Serwis 44.	N/A	Poland
24-Aug	Greenberg Traurig	Greenberg Traurig advised IREEF on the sale of Crown Square Warsaw PropCosp. z o.o., the owner of Warsaw's Crown Square office building, to M&A Capital.	N/A	Poland
24-Aug	Dentons; Linklaters	Linklaters advised Echo Investment on the forward sale of the Sagittarius Business House building in Wroclaw, Poland, to Warburg-HIH Invest Real Estate GmbH. The buyer was represented by Dentons.	N/A	Poland
27-Aug	Linklaters	Linklaters advised real estate developer Panattoni on its agreement to build a warehouse project in the build-to-own formula for Intersnack, the German-based owner of brands such as Felix, Crispers, and Przysnacki.	N/A	Poland
28-Aug	Kwasnicki, Wrobel & Partners; SSW Pragmatic Solutions	RKKW – Kwasnicki, Wrobel & Partners advised Vippo sp. o.o. on its issuance of bonds on the private debt market. SWW Pragmatic Solutions advised an unidentified investment bank on the deal.	N/A	Poland
3-Sep	Soltysinski Kawecki & Szlezak	Soltysinski Kawecki Szlezaksuccessfully represented Stowarzyszenie Twoja Sprawa in a case brought against the producer of Devil Energy Drink.	N/A	Poland
5-Sep	clifford chance	Clifford Chance advised CBRE Global Investors on the sale of the Wars Sawa Junior Shopping Center in Warsaw to Atrium Real Estate on behalf of the Property Fund Central and Eastern Europe.	EUR 300 million	Poland
11-Sep	CMS; Freshfields; PwC Legal	Freshfields Bruckhaus Deringer advised the XIO Group on the sale of 100% of the shares of Compo Expert GmbH to Grupa Azoty S.A. The buyers were advised by PwC Poland and CMS Germany.	N/A	Poland
13-Sep	Clifford Chance; Greenberg Traurig	Greenberg Traurig advised the HB Reavis Group on the sale of two A class office buildings that are part of the Gdanski Business Center complex in the center of Warsaw to Savills Investment Management, acting on behalf of Malaysia's Employees Provident Fund.	EUR 200 million	Poland
17-Aug	Popovici Nitu Stoica & Asociatii	PNSA advised private healthcare chain Medicover on its acquisition of the Phoenix Medical Center, which has a network of eight medical centers in Southwest Romania.	N/A	Romania
24-Aug	Tuca Zbarcea & Asociatii	Tuca Zbarcea & Asociatii advised Erste Bank Group on its acquisition of an additional 6.29% shareholding in Banca Comerciala Romana from investment company SIF Oltenia, giving it a 99.88% stake.	N/A	Romania
27-Aug	Maravela & Asociatii; Schoenherr	Maravela & Asociatii assisted a majority shareholder of Romanian petfood producer Nordic Petfood on the sale of the entire business to United Petfood. Schoenherr advised United Petfood on the acquisition.	N/A	Romania
4-Sep	Biris Goran	Biris Goran advised CloudTreats Inc., on the sale of its food delivery platform, hipMenu.ro, to online food-delivery group Delivery Hero.	N/A	Romania

Date covered	Firms Involved	Deal/Litigation	Value	Country
22-Aug	Egorov Puginsky Afanasiev & Partners	Egorov Puginsky Afanasiev & Partners advised Solntse Mexico and Mission Foods Stupino, the Russian divisions of the Gruma Group, on their restructuring and on obtaining special economic zone resident status with the Ministry of Economic Development of the Russian Federation and other governmental bodies in connection with its investment in a factory in the Moscow Region of Russia.	N/A	Russia
23-Aug	DLA Piper	DLA Piper advised Transmashholding, Russia's largest manufacturer of locomotives and rail equipment, on its joint venture with Japanese industrial conglomerate Hitachi to produce traction inverters for passenger trains in Russia.	N/A	Russia
27-Aug	DLA Piper	DLA Piper advised Sberbank on the sale of a 19.99% stake in Verkhnekamsk Potash Company, the operator of the Talitsky Potash Project, to Acron Group, with a simultaneous sale of the same stake back to Sberbank Investments, as VPC equity financing investor.	N/A	Russia
28-Aug	Baker Botts; DLA Piper	DLA Piper advised Baring Vostok, a private equity fund investing in Russia/CIS, on its acquisition of a minority stake in Itransition, a Belarusian software solutions developer and IT services provider. The seller, Firestrong Ltd., was represented by Baker Botts.	N/A	Russia
30-Aug	Egorov Puginsky Afanasiev & Partners; Roschier	Egorov Puginsky Afanasiev & Partners advised FAM AB on its USD 580 million plus acquisition of the business subdivision of Sandvik Process Systems. Nordic law firm Roschier acted as global counsel for Sandvik.	USD 580 million	Russia
30-Aug	DLA Piper	DLA Piper advised Doc+, a Russian digital e-health startup, on a USD 9 million financing from Vostok New Ventures.	USD 9 million	Russia
4-Sep	Capital Legal Services	Capital Legal Services advised the Siberian Concession Company on its agreement to build a bridge across the Ob River in Novosibirsk, Russia, for the Government of the Novosibirsk Region and Gazprom.	N/A	Russia
11-Sep	DLA Piper	DLA Piper advised Russia's largest bank, Sberbank, on its joint venture with Rambler Group and several other investors to create Foodplex, a united digital platform for the restaurant market. The stake of Sberbank in the JV will be 35% and Rambler Group will own 30%. Another 35% will be owned by GHP Partners and investors Grigoriy Gurevich and Evgeniy Malakhov.	N/A	Russia
5-Sep	Karanovic & Partners	Karanovic & Partners advised Zijin Mining on its successful participation in a privatization procedure that resulted in the company becoming a strategic partner in Serbia's sole copper complex, RTB Bor. Zijin Mining pledged to invest USD 1.46 billion in return for a 63% stake.	USD 1.46 billion	Serbia
28-Aug	Allen & Overy; Kinstellar	Kinstellar advised E.ON on its sale of the Malzenice power plant to Zapadoslovenska Energetika. Allen & Overy advised ZSE on the acquisition.	N/A	Slovakia
24-Aug	The Esin Attorney Partnership; Gide Loyrette Nouel	The Esin Attorney Partnership advised Altinyag Kombinalari A.S. and Gurtas Tarim Enerji Yatirimlari San. ve Tic. A.S. in connection with the sale of its production facilities to Sodrugestvo Group S.A. The buyer was advised by Gide Loyrette Nouel.	N/A	Turkey
6-Sep	Paksoy	Paksoy advised Migros Ticaret A.S., on its August 31, 2018 merger with Kipa Ticaret A.S. following the July 19, 2018 approval of Turkey's Capital Markets Board. The resulting company will operate under the Migros brand.	N/A	Turkey
12-Sep	Cooley; Hogan Lovells; Paksoy	Paksoy and Hogan Lovells advised Atlassian on its USD 295 million acquisition of Boston-based OpsGenie, a company making technology which enables companies to better plan for and respond to IT service disruptions. Cooley advised OpsGenie CEO and co-founder Berkay Mollamustafaoglu on the sale.	USD 295 million	Turkey
10-Sep	Delphi; Goktas Attorneys; Karanovic & Partners; Pekin & Bayar	Karanovic & Partners, Pekin & Bayar, and Sweden's Delphi law firm advised NIBE Industrier AB on its acquisition of 51% of the EMIN Group. Goktas Attorneys advised Emin Group on the sale.	N/A	Turkey; Serbia
17-Aug	Asters	Asters advised the EBRD in connection with its up to USD 3.86 million financing to Energoresurs-Invest Corporation, a provider of insulated steel pipe solutions and manufacturer of wastewater plastic pipes and drainage systems.	USD 3.86 million	Ukraine
20-Aug	Vasil Kisil & Partners	Vasil Kisil & Partners successfully represented Rost Agro, one of the largest seed producers and exporters in Ukraine, in a tax dispute.	UAH 63 million	Ukraine
28-Aug	ANK Law	ANK Law advised Delta-Wilmar CIS on its agreement to cooperate with the Ukrainian Sea Ports Administration on the construction of a soybean recycling plant and a new terminal for the accumulation and storage of grain cargo and protein meal at the port of Yuzhny.	N/A	Ukraine
3-Sep	DLA Piper; Engarde; Integrites; Pavlenko Legal Group	DLA Piper advised Atlantic Agro Holdings and DUI Holding on the sale of the Kyiv Atlantic Group – a grain, oil seed, and vegetable protein processing agro-holding consisting of Kyiv Atlantic Ukraine, Atlantic Farms, and Atlantic Farms II – to Agrolife and Eridon. Integrites acted as lead legal counsel to one of the sellers. The Pavlenko Legal Group advised both sellers on their acquisition of Atlantic Farms and Atlantic Farms II. Engarde also advised Agrolife on the acquisition of Kyiv Atlantic Ukraine.	N/A	Ukraine
4-Sep	Kinstellar	Kinstellar advised the Investment Fund for Developing Countries, an agency of the Government of Denmark, in connection with a secured EUR 5.75 million loan facility to the Kness Group, a Ukrainian engineering, procurement, and construction group of companies.	EUR 5.75 million	Ukraine

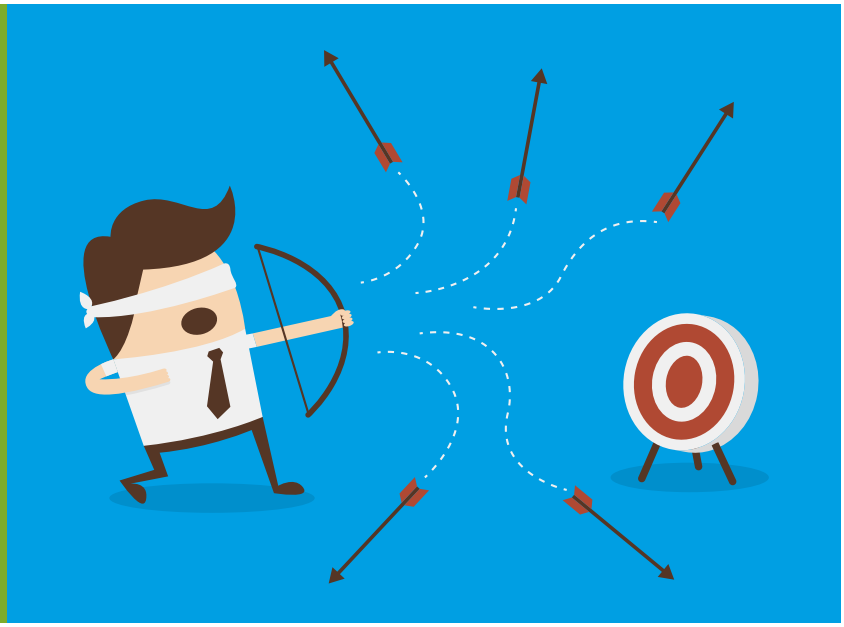
Date covered	Firms Involved	Deal/Litigation	Value	Country
4-Sep	Eterna Law	Eterna Law advised the Modus Group on its investment in the construction of a solar station in Zhytomyr region of Ukraine.	N/A	Ukraine
6-Sep	Ilyashev & Partners	Ilyashev & Partners represented PJSC Podilskiy Cement, PJSC Dyckerhoff Cement Ukraine, PJSC Heidelbergcement Ukraine, and PJSC Ivano-Frankivscement in an anti-dumping investigation on imports to Ukraine of Portland cement clinker originating from the Russian Federation, the Republic of Belarus, and the Republic of Moldova.	N/A	Ukraine
7-Sep	Baker McKenzie	Baker McKenzie helped a consortium of German banks led by Bayerische Landesbank and DTEK Renewables complete an ECA-backed finance transaction in the Ukrainian renewable energy sector aimed at financing the construction of the first stage of the Primorska wind electric plant in Ukraine.	N/A	Ukraine
11-Sep	Asters	Asters advised the EBRD on a USD 15 million loan to the Modern-Expo Group, one of the largest manufacturers and suppliers of fixtures and equipment for retail stores and warehouses in Central and Eastern Europe.	USD 15 million	Ukraine
11-Sep	Eterna Law	Eterna Law advised Gamma Solar holding on an investment into the development of a solar power station project in the Vinnytsia Region of Ukraine.	N/A	Ukraine
12-Sep	Sayenko Kharenko	Sayenko Kharenko's international arbitration team helped Safege-Suez Consulting reach an agreement with Ukraine's National Commission for State Regulation of Energy and Public Utilities regarding the completion of payment for consultancy services provided within the framework of the district heating regulatory reform support program funded by the World Bank.	EUR 1.2 million	Ukraine
12-Sep	Ilyashev & Partners	Ilyashev & Partners successfully represented Ukrinterenergo in a dispute with the Russian state-owned CJSC Inter RAO UES regarding the supply of Russian electricity to Ukraine's Luhansk and Donetsk territories.	N/A	Ukraine
14-Sep	Dentons; K&L Gates; Sunshine Law; Volkov & Partners	The London office of K&L Gates advised NBT AS and its Ukrainian subsidiary SyvashEnergoProm LLC on the Syvash Wind Power Project in Ukraine. Nordex Energy GmbH, advised by Dentons, will act as a turbine supplier for the project. Sunshine Law and Volkov & Partners advised engineering, procurement, and construction contractors Power Construction Corporation of China, Ltd. and POWERCHINA Fujian Engineering Co. Ltd.	N/A	Ukraine
14-Sep	Dentons	Dentons advised Chris Iacovides and Andri Antoniou, the joint liquidators of Ukraine's Mriya Agro Holding Public Limited, which is in liquidation in Cyprus, in relation to the company's successful debt restructuring.	USD 1.1 billion	Ukraine

Full information available at: www.ceelegalmatters.com

Period Covered: August 17, 2018 - September 14, 2018

DID WE MISS SOMETHING?

We're not perfect; we admit it. If something slipped past us, and if your firm has a deal, hire, promotion, or other piece of news you think we should cover, let us know. Write to us at: press@ceelm.com



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ON THE MOVE: NEW HOMES AND FRIENDS

Ukraine's Axon Partners Expands to Kharkiv with Merger

Axon Partners, which had existing offices in Kyiv and Lviv, has merged with Kharkiv's Oksana Kobzar Law Office. Following the merger, Axon Partners has offices in all three Ukrainian cities.

According to Dima Gadomsky, CEO of Axon Partners, "our merger has an efficient goal beyond increasing our number of lawyers up to 30 …. First, we want to get rid of the boutique style: now we have comprehensive practices of litigation, international taxation, and customs. Second, we are going beyond serving technology and media companies, but keeping our focus on innovation."

He continued: "Tax and litigation practices are red oceans of the legal services market. We had not put them into separate practices earlier for two reasons. The first is that we were not ready to compete with the leaders: the Big-4 and Ukrainian Big Law. Now we are powerful enough to compete with Ukrainian Big Law both externally (rankings) and internally (processes and level of expertise). Therefore, we can add new practices to our strong expertise in tech. The second reason is that usually tax and litigation lawyers get used to the role of a lawyer instead of being broad spectrum business consultants for the client. It's great luck that we met and teamed up with Oksana."

Finally, Gadomsky said, "it was more our dream than our strategy to have offices in the three largest tech centers of Ukraine. Large IT companies with development offices all over Ukraine will feel more secure with our lawyers nearby." In addition, he concluded, "even though now we are focusing on big businesses, we will continue helping startups. Just because we're bigger doesn't mean we're not still cool."

By David Stuckey

Big Move in Budapest: Squire Patton Boggs Managing Partner Takes Team to Wolf Theiss

Former Squire Patton Boggs Hungary Managing Partner Akos Eros has moved to Wolf Theiss Budapest, bringing with him former Squire Patton Boggs Senior Associates Judit Nador and Artur Tamasi and Associate Agnes Budai.

According to Squire Patton Boggs Partner Akos Mester, London-based Partner Andrew Wilkinson, who, according to Mester, had been sharing leadership of the Budapest office with Eros since 2015, will take over as sole Managing Partner, with Mester and fellow Budapest-based Partner Judit Kelemen sharing the responsibility for day-to-day administration of the office.

Eros, who joined Squire Patton Boggs in 2000 after spending one and a half years at Coopers & Lybrand (now PriceWaterhouse Coopers) and then four years as a National Partner at Arent Fox, specializes in mergers and acquisitions and private equity, MBOs, and other corporate matters. Wolf Theiss reports that, "over the years, he has also advised on some of the most important capital market transactions in Hungary," and says that "as the former Managing Partner of Squire Patton Boggs in Budapest, his experience, commitment to this profession, existing clientele and business approach will be a perfect complement to the Wolf Theiss team not only in Hungary but also regionally."

The team moving with Eros consists of Judit Nador, who focuses on corporate and employment law, Artur Tamasi, who specializes in commercial litigation, Hungarian and international commercial arbitration, enforcement proceedings, administrative proceedings, and litigious matters involving public law and criminal law, and Agnes Budai, who specializes in corporate/M&A.

"It's a great pleasure for us to join a leading law firm in the CEE/SEE region and to be part of Wolf Theiss' eminent team," Akos Eros said. "Working together, we can continue to serve our clients on the highest level and further expand our services and workforce not only in Hungary but also in the region."

Zoltan Faludi, Managing Partner of Wolf Theiss Budapest, expressed similar enthusiasm. "We are looking forward to the new opportunities that the expansion will bring us. We are happy to add the talents of Akos, Judit, Agnes, and Artur to our team in Hungary. They will be a great addition to our highly regarded corporate and dispute resolution practice and their market knowledge will be a great asset for our clients."

"We are delighted to welcome Akos and his team to the firm," said Erik Steger, Chair and Managing Partner of Wolf Theiss, from his office in Vienna. "Hungary is a key market with exciting opportunities in our regional platform and we have a top-notch team in Hungary. The arrival of this group will be a perfect complement to our existing practice."

At Squire Patton Boggs, Akos Mester insisted that Eros's departure had caused little disruption. "We all know that Akos's name had been associated with Squire Sanders and then Squire Patton Boggs in this market for almost twenty years," he said. "But things change, and over the years he developed a different vision for his future and career goals." Eros's departure, Mester reported, "doesn't affect Squire Patton Boggs or our demonstrated commitment to the Hungarian market. We continue to operate and serve our clients as before."

By David Stuckey

Former DLA Piper Poland Managing Partner Opens NGL Legal in Warsaw

Former DLA Piper Poland Country Managing Partner Krzysztof Wiater, who left DLA in July of this year, has opened a new law firm in Warsaw: NGL Legal.

Wiater, who had been Country Managing Partner at DLA Piper Poland since the firm opened its doors in the country in 2007, will lead the NGL Legal office. He is joined by Partners Magdalena Zwolinska, Grzegorz Godlewski, Maciej Wesolowski, Filip Opoka, and Bartosz Sankiewicz.

According to an NGL Legal press release, the firm has "an ambition to become a center of legal services of the new generation in CEE/Baltics and globally, through a network of trusted partners. NGL Legal supports clients with legal and tax advisory combined with substantive knowledge and deep understanding of business consulting as well as selected sectors of the economy. NGL Legal is an open partnership with a team of new generation of experienced lawyers, who actively build expertise matching their individual interests. Idea behind is to develop experts with knowledge beyond legal, ensure lawyers are driven by passion and deliver spot on advice to clients."

According to the NGL Legal press release, the firm's independence is an asset: "CEE is diversified and quality of service varies, depending on exposure to experiences and breadth of practice. In each of the CEE countries top lawyers from sectors and practices may work with different law firms. Understanding this specific was key to creating our hybrid cooperation model with partners in CEE/Baltics and with global law firms. The idea behind was to offer clients an easy, independent access to top law practitioners, verified in their expertise, which ensures that top lawyers in their fields are working on the case, without limitation of operating under one brand. Cooperation with global partners allows us to support projects with international reach. All our partners operate independently, under their own brand and with direct

contact with your team and NGL Legal is an integrator and your single point of contact."

By David Stuckey

BGP Litigation Announces New Anti-monopoly Practice

BGP Litigation has announced the creation of an Antimonopoly law practice, headed by Counsel Irina Akimova.

According to BGP Litigation, "establishment of the new department is connected with an increase in relevant business requests due to growing risks related to antimonopoly regulation, and the tendency for growth of Federal Anti-Monopoly Service powers, as well as significant liability for violations."

BGP Litigation reports that the firm's new department will provide clients with legal support on all key issues of antimonopoly regulation, including the protection of interests during antitrust proceedings and transactions of economic concentration. It will also assist clients with antimonopoly compliance matters and in representing client interests on issues related to unfair competition.

"Companies develop when new products are introduced to the market," said BGP Litigation Partner Dmitry Bazarov. "We constantly follow customer needs and are always ready to change to satisfy their interests better."

Akimova, brought on board to head the new department, has 15 years of experience in the field. According to BGP, she is experienced "in implementing projects involving antimonopoly audits, setting up antimonopoly compliance systems, dealer and distributor relationships, anti-competition agreements, economic concentration, as well as the legislation on trade, advertising, unfair competition, procurement and state defense purchases."

Before joining BGP, Akimova headed Antimonopoly practices at the Art De Lex and Capital Legal Services law firms. Before going into private practice, she worked for the Federal Antimonopoly Service for eight years.

By Mayya Kelova

Stentors Opens Its Doors in Bratislava

Vladimir Kordos, Michal Hulena, and Peter Nestepny have founded a new law firm in Bratislava under the brand name Stentors.

According to a Stentors press release, the firm's "core principles are to maintain a healthy ratio of senior and junior lawyers in each team, to extend existing ties made with international law offices in Europe, USA, and the Middle East, and to draw from previous enriching experiences."

"We are aware of the challenges we face in this competitive market full of exceptionally good law firms," Kordos said. "However, we at Stentors have only the highest expectations and we want to do law in a more modern style, business friendly, while ensuring the utmost level of professionalism, quality and innovative approach."

Kordos' areas of expertise are real estate law and M&A. He focuses on construction, corporate, public procurement, compliance, and arbitration. Prior to establishing Stentors, Kordos worked at the Konecna Zacha Law Firm, bnt, and Squire Patton Boggs, as well as in-house with Philips, Lomtec, and Foundation Zrnko.

Michal Hulena specializes in corporate/M&A and banking & finance. He is experienced in acquisition projects, represented banks in syndicated financing deals, projects involving leveraged financing and other M&A, real estate, and loan restructuring transactions. He worked at Konecna & Zacha, Ruzicka Csekes in association with CMS, and Konecna & Safar.

Peter Nestepny advises on greenfield projects and business ventures, supplier-customer relationships, including public procurement or internal corporate governance in relation to foreign parent companies and their employees.

"We highly appreciate our strong ties made with [our] clients," Nestepny said. "Even though our capacities are growing, the size of our company still allows us to maintain close and personal relations with our clients." In addition, Nestepny said, "the personal approach is one of our biggest assets. Clients are guaranteed to receive a tailor-made legal service provided to them by well-established lawyers."

By Mayya Kelova

PARTNER APPOINTMENTS

Date Covered	Name	Practice(s)	Firm	Country
6-Sep	Michael Froner	IP/Real Estate	Fellner Wratzfeld & Partner	Austria
5-Sep	Maris Brizgo	Corporate/M&A	Ellex Klavins	Latvia
5-Sep	Valters Diure	Banking & Finance	Ellex Klavins	Latvia
5-Sep	Martins Gailis	Intellectual Property/Competition Law	Ellex Klavins	Latvia
5-Sep	Irina Kostina	Dispute Resolution & Employment	Ellex Klavins	Latvia
5-Sep	Sarmis Spilbergs	Life Sciences/IT/IP/Communications	Ellex Klavins	Latvia
4-Sep	Vilius Bernatonis	Banking & Finance/Energy practice	TGS Baltic	Lithuania
4-Sep	Marius Matonis	M&A	TGS Baltic	Lithuania
5-Sep	Magomed Gasanov	Dispute Resolution	Alrud	Russia
31-Aug	Katja Sumah	Commercial, Civil & Statutory Law	Miro Senica & Attorneys	Slovenia

PARTNER MOVES

Date Covered	Name	Practice(s)	Firm	Moving From	Country
14-Sep	Sarah Wared	Corporate/M&A	Wolf Theiss	CHSH	Austria
11-Sep	Akos Eros	Corporate/M&A	Wolf Theiss	Squire Patton Boggs	Hungary
6-Sep	Adam Kowalczyk	Dispute Resolution	Bird & Bird	PwC Legal	Poland
14-Sep	Irina Akimova	Competition	BGP Litigation	Art De Lex	Russia
6-Sep	Oksana Kobzar	Tax/Litigation	Axon Partners	Oksana Kobzar Law Office	Ukraine

IN-HOUSE MOVES AND APPOINTMENTS

Date Covered	Name	Company/Firm	Moving From	Country
30-Aug	Anna Tanova	CMS	Bulgarian Broadcasters Association	Bulgaria
31-Aug	Mikhail Dikopolskiy	Capital Legal Services	Dentons	Russia
11-Sep	Josef Holzschuster	Phillips (Country Manager for Hungary)	Phillips (Head of Legal Affairs for CEE)	Hungary
13-Sep	Nerijus Zaleckas	Skycop	Cobalt	Lithuania
13-Sep	Leda Irzikeviciene	Sorainen	Nordea Baltics	Estonia; Latvia; Lithuania

OTHER APPOINTMENTS

Date Covered	Name	Company/Firm	Appointed To	Country
6-Sep	Adela Krbcova	Peterka & Partners	Director	Czech Republic
6-Sep	Barbora Urbancova	Peterka & Partners	Director	Czech Republic
7-Sep	Bartlomiej Wajda	CMS	Head of Transfer Pricing	Poland
11-Sep	Vuk Draskovic	Bojovic Draskovic Popovic & Partners	Named Partner	Serbia
11-Sep	Uros Popovic	Bojovic Draskovic Popovic & Partners	Named Partner	Serbia

Full information available at: www.ceelegalmatters.com Period Covered: August 30, 2018 - September 14, 2018

THE BUZZ

In "The Buzz" we check in on experts on the legal industry across the 24 jurisdictions of Central and Eastern Europe for updates about professional, political, and legislative developments of significance. Because the interviews are carried out and published on the CEE Legal Matters website on a rolling basis, we've marked the dates on which the interviews were originally published.

SLOVENIA: AUGUST 28, 2018

Interview with Uros Ilic of ODI

The Slovenian business sector and Slovenian law firms are still waiting for the newly-elected parliamentarians to form a government, says Uros Ilic, the Managing Partner of ODI Law in Ljubljana. "In the long run the final form of the government could affect business life," he says. "Not just because of the different approaches towards the tax system, but also because of the possible approaches towards privatization processes."

"The truth is, I do not expect major changes legislation-wise in either direction for the moment," Ilic sights. "I just hope they won't freeze privatization processes, as privatization is perhaps even more connected to the legal part of the business market, because it always brings a lot of work to our tables." He notes that at the moment it is business opportunities connected to the state that are on hold, with completely private deals less affected. "I haven't seen any decline in those deals lately," he says. "Foreign investors are doing business as usual, and they probably don't even know that we don't have a government." Thus, he says, "Slovenian law firms still have some M&A deals, and a couple of NPL attempts, but the large infrastructure and privatization processes are all on hold."

Ultimately, Ilic says, the country's health system is likely to be the number one priority of the new government. "Right now we have a public-owned system, and obviously the left wing and central powers would like to keep this, so they are trying to inject couple of hundred million euros into the system and keep it as it is," he explains. "If a right wing party would come up, they would probably put more pressure towards building an alternative health system in Slovenia, which would create more business opportunities."

Ilic calls it "likely" that the new government will be announced in September, but says it's ultimately difficult to be sure.

By Hilda Fleischer

LITHUANIA: AUGUST 31, 2018

Interview with Ramunas Audzevicius of Motieka & Audzevicius

Ramunas Audzevicius, Partner at Motieka & Audzevicius in Vilnius, claims that things are calm in Lithuania, though he admits there are still issues in various areas affecting business. One such issue Audzevicius highlights is the tax reform approved by the Lithuanian parliament and signed by President Dalia Grybauskaite at the end of June. "The personal tax has changed dramatically in a negative way," he sighs. "People will be taxed more than they expected."

The reform also involves changes in the employment income tax, raising two personal income tax rates to 20% and 27%. This means income up to 120 times the national average wage – so approximately EUR 107,500 per year – will be taxed at 20%. Income exceeding this threshold will be taxed at 27%, which is the highest rate in Eastern Europe.

According to Audzevicius, the change in Lithuania's personal income tax, which will come into force in January, 2019, was not unexpected, as it had been proposed by the ruling party in the campaign leading up to the October 2016 election. "They promised to implement a progressive tax in the future," he says. "So they're fulfilling that promise."

Still, despite its campaign promises, Audzevicius believes the government has failed to provide sufficient justification for making such drastic changes to the tax law. The stated purpose of the new law was to reach a balance between wealthy people and the rest, but he believes the real purpose is simply to collect more revenue, which he describes as: "the easiest way to support the government budget." In practice, he says, the new tax rate means that, "it will be more difficult to compete for attractive foreign direct investments for Lithuania, which has been the goal of each Lithuanian government after my homeland restored its independence in 1990."

And he's not alone in his frustration, he says. "There are many debates, commentaries, and a lot of criticism from the op-

position parties and the business community regarding this. However, we have what we have."

Although Lithuania is among the most aggressive countries in Eastern Europe on personal taxation rates, it is among the most progressive in the world in blockchain technology regulations. Audzevicius says, "Lithuania is moving to be the leader in FinTech, as suggested by our financial authorities." And recently the country has made a number of changes to improve its financial technology market, including the issuance by the country's Ministry of Finance of guidelines for cryptocurrency and initial coin offerings (ICOs). These guidelines provide information about applicable regulations, taxes, accounting, Anti-Money Laundering, and Combating the Financing of Terrorism issues. "This was important for businesses dealing with ICO projects," he explains, "as the new framework established clearance and a more secure environment for FinTech and blockchain business."

Audzevicius reports that Lithuania's ICO regulations, which came into force on June 7, 2018, are among the first such in the world. He says, with excitement, "it provides legal certainty for law firms which have never advised on ICOs," and he believes that the new regulations will help increase the number of ICO deals in the country, thus bringing in more business.

Despite the changes in Lithuania's law and economy, the legal market itself has not changed much recently, Audzevicius says, and he describes himself as positive about its status and growth.

By Mayya Kelova

BULGARIA: SEPTEMBER 4, 2018

Interview with Stefana Tsekova of Schoenherr

"It's never boring in Bulgaria – we always have some hot topics to handle," says Stefana Tsekova, Partner at Schoenherr Bulgaria, who reports that on August 10 the country's trade registry collapsed and remained unavailable for 18 days, causing a "total nightmare for the business sector."

The crash involved the online registry of all Bulgarian companies and Bulgarian branches of foreign companies, and all non-profit legal entities acting in the country. "This site is basically the single source that provides reliable information on companies' current status, whether they are active, in liquidation, or in insolvency," Tsekova says. "This platform also tells us the legal representation of a company and provides information on the representative powers." She explains that any change that happens within a company must be immediately uploaded onto the registry. "If you change the ownership structure, the management, or if there are any changes in companies' articles of associations, everything must be there."

Because of its vital role in day-to-day business activities, Tsekova says that the crash "created a kind of mass panic in the business and legal sectors," with representatives of both unable to use the system for basic research, nor use it to register new information or deals. "If someone wants to sign a deal, usually you check who the representative of the counter-party is, and you do that in the online trade register, in order to know if they actually have the power to buy or sign. During the outage, this was also impossible," she explains.

"It was so severe that the Bulgarian Minister of Justice, the Bulgarian National Security Agency, and the prosecutor's office had to launch an emergency action-plan in order to recover the data from the registry," Tsekova says. "It truly was a nightmare, especially because in the first days of the collapse, the reasons were unknown to the government as well. Later on, they officially stated that the reason was the burnout of some system discs, but some of the specialists still suspect that it might have been a cyber-attack and there might be some data leakages." Either way, she reports, the crash has raised a lot of questions about the reliability of the system, and whether all the data was properly recovered.

The system was finally reinstalled on Monday, August 27. Still, even now not all functions are back, and Tsekova reports that users are continuing to have problems filing online applications. "Also, while before applications required just three days to be registered, now everything is delayed, and applications are being registered only after one month."

"So what all companies and our clients are doing now, with our help, is checking if the recovered data matches the actual data which we initially submitted in the system," Tsekova says. "You can imagine that some data in the register is historical, and it is almost impossible to track and check the entire history. It will require huge resources to go over it."

Besides checking and confirming the data of the newly reinstalled registry, Bulgarian law firms are also busy with new regulations coming for the energy sector, she says. "The government just adopted a new law regulating oil-related economical activities in Bulgaria. It was promulgated at the end of July, 2018, and it will become effective as of January 28, 2019." She explains that the previous regulatory regime for oil-related activities was repealed in Bulgaria almost 30 years ago, with the fall of Communism, and is now being reintroduced to deal

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with the so-called "grey sector."

"All oil and oil product companies which are involved in wholesale, retail, storage, transportation, bottling, and distribution-related businesses must be entered into a special publicly-accessible registry maintained by the Ministry of Economy," she says. "There are smaller companies – shelf companies – that are making some transactions and then liquidating the companies, sometimes avoiding tax and the obligation of the compulsory stock maintenance," says the Schoenherr Partner, who adds that in Bulgaria all oil companies have to maintain a certain level of compulsory stock in case of a crisis.

"Generally, I think it is a positive initiative," Tsekova says. "The only negative impact could be on small enterprises; the new obligations and restrictions will affect them mostly, as among the requirements is that a minimum threshold of registered capital must be maintained and they must also provide certain guaranties for their businesses to cover taxes and other duties." She adds that because of these regulations, there were some arguments against the adoption of the law. "Anyway, the law is adopted," she says, "and it also provides for some serious sanctions. If you do not register, fines could reach up to 125,000 euros, and for repeated violations, the fines will double."

By Hilda Fleischer

BOSNIA AND HERZEGOVINA: SEPTEMBER 6, 2018

Interview with Naida Custovic of Law Office Custovic in Cooperation with Wolf Theiss

Among the biggest challenges in Bosnia and Herzegovina is attracting foreign investment, says Naida Custovic, Partner at Law Office Custovic in Cooperation with Wolf Theiss. "Our economy relies heavily on foreign investments," she says. "Unfortunately, our legal system and overall investment climate is not yet satisfactory."

Custovic explains that while the government, most political parties, and the business community identify foreign investment as an important tool for economic growth and as a source of employment and competition in the market, "there is a significant lack of political will to focus on this kind of legislation." Still, she notes that local associations and agencies that promote foreign investments, such as the Foreign Investor Council, continue to push for legislative changes.

In addition, Custovic reports, Bosnia & Herzegovina is continuing to harmonize its legislation with EU requirements, though the legal framework in the country, at the moment, remains unpredictable. In addition, burdensome bureaucracy, problems in debt collection and the judicial system, and problematic tax collection and customs procedures continue to complicate the environment for investors.

The lead-up to the country's upcoming October 7, 2018 general elections is not promising either, Custovic reports. "I think we are leaning towards a more pessimistic view, so there will not be many changes," she says, though she concedes that, "it is very difficult to predict." Indeed, she notes that despite the negative outlook, according to statistics the vast majority of investors intend to continue investing in the country. "So it is kind of a paradox," she smiles.

Of course, Custovic reports, Bosnia & Herzegovina is undergoing some positive changes as well – including changes to the banking laws in both the Federation of Bosnia and Herzegovina (FBiH) and Republika Srpska (RS) that came into force in 2017 and 2018 and more recent changes in implementation bylaws that have been adopted by the FBiH Banking Agency and the RS Banking Agency – the competent regulatory bodies. "I think this is one of the most important reforms to legislation that we have had in the last few years," she says. The new regulations improved the overall banking sector, she reports, particularly by introducing a legal framework for the sale of non-performing loans. "This is something that we did not have before, so this was a completely unregulated kind of market," she explains. "And now for the first time we have a substantially-regulated NPL market in the country." She says that the new banking legislation also vastly improved the legal framework for restructuring and rescue of banks in distress.

The Bosnian legal market is also about to change, she reports, as a new Advocacy Law has been drafted and circulated among members of the BiH Bar association for improvements. "We hope that many comments will be taken into consideration," she says, emphasizing the importance of the amended law for law firm operations, and specifically for foreign firms, which currently face various restrictions in their ability to operate in the country. "This is kind of an issue in Bosnia," she says. "I am hoping that the entire community of attorneys will loosen up and embrace competition that comes locally or from abroad, because anything that raises competition is good."

By Mayya Kelova

MOLDOVA: SEPTEMBER 7, 2018

Interview with Vladimir Iurkovski of Schoenherr

"This fall Moldova is facing parliamentary elections and so, for the moment, we are just coping with the current political reality and trying to keep a record of all the new legislation – which the Parliament is passing at quite a fast pace," reports Vladimir Iurkovski, Managing Attorney at Law at Schoenherr Moldova.

In Iurkovski's opinion, this accelerated rhythm may rise from parliamentarians' fear of not getting reelected in November.

"Some laws are actually negative for the existing investor community," Iurkovski says. "One example that I could give you is connected to the recent changes to the Customs Code. The state basically wants to create special zones on the borders, in addition to the already-existing duty free shops, where operators can retail their products without being subject to taxes. The list of such products will likely be very broad." He adds that this is likely going to be detrimental to the companies already operating inside the country. "Petroleum companies, for example, will face competition from new operators appearing now in such zones, as petroleum products retailed there will be exempted from VAT and excise tax. It will be like a bigger duty-free area, but besides alcohol and sweets, now you will find petroleum products and other stuff as well."

"Another good example would be the recent changes to our insolvency legislation," Iurkovski continues. "Until recently the Courts of Appeal was the competent body to examine matters relating to companies' insolvency. But they have now shifted down the competence to first instance courts, even though the judges there, professionally speaking, are not sufficiently prepared and don't have the required experience to make these kinds of decisions in an expedited and professional manner." As a result, he says, "insolvency cases are lasting longer and are more often resulting in deadlock."

However, Iurkovski insists, not all is bleak. "I must also emphasize that some of the recent legislative initiatives are doing good things for the business market and are serving the country's EU commitments," he says. Recent changes to the country's Code of Civil Procedure serve as an example. "The main goal is to expedite the civil processes and to bring the parties to an agreement or judgment in a shorter time," he says. "They implemented the changes to make sure that there are fewer delaying possibilities from the parties, especially those acting in bad faith."

"The government has also made voluntary dissolution processes easier," he continues. "If someone wants to close down a business, they can do it in a more transparent and much easier way than one year ago. Back then the tax audit could prolong the process, but now there are clear deadlines in the Tax Code as to when the audit has to be performed, and in absence of such, the dissolution process can continue," he explains, going on to describe these amendments as definite pro-business changes which will significantly help the activity of local companies.

Finally, Iurkovski notes that, this being an election year, the country is seeing the inevitable decrease in the number of deals, as investors are waiting for the new parliament to be elected. As a result, firms are trying to find new clients in this period of stagnation. "Still, from what I see, there are plenty of M&A deals on the market and quite a lot of assistance projects to get the country in line with EU's *acquis*."

By Hilda Fleischer

RUSSIA: SEPTEMBER 17, 2018

Interview with Stefan Weber of Noerr

The announcement that the retirement age in Russia for both men (from 60 to 65) and women (from 55 to 60) will increase by 2028 have led to quite an outcry, says Stefan Weber, Head of Noerr's Moscow Office, who points to recent demonstrations by protesters across the country.

The draft bill, which is expected to be adopted next year, was initially introduced during the 21st FIFA World Cup hosted by Russia this past June. The timing, Weber notes, "may have been intended to minimize the negative focus and energy." Regardless, he describes the proposed change, in light of the age structure of the population, as ultimately a necessary measure that should have a positive impact on economic growth.

Turning from politics to the law, Weber reports that amend-

ments to Russia's Administrative Offenses Code introduced in the middle of August include a leniency provision on self-reporting for companies with respect to anti-corruption compliance, which never existed before.

Just as the country's antitrust law allows parties who self-report violations to avoid liability, the new Administrative Offenses Code, Weber explains, allows companies to avoid liability for bribery if they self-report to the appropriate law enforcement agency. "This basically encourages companies to report cases of bribery that they discover among their employees," he explains.

"Russia continues to fight corruption in different ways," he says, and notes that "there are many other examples that illustrate the ongoing efforts to improve the Russian legal and compliance environment." In this respect he also mentions the enforcement practice of the Russian antitrust authorities, focusing to a large extent on fighting manipulations in tender procedures. According to Weber, this new focus is evidenced by the August 2, 2018 report of the Russian Federal Antimonopoly Service on its activities on anti-competitive agreements in 2017 and the first half of 2018.

In the meantime, Weber says, the situation in Russia's legal market is more-or-less stable, though he refers to possible changes to the country's bar admission process, including the creation of special exams for qualification, which – at the moment – are not required for the majority of lawyers. Weber notes that, "if the law goes through, lawyers and large law firms, which are mostly not advocates, will have to pass an exam to become licensed advocates."

By Mayya Kelova

POLAND: SEPTEMBER 20, 2018

Interview with Karolina Stawowska of Wolf Theiss

Among the most acute challenges that Poland is facing at the moment are the well-publicized changes to the country's court system, says Karolina Stawowska, Partner at Wolf Theiss.

The changes include new laws affecting the country's Supreme Court, such as the replacement of 27 out of 74 judges and a rule requiring judges to retire at 65, which would, among other things, force current Chief Justice Malgorzata Gersdorf to resign. This, combined with the expansion of the Supreme Court to 120 judges, gives the current government the power to appoint almost two-thirds of the judges. However, Stawowska believes the new laws violate the Polish Constitution. "The law says that the position of the Chief Justice is held for six years," she says, referring to Gersdorf, "and this time has not yet concluded for her." Indeed, Gersdorf has, so far, refused to step down.

Unsurprisingly, certain provisions of the new law are being appealed to the European Court of Justice. In the meantime, the ruling Law and Justice party is pushing the changes forward. According to Stawowska, the situation may result in a lowering of the public's trust in the country's judicial system, particularly with regard to rulings made during this period. "If the current government replaces judges and the EU tribunal finds that the changes are illegal," she says, "it means those court rulings by the new judges might not be binding." She notes that certainty and consistency in the judicial system are critical for both individuals and businesses.

The Law and Justice party has also introduced a new "disciplinary chamber" into the system to initiate disciplinary proceedings against judges, with members of the disciplinary chamber linked to the country's Ministry of Justice, even though, Stawowska says, "from a legal perspective they are supposed to be selected by an independent body."

"All of the changes have planted fears that judges will lose their independence," Stawowska says, "because government officials will have the power of the disciplinary chamber."

The Law and Justice party is continuing to reform the country's Tax Code as well, with a draft law expected to come into effect in January 2019. "While the vast majority of the planned changes are unfortunately painful for taxpayers," Stawowska says, "I have to admit some of them are favorable." One such change is the reduction of the corporate income tax rate for small companies to 9%, and another involves an increased regulation of trade in bitcoins. The changes "are currently under discussion and we still don't know exactly what direction the law will go," she says, though she notes that "at the same time, the new draft of the personal income tax and corporate income tax laws provide quite a lot of new restrictions and new ways that would eventually lead to an increase of effective tax rates."

By Mayya Kelova

READINESS IS ALL:

SCHOENHERR ROMANIA HELPS COMPANIES COMPLY WITH COMPETITION AUTHORITY GUIDELINES

Romania's Competition Council is one of the country's most active and demanding regulatory authorities, with hundreds of sector inquiries and investigations conducted in two decades of activity and significant fines being levied against offenders each year. The powers of the RCC have increased in recent years, as a result of efforts to encourage and protect whistleblowers, new developments in forensic procedures, and cross-border cooperation and action. In addition, the European Commission's March 22, 2017 proposal to empower national competition authorities is expected to increase the RCC's reach and efficiency.

In this context, companies need to take more care than ever to ensure compliance with Romania's competition legislation. To help companies do so, in 2017 the RCC published a Guide on Compliance with Competition Rules.

To find out what such compliance programs should look like, what the RCC recommends, and how following the RCC's guidelines can help a company, we reached out to Schoenherr Bucharest Partner Georgiana Badescu, a widely-acknowledged expert in the field, with some questions.

CEELM: First, Georgiana, let's start by reviewing the RCC's efforts and success rate. How active is the authority, and how often are its challenges to its fines successful?

G.B.: Competition challenges in Romania are governed by two levels of jurisdiction: the Bucharest Court of Appeals and the High Court of Justice. Most years there are well over 100 cases pending before the competent courts of jurisdiction. Last year there were 185 cases, in fact – up from 118 in 2010.

Statistics show a high success rate in favor of the Romanian authority: its average success rate at the first level of jurisdiction was 90% from 2010-2016, with a drop to 78% in 2017; and an average of 92% at the second level of jurisdiction during the same period, with a drop to 90% in 2017. In 2017, the High Court of Justice upheld sanctioning decisions in full in 55% of the cases; in others, it mostly reduced fines applied through the RCC's sanctioning decision. Only in rare cases – approximately 10% of the time – did it actually annul the fine.

CEELM: What sorts of problems get companies in trouble most often?

G.B.: Agreements between competitors (so-called cartels) consisting of price fixing, bid rigging/market sharing, limitations of trade, including those set up via exchanges of commercially sensitive information either directly or through trade associations, for example, are the most problematic and are typically investigated and sanctioned by the RCC.

Abuses of dominant position have also been on the authority's radar for some years now.

Recent statistics show that out of 19 new investigations opened by the RCC in 2017, 11 concern potential cartels and five involved abuses of dominant position.

CEELM: What do the compliance programs you design and help implement

generally look like?

G.B.: The first step we usually take before drafting a competition compliance policy is to audit the company's business practices. This allows us to diagnose where problems may lie, including determining whether a company may be presumed dominant on a specific/narrow market, and to put appropriate safeguards in place via the company's compliance program.

The second step consists of devising a tailor-made policy that includes practical examples and easy-to-understand cases by employees and typically involves dedicated interactive training sessions and testing.

For some clients, we even organize mock dawn-raids, which basically replicate an inspection from the competition authority. This conveys an increased level of awareness and secures the preparedness of key employees who are likely to be involved in a real raid.

CEELM: What elements of those programs do most companies most commonly overlook without your assistance?

G.B.: I would generally say that an anti-trust lawyer's know-how is an extremely valuable resource in prevention activities, especially in devising or upgrading compliance programs.

We have had requests to review existing compliance programs, especially after the publication of the RCC's Guide. When handling these instructions, we first define the relevant business areas and have discussions with key employees on daily working streams or information exchanges. After that, we can put forward specific and dedicated recommendations, including templates to be safely used in correspondence. By the nature of our job, we are constantly updated with the latest developments in the field, and therefore we can flag very specific areas of concern that are usually overlooked or seen as less important by companies.

CEELM: Have any of the companies you've worked with experienced dawn raids since? What were the results?

G.B.: Yes, we have had a couple of companies that were raided by the RCC, one of them only a few days after a dawn-raid refresher training. I was very impressed by their internal organization, as they followed internal policies by the book: they called us immediately and everyone was alert and aware of the inspectors' rights during the raid. The process went very smoothly.

CEELM: Does improving a compliance program in alignment with the RCC guidelines help a company in any way beyond protecting it from potential RCC penalties or sanctions?

G.B.: Since the RCC's sanctioning regime is gradually becoming more severe, I strongly believe companies should focus on investing in adequate compliance programs that could ideally result in bullet-proof behavior. The recent practice of the RCC shows that a company may be held accountable and fined with a percentage of its entire turnover, even for misdeeds of one or two employees.

Beyond this goal, there is also a direct reward for companies: in the event of an investigation, an adequate compliance program can lead to a fine being reduced by up to 10%. It is reasonable to expect that the standards used by the RCC to assess the adequacy of such programs will increase and rely on the RCC's Guide. Regular trainings are truly important, and mere paperwork ticking all boxes required by the RCC will presumably not be sufficient to secure the highest penalty reduction.

Georgiana Badescu, Partner, Schoenherr Bucharest

CEELM: How long does a typical mandate work in these cases? How long from initial contact to Schoenherr until the primary work is completed?

G.B.: This very much depends on the scope of work defined with each client.

On average, a typical mandate involving a basic audit of one or two lines of business followed by devising the compliance policy takes between one and a half to three months, as during this time we may exchange several iterations with the client. We have had more extensive mandates of up to six months, but in these cases the audit phase was longer due to the existence of several group companies or lines of business that needed to be assessed.

David Stuckey

MARKETING LAW FIRM MARKETING: THE BIGGEST DIFFERENCE

The news that many of the legal markets in CEE impose stricter rules on law firm advertising and marketing than many of their Western counterparts comes as no surprise. Still, to explore this concept just a bit, for this issue, we asked law firm marketing and BD experts around CEE: "What, in your opinion, is the biggest difference between law firm marketing in your market and law firm marketing in London or New York?

The city economies in London and New York are way more competitive and volatile than country economies in the Balkans. This affects the type and quality of our marketing material. While London and NY law firms claim boutique-like qualities and agility, CEE law firms promote their one-stop-shop capacities and stability. Our London colleagues will produce a lot of shorter pieces of writing on a specific topic within a certain sector, while your typical CEE product will include a comprehensive overview of the entire practice area or a sector group. For SEE law firms, Bar-imposed limitation on advertising define our focus on in-bound marketing options and the educational, even scientific, character of our non-client material.

Jelena Bosnjak, Business Development & Marketing Manager, CMS Croatia

The US and UK legal markets have over a hundred years of history, whereas the Russian market is, after only 25 years, still relatively young. Its pioneers emerged in the early 1990s and we – Andrey Goltsblat's team – were among them. We are still operating on the Russian market, now as part of Bryan Cave Leighton Paisner. This is a relatively young and dynamic market, where rigidity has not yet had time to set in. Every year brings change. First of all, many new players are emerging, mostly spin-offs, which is peculiar to the Russian market. In contrast, ILFs are developing through M&A. So the market is very quick-moving, with three to five law firms (including us) invariably top ranked, while the lower leagues change dynamically from year to year. These many small spin-offs grow quite quickly. They tend to have one or two major clients, so need to expand their client base and position themselves on the market. To this end, they focus on building brand awareness using a diverse range of PR and communications tools and investing in sponsorship and advertising.

As throughout the world, bigger and more mature law firms with sizeable client portfolios focus more on BD and client technics seeking to both maintain existing and develop new relationships.

The Russian business is fairly pragmatic. To qualify for a tender, track record and rankings are often crucial, so we need to demonstrate relevant experience and a client list. For example, here in Russia, it is a must to publish the firm's client list on its website, with the clients' consent, of course. In other markets, such disclosure might be inappropriate or prohibited, or even subject to specific laws or rules of the Bar.

In an actively evolving and highly competitive market environment, those that demonstrate the greatest creativity and innovation come out on top. So we endeavor to merge the classical marketing and PR tools used by global ILFs with new and unconventional marketing solutions tailored to the local market and focusing on our specific client segments. New technologies, Internet marketing, and social media are all available and used widely here in Russia. We have a dynamic young market and a young client base, where today's law students might soon be working in-house and choosing a legal counsel.

Svetlana Kleimenicheva, Director of Operations and Marketing, Bryan Cave Leighton Paisner (Russia)

The main difference was the highly regulated legal marketing in CEE. The US and UK markets are way more liberal. The regulations are softening but it's hard for the partners to implement the business and marketing driven mindset immediately. Also, these conservative markets are not ready for the US type of lawyer-ads as well. In Hungary, almost all of the special prohibitions have been lifted, but only a small group of law firms are using the marketing opportunities in their full potential – probably because the rest did not become used to it in previous decades.

Mate Bende, Managing Partner, Pro/Lawyer Consulting

TAKE THIS JOB AND SHOVE IT: A LAW FIRM MARKETING SPECIALIST SAYS GOOD-BYE

The particularly-challenging nature of CEE law firm marketing becomes especially relevant as we bid adieu to a good friend in Bulgaria, who, after more than four years doing law firm marketing and business development with several of Bulgaria's leading law firms, is leaving the profession altogether. We asked her some final questions on her last day, honoring her request for anonymity in the process.

CEELM: First, tell us a bit about your background and how you got into the law firm world.

A: I was a project manager at a venture equity company, but I had an applied legal background; I was not a lawyer but I had a great focus on law in my education, and I had prepared many legal documents as a project manager.

I was looking for diversity – for something new, for new challenges. I thought at that time the legal industry was very interesting. I thought it would provide a very dynamic environment, working with a lot of people, and a lot of projects. And It was very dynamic. Indeed, I was quickly quite overwhelmed with work. I was the only person in the business development departments at both firms I worked with, which meant all work went through me. Which is very difficult. It was very interesting, of course, and very challenging, because I participated in proposing new working procedures, new challenges, new networking challenges, and new marketing opportunities for the companies. But in terms of the unending submissions, and the frustration of trying to overcome Bulgaria's bar restrictions, it was very frustrating, and very consuming.

CEELM: So why have you decided to move on?

A: It was just high time to leave the industry. I became very frustrated. Working with the lawyers was difficult, while trying to maintain my dignity. Of course, I value many of the relationships I was fortunate enough to develop, but whether it's because of the stress they face, or the particular incentives, or simply the kind of characters that are attracted to the profession, I'm afraid I discovered that many of them are simply not very nice persons. And I'm afraid that non-fee earners are not persons that are much loved at law firms.

CEELM: Did you not feel that you were getting enough support?

A: With more support I would have been happier, obviously.

CEELM: It sounds like you don't feel that you were given enough respect, ultimately.

A: Yes, exactly. That's the right word. I didn't feel I was receiving any real respect for the amount of work I was putting in. Still, I don't want to be too negative. There were many parts of the job I enjoyed a great deal, including online marketing projects, helping develop and implement content strategies, participating in negotiations with clients, and creating/hosting client events.

CEELM: So what's next for you?

A: I've accepted a position in a whole new industry: telecom. I will be managing telecom infrastructure projects.

We wish you the best and the CEE law firm marketing world is the worse for your departure!

INSIDE INSIGHT: INTERVIEW WITH MAXIM NIKITIN, CHIEF LEGAL OFFICER OF ATOL GROUP IN RUSSIA

Maxim Nikitin is the Chief Legal Officer of Atol Group in Russia. He started his career in law in 1998 at Debevoise & Plimpton. In 2001 he moved in-house before returning to private practice in 2011. In 2013 he moved back in-house as Chief Legal Officer with Virgin Connect, before moving to Atol in March of this year.

CEELM: When and why did you decide to become a lawyer?

M.N.: I am from a lawyer's family. My parents are both lawyers and apparently I was inspired to continue the family tradition from a young age. As I recall it, choosing my future career path was not a hard decision for me.

CEELM: You started your career in law in 1998. How has the market changed since that time?

M.N.: The market in Russia has changed dramatically since 1998. In the nineties the law was still in transition from the Soviet regulation to the current one. A lot of new areas of business were appearing, and the legal part was constantly lagging behind the requirements of the market. It was challenging to make a decision amid the lack of regulations because the results could not be predicted from the legal perspective. However, I would say it was an interesting time – and not only for lawyers.

CEELM: Who is the one person you learned the most from?

M.N.: Wherever I've worked so far, I have always found colleagues from whom I could learn. And this is still true. I was perhaps also fortunate to meet and to work with strong professionals. We face new challenges every single day and each one is more difficult than the previous.

CEELM: What kind of legal and personal skills are most valuable in your role at Atol Group?

M.N.: Risk assessment is the most required competence. Zero-risk solutions simply do not work. A lawyer has to understand business requirements and suggest solutions which prevent negative consequences and allow business to grow. In order to provide the right advice, lawyers must have strong management skills, be attentive to detail, and – at the same time – have a full view of the problem.

CEELM: How big is your team? Did you put it together or did it exist before you arrived?

M.N.: Before I joined Atol, the company had only one lawyer on board, and that was obviously not sufficient for the business. Now my team consists of four lawyers, plus myself. First, I examined the ongoing business processes in order to find out what bottlenecks were in the processes and what was still needed. After that I defined the areas that needed improvement and decided how big the team should be. Now each team member is assigned to a particular area. I think it is very important to find a balance between people's specialization in order to better exploit their expertise and ensure some generality of skills to prevent disruptions if a designated lawyer is absent or cannot respond timely by any reason.

CEELM: What was the biggest challenge you faced in the last two years? How did you respond to it?

M.N.: As a matter of fact, the biggest challenge in my profession is the legislator. The law in Russia is still changing quite rapidly. What I studied twenty years ago at the university became irrelevant quite a long time ago and even what I learned two years ago has lost its relevance. You cannot rely on your own experience and you always have to check what the current legal regulations are. At least, basic legal principles have not changed dramatically and this helps sometimes.

CEELM: If you could change one thing about the service you've received from external counsel, what would it be?

M.N.: The price. But it is utopia, of course, to expect legal advice for no cost. I understand why costs cannot be lower, because the quality cannot be compromised. What I expect from the external counsel is deep involvement in my business, which allows us to receive more professional and relevant advice.

CEELM: What's your favorite tourist destination? Why?

M.N.: Usually I prefer active vacations. Lying on a beach with a glass of beer is definitely not my style. I love mountains, so usually, in the summer, we go hiking, in the winter, we go skiing. Fortunately, there are plenty of places to visit on this planet. If not the mountains, then it can be travelling without any exact destination – we just rent a car and go around the country, find nice rural places and observe life as it is. Something that you probably miss if you just visit capitals with their fancy life.

Hilda Fleischer

MARKET SPOTLIGHT: POLAND

In this section:

GUEST EDITORIAL: WHAT A WONDERFUL PROFESSION

I love my profession. It has given me the privilege of being a witness to and an active participant in the significant changes which have unfolded in Poland over the last 30 years. I graduated in 1985 when the Polish economy was socialist. Nothing at that time could lead one to realistically expect that the socialist regime would fall in a few years, with Poland becoming a free country. When I went to study in Oxford in 1988, I left a socialist Poland, only to return to a Poland already on its path to a free market economy.

Socialist Poland had no corporations, only state-owned enterprises; it had no concept of shares or shareholders. My Oxford studies on company law and employee share ownership proved helpful when I became an expert for the Ownership Transformation Board advising the Prime Minister.

I believe that a lawyer needs to develop a thorough understanding of lawyering by taking up various roles and learning the ins and outs of the profession. After graduating, I completed formal judge training, although I never became a judge. I was admitted to practice as a legal counsel. The fifteen years I spent as a faculty member in the Department of Civil and Commercial Law at the Poznan University, including my time working on my PhD dissertation, let me build a toolbox for in-depth legal analysis that is now so important in providing advice. Since the early 1990s, I have advised various corporations or served on their supervisory boards and, in this way, I have developed a good understanding of business and corporate realities. My involvement in numerous governmental projects and work for parliamentary committees has given me insight into the law-making process, which is also of great value.

In addition, I appreciate the several years I worked in a law office affiliated with one of the Big Four firms, which was when the word "partner" first appeared on my business card. This deepened my realization that lawyering is a service, and that it is the quality of your business advice that matters, and not how many footnotes or Latin maxims your legal advice contains. Crucially, I recognized that to provide top-quality legal services the lawyer is required to understand the client's business. That was also when the idea struck me to create a team of energy lawyers, which is the sort of advisory work I have been doing for over 20 years now, and successfully so, if you go by Chambers and Legal500 rankings. More often than not, a good understanding of my clients' business and the applicable regulatory environments has given me a competitive advantage. For example, it allows me to bring them various opportunities – and, if I am convincing enough, the client usually retains us for implementation. In contrast, increasingly, when a client on its own identifies a need for legal assistance, it can be expected to launch a beauty contest and request proposals from several firms.

The last 30 years did not just involve a quantum leap from socialism to capitalism, but also the milestone of Poland's 2004 accession to the European Union, resulting in wide-ranging changes in all areas of law.

Recent times have seen a fundamental change in the relationship between law firms and in-house counsel. In the 1990s and early 2000s, an academic background, a good command of English, and knowledge of EU legislation usually gave law firm partners an edge over in-house lawyers. This is rare now. Corporate legal directors of today typically have an excellent education, speak foreign languages, know EU law, and, importantly, have significant business experience.

As a result, General Counsel are increasingly-demanding business partners, especially after the last global financial crisis. Unlike before, they now expect law firms to accept fee budgets or caps and to take risks they previously did not incur. The challenge for law firms is to rise to such increased expectations. As the Managing Partner of a leading Polish law firm, I think the key job for me and my partners is to create opportunities for the best young lawyers who want to work for us and join us in facing the new challenges.

My generation knew we had to work very hard to close the gap between the old and the new system as quickly as possible. Today's legal graduates are millennials with a different view of the work-life balance than we once had. Reason and good will are usually enough to work out any differences.

The environment and technological setting for legal services are changing. But, more importantly, the job continues to offer plenty of joy and satisfaction.

Jerzy Baehr, Managing Partner, Wiercinski, Kwiecinski, Baehr

SAVING THE SNITCH:
INCREASING WHISTLE-BLOWER PROTECTION IN POLAND

Against the backdrop of the many significant and at times highly controversial changes being made to Polish law at the moment, the country is close to enacting its first ever serious whistleblower protection laws. What will this protection look like, and what does its passage mean for Poland?

THE EUROPEAN BACKGROUND

The European Commission defines whistle-blowers as "persons who report (within the organization concerned or to an outside authority) or disclose (to the public) information on a wrongdoing obtained in a work-related context, help prevent damage and detect threat or harm to the public interest that may otherwise remain hidden." According to the Commission, because "they are often discouraged from reporting their concerns for fear of retaliation … the importance of providing effective whistle-blower protection for safeguarding the public interest is increasingly acknowledged both at the European and international level."

The fear of negative repercussions is not simply theoretical. According to the 2017 Special Eurobarometer 470 Report on Corruption that was requested by the European Commission, Directorate-General for Migration and Home Affairs and coordinated by the Directorate-General for Communication, 81% of European respondents indicated they would not report corruption they experienced or witnessed due to the potential risk of reprisal.

Accordingly, and following the recent and highly-publicized Dieselgate, Luxleaks, Panama Papers, and Cambridge Analytica scandals, on April 23, 2018, the European Commission issued a proposal for a new Directive on the Protection of Persons Reporting on Breaches of Union Law, which would establish a comprehensive legal framework for whistle-blower protection.

In the meantime, however, and until that framework is officially enacted, the protection of whistle-blowers on a national level in Europe is uneven. Indeed, only ten EU countries – France, Hungary, Ireland, Italy, Lithuania, Malta, Netherlands, Slovakia, Sweden, and the United Kingdom – ensure the full protection of whistle-blowers, with the rest granting only partial protection, usually only in particular sectors such as financial services, transport safety, and environmental protection.

Poland is one of these countries.

THE UNSATISFACTORY CURRENT SITUATION

Currently, provisions in Poland's Labor Code, Criminal Code, and Code of Criminal Procedure loosely protect the right of whistle-blowers. Under the Polish Labor Code employees are protected from unfair dismissals, and the Code of Criminal Procedure requires witnesses to a crime to notify law enforcement authorities. Nevertheless, although complaints can be filed to the country's Labor Inspectorate or Human Rights Ombudsman, ultimately Polish law provides little protection for the identity of whistle-blower, and – in the context of unfair dismissals – puts the burden of proof on them to prove that their dismissal was tied to their reporting.

In addition, the relevant provisions in the Labor Code and the Code of Criminal Procedure are subject to judicial interpretation, allowing each judge to interpret the rules differently. According to Transparency International's 2013 Whistleblowing in Europe report, "since the [Polish] provisions are subject to judicial interpretation, it is difficult to predict how a particular judge will apply these general rules to a particular whistle-blower case. This adds yet more subjectivity into an already incomplete whistle-blower framework. Further, judges' hands are tied by Supreme Court rulings that often do not allow the underlying reasons for an employee's dismissal to be examined. This means that judges may not consider a whistle-blower's public interest disclosure."

"The problem is real, because we are not complying with international standards"

Arkadiusz Korzeniewski

Grzegorz Makowski

Photo Credit Anna Liminowicz

Jacek Michalski

Radoslaw Nozykowski

And part of the problem may be an overall lack of governmental enthusiasm for pursuing corporate crime in the first place. According to Grzegorz Makowski, a Transparency International Partner in Poland and expert at the *pro bono* IdeaForum think tank of the George Soros-founded Stefan Batory Foundation, statistics on corporate liability law indicate that from 2006 to 2016 there were around 200 cases related to corruption, with only 60 convictions, leading generally to what Makowski calls "ridiculous" fines.

Ultimately, the current whistle-blower protection provisions in Poland are widely criticized as being ineffective and badly designed to tackle the real issues whistle-blowers face, even though Poland ratified the United Nations Convention against Corruption in September 15, 2006 and in November 22, 1996 ratified the Convention on the Organization for Economic Co-operation and Development. Whistle-blower rights are also potentially protected under Article 11 of the Charter of Fundamental Rights of the European Union and Article 10 of the European Convention on Human Rights. "The problem is real, because we are not complying with international standards," Makowski says.

Thus, although according to Blueprint for Speech (an NGO that provides research and analysis in support of freedom of expression), public support for whistle-blowers is high, the level of protection they are afforded in Poland, currently, is not.

This may soon change.

EITHER/OR: TWO DRAFT LAWS CIRCULATE IN PARLIAMENT

In recent years, Poland has made several attempts to introduce provisions into legislation addressing whistle-blower protection. Two draft laws currently under consideration by the Polish Parliament reflect different strategies to do so.

The first of these, the Transparency in Public Life law, was drafted by the Polish intelligence agencies as a combination of four pieces of legislation (involving lobbying, access to public information, declaration of assets, and whistleblower protection), and includes a provision that guarantees protection against retaliatory actions, such as terminating employment contracts. Although it was initially expected to be enacted in February of this year, push-back has put it on hold for the moment.

The second draft law providing whistle-blower protection that is under consideration is the new draft Corporate Liability bill put forward by Poland's Ministry of Justice in May of this year (with an updated version released in August).

Although both the draft Transparency in Public Life law and draft Corporate Liability law address the protection of whistle-blowers, they do so in different ways. The Transparency in Public Life law only applies to crimes involving bribery and/or tax evasion, and ensures protection only for those whistle-blowers whose status is officially acknowledged by a prosecutor. By contrast, the Corporate Liability law would protect whistle-blowers irrespective of public prosecutor involvement, and is not limited to specific offenses. Unlike the Transparency in Public Life law, it also requires that companies address any issues revealed by a whistle-blower, with sanctions levied on those that fail to do so.

As both draft bills are still in process, it is not clear which law (if either) will be enacted first. "I can sense an internal competition between these two public officials," CMS Partner Arkadiusz Korzeniewski says, referring to the sponsors – the Polish Intelligence Agencies and the Ministry of Justice – of both bills. "We will see who is going to win the struggle."

WEIGHING THE PROS AND CONS

Many in the Polish legal community are concerned about the provision in the Transparency in Public Life law providing prosecutors with exclusive responsi-

bility for determining who qualifies as a whistle-blower and who does not for purposes of obtaining the law's protection. "The Transparency rules are very strange, to put it mildly," Wolf Theiss Partner Jacek Michalski says. "It does not make any sense to define a whistle-blower only when a prosecutor accepts his or her arguments and information."

In addition, the provisions in the Transparency in Public Life liaw limiting its applicability to specific criminal acts has also drawn some criticism. "The purpose of the whistle-blower provision is to provide tools to protect against offenses or wrongdoings within organizations," Michalski says, "and these are not always necessarily connected to tax evasion or bribes. There might be other issues that a whistle-blower could report in a given form and format."

But the Corporate Liability law, which grants power to the courts instead of the prosecutor to determine who is and who is not entitled to whistleblower protection, does not escape criticism either. The downside of the draft Corporate Liability law, Grzegorz Makowski claims, is the absence of any protection for whistleblowers who are still employed and seeking ways to use internal mechanisms to report irregularities without getting fired. Makowski says, "It seems they [the lawmakers] would like to create incentives for employees to report on their employers without offering them any protection."

Baker McKenzie Partner Radoslaw Nozykowski is more optimistic. Speaking about both bills, he notes, "to a certain extent, it is a step in a good direction, because the previous law was not very effective, and certain changes were needed." And he describes the draft Corporate Liability law in particular as "kind of an umbrella legislation, because it covers reporting on any kind of crime." Still, Nozykowski says, "I do believe that this draft needs serious work. It is a good start, but it definitely needs to be drafted much more carefully."

Ultimately, many believe that both of the attempts to address the issue are insufficient, and that a full and separate act is needed, providing real protection to whistle-blowers in all appropriate situations. To this end, Makowski reports, two years ago the Polish Ministry of Justice initiated consultation on the possibility of combining all whistle-blower protections into one act. The proposal received a positive response at the time, he says, but the idea was dropped at a later stage for undefined reasons. Subsequently, his organization – the Batory Foundation – working alongside Poland's Labor Union and Trade Union, drafted a new law on whistle-blower protection at the end of 2017.

Although Makowski reports that the Batory Foundation's umbrella proposal was supported by Poland's Central Anticorruption Bureau, at the moment it appears the draft bill on Transparency in Public Life is receiving more support in the government. Makowski insists that he and his colleagues are not discouraged. "We think this is a window of opportunity. It will be difficult to ignore our proposed law totally," he says, "and we will advocate for this bill until next year's parliamentary election."

CMS's Arkadiusz Korzeniewski agrees that umbrella protection is needed, and that merely protecting whistle-blowers from having their employment terminated is not enough, as whistle-blowers to significant violations are rarely interested in continuing their employment with notorious employers anyway. "The current EU system leaves a lot of space for domestic legislation, and thus, when it comes to general principals, both [of Poland's draft] laws are definitely steps in the right direction. But the mere fact that this person blew the whistle means his or her professional career is over, because this person will not be able to get any job in her or his profession, because no one wants to have a person like this. So no matter what is written in legislation prohibiting discrimination and retaliation, this will not be enough."

"It seems they [the lawmakers] would like to create incentives for employees to report on their employers without offering them any protection."

"But the mere fact that this person blew the whistle means his or her professional career is over, because this person will not be able to get any job in her or his profession, because no one wants to have a person like this. So no matter what is written in legislation prohibiting discrimination and retaliation, this will not be enough."

Korzeniewski concedes that he is unimpressed with the current proposals circulating in the Polish parliament. "I doubt this very rudimentary measure of protection would be sufficient for making whistle-blowing a more effective measure of combating corruption fraud or other law violations done in companies." Ultimately, he says with a sigh, some aspects of the problem may be beyond the reach of legislation anyway, making a full protection of whistle-blowers impossible.

CONCLUSION

Few would challenge the notion that protecting those who report on crime and ethical violations in the work-place deserve from retribution will encourage them to step forward, providing valuable assistance to authorities in their ongoing attempts to identify and prosecute bad actors. The best way to do so, however, remains a subject of great debate. Poland is attempting to solve this riddle.

Mayya Kelova

MARKET SNAPSHOT: POLAND

THE RECORD-BREAKING ERA OF THE POLISH REAL ESTATE SECTOR

Mateusz Grabiec,
Partner,
Baker McKenzie

The commercial real estate market in Poland continues to be on a growth path. In 2017, the market recorded high demand in all major asset classes, breaking records in the hotel and warehouse sectors. The total value of transactions is growing consistently, and in 2017 it reached EUR 5.1 billion – the highest level in the history of the Polish market.

This figure can be attributed to several factors. The relatively high absorption of this market and the relatively high rates of return on investments in commercial real estate in Poland seem to be the most important. Analysis shows that in most cases there is an increase in demand calculated on a year-on-year basis. This provides a significant incentive for developer activity. Indeed, the rate of return yielded from investments in commercial real estate in Poland is higher than in Western Europe, making it especially attractive to international investors.

In addition, investments in real estate are still an attractive way of investing capital in macroeconomic terms, in light of the stable and relatively high growth rate of the Polish economy. Poland seems to be perceived as a recognized real estate market, gradually reaching the status of a mature market, due to the increasing liquidity and diversity of investment products and the growing number of investors.

In terms of sectors, the greatest activity is happening in the office and warehouse markets. Currently, there are over 1.8 million square meters of modern office space under construction in Poland. Most projects are being implemented in Warsaw, and among regional cities, the construction boom is most visible in Krakow and Wroclaw. At the end of December last year, over 1.3 million square meters of warehouse space were under construction in Poland, providing a record supply of 2.3 million square meters of modern warehouse space. In both the office and warehouse markets, 2017 was also record-breaking in terms of space leased. As a result, the vacancy rate fell to an almost unnoticeable level. This trend is also visible in the hotel market.

Developers are not slowing down, which leads to record-breaking demand for land in Warsaw and regional cities. Some developers have secured land banks that allow them to take advantage of the market boom, but others are facing a significant increase in land prices, especially in relation to land intended for housing development. Available land which is well-prepared in technical and legal terms and is in a good location is rare. In the office market, the alternative is to look for land in places typical of B class office buildings, as well as investments in dynamically growing regional markets, even in such promising new locations as Lodz and Szczecin.

The role of the BPO/SSC external services market should be noted as an important factor stimulating office investments, and the BPO/SSC sector will continue to be one of the key sectors affecting the situation in the office real estate market in Poland. Attention should also be drawn to the growing importance of the co-working services sector. It seems that the market is confident that such offers are an attractive and developing product for entities from other sectors of the economy. As such, the providers of co-working services fill the gap between the expectations of the traditional commercial real estate market and the pressure on flexibility on other lines of business.

Significantly, among the factors stimulating growth on the commercial real estate market, the legal environment is not mentioned. On the contrary, the instability of the law on business practices and the increase of new regulations operate as a brake on the development of this market, as business expects durable solutions in the field of spatial planning and the construction process. As persistent ills, there are also ownership issues resulting from the lack of uniform rules for the re-privatization of land. Thus, there are many challenges for the legislator and for legal practitioners seeking to contribute to the development of the commercial real estate sector in Poland.

By Mateusz Grabiec, Partner, Baker McKenzie

AMENDMENTS TO POLISH TRANSFER PRICING REGULATIONS IN 2017 AND 2018

Andrzej Posniak, Partner, CMS

Significant changes have been made to Polish transfer pricing regulations in recent years. New legislation, adopted in 2017, introduced a three-tiered approach to transfer pricing documentation consisting of: (1) local file, (2) master file, and (3) country-by-country reporting. Poland was one of the first countries to introduce the changes recommended by the OECD in BEPS (Action 13).

Furthermore, beginning in 2018, a limitation on intra-group services (such as advisory, market research, marketing, management and supervision, data processing, insurance, guarantees, *etc.*) and licences between related parties that could be treated as tax-deductible was introduced in Poland. New regulations allow taxpayers to deduct up to 5% EBITDA above an annual threshold of PLN 3 million. However, the Polish Ministry of Finance plans to raise the limit up to 10% of EBITDA in 2019. More expenses on intra-group services might be recognized as tax-deductible costs only if confirmed by the Advance Pricing Agreement negotiated with the Polish authorities.

New Draft Rules on Transfer Pricing

In August 2018, and before taxpayers even had time to get used to the new regulations, the Polish Ministry of Finance published draft rules representing revolutionary changes in the area of transfer pricing. The main goal of the draft rules is to ease the compliance burden for taxpayers and ensure greater consistency of local transfer pricing documentation regulations with OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations. However, some of the proposed regulations, such as one allowing the tax authorities to re-characterize or not recognize transactions between related parties, may pose some risk for taxpayers.

Moreover, the new bill does not change some elements which have been problematic for taxpayers. For example, benchmarking studies are still required to contain Polish comparables (however, this requirement is expected to be changed by decrees attached to the new bill). In addition, there are no plans to extend the seven-day deadline for taxpayers to submit tax documentation after receiving the tax authorities' request.

Tax Authorities' Approach to Transfer Pricing

Bartlomiej Wajda, Counsel, CMS

Tax authorities have, it seems, become particularly interested in transfer pricing in recent years during their discussions with taxpayers. At the same time, they have become more open to dialogue with taxpayers and to pursuing positive initiatives in respect of transfer pricing regulations. For instance, they have created the Transfer Pricing Forum – a discussion platform between the tax administration and business.

In terms of tax audits, Polish tax authorities have increased the effectiveness of their efforts by doing more preparatory analysis in advance, using statistical tools (like the Quick Analytics TP and Orbis databases, CIT-TP declaration, and SAF-T), and implementing data mining processes before initiating formal audits. These analyses may be triggered by, for instance, a decrease in profits or low profitability, deviations from the profitability level in the industry, or low income in relation to the capital employed.

According to statistics, in 2017 the Ministry of Finance initiated over 150 audits and proceedings in the field of transfer pricing and aggressive tax optimization, involving the understatement of tax liabilities amounting to PLN 635 million and a PLN 1.3 billion tax loss reduction. Transactions of special concern for the Polish tax authorities include: (i) intangible services and licences; (ii) loans and guarantees; (iii) business restructuring; and (iv) profit allocation to permanent establishment.

To sum up, transfer pricing is becoming an increasingly important area of tax law in Poland. This trend is clearly highlighted by the fact that despite a major amendment to the transfer pricing rules in 2017, the Ministry of Finance is already preparing more significant changes for 2019.

By Andrzej Posniak, Partner, and Bartlomiej Wajda, Counsel, CMS

INSIDE OUT: THE POLISH DEVELOPMENT FUND'S ACQUISITION OF PESA BYDGOSZCS

The Deal: In July 2018, CEE Legal Matters reported that the Warsaw office of Linklaters had advised Polish rolling stock manufacturer PESA Bydgoszcz and its shareholders on the sale of 100% of the company to the Polish Development Fund. Weil, Gotshal & Manges advised the Polish Development Fund on the acquisition.

We reached out to both firms for more information.

The Players:

- Counsel for PESA Bydgoszcz: Marcin Schulz, Partner, Linklaters

- Counsel for the Polish Development Fund (PFR): Pawel Zdort, Partner, and Jakub Zagrajek, Senior Associate, Weil Gotshal & Manges

CEELM: Marcin, how did you and Linklaters become involved with PESA Bydgoszcz in this matter? How were you selected as external counsel initially, and when was that?

M.S.: We became the advisor to PESA Bydgoszcz and its shareholders back in October 2017. Initially our relationship began with our involvement in a litigation matter, followed by refinancing discussions, which eventually morphed into Linklaters becoming the exclusive advisor on all matters relating to the refinancing of PESA Bydgoszcz's loan facilities and the sale process to PFR.

CEELM: What about you, Pawel? How did you and Weil become involved with Polish Development Fund in this matter?

P.Z.: We have known certain members of the Polish Development Fund investment team for quite some time – they are esteemed professionals with an established presence in the Warsaw investment community. Jakub and I first encountered PFR's team while working for UniCredit in connection with the disposal of its stake in Bank Pekao – the largest M&A transaction in the Polish market signed in 2016, when we sat on opposite sides of the negotiating table. PFR subsequently retained us in connection with the PESA transaction (in October 2017) and certain other deals. This type of business generation is the most satisfying for us as lawyers since it proves to us that our performance and dedication are noted and appreciated by all of the parties to a transaction, particularly as PFR always selects its legal counsel in an auction process where several law firms compete with each other for a mandate.

CEELM: And what was your initial mandate when you were first retained for this particular project?

P.Z.: Our initial mandate encompassed all key aspect of the potential transaction, including structuring, due diligence, and antitrust issues, as well as negotiations of the transaction documents.

CEELM: Who were the members of your teams, and what were their individual responsibilities?

M.S.: It was a true team effort. Jarek Miller, Head of our Banking & Finance Practice, supported by Agata Brzozek, advised PESA on all refinancing-related matters in the process. I and Szymon Renkiewicz, supported by Klaudia Krolak, Jakub Wozniak, and Ewa Szmigielska took the lead on the sale process itself. We also engaged Malgorzata Szwaj, Head of our Competition/Antitrust Practice, and Wojciech Podlasin, in relation to advising the client on merger control and related issues. The financial advisor was Deloitte (Zbigniew Majtyka and Wojciech Labus).

P.Z.: I was the relationship partner on the deal and Jakub was responsible for the day-to-day work on the transaction, with the support of Michal Milewski, an

associate. Marcin Iwaniszyn, a partner, and Zofia Frydrychowicz, counsel, who jointly Head the Banking and Finance practice, advised on financial issues related to the transaction, and they were assisted by associates Barbara Skardzinska and Jakub Czerka.

The due diligence team was headed by Monika Kierepa, counsel, and included associates Kamil Kozlowski, Tomasz Karkowski, Kacper Stanosz and Pawel Mazur. Magdalena Pyzik, counsel, and associate Jerzy Bombczynski were responsible for restructuring issues.

Iwona Her, a partner and the Head of the Warsaw office's Competition practice group, and associates Irmina Trybalska and Leszek Cyganiewicz advised on anti-monopoly issues. Robert Krasnodebski, a partner, senior associate Marek Kanczew, and associate Franciszek Dewille were responsible for tax advice.

CEELM: Please describe the final deal in as much detail as possible – in other words, how was the deal structured, and how did you help it get there?

M.S.: Throughout the past year, the press has been abuzz with reports of PESA Bydgoszcz's financial difficulties. Our aim was to help the company and its shareholders both to overcome these problems and to secure the engagement of a stable investor who could build on the incredible potential offered by the company, built over many years. From a structural point of view, this transaction combined refinancing with the sale to PFR as the investor of 100% of shares in PESA Holding, which in turn controls PESA Bydgoszcz. The transaction is conditional and we expect closing to take place in September.

J.Z.: In accordance with the investment agreement signed on July 16, 2018, PFR's investment in PESA encompasses two elements: the acquisition by an investment fund managed by PFR of all of the shares in PESA Holding (a limited liability company holding approximately 99% of the shares in PESA) from the current shareholders (*i.e.* the founders and certain former management board members of PESA); and a PLN 300 million investment in PESA by that PFR-managed investment fund.

The structure of the transaction changed during the course of the negotiations. The initial discussions envisaged that the sellers would retain a certain stake in PESA Holding and that a shareholders agreement would set out the principles of governance, exit, *etc.* However, the deal structure that was finally agreed was an outright sale of the entire stake in the target company, with the sellers being entitled to certain earn-out payments if particular conditions are met in the future.

CEELM: What would you describe as the most challenging or frustrating part of the process? Why?

M.S.: The key challenge in the transaction was its complexity and the need to align the interests of different parties involved in the process.

J.Z: The final stages of the negotiations overlapped with the 2018 World Cup in Russia, which meant that aligning the availability of all of the parties involved was extremely difficult, this despite the

Marcin Schulz

fact that not all legal advisors are all that interested in football.

P.Z.: In all seriousness, I believe that the most challenging aspect of the transaction was aligning the results of the discussions of the financial team (involved in the discussions with the financing banks and insurance companies) and the transactional team.

CEELM: Was there any part of the process that was unusually or unexpectedly smooth/easy?

M.S.: Let me say that we enjoy getting involved in complicated transactions with plenty of challenges. This has certainly been one of those transactions.

P.Z.: Our antitrust team managed to ensure that the antitrust clearance from Poland's Office of Competition and Consumer Protection was obtained prior to the execution of the investment agreement – in fact very soon after the filing of the relevant application. This allowed us to slightly simplify the transaction structure just before signing the deal.

CEELM: Did the final result match your initial mandate, or did it change/transform somehow from what was initially anticipated?

M.S.: Speaking from experience, I don't think there has been any transaction where the final result fully matched the initial mandate, so obviously there were certain changes as we went down the

transaction road map. For a number of valid reasons, the structure of the transaction had to be re-shaped more than once but we are quite happy with the final result.

P.Z.: Our final mandate was extended so as to also cover the provision of assistance to PFR in connection with the discussions with the financing banks as well as transactional tax advice.

CEELM: What individuals at PESA Bydgoszcz directed you, and how would you describe your working relationship with them?

M.S.: Our roles were multiple and we had to consider the interests of PESA Bydgoszcz and its shareholders alike. We worked with all of the seven shareholders controlling PESA Bydgoszcz as well as with the Management and the Legal Team at PESA Bydgoszcz. The longer the project took, the closer the co-operation became, and I am confident when I say we won the trust of our clients.

CEELM: What about you, Pawel and Jakub? Which individuals at PFR directed you, and how would you describe your working relationship with them?

J.Z.: The PFR team was led by Marcin Piasecki, the Vice-President of PFR. The investment team of PFR consisted of Adam Brulinski, Grzegorz Stepinski, and Sebastian Marchel. The legal aspects of the deal were managed by Joanna Blaszczyk, head of PFR's legal team responsible for investments. PFR is a demanding client and the members of its team come from various backgrounds and have strong transactional experience. PFR did not even retain a financial advisor in connection with the transaction and handled the transaction internally. The PFR team members worked very closely with their legal advisor and are just as familiar with every bit and piece of the investment agreement as we are.

Jakub Zagrajek

CEELM: How would you describe the working relationship with your counterparts at Weil on the deal?

M.S.: The complexity of the transaction was a challenge to all advisors alike. To properly respond to the challenge, we had to build a solid, collegial working relationship with our peers across the table. I enjoyed working with colleagues from Weil and strongly believe that together, we helped to advance the deal and avoid a number of pitfalls. I trust that Pawel, Jakub, and Michal would co-sign my assessment.

CEELM: Is that right, Jakub? What was your relationship with your counterparts at Linklaters like?

J.Z.: I would describe it as very smooth. Linklaters' team was led by Marcin Schulz, a pragmatic and experienced M&A lawyer. It was very important for us that PESA retain an established legal advisor with sufficient experience to handle such a complex transaction. Based on our experience with sellers of a business who are individuals – in particular company founders or former management – Marcin needed to participate in long and demanding discussions with PESA's sellers in order to ensure that their respective positions were aligned.

CEELM: How would you each describe the significance of the deal?

M.S.: The Polish Development Fund is a strategic company belonging to Poland's State Treasury, serving the long-term development of Poland's investment and economic potential. In March 2018, it was reported that the PFR would be directly involved in PESA. The financial problems of the Bydgoszcz producer, stemming from delays in the implementation of contracts towards the tail-end of the EU funding period (2007-2013), as well as a lack of new orders after the end of the EU funding period, were already widely known at that time. Following this transaction, the PFR Group became the largest player on the domestic rail market and is key to the greater strategy of transforming PESA into the biggest rolling stock producer in Poland. The investment in PESA Bydgoszcz entails a change in the company's market strategy. Thanks to this transaction, PESA will obtain the necessary funds needed to finance and implement its strategic objectives.

Pawel Zdort

P.Z.: As PFR stated in its press release, the investment in PESA Bydgoszcz entails a change in the company's market strategy. PESA plans to optimize production by improving management and quality control standards, as well as producing longer series. It will selectively choose new contracts. The new strategy assumes the intensification of development in foreign markets such as Italy, Germany, the Czech Republic, and Romania. We take great pride, both collectively as Weil and as individuals, in having advised PFR in connection with this unique business opportunity. We hope that the final result of the transaction will be that in a couple of years it will become quite standard to jump on a PESA train or tram not only in Poland, but in other European countries.

David Stuckey

#lawyers #realestate #expertise

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EXPAT ON THE MARKET:

INTERVIEW WITH ANDREW KOZLOWSKI OF CMS

Andrew Kozlowski is Counsel (and former Managing Partner) at CMS in Warsaw, where he specializes in energy and project finance, corporate/M&A, privatizations, and international capital markets. He has been involved in numerous infrastructure projects in Poland and across CEE and various project finance transactions in the energy and transportation sectors, from motorways, railways, and waste, to energy utilities.

CEELM: Run us through your background, and how you ended up in your current role with CMS.

A.K.: I am a graduate of the University of San Diego Schools of Business and School of Law and a member of the California Bar. Prior to moving to Poland in March 1992 I practiced law in a San Diego-based law firm focusing on cross-border M&A and real estate transactions. In 1990 and 1991 I made numerous business trips to Poland advising clients on cross-border transactions between the US and Poland. During one of my stays in Poland I was asked by the Polish Minister of Finance to move to Poland and become one of his foreign legal advisers thru a program financed by the World Bank. In that capacity I advised Ministry officials on numerous international transactions.

I joined the Warsaw office of CMS in January 1995 as its managing partner with the mission to quickly expand the office – which at that time consisted of one Polish lawyer. By the end of 1995 the office had ten Polish lawyers and a fee income of 2 million euros. In 1996 I convinced Stephen Shone and Pawel Debowski and their real estate team to join CMS. As a result, the office doubled to 20 lawyers. In 1998 I convinced Dariusz Mioduski, Andrzej Blach, and Tomasz Minkiewicz and their entire energy and infrastructure team to join us from White & Case. By the end of 1998 the Warsaw office had over 40 lawyers and was one of the largest law firms in Poland. Over the next 20 years we organically grew to over 140 lawyers in Warsaw and Poznan. In 2009 the firm asked me to become the practice group manager for the entire CEE region in addition to continuing to be the managing partner of the Polish practice. As a consequence, I virtually had no time to perform legal work, which was my true passion. In Spring 2016 I transferred all my management responsibilities to younger partners. This allowed me to focus full time on developing transactions for CMS clients resulting in new legal instructions for our partners.

CEELM: Was it always your goal to work abroad?

A.K.: It was never my goal to work and live abroad, although most of my work related to cross-border transactions. It was really my work at the Polish Ministry of Finance in 1992 which convinced me that CEE offered a tremendous opportunity to a then-young lawyer with international transactional expertise. My fluency in the Polish language was also a big factor.

CEELM: Tell us briefly about your practice, and how you built it up over the years.

A.K.: My practice currently concentrates on infrastructure finance, which is quickly spilling over to real estate development as the boundaries between the two are becoming less defined. In 2009, when I became the practice group manager for the CEE region I transferred most of my client responsibilities to younger partners, as I had to devote most of my time to managing the Warsaw office and the CEE region – which at that time totalled

over 300 lawyers.

During the past two years, having relinquished all my management responsibilities, I have been concentrating on developing infrastructure and real estate development projects for CMS clients. My focus is to help clients structure transactions at a very early stage leading up to signing the term sheet. At that point my Polish colleagues take the lead in drafting documents. During the document negotiation phase I assist on a more high-level basis, concentrating on developing legal solutions to major deal-breakers. I feel that my present role is the high point of my career as I am confident that I am adding real value to clients in helping them develop new projects and overcome obstacles leading to their successful completion.

CEELM: How would clients describe your style?

A.K.: Deal maker vs. deal breaker. Our role as lawyers is to advise clients on the legal risks in a certain transaction and to minimize the chance of later disputes leading to litigation. Many lawyers have a tendency to provide clients with a litany of risks resulting in the transaction not completing. Since every business transaction is riddled with risks it is our job to provide our clients with a commercial perspective on their impact to the them so that they can take a view on whether or not to assume the risks.

CEELM: There are obviously many differences between the Polish and American judicial systems and legal markets. What idiosyncrasies or differences stand out the most?

A.K.: The main difference is in the litigation context. In the US once a dispute goes to trial there is a resolution within a matter of weeks. In Poland courts schedule one-day trials in three to six month intervals, resulting in court proceedings lasting up to seven years. This provides a lot of uncertainty to clients and is inefficient from the judges' perspective, as they are required to read files multiple times. The overhaul of the entire court system which is currently being attempted by the current Polish Government is long overdue.

CEELM: How about the cultures? What differences strike you as most resonant and significant?

A.K.: I think the biggest difference is that in Poland families are much more close-knit. Parents tend to help their children even after they graduate from college. Children tend to take a more active role in tending to elder parents. Also, the role of the Church is much more prominent than in the US.

CEELM: What particular value do you think a senior expatriate lawyer in your role adds – both to a firm and to its clients?

A.K.: I think our experience in structuring transactions in different legal systems enables us to develop creative solutions to legal obstacles. Many times, my role is to be the strategic adviser to the client, which goes beyond pure legal advice. Furthermore, because of our network of contacts we are able to affect introductions to clients who can provide sources of financing or other types of expertise.

CEELM: Outside of Poland, which CEE country do you enjoy visiting the most, and why?

A.K.: The Czech Republic, because of its capital Prague, which I think is the most beautiful city in Europe, full of history and beautiful architecture.

CEELM: What's your favorite place to take visitors in Warsaw?

A.K.: Lazienki Palace and Park, the former palace of Polish kings. The park is in the middle of Warsaw and is breathtaking for its size and natural beauty.

David Stuckey

EXPERTS REVIEW: COMPETITION/ANTITRUST

The Experts Review spotlight descends on Competition/Antitrust this time around. And the articles are ranked, as suggested by CEELM Staff Writer Mayya Kelova, in order of national alcohol consumption (from 2010 data). Why? We don't ask.

And, in a development that will shock approximately none of our readers, it turns out we have found a ranking in which not just European, but Central and Eastern European countries, dominate. Thus, the article from Belarus comes first not simply because Belarussians drink more than anyone else in CEE, but because, at 17.6 liters per capita per year, they they drink more than anyone else in the world. There are no articles from the countries ranked second and third in the world (Moldova and Lithuania), but Russia picks up the baton at number four (admit it: you thought they'd be first, didn't you?)

(Unsurprisingly, Bosnia & Herzegovina, where inhabitants drink only 7.1 liters per year, is the driest country in CEE).

In This Section:

BELARUS

New Law on Competition: What Has Changed for Foreign Companies in the Belarusian Market?

Natalia Anoshka

As part of comprehensive change in the Belarusian legal sphere, a new edition of the country's "On Contradiction of Monopolistic Activity and Development of Competition" law (the "Competition Law") entered into force on August 3, 2018. The Competition Law sets out new rules designed to ensure conditions for fair competition and to create new markets and enable their development apply to Belarusian and foreign companies doing business in Belarus.

What are the most significant changes and opportunities companies should be aware of?

Extended Definition of Economic Concentration and Criteria for Obtaining a Permit

Earlier, Belarusian legislation stipulated a limited number of cases when the prior approval of the Ministry of Antimonopoly Regulation and Trade of the Republic of Belarus (MART) was required (primarily matters regarding share and stock transactions, mergers and acquisitions, the founding of companies in certain cases, and the registration of holding companies). This approach, however, failed to correspond to foreign practice and contradicted the regulations of many other jurisdictions.

Under the Competition Law the rules for merger clearance (where the relevant threshold criteria have been exceeded) have been amended relating to: (1) the acquisition of property located in Belarus which is related to main assets and/or intangible assets valued at more than 20 percent of the book value of all main assets and intangible assets of the company which owns them; (2) the acquisition of the right to give mandatory directions to companies and individual entrepreneurs (for instance when a trust agreement regarding majority of voting shares is concluded); (3) partnership agreements between companies or individual entrepreneurs which are competitors in Belarus; and (4) the acquisition of the right to discharge the office of an executive body of a company (for example, hiring a management company instead of appointing a director).

We focus on another change, which has the most significant impact on business: the increase in the threshold criteria for deals recognized as economic concentration. These criteria have been doubled as follows: 1) the book value of assets and 2) the volume of proceeds from sales (following the result of the preceding year), from USD 1 million and USD 2 million to USD 2 million and USD 4 million, respectively. In practice, this means a reduction in the number of corporate deals subject to prior approval from MART, as under the previous legislation relatively small companies which had a small market share were also obliged to fulfill formal requirements and meet the lower threshold criteria.

Agreements Restricting Competition and Concerted Actions

Agreements between competitors (cartels) regardless of their impact on competition is now prohibited if these agreements can result in setting, maintaining, increasing, or reducing prices, dividing the commodity market, reducing and terminating the production of goods, or one or more parties to the agreement refusing to (at its/their own discretion, not under the law) enter into contracts with certain sellers and consumers.

The legal regulations regarding vertical agreements have also changed. Currently vertical agreements which can result in the setting of resale prices (with the exception of the maximum resale price) and prohibiting buyers from selling goods of competitors (with the exception of trading under a certain means of individualization of the seller) are forbidden. This prohibition does not apply to permissible vertical agreements. Other innovations in the Competition Law include an increase in the level of permissibility to 20 percent (from 15 percent) and the right of an interested party to provide evidence of permissibility to MART if the party disagrees with the decision of the authority.

Simplifying the Fight Against Unfair Competitors

New restrictions and bans on unfair competition have been introduced, such as the use of specific comparisons to competitors and their products (including the words "best," "first," "most," and "only"), which is forbidden unless those terms can be confirmed, the unlawful receipt, use, and disclosure of information which is a commercial, official, or other legally-protected secret, and the imitation of competitors' corporate style or other elements individualizing products.

The Competition Law introduces many other progressive and significant norms, such as stricter control over procurement, the conception of the "monopsony," the limitation period of actions for violations, new powers of MART, and so on. In general, we may state that the Competition Law conforms with international regulations and is more oriented to real business practices.

Natalia Anoshka, Partner, Peterka & Partners Belarus

RUSSIA

Russian Competition Law and Sanctions


Stefan Weber

Foreign sanctions are forcing international companies to carefully evaluate their contractual relationships with Russian counterparties. In this respect Russian competition law provides obstacles that may be difficult to over-come.

Among other things, the sanctions prohibit international companies from entering into or continuing business relationships with specific individuals and from conducting business in Crimea. International companies may also try to ensure that their Russian counterparties do not resell goods to those specific individuals, and they may try to prepare for the possibility that their Russian counterparties will be qualified in the future as someone they are prohibited from doing business with.

The resulting changes in the interaction with Russian counterparties may cause issues under Russian competi-tion law. For example, restricting the resale of supplied goods is, as a rule, prohibited under Russian competition law. Further, companies with a dominant market position may refuse to enter into a contract or treat counter-parties equally only for economic, technical, or other justified reasons. When assessing market dominance, the relevant goods market can sometimes be defined very narrowly, such as a single medicine, specific consuma-bles, or spare parts. Russian competition law also contains a catch-all clause that generally prohibits any agree-ments that result or may result in the limitation of competition. Last, but not least, the coordination by one entity of market behavior of two or more other entities that are active on another market may be regarded as a pro-hibited coordination, such as a manufacturer coordinating the prices offered for its products by dealers.

These restrictions may become relevant in certain sanctions-related scenarios. For example, the refusal by a market-dominant company to supply or to continue to supply its product to specific individuals identified by the international sanctions or to customers in Crimea may violate Russian competition law. The contractual covenant imposed on a counterparty not to resell goods to those individuals or to customers in Crimea may violate Russian competition law with respect to resale restrictions and the general prohibition of restrictions to competition, and may also lead to antitrust violations by the Russian counterparty where it has a dominant market position. It is possible that an international company may be regarded as a market coordinator by imposing identical sanc-tions-related restrictions on all of its dealers in Russia.


Hannes Lubitzsch

Solutions to the resulting conflict between foreign sanctions and Russian competition law must be assessed on an individual basis. In certain cases exemptions from Russian competition law may apply, particularly in case of low market shares. However, uncertainties usually remain, as the relevant market is often difficult to determine exactly. One may also argue that the threat of significant fines under foreign law in case of violation of sanctions provides sufficient economic justification for deviation from general antitrust restrictions, in particular for domi-nant market players. However, previous Russian administrative and court practice on a similar conflict between Russian competition law and foreign anti-corruption regimes, as well as the recognition by the Russian Supreme Court of foreign sanctions contradicting Russian *ordre public*, render it unlikely that foreign sanctions can be used as justification of anti-competitive behavior under Russian competition law.

This puts international companies in an uncomfortable position, as the potential liability under Russian competi-tion law is not low. Violations of Russian competition law may result in fines that are mostly turnover-based and can amount to up to 15% of the annual turnover on the relevant market. Personal fines and other implications may also be imposed on key employees.

There are apparently no cases in which the Russian competition authority has, so far, pursued violations of Rus-sian competition law that were triggered by compliance with foreign sanctions. In 2014, the Head of the Russian Federal Antimonopoly Service stated in an interview that the authority was not using its tools, at least at that stage, in order not to worsen relations. For instance, the controversial (and widely-reported) decision by Google not to make Google Play available in Crimea resulted in no measures by the Russian antitrust authority.

As regards Russian countermeasures to foreign sanctions in general, an initially proposed strict approach of im-posing criminal liability on compliance with foreign sanctions has been abandoned and only the less severe form of administrative liability is still under consideration. It remains to be seen which position the Russian competition authority will pursue in the future with respect to sanctions-related measures taken by international companies.

Stefan Weber, Head of Moscow Office, and Hannes Lubitzsch, Associated Partner, Noerr

ROMANIA

The Romanian Competition Council's Improved Investigation Tool: Forensic Examinations


Razvan Pele

Over the past years, Romania has excelled in antitrust law enforcement as the Romanian Competition Council boasts stellar appraisals both inside the country and at the EU level.

The RCC has established an increased presence in the daily lives of businesses and in the business-wise jargon of CEOs and corporate pundits. This is mainly due to the boost in the RCC's activity after 2010, as it began vigorously to inspect and assess various industries and to offer recommendations to both businesses and Government initiatives.

As early as 2012 the RCC implemented a new electronic method of undertaking dawn-raids. Enthusiasm was high because this new method meant a reduction in the printing of selected elements of proof and in inspection hours. However, no one anticipated that the actual workload would grow. The accessing of the electronic storage means and the examination piece by piece of all collected data meant a true challenge for businesses and lawyers. It also meant an upper hand for the RCC since it was allowed enough time to examine the immense volumes of information that it collected in depth.

The RCC's position was further consolidated since courts are consistent in issuing authorizations for forensic examinations for periods of up to three months and to prolong them without much consideration, since authorizations are inevitably non-contentious.

What businesses need to know is that during a dawn-raid the RCC (like the European Commission) has access to all their hardware and software infrastructure. Specifically, RCC inspectors must be allowed access and given the passwords, pass codes, or encrypting keys to all programs or applications used on site. Storage facilities – including both physical servers and cloud storage – must be made available.

Most importantly, no documents must be tampered with by the company under investigation. First, any such tampering may be noticed on the spot, as the RCC inspectors use machines and software to make identical copies of HDDs, local storage space, cloud storage, mobile phones, PDAs, tablets, and so on, and any tampering with electronic data may be either recorded or indicated outright. Second, the RCC has spared no expense in investing in its IT facilities; it has and uses state-of-the-art computer programs which can detect with millimetric precision whether a document has been tempered with which, if duly established, may negatively affect a company's position in an investigation (in terms of amount of fine increased via the ascertainment of aggravating circumstances).

In the tranquility afforded by the RCC's forensic laboratories its inspectors may undertake the actual examination with the required degree of attention to detail. Under current enactments, they may do so with or without the owner of the data or its lawyer being present. They must only be allowed to be present when a working copy of the HDD produced during the dawn-raid is made and when the minutes containing the actual documents selected and retained are being drafted. Of course, the law does not require such presence, but any diligent business will undoubtedly hire a lawyer to represent its rights and interest and will delegate one of its employees to participate in the actual examination.

Indeed, both employee and lawyer are essential during the actual examination process. The employee is best placed to acknowledge whether a piece of information is in any way related to the scope of the investigation. The lawyer is also necessary, as he is best placed to identify documents and correspondence falling within the attorney-client privilege and fight to have them removed from the investigation dossier, and he is best placed to moderate interventions by the employee.

Since forensic examination are undertaken piece-by-piece, the presence of a lawyer in this process is also critical since personal information may be accessed or revealed contrary to the rules on data protection. Moreover, participating in the actual examination affords the investigated business the advantage of anticipating the course of action likely to be taken by the authority and it may begin to prepare its lines of defense based on the types of data and information sought by the inspectors.

Given the intrusive nature of forensic examination, dedicated compliance programs, applied trainings, and 24-hour responsiveness on part of a competition professional are key for a company wishing to avoid feeling threatened by an inspection and forensic examination of its dealings.

Razvan Pele, Partner, Maravela I Asociatii

UKRAINE

Dawn Raid Tips


Volodymyr Monastyrskyy

The The Ukrainian competition authority focuses on investigating the status of competition in different markets in Ukraine. They are empowered to do this either by sending written requests to companies or by performing on-site inspections (*e.g.,* dawn raids).

In practice, Ukraine's competition authority more often sends written requests, allowing the parties time to prepare their answers. Onsite inspections, including dawn raids, are more commonly reserved for potential cartel investigations. However, the authority can also perform onsite inspections, including dawn-raids, especially with respect to investigating such violations as cartels. This kind of inspection is much more stressful for the company and for its employees.

In those stressful situations, employees often do not know how to behave and can perform certain actions or provide information that can lead to fines for violations of competition regulations and result in substantial losses for the company. Under Ukrainian competition regulations, the maximum fine can be as much as 10 percent of the annual turnover of the particular group of entities.

Therefore, a lot of companies are very careful to train their employees on how to behave during potential dawn raids by competition authorities. However, they may face a problem with employee turnover, especially with reception staff and low-level managers.

Given this, we would like to suggest some basic tips that can be easily shared with different categories of employees, and some basic rules about how to behave during a dawn raid.

Basic tips for the reception staff:

1. Note that a dawn raid inspection by the competition authority may come at any time (most likely at 9 am), and you are obliged to allow them to enter, even if the company's management is absent.
2. Politely ask for the documents identifying the inspectors and lead them to a separate and fully isolated room.
3. Contact the appropriate responsible individuals in your company to arrange for their presence during the inspection.
4. Do not discuss ANY matters with the inspectors except for technical arrangements such as checking identification documents, arranging for the presence of company employees, leading the inspectors to the meeting room, offering refreshments, and so on.
5. Make sure that the arrangements listed above do not take longer than 30 minutes.


Oksana Franko

Basic tips for business employees:

1. Politely check whether the documents and information requested by the inspectors correspond to the scope of the inspection.
2. Do not delete any documents or files from your computer or other devices which are provided to you for work, as this will be checked by the inspectors.
3. Do not speak to the inspectors off-record (including by messengers), because such communication will be recorded and used as evidence; speak only with respect to your own scope of responsibility, and do not provide any information regarding other employees.
4. If you have any questions, ask for legal advice from your legal team before giving any answers to the inspectors.
5. If you disagree with any statements made by the inspectors in the minutes of your interview, contact your lawyers for advice, as you have the right either to provide explanations and comments regarding the contents of the minutes, or to refuse to sign the minutes providing explanation of the reasons of your refusal.

Basic tips for the legal team:

1. Ensure that the reception staff has updated details of persons who they must contact as a first priority when an inspection occurs.
2. Check whether inspectors have all the documents authorizing them to perform inspection as required by law (it is advisable to have a check-list of the required documents).
3. Contact external lawyers, if necessary.
4. Ensure that all inspectors are accompanied and monitored by at least one lawyer; don't leave inspectors alone.
5. Make notes on what the inspectors review and with whom they communicate.
6. Ensure that inspectors do not request information outside the scope of their inspection.
7. Ensure that legally privileged documents are duly marked, and remember that the company may refuse to submit them even if the inspectors request that they do so.
8. Check the contents of the minutes of inspection, provide explanations and comments to them if necessary, or refuse to sign them providing an explanation for your refusal.
9. Contact the competition authority after the inspection to receive information about the outcome of the inspection.

Volodymyr Monastyrskyy, Partner, and Oksana Franko, Associate, Dentons Ukraine

HUNGARY

Draft Communication on Commitments in Competition Cases

Janos Toth

The Hungarian Competition Authority has launched the public consultation process about the draft of its updated and amended communication concerning commitment decisions in Hungarian competition cases.

In general, a "*commitment decision*" is available from the competition watchdog to infringers of competition laws (both antitrust rules and laws prohibiting unfair business-to-consumer practices), who are prepared to offer legally binding commitments in order to remedy the competition concerns the regulatory investigation has identified. Unlike a normal prohibition decision, the acceptance by the Competition Authority (GVH) of a voluntary commitment makes the resulting decision binding on the infringing company without establishing any infringement or pursuing the investigation any further. Another difference is that in a prohibition decision the GVH imposes sanctions on the infringer, whereas a commitment decision essentially rests only on the voluntary commitments offered.

The GVH sees this procedural alternative, which has been available under Hungarian law since 2014, as an effective tool to address competition law concerns via a procedure that allows for a quicker restoration of undistorted conditions of competition on the relevant market than stretching out a full-blown investigation to its end (or even further if the infringer appeals the prohibition decision).

Nonetheless, there has admittedly not been a clear legal path in Hungary for wrongdoers hoping to secure a commitment decision from the GVH against their compromise offer. Therefore, the GVH now proposes to update and substantially amend its former communication in order to fill that procedural gap.

The new communication proposes to define milestones and introduce deadlines for the process and to set explicit requirements in terms of preparing the offered commitments by the infringer and then having them evaluated by the regulator. These are intended to confer increased transparency and predictability on the process. The new communication makes it clear that it remains binding on the GVH only where the infringer follows the preferred procedures.

Wrongdoers are encouraged to proactively indicate their interest in discussing any possible commitment at the earliest possible stage. Unless they do so, the GVH's preliminary assessment of the case and the resulting draft statement of objections will also mention the GVH's preparedness to consider commitments from the wrongdoers to the extent the underlying case allows the competition concerns to be effectively addressed by those commitments. A review of Hungarian competition cases shows that one fourth of infringers in antitrust cases and half of all infringers in unfair business-to-consumer practices cases had a genuine willingness to propose commitments even at the outset of their cases.

One of the most important new features of the draft new communication is that it introduces a well-defined set of six criteria the proposed commitment package needs to comply with in order to open the door for further alignment with the GVH. In particular, the GVH expects that the commitments infringers offer be relevant, credible (*i.e.*, raise no concerns regarding their implementation), timely (*i.e.*, can take effect soon after the GVH's decision and extend for a period sufficient to remedy the problem), unambiguous, accountable (*i.e.*, a subsequent inspection of compliance will be reasonably possible for the GVH), and fit for putting out for market testing (*i.e.*, not so dominated by business secrets and other confidential details that the GVH would be unable to make them available to third parties).

Although it remains in the GVH's discretion to assess whether the commitments offered are appropriate and sufficient to address its competition concerns, the explicit listing of these criteria in the new communication significantly increases the transparency and predictability of the GVH's decisions.

Otherwise the new communication leaves infringers completely free to offer commitments that are "behavioral" (*i.e.*, a commitment by the infringer to actively do something on the market, such as provide certain services or goods under specified conditions, or refrain from certain former practices) and/or "structural" (*e.g.*, a commitment to divest certain assets to other market players).

The new communication makes it apparent, however, that commitment decisions are not appropriate for severe infringements of competition law (*e.g.*, secret cartels), which the GVH prefers to investigate in full and where sanctions are considered necessary.

Once the new communication has been finally adopted by the GVH the expectation is that it will further increase the recognition of commitment decisions in Hungary and hence contribute to more efficient investigations by the GVH.

Janos Toth, Partner, Wolf Theiss Budapest

CZECH REPUBLIC

Current Trends in the Prosecution of Bid Rigging in the Czech Republic


Petr Zakoucky

In its most recent annual report, the Czech Competition Authority stated that the investigation of bid-rigging cartels would be its highest priority. The issue of bid rigging is a hot topic that has attracted the attention not only of the CCA, but also that of the Czech police and public prosecutors, who have been very active in investigating bid-rigging cartels in recent years.

With this increased level of scrutiny, companies should be aware that potential antitrust behavior brings not only the risk of high fines from the CCA, but more importantly criminal sanctions, which may be catastrophic for both the company and its management.

Criminal Law Implications of Bid Rigging

Under Czech law, companies can be held liable for certain crimes. However, unlike individuals, corporate entities cannot be held criminally liable for breaches of antitrust law. Thus, formally, only the CCA and/or the European Commission can investigate and punish cartels for bid rigging.

However, recently we have observed a growing trend whereby the police and public prosecutors are actively going after bid-rigging cartels and pursuing companies in such cases through different means. Specifically, they are prosecuting them for "manipulating public procurement and public tenders" - a crime for which companies can be held criminally liable.

This practice has material implications for companies operating in the Czech Republic. In practice, if a company is convicted for bid rigging, it faces, among other things, the following negative consequences: (i) substantial fines; (ii) a non-discretionary ban from participation in public tenders for at least five years; and (iii) significant reputational damage, given that criminal records are publicly available and cannot be deleted for at least five years, and in certain cases even longer.

Such penalties can strike a deathblow to companies - especially those which depend on public tenders for their business.

Limited Legal Tools for Defense

Czech criminal law does not provide companies with sufficient tools to mitigate the negative effects of criminal convictions, such as leniency or settlement programs, which are commonly used by individuals in antitrust infringement cases.


Adam Prerovsky

For instance, if an individual files a successful application for leniency before the CCA in antitrust infringement cases, he/she can obtain a reduction or removal of fines and, in some cases, avoid being blacklisted from public tenders. Moreover, Czech criminal law recognizes the successful application for leniency before the CCA as a way of exculpating an individual from subsequent criminal liability.

However, companies accused of bid rigging and prosecuted for these crimes do not have this option. In general, they cannot even settle with the public prosecutor or judge since most bid-rigging cases are too serious to qualify for this.

The negative consequences of a criminal conviction for bid rigging occur automatically, and judges do not have any discretion to decide otherwise.

We see this as a potential problem, in particular for the large corporations that are vital for the Czech economy, and which may face criminal sanctions even for quite negligible cases involving their employees.

Is There a Fix?

The existing Czech criminal law requires, in our view, substantive amendment in order to protect the rights of companies accused of bid rigging. First, it should be clear whether bid rigging should fall within the jurisdiction of criminal prosecution, and if so, what types of cases can be prosecuted. It should also be clear what type of offences should be left exclusively to the CCA's competence. Secondly, companies that are criminally accused of involvement in bid rigging should be provided with alternatives such as settlement or leniency in order to give them a reasonable chance of surviving a criminal conviction.

As an alternative, there is an argument that the prosecution of all bid-rigging cases should be left to the exclusive jurisdiction of the CCA and/or the European Commission due to their longstanding expertise in detecting and addressing these types of antitrust behavior.

Obviously, given the severe nature of the sanction, companies in sectors sensitive to bid rigging should implement solid compliance programs to educate their employees and protect themselves from both administrative and criminal sanctions. If the company detects any anti-competitive behavior, it should consider applying to the CCA for leniency. If a leniency application is done in time, the CCA's binding decision on a bid-rigging case would create a legal obstacle, preventing the police and public prosecutor from prosecuting the company for the same acts covered by the CCA's decision.

Petr Zakoucky, Partner, and Adam Prerovsky, Associate, Dentons

SLOVAKIA

The Dusk of (Illegal) Dawn Raids in Slovakia?

Jakub Jost

The competence of the Slovak Antimonopoly Office to conduct dawn raids is governed by Article 22a of Slovakia's Act No 136/2001 Coll. on Protection of Competition.

While Act No 136/2001 (the "Act") sets a general framework for the conduct of dawn raids, its interpretation has in previous years been subject to judicial review – with some interesting outcomes.

Authorization to Conduct Dawn Raids Must Be Specific

Besides setting out certain formal requirements, the Act generally requires that dawn raids be based on authorization issued by the Antimonopoly Office (PMU), outlining its subject and purpose.

Adhering to the decision-making practice of the Court of Justice of the European Union, the Supreme Court of the Slovak Republic addressed the issue of the subject-matter content of the authorization in its landmark 2015 decisions in relation to the bid-rigging case brought against the *Datalan* company.

In those decisions, and in order to limit "fishing expeditions," the Court presented a more detailed list of the requirements necessary for authorization. The authorization must contain a description of basic characteristic features of the alleged delict, designation of the affected market, nature of the alleged restrictions and explanations from which the serious indications as to the delict assessed have arisen (along with a general description of their type and nature), as well as serious material indications on which the suspicion against the relevant undertaking is based.

The authorization should also contain a description of the manner in which the delict was allegedly perpetrated and, to the extent possible, a specific designation of what the dawn raid seeks to discover. The PMU is also asked to prove that carrying out the dawn raid is necessary for the collection of evidence attesting to the perpetration of the delict.

The Rights of Undertakings (and Their Employees) During a Dawn Raid

In its *Datalan* saga, the Court also touched upon the requirements for the PMU during the execution of a dawn raid. First, the PMU is obliged to exercise maximum effort to use the legal time period provided for the conduct of the dawn raid in order to separate any irrelevant (personal) data and to collect and process only the data necessary for the conduct of the inspection. Since, in the *Datalan* case, the PMU decided to end the dawn raid four days before the deadline set out in the authorization, it could not invoke time pressure as an excuse to separate unnecessary data later on in its premises (as was the usual practice before the decision).

Second, the Court also ruled, regarding the PMU's entitlement to inspect private devices of employees of the inspected undertaking used for professional purposes, that this inspection has to be performed within the limits of proportionality. In effect, the PMU must be able to clearly identify and communicate (both to the undertaking and to the affected employees) the necessity of inspection.

The *Datalan* case wasn't the only opportunity for the Court to consider dawn raids – it also dealt with a number of other questions relevant for the proper conduct of dawn raids in the case of *AT Computer*. First, while the Court in that case did not find a specific obligation of the PMU to inform the undertakings about their right to have their legal counsels present, it seemed to implicitly confirm that obligation's existence.

Second, the Court ruled that while the PMU is entitled to ask employees of the inspected undertaking for explanations, these questions have to be limited to the purpose of the inspections itself (*e.g.,* how and where to find certain documents, *etc.*) and cannot relate to the (as yet un-initiated) administrative proceedings on the merits (*e.g.,* questions about different business strategies). Moreover, the employees may not be interviewed at the same time as their personal computers are being inspected, which would effectively deprive them of the opportunity to object to the private or irrelevant content of the communication being reviewed.

The Future of Dawn Raids in Slovakia

While we have seen a considerable improvement in delineating the boundaries of the PMU's competence during the last decade, the legal terrain establishing its rights to conduct dawn raids is far from stable. For instance, we still lack compelling judicial authority on the PMU's common practice of prohibiting an inspected undertaking from contacting its external legal counsels based on a fear of thwarting the inspection.

Nonetheless, recent developments in the case law on dawn raids provide undertakings with more lines of defense and bring some legal certainty into the (still) young and vibrant practice.

Jakub Jost, Leader of Antitrust and Competition, Peterka & Partners Slovakia

SERBIA

Designing a Competition Enforcement System: The Imperative of Credibility

"If people are good only because they fear punishment, and hope for reward, then we are a sorry lot indeed." – Albert Einstein


Bojan Vuckovic

It is not uncommon for post-communist societies to wrestle with the idea of competition enforcement. Executives of a more old-school bent are often confounded by having something which once was common market practice, sometimes even mandated by the state, now scrutinized and considered a serious infringement of law. This is why competition advocacy is a crucial tool for relatively inexperienced competition authorities – it would hardly be fair to beat upon market players legitimately unaware of changes to the *modus operandi*.

But advocacy can only get you so far. For less scrupulous actors, or when the market has had sufficient opportunity to become acquainted with the legal framework, strong enforcement is necessary. It is small wonder that, when considering the setup of an enforcement system, policy-makers usually focus on the amount of fines. Having a high-profile company under investigation and facing multimillion euro penalties does tend to grab headlines.

However, credibility represents an important issue that tends to be neglected in discussions about effective deterrence. There needs to be a credible threat of consequences for those who would be willing to commit an infringement. The more practice the authority has, and the more serious the actual risk of punishment is, the more common antitrust awareness becomes, making infringements taboo. This phenomenon is quite evident among some jurisdictions in the Western Balkans. In our experience, the business community struggled to take competition law seriously when facing authorities hesitant to take on difficult cases or imposing predominantly cautionary fines. In contrast, authorities which initiated high-profile investigations against major market players and imposed significant fines contributed much more effectively to an overall compliant culture. They may have made mistakes along the way and suffered failure in some of these cases, but the end result tended to be greater awareness of the legal framework and a significant reduction in the most serious infringements.


Veljko Smiljanic

Therefore, it is not enough to have competition fines on the books – there needs to be a reasonable chance that an infringer would actually suffer them in case of a breach. An authority reluctant to use the tools at its disposal tends to erode respect for the legal framework in place. "*Sure, the rules are there*," a crafty manager might think, "*but my bonus depends on this arrangement, we will never get caught – and even if we are caught, they're going to let us off with a warning.*"

Another important aspect involves efforts by the authority: a constantly developing practice as well as presence and visibility on the market, are critical. The authorities have a wide array of tools, such as leniency or dawn raids, to establish credible deterrence and make the companies aware that non-compliance carries a significant risk of sanction. Credibility also implies efficiency: if proceedings last a good many years and can be manipulated, short-term thinking kicks in and people stop caring about what will, most likely, turn out to be the next CEO's problem.

Another question concerns the predictability and equality of outcomes. Competition rules are often broad, allowing enforcers significant discretion and requiring undertakings to closely follow the evolving practice. The authorities need to commit to a consistent application of the rules, so that companies are able to adapt their business accordingly. This is also a safeguard for the equal treatment of parties to the proceedings and directly depends on the overall state of the rule of law in a given jurisdiction. Discriminatory or selective enforcement can be devastating for an authority's credibility. If it is possible to bend the rules or decide differently without clear reasoning or explanation, this incentivizes companies to focus not on compliance, but on regulatory capture and establishing a relationship with the authority when a problem arises. This is also why competition enforcers need to be aware of the wider legal framework, instead of focusing on their relatively narrow scope of authority: often enough, would-be infringers are simply trying to adapt to governmental policies drafted with scant regard for market competition. Furthermore, efficiency should never come at the expense of due process, as integrity demands procedural fairness.

Stakeholders would do well to bear in mind the importance of credibility in institutional design. Without it, enforcement can be twisted into harming competition, instead of fostering it. Great power must be accompanied by great responsibility.

Bojan Vuckovic, Partner, and Veljko Smiljanic, Senior Associate, Independent Attorneys at Law in coop. with Karanovic & Nikolic

POLAND

Antitrust Enforcement in Poland: What 2018 Brought and What Lies Ahead

Malgorzata Urbanska

The Polish Competition Authority has been increasingly active as the market watchdog. In assuming his position as President of the Competition Authority in 2016, Marek Niechcial announced his commitment to strengthening competition law enforcement via a stricter approach, more investigations, and higher fines for wrongdoers. The last two years demonstrate that the Authority is working towards delivering on this promise.

Dawn Raids

The Polish Competition Authority (UOKiK) is increasingly active in investigating both entire market sectors and particular business entities. Between January and June 2018, the Authority conducted six dawn raids in more than ten locations (the raids affected distributors of musical instruments and accessories, sportswear and sports equipment, motor vehicles, photo equipment, and marketing agencies). This is a lot compared to previous years, especially when taking into account that each dawn raid involves considerable resources.

Higher Fines

The current President of the UOKiK, when assuming his position, was very clear that in his view there should be more fines, and the fines should be higher. He criticized the concept of soft measures (such as contacting market participants, highlighting questionable behaviors, and providing an opportunity to have them adjusted before formal proceedings are initiated and fines imposed). He explained that in case of serious anti-trust infringements, administrative proceedings and fines are necessary, as they "bring order to the market." Finally, he emphasized that the penalties are far too low. The law allows fines of up to 10% of the annual turnover, but the base amounts are in practice much lower – usually around 0.1-1% and never higher than 3%. According to the current President of the UOKiK, this is too low, and a base amount of 6% is more appropriate. Two years into his term, it can be seen that the UOKiK is implementing his suggestions. The total amount of penalties imposed in 2017 was PLN 222 million – the highest in the last six years. To compare, the total amount of penalties in 2016 was PLN 107 million, in 2015 it was PLN 47 million, in 2014 it was PLN 86 million, and in 2013 it was PLN 135 million. Also, the Authority announced that it will propose changes to its guidelines regarding the calculation of fines, so as to increase the percentages.

Liability of Managers

In July 2018, and although it has had the power to do so since 2015, the UOKiK announced that for the first time it is considering imposing fines for competition law infringement not only on the companies involved, but also on the individuals responsible. A penalty can be imposed on a manager (a member of the management body or other person holding a managerial position) who intentionally allows a business entity to enter into an anticompetitive agreement. The maximum penalty is PLN 2 million (approximately EUR 460,000). Until now, this power has not been used. Recently, however, the UOKiK has initiated proceedings against 17 fitness services businesses (fitness clubs and an operator of sports and recreation packages), citing potential market division. In a public statement, the UOKiK noted that the evidence it has collected may indicate collusion between seven managers of the fitness companies and initiated proceedings against these individuals. The proceedings – both in relation to the business entities and the managers – are pending and whether the individuals concerned will ultimately be fined remains to be seen. However, this shows that the UOKiK is heading towards a stricter approach towards individuals.

Promotion of Whistleblowing

Finally, the Authority is committed to introducing and promoting the concept of whistleblowing. Last year it introduced a pilot program in this respect. A whistleblower is a person, often an individual (such as a past or present employee, client, even a competitor; but not someone responsible for an infringement, as such people should rather make use of leniency programs), who is in possession of useful information and/or evidence regarding a cartel or other anticompetitive conduct. The UOKiK has made a special telephone number and e-mail address available for whistleblowers wishing to deliver such information while keeping their identity secret if they wish to. The Authority is also in favor of some form of legal protection for whistleblowers to secure them from potential negative consequences. It is worth noting that this is not a purely Polish concept, but is based on solutions already used in other countries. Whistleblowing in general is becoming increasingly popular with competition authorities around the world as yet another effective tool to uncover secret cartels.

Malgorzata Urbanska, Partner, CMS

[For more on the subject of Poland's attempt to enact sophisticated whistle-blower protections, see the article on page 36]

CROATIA

Unfair Trading Practices in the Food Supply Chain – New Competence of the Croatian Competition Agency

Hrvoje Bardek

At the EU level, long-term discussions on unfair trading practices in the food supply chain have resulted in the Proposal for a Directive that is currently in process. The Republic of Croatia has already adopted a law with a similar subject matter – the Act on Tackling Unfair Trading Practices in the Food Supply Chain (the "Act") – which entered into force at the end of 2017. The Act concerns business-to-business relations and aims to protect suppliers (including primary producers) in their relations with resellers, buyers, and processors with significant negotiating power. The authority in charge of implementing the Act is the Croatian Competition Agency (the "Agency"), which the legislator considers the most competent to handle these matters due to its experience in abuse of dominance cases in competition law.

Whether someone has significant negotiating power or not is determined on the basis of the aggregate turnover realized by the respective undertaking (turnovers of affiliated companies are included in the calculation) in the Republic of Croatia. For resellers, the aggregate turnover has to exceed HRK 100 million (approximately EUR 13.4 million), while the threshold is set at HRK 50 million (approximately EUR 6.7 million) for buyers and processors. According to the legislative preparatory acts, these thresholds should cover approximately 95% of traders in Croatia.

The Act aims to prevent and penalize the exploitation of significant negotiation power; *i.e.*, the imposition of unfair trading practices (UTPs). It lists different examples of UTPs, such as contracts and general terms which are not in accordance with the Act; payments which are not clearly indicated on the invoice (including the specification of discounts or rebates); possibility of unilateral termination of contract without justified reason; obligations imposed on suppliers which go beyond the contracted ones; disproportionate contractual penalties; imposing various payment obligations which should not be the burden of suppliers (*e.g.*, listing fees, fees payable for the purpose of stocking of products after delivery, fees payable due to reseller's decreased sales); *etc.*

Marija Zrno

Undertakings were obligated to ensure compliance with Act's provisions – *i.e.*, revise their contracts, invoices, and business practices as necessary – by the end of March 2018, as contracts made before the entry of the Act ceased to be valid as of April 1, 2018. Apart from facing the potential nullification of contracts in certain cases (*e.g.*, if the contract is not made in a written form or if it does not contain mandatory provisions prescribed by the Act), undertakings are exposed to high fines for breaches (as high as HRK 3.5 million (approximately EUR 0.4 million) – or even HRK 5 million (approximately EUR 0.7 million) for the most severe breaches).

A few months after the Act became fully applicable (*i.e.*, after April 1, 2018), the Agency conducted market research by requesting that more than 30 undertakings deliver more than 100 contracts made with national and international undertakings in the food supply chain. According to publicly available information, more than 20 proceedings were initiated on the basis of this market research, including several against bigger retail chains.

It will be important to keep track of further developments and of the decisions of the Agency, which have yet to be adopted, especially because initial interpretations of the Act (provided in the form of "frequently asked questions" (FAQ)) were subject to significant changes (*e.g.*, it was stated first that the assortment rebate approved by the supplier to the reseller always constitutes a UTP, while the subsequent amendments to the FAQ stated that such rebates are permissible under certain conditions). A line will have to be drawn in practice as to what is and what is not a UTP. If the related EU Directive is adopted, the situation might become even more complex, as the provisions and interpretations of the Act will have to comply with the EU Directive, and current practices might need to be further adjusted.

Hrvoje Bardek, Partner, and Marija Zrno, Attorney-at-Law, CMS Zagreb

SLOVENIA

The Position of Intervener in Procedure Before the Slovenian Competition Protection Agency

Katja Sumah

The well-formed regulation of competition is a precondition for a healthy and effective market. Thus, countries have to not only adopt appropriate legislation, but also ensure that the relevant authorities will enforce that legislation in a way that allows all participants in the market to carry out their activities in a fair environment.

Protection of fair competition in Slovenia is ensured by the Slovenian Competition Protection Agency (the "Agency"). The Agency is responsible for implementing the Slovenian Prevention of Restriction of Competition Act (ZPomK-1) and Article 101-102 of the Treaty on the Functioning of the European Union. The Agency may carry out two types of procedures – one concerning restrictive practices and one in respect of concentrations – and it may impose sanctions on those undertakings which violate the rules of fair competition.

In this article, we will consider some issues which may arise in the procedure concerning restrictive practices, and focus especially on the procedural rights of an intervener.

The procedure for restrictive practices starts when the Agency learns about circumstances that could constitute a restrictive agreement between undertakings or the abuse of a dominant position by one or more undertakings. Upon the discovery of such circumstances, the Agency will issue an order that an investigation is commencing.

The company targeted by the procedure (the "Infringer"), has the status of a party in the procedure. The Agency may also allow another person to participate in the procedure (the "Intervener") if that other person can prove that the participation is necessary to protect his or her interests. Thus, an Infringer's competitors will usually participate in the procedure as Interveners, especially if the Infringer's restrictive acts resulted in damages for which the Interveners plan to seek compensation. Such Interveners usually have great deal of interest in the outcome of the procedure in front of the Agency, since Article 62.g of ZPOmK-1 provides that the civil courts which will hear these lawsuits are bound by the final decision of the Agency regarding the infringement.

Luka Rzek

Despite the fact that both Infringer and the Intervener may participate in the procedure, their procedural rights substantively differ. Both have the right to review documentation relevant to the case (under Article 18 of ZPOmK-1), but when it comes to basic procedural rights such as the right to an adversarial procedure, the status of the Infringer and the Intervener is not the same. The Slovenian Supreme Court has explicitly stated that the Agency has to ensure the full right to an adversarial procedure only to the Infringer, whereas the Intervener enjoys this right only in exceptional cases: *i.e.*, if ZPOmK-1 explicitly grants it or if it is necessary for the protection of the Intervener's interests.

The Agency thus has a certain margin of discretion as to if and to what extent it will allow the Intervener to exercise its right to an adversarial procedure. With this regard, the Supreme Court has stated that the Agency has to review any Intervener's claims and evidence that is essential for the outcome of the procedure. However, the Agency is still the entity empowered to determine the significance of those claims and that evidence.

Participation in the procedure before the Agency is of great importance for the Intervener, since the Agency's decision could have significant impact on the participant's market position and profitability. Moreover, as explained above, the outcome of the procedure before the Agency will also effect the Intervener's position in its case in court to obtain compensation of damages.

Therefore, it is important that the Agency not use its discretion arbitrarily, and, when deciding on whether to grant the right to an adversarial procedure to the Intervener or not, it should consider the consequences of the outcome of its decision for the Intervener. Furthermore, if the Agency declines to provide an adversarial procedure to the Intervener, it should provide a thorough explanation as to why a specific claim or evidence was insufficient so that the Intervener is able to understand its decision and (if necessary) to challenge it to the Administrative Court.

Katja Sumah, Partner, and Luka Rzek, Legal Clerk,
Law Firm Miro Senica and Attorneys

BULGARIA

First Decisions Prohibiting Concentrations Issued in Bulgaria


Ilko Stoyanov

Two concentrations recently prohibited by the Bulgarian Commission for the Protection of Competition with limited analysis have been widely criticized for their lack of valid economic arguments. Because both decisions were highly publicized and concern the politically sensitive sectors of media and energy, they are worth special attention.

On July 19, 2018 the CPC prohibited: (1) The sale of Nova Broadcasting Group AD, the second largest media conglomerate in Bulgaria, to PPF (owned by Czech businessman Petr Kellner); and (2) the sale of CEZ's assets in Bulgaria, including its energy distribution and trade businesses and some small renewable energy parks, to Bulgaria's Inercom, which maintains three solar power stations in the country.

In both decisions, the commission's legal arguments were expressed in a few paragraphs and it remains unclear why it classified the acquisition of companies which are not major competitors as potential strengthening of the acquirer's dominant positions.

In both prohibited concentrations the overlap on the horizontal and vertical market/s is none or almost non-existent. Also, both concentrations concern acquisitions of large undertakings in Bulgaria (with market share in certain relevant markets close to or exceeding 40%) while the market share of the acquirer is insignificant (below 5%).

Thus, for instance, in the prohibited concentration of Nova Broadcasting, the parties' activities overlap only in the market of e-commerce, where both the acquirer and the target hold a market share of less than 5%. Indeed, the Nova Broadcasting Group holds a market share of approximately 40% on the markets of TV distribution and TV advertising. In these two markets, however, the acquirer is not active in Bulgaria, and there is no overlap. Despite the lack of actual threatening horizontal or vertical overlapping, the CPC considered that the *"significant amount of mass information resources, which would be accumulated by the concentrated group, would lead to its significant advantage over the other participants in the media market. Thus, the participants in the concentration would have the incentive and actual possibility to change their trade policy (e.g., by limiting the access, price increases or changes in the terms of the concluded agreements)."*

In the decision prohibiting the sale of CEZ's assets in Bulgaria, the CPC found that there was a horizontal overlap between the participants' activities on the market for the production and wholesale supply of electricity from photovoltaic power plants. The CPC also stated that the concentration generates vertical effects on downstream markets, namely the markets for electricity distribution, and supply and trade with electricity.


Galina Petkova

However, the CPC did not assess the market shares of the participants on these markets. The CPC only referred to a potential threat for the competition by analyzing the legislative changes in Bulgaria, which concern the buy-out of electric energy produced by small electricity plants with a capacity exceeding 4 megawatts. The analysis of the CPC failed to explain why the concentration would be detrimental for the concentration under the new legal regime considering that no substantial actual change would occur as a result of the concentration.

Next, in the CEZ decision, the CPC directly prohibited the concentration after a Phase I proceeding, without initiating a Phase II proceeding. As a general principle under the Competition Protection Act (CPA), when, during a Phase I proceeding, the CPC establishes that the concentration poses serious threats to effective competition on the market, it starts an in-depth investigation and analysis of the merger's effects on competition. The CPC, however, directly prohibited the CEZ concentration based on the Phase I investigation alone.

In the Nova TV decision, the CPC formally opened a Phase II proceeding. However, the results of those proceedings were not clear. In particular, the conclusions the CPC drew from the Phase II proceedings were identical to the conclusions it drew which led to its opening of the Phase II proceedings in the first place.

Next, the CPC did not discuss the positive effects of the concentrations in either of the two decisions. While the CPC examined the stable and substantial financial resources of the acquirers and the experience of the targets, it seems that these factors were considered as negative *per se* in the context of the two transactions.

It also remains largely unclear as to why recent concentrations with almost identical factual backgrounds concerning markets as those under the prohibited decisions were approved without conditions, while these concentrations were directly prohibited by the CPC.

The decisions of the CPC can be appealed to the Supreme Administrative Court in the second instance. It remains to be seen what will happen.

Ilko Stoyanov, Partner, and Galina Petkova, Attorney at Law, Schoenherr Sofia

AUSTRIA

New Guidance on Transaction Value Threshold


Andreas Traugott

On July 9, 2018, the German and Austrian competition authorities published joint guidelines regarding the transaction value thresholds of their respective merger regimes.

In Austria, the new threshold (Section 9 paragraph 4 of the Austrian Cartel Act) has applied since November 1, 2017. Accordingly, a merger has to be reported to the competition authority, even if the "traditional" turnover thresholds are not met, if: (a) the value of consideration exceeds EUR 200 million, (b) the combined worldwide turnover of the concerned undertakings exceeds EUR 300 million, (c) the combined domestic turnover of the concerned undertakings exceeds EUR 15 million, and (d) the target has significant activities in Austria.

Background

The rationale of the new threshold is to capture transactions where the target's turnover does not adequately reflect its market position. A disproportionately high purchase price compared to the size of the target and its actual revenues may indicate that this is the case. The 2014 *Facebook/WhatsApp* merger is a commonly-cited example. The new threshold, however, does not only apply to digital markets (where products or services are monetized differently than in conventional markets), but also to "new" markets or markets characterized by innovation. Indeed, in practice, so far (as reported by the competition authorities), the rule's application has not been limited to the digital sector, and often concerns other sectors (*e.g.*, the pharmaceutical industry).

The New Guidelines

The new thresholds raise a number of questions, including, among others: "How is the consideration calculated?"; "What is the relevant date to determine transaction value?"; "What constitutes significant domestic activities?" The new guidelines address these questions and provide guidance based on the experience of the authorities.

Significant Activities in Austria: Any (Turnover) Safe Harbor?

The local nexus requirement in Austria can be a particularly critical issue when assessing a potential filing obligation.

It should be noted that the guidelines state that the local nexus criterion included in the transaction value threshold has to be clearly distinguished from the local nexus criterion which applies (according to established case law) with regard to the traditional turnover thresholds under the effects doctrine. Having thus two different sets of local nexus criteria within the same jurisdiction already creates real confusion.


Anita Lukaschek

The guidelines stress that the domestic turnover is of limited relevance when assessing local nexus in the context of the transaction value threshold. This approach makes perfect sense considering the rationale of this threshold, which is to cover cases where the target's turnover is not an adequate parameter. It follows that the turnover is only relevant where it "adequately reflects the undertaking's market position and its competitive potential." In this case, the guidelines specify that the Austrian competition authority will generally not assume that an undertaking has significant activities in Austria where domestic turnover does not exceed EUR 500,000. This threshold does thus not create an absolute "safe harbor," but rather one in relative terms, as it still requires diligent analysis of the market, the activities, and the potential of the target. It will mostly be relevant in mature "conventional markets" and markets where competition is not mainly driven by innovation.

Other Reference Points for Local Nexus

If turnover is not an adequate measure, what is? The guidelines emphasize that this will largely depend on the industry at issue. Frequently cited examples for the digital sector are the number of "clicks" (access frequency), downloads, or registered users.

The guidelines state that there is will also be a presumption of significant domestic activity if the target has a location in Austria.

According to the guidelines, research and development may also qualify as a relevant activity. Whether such R&D activity is significant in Austria depends on a number of circumstances (*e.g.*, location, activities relating to entry into the domestic market). The guidelines provide specific guidance for some industries (*e.g.*, the pharma sector).

Conclusion

The competition authorities' paper offers valuable guidance on the most relevant aspects of the new thresholds and illustrates them with a number of practical examples. By their very nature and due to the fact that the relevant regulation has been in place for less than a year, the guidelines do not claim to provide an exhaustive set of answers. However, the very detailed guidelines are certainly helpful in order to assess a potential filing obligation under the new transaction value test. In addition, parties may approach the Austrian authority to seek individual guidance in order to clarify open issues.

Andreas Traugott, Partner, and Anita Lukaschek, Associate, Baker McKenzie Vienna

MONTENEGRO

Territorial Scope of the Montenegrin Competition Law

Rasko Radovanovic

Article 2 of the Montenegrin Law on the Protection of Competition limits the law's application to acts undertaken within the territory of Montenegro and acts undertaken outside of Montenegro which have as their object or effect the distortion of competition in Montenegro. In practice, however, the Law on the Protection of Competition (the "Law") seems sometimes to be applied beyond its territorial scope.

Maybe the best example of this is the merger control regime. It appears that transactions that have no obvious and immediate ties to Montenegro – typically called *foreign-to-foreign* transactions – are still reviewed and cleared by the Montenegrin Commission for Protection of Competition (the "Commission"). In other words, the Commission apparently accepts jurisdiction in such cases, even though it seems unlikely that the subject transaction would have *any* effect in Montenegro.

The reason for this could lie in the jurisdictional thresholds of the Montenegrin merger control regime set out in article 50 of the Law. The thresholds are set very low and structured in a way that allows situations in which only one party to the concentration can exceed them. This leads to the absurd situation in which, judging based only on jurisdictional thresholds, an undertaking with any Montenegrin turnover above EUR 1 million has to notify the Commission in Montenegro of each and every transaction in the world (for example, a transaction resulting in control of a company located and exclusively operating in Cambodia).

Yet, it is doubtful that this was the legislator's aim when it drafted the Law and established the Montenegrin merger control regime. In other words, it is unlikely the *ex ante* review of foreign-to-foreign transactions was necessary for the protection of competition in Montenegro.

One possible explanation is that the legislator was being overly cautious. Another is that it was unaware of the volume of transactions that would be caught under the jurisdictional thresholds. Neither explanation seems likely, not just because of globally accepted principles in competition law and merger control, but also because of the wording of the Law and the interplay between the provisions on the territorial scope of the Law and its jurisdictional thresholds.

One of the most commonly accepted competition law principles – especially in EU competition law and the national competition laws of many EU member states – is the domestic effects doctrine. According to this principle, domestic competition law may only be applied to acts carried out by (foreign) entities undertaken abroad if the acts have effects in the domestic territory. Only in such extraterritorial situations is the application of domestic law proportionate and permissible. The wording of Article 2 of the Law, Territorial Scope, resembles the domestic effects doctrine, at least on paper.

Nevertheless, as one of the guiding principles of the Law, the territorial scope of the Law should be interpreted as prevailing. Jurisdictional thresholds are typically set to limit the scope of the merger control to important transactions only – *i.e.*, a transaction large enough to potentially affect competition. However, this particular purpose of the jurisdictional thresholds cannot override the basic principle of the territorial scope of the Law itself.

For these reasons, it appears that the Law should not be applicable to typical foreign-to-foreign transactions. The same should also hold true for agreements – for example those concerning the export of goods outside of Montenegro – as long as they do not contain restrictions that could affect competition in Montenegro.

Rasko Radovanovic, Partner, CMS Belgrade

CHASING CZECH TRACES IN FOREIGN PLACES:

JSK PARTNER ROMAN KRAMARIK MAKES SOLO FLIGHT AROUND THE GLOBE

45 days. That's how long it took Roman Kramarik, Partner at JSK in the Czech Republic who recently became the first-ever Czechoslovakian pilot to fly around the world, to complete his 36,863-kilometer mission. After crossing three oceans, surviving monsoon rains, facing the cold of Alaska and the warmth of the Far East, all behind the controls of his Cessna P210N Centurion airplane named the "Winged Lion," Kramarik returned to his office at the Prague law firm, rightly proud – and more than a little exhausted.

STEPPING IN BATA'S SHOES

The inspiration for Kramarik's journey came from an unexpected source. "Three years ago I was given a book by my grandmother about the travels of the famous Czech industrialist Jan Antonin Bata, who did a similar around-the-world trip – though not solo – for business purposes, long before globalization was invented," Kramarik explains. "He was a visionary man, so I decided to retrace his journey and search for possible Czech traces abroad – not only traces of the work of the Bata family, but also those of other emigrants who left their indelible marks around the world."

Bata was a successful Czech shoe manufacturer who fled the Nazis before World War II and eventually settled in Brazil, where he founded several towns and communities. "He and his brother set up companies all around the world," Kramarik says. "In 1937 he took a long trip and he wrote a lovely, inspirational book, entitled Za Obchodem Kolem Sveta ["Around the World for Business"] - it only exists in Czech – which I read in one breath."

But Bata wasn't the only inspiration, and Kramarik also cites the 100th anniversary of Czechoslovakia, that was celebrated this year. "Another reason for I flew now and not in ten years' time, when I would probably be a more experienced pilot," he says, "was to pay special respect to the establishment of Czechoslovakia in 1918 following the end of World War I." The commemoration also played an important part in the choice of name for the aircraft. Czech aircraft are allocated the "OK" country code, but pilots are allowed to select the three letters that follow it. "You can use three letters that are available and do not mean any international codes in aviation terminology. We decided that the aircraft of our club, the Aeroklub Praha-Letnany, where I learned to fly in 1989, will carry the initials of our first president, Tomas Garrigue Masaryk." The Winged Lion thus flew as OK-TGM.

THE PRE-FLIGHT CHECKLIST

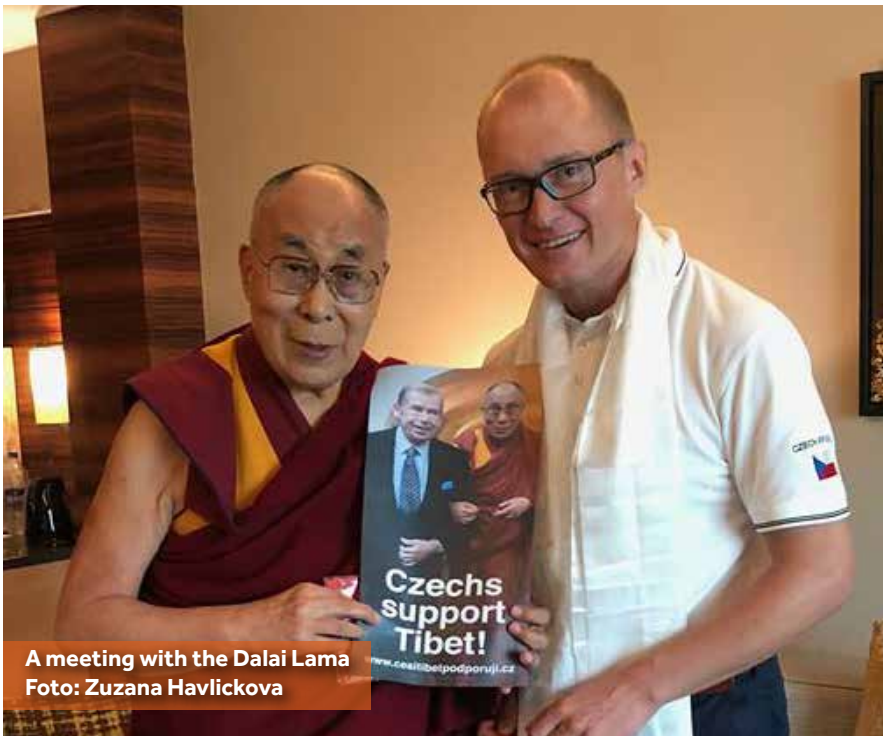
A team of ten people helped Kramarik prepare for his historic flight, including representatives from ABS Jets – a business jet operator at Prague's Vaclav Havel Airport – who planned the itinerary and ensured that all necessary permits were obtained. "Planning the route presented a great deal of work that was initiated a couple of weeks before the departure," said Michal Pazourek, Director of Ground Operations at ABS Jets. "It all started with discussions and analyzing different options of how the flight should be executed with regard to weather and prevailing winds, as well as legislative requirements. This was followed by intense communication with the airports and double-checking the availability of services and fuel."

Finally, and to make sure he was prepared for any complication that might arise, Kramarik spent hours in the swimming pool at the Czech Agricultural University to learn how to board a life raft and how to swim in a dry suit with a life jacket on.

LIFTOFF AND FLIGHT

On the morning of July 25, 2018, the Winged Lion took off from the Czech village of Tocna, accompanied by a group of aircraft – including the restored Lockheed Electra once used by Jan Antonin Bata.

Kramaric made 30 stops on his passage around the world, including one unexpected diversion to Nagpur, India, caused by heavier-than-expected monsoon weather. The longest stop-overs were in New Delhi, where he waited for an audience with the Dalai Lama, and in Thailand, where he repaired a dent in the propeller.

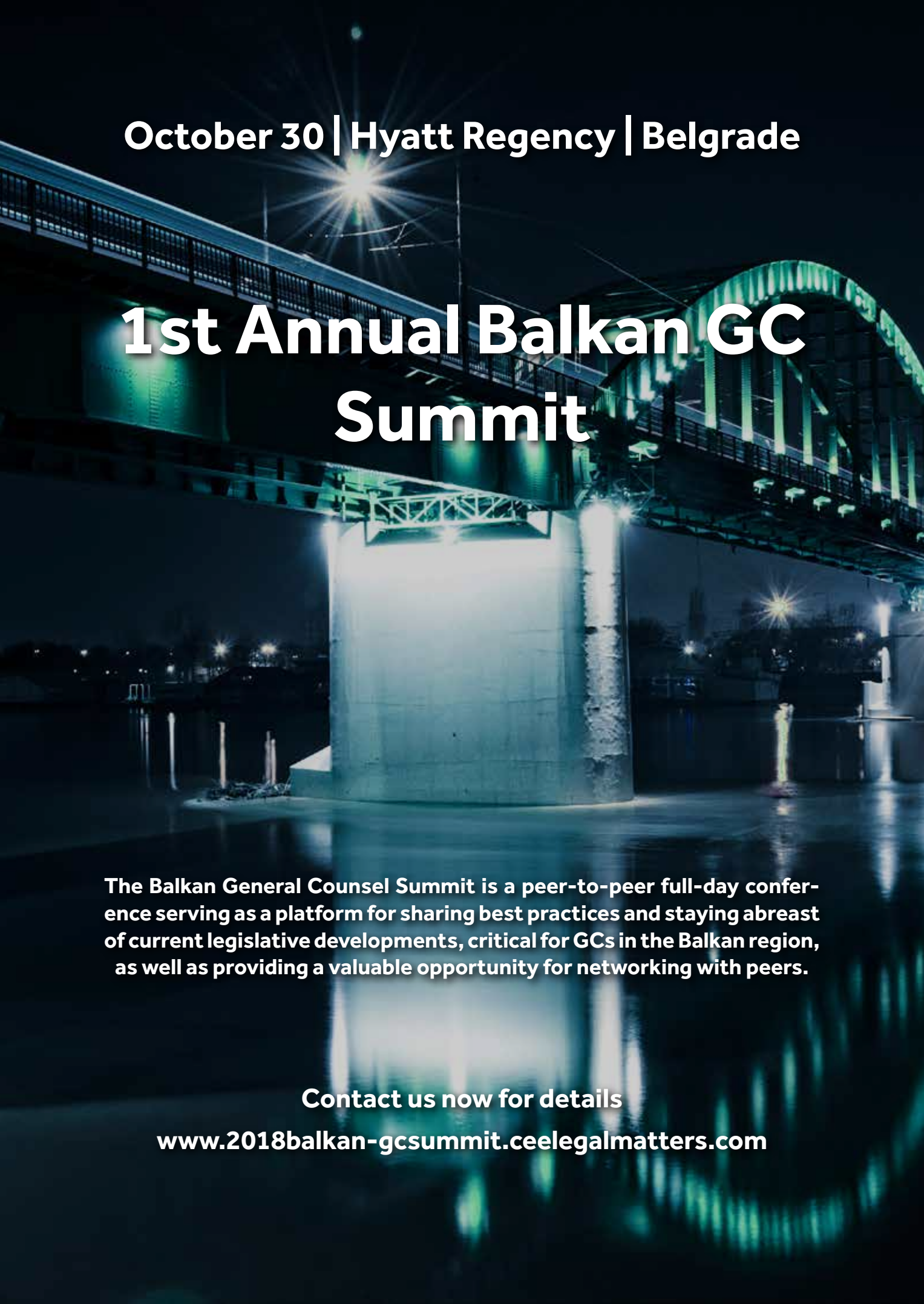


A meeting with the Dalai Lama
Foto: Zuzana Havlickova

"There were no passengers on any part of the flight, because I had removed all seats from the aircraft (except the captain's seat) for safety reasons: to reduce weight and give way to fuel, oil, supplies, and spare parts," Kramaric remembers. "And those came in handy: in India, I had to replace a defective servo of the autopilot and in Thailand, I had to perform extensive maintenance on the aircraft." At one point he also had to carry a hand-operated fuel pump, because in remote airports, fuel was delivered in large 200 liter drums and it was his responsibility to pump it into the tanks. "I became an expert in opening fuel drums with only pliers and a screwdriver," he laughs.

The longest leg that Kramaric flew was 3,313 km from Halifax, Canada, to Santa Maria in the Azores, which took him just

The Winged Lion



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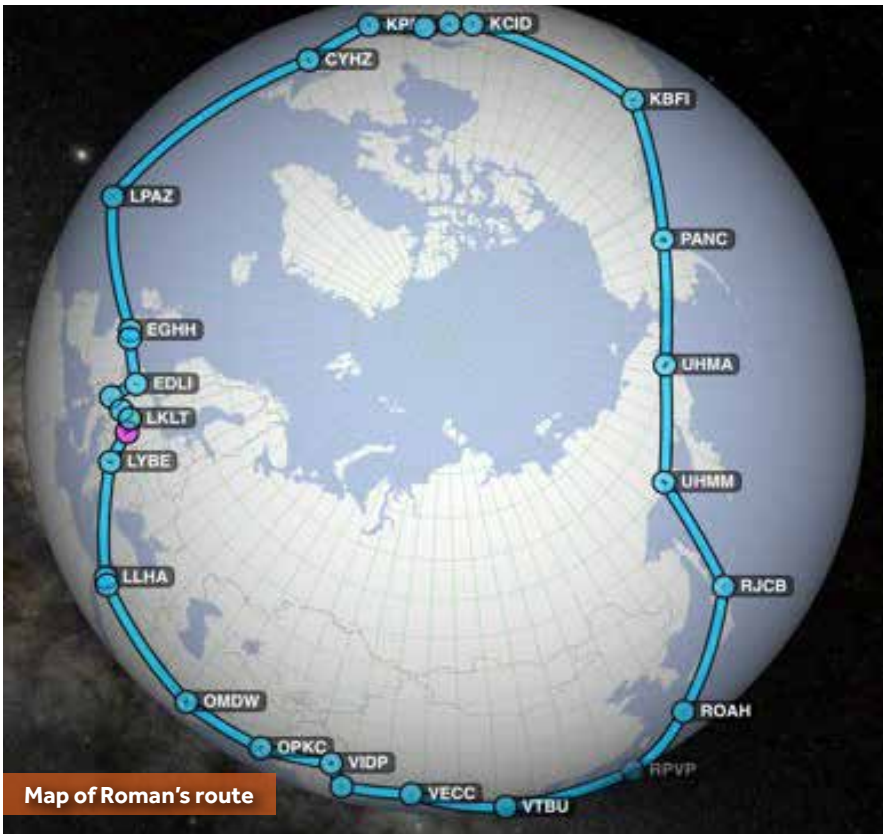

Map of Roman's route

over ten hours in the air. "However, the long flights themselves, which I expected to be tiring, eventually were like a refreshing breeze," he says, though he concedes that maintaining the necessary focus for six weeks straight was extremely challenging. "I managed – I did not collapse – but I don't think I could have sustained something like this for 12 weeks."

Boredom, it appears, was not a problem. "I always had something to do," he recalls. "I took some books with me, but I did not read a single page. When you fly long legs over ocean, desert, or inhospitable remote areas such as Russia's Far East, even when there are no urgent duties, you keep re-counting everything as you go, checking the instruments and fine-tuning the fuel mixture and engine temperature every five minutes. "

THE RETURN OF THE HERO

Finally, on September 8, 2018, Kramarik completed his flight. "If I had to summarize it in one word, it would be: 'exhausting'," he reflects. "Not necessarily the time spent in the cockpit airborne. But the flight time, combined with the preparatory work before each flight, necessary maintenance and detailed weather analysis, and the difficult decisions I was forced to make made the whole mission an exhaustive exercise. Last but not least, I had to keep in touch with the media back home which was following the mission. There was a lot of stress overall. When you squeeze so many activities into such a short period of time, and you are facing ever-shortening days as you fly east, it can be really exhausting. A lot more than I expected it would be."

"Nonetheless it was definitely worth all the pain," he smiles. "I saw some amazing places and met a lot of special people. I had the pleasure of finally meeting the Dalai Lama, which was a very moving experience. We talked about Vaclav Havel, who is a major Czech footprint in contemporary history. His Holiness told me how much and why he respected him, and he said that they were good friends, and how much good he could have done if he had not died so early. At another stop, in the United States, in Cedar Rapids, Iowa – which is considered one of the meccas of Czechs and Slovaks in America – the center of the city is called New Bohemia, there is another part called the Czech village, there is a Czech and Slovak museum, *etc.*"

Kramarik is asked whether he has any similarly grand plans for the future. "One planet was enough for a circumnavigation," he answers, "but a man without a dream is a dead man. I have plans, but rather than talking about them, I will see to have them turned into reality. However, now I will definitely focus entirely on work and our clients for some considerable time before I take any more time off to embark on another mission."

Hilda Fleischer


A proud family reunion upon Roman's return

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