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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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EDITORIAL: ON TO CINCINNATI

By David Stuckey

In one contentious press conference following a loss several years ago, Bill Belichick, the famous American football coach of the New England Patriots, launched a meme by stubbornly answering every single question he got with the exact same four-word phrase, reflecting his single-minded intention to keep the focus forward-looking and positive, and referring only to his team's next opponent: "We're on to Cincinnati."

Metaphorically, at least, so are we.

Our bad news, the inevitable news, is that we have been forced, reluctantly, to cancel the 2020 Dealer's Choice International Law Firm Summit and CEE Deal of the Year Awards Banquet, which were initially scheduled for April 23, 2020, then rescheduled for October 13, 2020, in London. We don't want to do it. We delayed doing it as long as possible. But at the end of the day, we had no choice.

Indeed, COVID-19 took the decision right out of our hands. Travel between the UK and the continent is still limited, and many of our friends are avoiding airplanes, airports, and public spaces to begin with. Indeed, the HAC – the planned venue of the event – remains closed as well, with no indication it will be open by mid-October anyway. And, finally, who wants to come to a conference where speakers are in masks and networking is conducted with limited people, standing six feet apart?

So, 2020 turns out to be a lost year, in terms of CEELM events. But we're staying positive, and like Belichick, looking forward to the next game on our schedule. We're on to 2021!

And I find myself actively enthusiastic about the prospect. No, hear me out! Everyone was excited about the events this year. Imagine what the turn-out will be *next* year, as we reconvene for the first time in two years, giving people the opportunity to gather with contacts they haven't seen in several years, and to establish new relationships with potential business partners eager to take advantage of the dynamic opportunities on the ground in CEE.

In other words, this could – COVID-19 permitting – be not only a successful conference and a return to normalcy, but something special. **The Re-Opening of CEE**.

Certainly our sponsors – Avellum (Ukraine), Ijdelea Mihailescu (Romania), Kambourov & Partners (Bulgaria), Nagy es Trocsanyi (Hungary), and the members of the Pontes the CEE Lawyers law firm alliance – think so. They have confirmed that they share our optimism and will be joining us next year.

Things are fluid. We haven't yet identified the specific date of next year's event, but we will, shortly. We haven't yet booked a specific venue, but we will, shortly. For now, this is enough: We will be in London in the late spring or early summer of 2021, celebrating the re-opening of CEE – and providing the most exciting and important opportunity for the commercial lawyers from and interested in the region to get together in many years. We hope you'll be joining us. And if you have questions – about sponsorships, about tickets, about logistics – please contact us.

In the meantime, stay safe and healthy, my friends. ■

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Letters to the Editors:

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: press@ceelm.com

GUEST EDITORIAL: LESSONS LEARNED IN THE LAW – FROM LJUBLJANA

By Mia Kalas, Partner, Selih & Partners

It was nineteen years ago, but I remember it vividly as if it were yesterday: fresh out of law faculty and green with excitement, I was sitting in my very first job interview when the question fell: "Do you know anything about mortgages?" I started reciting: "A mortgage is a real right of a third person …," when my future mentor smiled and exclaimed: "Ah, never mind, you will learn!"

I suppressed a sigh of relief and learned the first important lesson, although I was obviously not aware of it at the time: when recruiting young lawyers, brightness and enthusiasm can outweigh theoretical knowledge and even experience.

Reflecting on the rollercoaster of learning, hard work, and meeting incredibly interesting people that followed, I can admit that never in a million years would I have anticipated seeing such a change in the legal profession in CEE, in such a relatively short period of time.

Twenty years ago we were inspecting dusty physical books of the land register and today we are testing the application of artificial intelligence in due diligence reviews. The complexity of transactions in CEE has raised exponentially compared to their value. We have gained experience in "exotic" legal areas, such as derivatives, and we have seen the development of completely new ones, such as crypto. The growth of regulation has been overwhelming (and, in my personal view, often excessive). Last but not least, whereas two decades ago (at least in Slovenia), for 99% of lawyers a law degree meant a definite cutting of the umbilical cord with the law faculties, today all larger firms dedicate great efforts to staying connected and to providing law students with a little – but so-very-valuable – peek into how interesting and fulfilling our profession can be.

If you asked me to point out two main advantages of being a lawyer in CEE compared to the U.S. and Western Europe, I would dare to claim that the lower degree of specialization (which is driven by the size of our markets) not only makes our professional lives more interesting, but can also be advantageous for clients. Fully aware that not everyone will agree, I believe that a broader (although less detailed) knowledge of several legal fields keeps our eyes open to risks we might otherwise miss, and our minds open to pragmatic solutions.

The other advantage I would mention is a comparatively better balance between work and play, which is probably not driven only by cultural background but also by our geographical good fortune – it does make a difference if you can reach the nearest unspoilt nature within one hour or within three. And, controversial as this statement may be, I think we have perhaps even started learning the importance of this balance from the younger generation.

Hoping that such younger generation lawyers do not stop reading here – realistically, pushing yourself to the limit will occasionally still be unavoidable – I would finish with a few takeaways which sank into my mind looping through the years:

Be curious. Do not limit yourself to what [needs to be done], for whom [it needs to be done], and until when [must it be delivered], but always ask why [does the client need this], and how [can I assist best]. Do not be afraid of asking the client – there are no stupid questions, and the clients are usually quite happy to explain their underlying business objectives.

While thinking a few steps ahead is always positive, try not to plan every detail of your career. Life does not always turn out the way we expect. Flexibility will help you dodge disappointment if something does not work out the way you planned, and you will not miss opportunities if you do your best in every situation instead of just in situations you deem important for your career.

There are no small deals. Regardless of the size of the transaction, always try to do your very best. The clients need you to, even if they admit themselves that their transaction is of lesser importance (but they rarely will). ■

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ACROSS THE WIRE: DEALS SUMMARY

Date covered	Firms Involved	Deal/Litigation	Value	Country
16-Jul	Eisenberger & Herzog	Eisenberger & Herzog advised the Switzerland's Brisen Group on its entrance into an operating agreement with the Mandarin Oriental hotel chain.	EUR 100 million	Austria
17-Jul	BPV Huegel; Linklaters; Weber & Co.	BPV Huegel advised Immofinanz on a combined share placement and the first-to-market issue of subordinated mandatory convertible notes. Linklaters and Weber & Co. advised bookrunners J.P. Morgan Securities plc, Sole Global Coordinator, and Erste Group Bank AG and Raiffeisen Centrobank AG.	N/A	Austria
20-Jul	Eisenberger & Herzog	Eisenberger & Herzog helped Austrian Airlines on its receipt of State aid amounting to EUR 150 million from the Republic of Austria.	EUR 150 million	Austria
22-Jul	DLA Piper	DLA Piper advised Austria's Kurant GmbH on the Europe-wide roll-out of its Bitcoin vending machines.	N/A	Austria
22-Jul	Freshfields; Schoenherr	Freshfields Bruckhaus Deringer advised an international banking consortium consisting of HSBC Bank plc, JP Morgan Securities plc, and Raiffeisen Bank International AG on Uniqua Insurance Group AG's successful issuance of two bonds worth a total of EUR 800 million. Schoenherr advised Uniqua on the deal.	EUR 800 million	Austria
24-Jul	Binder Grosswang; BPV Huegel; Herbert Smith Freehills	BPV Huegel worked with the Frankfurt office of Herbert Smith Freehills in advising the Heidelpay Group, a German technology company for international payments, on the acquisition of the Paysafe Group's Pay Later business. Binder Groesswang advised the Paysafe group.	N/A	Austria
30-Jul	Themmer Toth & Partner; Weber & Co.	Weber & Co. advised Central European University on its July 27, 2020 agreement with the Vienna Business Agency to use the Otto Wagner site in Vienna as the university's new site. Themmer, Toth & Partner advised the Vienna Business Agency.	N/A	Austria
31-Jul	Schoenherr	Schoenherr assisted Auer-Blaschke GmbH & Co KG with the registration of its new AUER brand design as a model brand at the Austrian Patent Office.	N/A	Austria
5-Aug	Eisenberger & Herzog; Schnittker Moellmann Partners	Eisenberger & Herzog advised Samsung Catalyst Fund, a venture capital fund of Samsung Electronics Co., Ltd, on an undisclosed investment in the Speedinvest 3 fund, which was advised by Berlin-based Schnittker Mollmann Partners.	N/A	Austria
7-Aug	Herbst Kinsky	Herbst Kinsky advised Byrd technologies GmbH on a EUR 5 million Series A financing round.	EUR 5 million	Austria
10-Aug	Freshfields; Linklaters; Wolf Theiss	Wolf Theiss and Linklaters advised Raiffeisen Bank International AG on the issuance of EUR 500 million worth of additional Tier 1 capital. Freshfields Bruckhaus Deringer advised joint lead managers Barclays Bank plc, Goldman Sachs International, J.P. Morgan Securities plc, Raiffeisen Bank International AG, and UBS Europe SE.	EUR 500 million	Austria
11-Aug	Brandl & Talos	Brandl & Talos advised BTOV's Industrial Technologies Fund on its participation in ToolSense's financing round that also included AWS Grunderfonds, Segnalita Ventures, Martin Global AG, and Dr. Georg Hoblik GmbH.	EUR 3 million	Austria

Date covered	Firms Involved	Deal/Litigation	Value	Country
11-Aug	Fellner Wratzfeld & Partner	Fellner Wratzfeld & Partner advised a consortium of UniCredit Bank Austria, BAWAG P.S.K, Commerzbank, Raiffeisenlandesbank Oberoesterreich, and HYPO Vorarlberg on the reorganization proceedings of the Huber Group, an Austrian lingerie manufacturer.	N/A	Austria
16-Jul	Aleinikov & Partners	Aleinikov & Partners has advised StringersHub on investment into the company by a group of angel investors and venture capital firms Insta Ventures and Starta Ventures.	USD 500,000	Belarus
28-Jul	Ilyashev & Partners	Acting on behalf of Challenge Shipping Ltd., the Odesa office of Ilyashev & Partners secured the acceptance by Ukraine's State Ecological Inspection of a British protection and indemnity club's letter of undertaking as a sufficient security for a maritime claim.	UAH 13.5 million	Belarus; Ukraine
17-Jul	Djingov, Gouginski, Kyutchukov & Velichkov	DGKV advised Bulgarian start-up Nasekomo on the investment into the company of EUR 4 million from VC funds Morningside Hill and New Vision 3 backed by the Fund of Funds in Bulgaria.	EUR 4 million	Bulgaria
17-Jul	Kinstellar	Kinstellar advised OTP Bank and its Bulgarian subsidiary, DSK Bank, on a EUR 25 million loan provided to Balkan Business Center AD for the construction and operation of the Balkan Business Center office complex in Sofia.	EUR 25 million	Bulgaria
21-Jul	Georgiev, Todorov & Co.	Georgiev, Todorov & Co. successfully represented Sofia's Acibadem City Clinic Multidisciplinary Hospital for Active Treatment Tokuda EAD in a claim against Bulgaria's National Health Insurance Fund for payment for medical care provided by the hospital to health-insured persons above the NHIF's limits.	N/A	Bulgaria
27-Jul	CMS; Eurolex Bulgaria	Eurolex Bulgaria and CMS advised Trace Group Holding and Balkantel – members of the Plovdiv Railway Project Consortium – on their successful participation in a tender for a EUR 45 million railway public procurement project in Bulgaria.	EUR 45 million	Bulgaria
30-Jul	Dimitrov Petrov & Co.; Vladimirov Kiskinov	Dimitrov, Petrov & Co. advised Team.blue on its acquisition of the Bulgarian web hosting company SuperHosting. The Vladimirov Kiskinov law firm advised SuperHosting on the deal.	N/A	Bulgaria
31-Jul	Boyanov & Co	Boyanov & Co successfully represented Organic Land Corporation EOOD, a Bulgarian subsidiary of Tradin Organic B.V., in litigation against an unidentified agricultural company.	N/A	Bulgaria
3-Aug	Lacore; Tsvetkova Bebov Komarevski	Separate teams from Tsvetkova Bebov Komarevski advised both EnduroSat and Freigeist Capital on the latter's investment into the former. Lacore Rechtsanwalte was German counsel to Freigeist Capital.	N/A	Bulgaria
7-Aug	CMS; Reed Smith; Wolf Theiss	CMS advised OTP Bank, DSK Bank, and Eurobank on the EUR 110 million refinancing of the Business Park Sofia with Arco Capital Corporation. Reed Smith and Wolf Theiss advised Arco Capital on the transaction.	EUR 110 million	Bulgaria
13-Aug	Georgiev, Todorov & Co.	Georgiev Todorov & Co. advised Bulgaria's Office Sgradi EOOD on the purchase of 50% of the shares of Medical Center-On Clinic Bulgaria AD from the Netherlands-based On Clinic Advanced Medical Institute B.V. The seller was reportedly advised by Israel's Epstein Rosenblum Maoz.	N/A	Bulgaria
14-Aug	Tokushev and Partners	Tokushev and Partners advised Intercapital Property Development REIT on its initial public offering of company shares worth over BGN 24 million.	BGN 24 million	Bulgaria
11-Aug	CMS; Harney's; Jipyong	CMS advised the Export-Import Bank of Korea on a USD 36 million financing deal with Grain Terminal Holdings – a Singapore-based joint venture between Posco International and the Orexim Group. Posco International was advised by South Korea's Jipyong law firm, and the Orexim Group was advised by Harneys' Cyprus office.	USD 36 million	Bulgaria; Ukraine
16-Jul	Havel & Partners; Hengeller Mueller; White & Case	White & Case advised Hungary's MVM on the acquisition of the entire share capital in Innogy Czech Republic from Innogy Beteiligungsholding, a member of the Innogy/E.ON Group. Hengeler Mueller and Havel & Partners advised E.ON on the deal.	N/A	Czech Republic
28-Jul	Grant Thornton; GT Legal; Kocian Solc Balastik	Kocian Solc Balastik advised the Skoda Transportation Group on the acquisition of Ostrava-based Ekova Electric. GT Legal and Grant Thornton advised the seller, Dopravni Podnik Ostrava.	N/A	Czech Republic

Date covered	Firms Involved	Deal/Litigation	Value	Country
3-Aug	Allen & Overy; Clifford Chance	Allen & Overy advised Czech Gas Networks Investments on its successful issuance and placement of EUR 600 million and CZK 6.75 billion notes with investors on international capital markets. Clifford Chance reportedly advised joint book-runners Citigroup Global Markets Europe AG, Societe Generale, UniCredit Bank AG, Ceska Sporitelna, a.s., Ceskoslovenska Obchodni Banka, a. s., and Komercni Banka, a.s., as well as trustee Citicorp Trustee Company Limited and the London branch of Citibank, which acted as the paying agent, transfer agent, and the agent bank.	EUR 855 million	Czech Republic
5-Aug	Bird & Bird	Bird & Bird advised KB SmartSolutions on its strategic entry into Upvest.	N/A	Czech Republic
6-Aug	Eversheds Sutherland	Eversheds Sutherland advised Expandia on the sale of the Hamburg Business Center office complex in Pilsen, in the Czech Republic.	N/A	Czech Republic
12-Aug	Heuking Kuhn Luer Wojtek; Kocian Solc Balastik	Kocian Solc Balastik and Germany's Heuking Kuhn Luer Wojtek advised China-based Inner Mongolia Mengtai on the acquisition of the Czech part of the Apt group.	N/A	Czech Republic
21-Jul	Cobalt	Cobalt helped the Estonian Ministry of Economic Affairs and Communications obtain authorization to provide State aid from the European Commission.	EUR 20 million	Estonia
23-Jul	Ellex (Raidla)	Ellex Raidla successfully represented Enefit Green in a dispute over competition clearance the company received for its 2018 merger with Nelja Energia AS.	N/A	Estonia
3-Aug	Sorainen	Sorainen advised Montonio on its generation of EUR 500,000 from both Estonian and international investors.	EUR 500,000	Estonia
5-Aug	Cobalt	Cobalt advised Estonia-based real estate development and management company Capfield OU on a EUR 85 million financing it received from Luminor.	EUR 85 million	Estonia
7-Aug	Cobalt	Cobalt advised Estonia's Helmes on its acquisition of all shares of software development company T2T from Latvia's Tet.	N/A	Estonia
11-Aug	Cobalt	Cobalt advised the Rubylight technology investment fund on its participation in Tandem's Series A round of financing, which also included investors Brighteye Ventures, Trind Ventures, and GPS Ventures.	USD 5.7 million	Estonia
22-Jul	Ellex (Klavins); Ellex (Raidla); Ellex (Valiunas); Latham & Watkins; Sorainen	Sorainen advised the Bite Group on a EUR 700 million bond issuance and refinancing. Latham & Watkins and Ellex reportedly advised initial bond purchasers and mandated lead arrangers Citigroup Global Markets Limited, Deutsche Bank AG, London Branch, ING Bank N.V., London Branch, and UniCredit Bank AG.	EUR 700 million	Estonia; Latvia; Lithuania
30-Jul	Deloitte Legal; Kaevando & Partnerid	Lawyers from Deloitte Legal's Lithuanian and Estonian offices advised Lonas UAB, a manufacturer of mattresses and beds, on its acquisition of Estonia's Dreamland Home OU, a retailer and wholesaler of bedroom products, from ITIS Holding OU. Kaevando & Partnerid advised the sellers on the deal.	N/A	Estonia; Lithuania
21-Jul	Bahas Gramatidis & Partners	Bahas, Gramatidis & Partners is advising Coffee Berry and Hans & Gretal on the creation of their corporate structures and the structuring of franchise agreements for Greece and abroad.	N/A	Greece
22-Jul	Koutalidis	Koutalidis advised investment fund Southbridge Europe Mezzanine and the founders of Skroutz S.A. on the sale of a minority stake in Skroutz S.A. to CVC Capital Partners.	N/A	Greece
28-Jul	Koutalidis	Koutalidis advised mandated lead arrangers Bank of Greece, Alpha Bank, Eurobank, Piraeus Bank, and Euroxx Securities, and issuance advisors Eurobank and Piraeus Bank, on Lamda Development S.A.'s issuance of a EUR 320 million bond and it admission to trading on the Athens Exchange.	EUR 320 million	Greece
31-Jul	Norton Rose Fulbright	Norton Rose Fulbright advised Admie, the owner and operator of the Greek electricity transmission grid, on the concession for the Crete-Attica high-voltage direct current interconnection project, which was granted to Admie's subsidiary Ariadne Interconnection.	N/A	Greece
11-Aug	Zepos & Yannopoulos	Zepos & Yannopoulos advised Pancreta Bank on its transformation from a cooperative bank into a "societe anonyme."	N/A	Greece

Date covered	Firms Involved	Deal/Litigation	Value	Country
30-Jul	Kinstellar	Kinstellar advised the Hungarian State on a greenfield investment in a helicopter spare parts manufacturing plant to be established in Hungary by Airbus Helicopters and the Hungarian state-owned NLP Nemzeti Legiipari Projekt Kft.	N/A	Hungary
31-Jul	Allen & Overy; Erdos | Katona	Erdos | Katona advised Cordia International Zrt. on its HUF 36 billion bond issuance, made pursuant to the Bond Funding for Growth Program of the Hungarian National Bank. Allen & Overy advised lead arranger Raiffeisen Bank.	HUF 36 billion	Hungary
12-Aug	Erdos | Katona; Kinstellar	Erdos | Katona advised Hell Energy on its refinancing of an existing loan with four unidentified Hungarian banks. Kinstellar reportedly advised the banks.	N/A	Hungary
13-Aug	CMS; Noerr	Noerr's Budapest office advised UniCredit Bank on financing provided to GTC for the development of the Pillar office building in Budapest. CMS reportedly advised GTC on the deal.	N/A	Hungary
3-Aug	Cobalt	The Latvian office of Cobalt advised AirBaltic on a EUR 250 million investment in its shares by the Latvian Government.	EUR 250 million	Latvia
7-Aug	BDO Law	The Latvian office of BDO Law provided legal analysis to the European Investment Bank regarding a EUR 80 million financing agreement with the Latvian state.	EUR 80 million	Latvia
13-Aug	BDO Law	BDO Law advised Deichmann-Schuhe Service-GmbH on its investment of EUR 500,000 in its Latvian subsidiary, SIA Deichmann Apavi, that increased its capital to EUR 1.15 million.	EUR 500,000	Latvia
21-Jul	TGS Baltic	TGS Baltic successfully represented Valstybiniu Misku Uredija –Lithuania's state-owned enterprise responsible for the supervision, administration, and inventory of state forests – before the Supreme Court of Lithuania.	N/A	Lithuania
22-Jul	SPC Legal	SPC Legal advised UAB Leteja on the sale of Hotel Conti, located in Vilnius' Old Town, to UAB NS Consulting.	N/A	Lithuania
22-Jul	TGS Baltic	TGS Baltic advised the Opera Limited browser provider on its acquisition of Fjord Bank.	N/A	Lithuania
24-Jul	Cobalt	Cobalt helped Lithuania's UAB Kedainiai Free Economic Zone draft establishment and operation agreements for Kormotech.	N/A	Lithuania
28-Jul	Cobalt	Cobalt advised the EBRD, Swedbank, and Citadele Bank on their provision of a EUR 86 million syndicated loan to UAB Vakaru Medienos Grupe in Lithuania.	EUR 86 million	Lithuania
30-Jul	Sorainen	Sorainen successfully defended the interests of the Union of Lithuanian Journalists and other journalists in a case investigated by Lithuania's Supreme Administrative Court regarding defense of that country's constitutional right to receive, collect, and share information.	N/A	Lithuania
4-Aug	Sorainen	Sorainen advised Alfa Bank on debt recovery efforts against Lithuanian businessman Vidmantas Kucinskas, as well as identifying possibly illegal acts by Kucinskas, who is suspected of financial fraud.	N/A	Lithuania
5-Aug	Dentons; Sorainen; TGS Baltic	The Vilnius office of Sorainen advised dealers BNP Paribas, Citi, and Erste Group on Lithuania's raising of EUR 1.75 billion by means of a 30-year Eurobond issue.	EUR 1.75 billion	Lithuania
7-Aug	Iustum; Sorainen	Sorainen advised the Darnu Group on a construction agreement with UAB Naresta for the sixth stage of the Paupys district of Vilnius, in Lituania. UAB Naresta was reportedly advised by the Iustum law firm.	N/A	Lithuania
11-Aug	Sorainen	The Lithuanian office of Sorainen advised Koinveticinis Fondas on its investment in Ligence, a Lithuanian startup developing an automated cardiac ultrasound diagnostic solution based on artificial intelligence.	EUR 360,000	Lithuania
13-Aug	Hillmont Partners	Hillmont Partners obtained an award for interim measures for client Komaksavia Airport Invest Ltd in arbitration against the Republic of Moldova related to the concession agreement for the Chisinau International Airport.	N/A	Moldova; Ukraine
24-Jul	Polenak Law Firm	Polenak advised the EBRD on a EUR 20 million loan to Sparkasse Bank Makedonija.	EUR 20 million	North Macedonia

Date covered	Firms Involved	Deal/Litigation	Value	Country
31-Jul	Law Office Karmen Rebesco; Polenak Law Firm	The Polenak Law Firm advised NLB Bank Skopje as mandated lead arranger, agent, and lender on a EUR 72 million syndicated loan to East Gate to finance the construction of the East Gate Mall in Skopje. Law Office of Karmen Rebesco prepared the LMA finance documents and advised NLB dd. on the deal. East Gate was advised by solo practitioner Zeqir Zeqiri.	EUR 72 million	North Macedonia
5-Aug	ODI Law	ODI Law helped Exor N.V. obtain Macedonian merger clearance for its EUR 102.4 million acquisition of GEDi Gruppo Editoriale S.p.A. from CIR SpA.	EUR 102.4 million	North Macedonia
5-Aug	ODI Law	ODI Law advised FLO Magazacilik ve Pazarlama A.S on the opening of stores in Skopje and Tetovo.	N/A	North Macedonia
6-Aug	ODI Law	ODI helped Nova Ljubljanska Banka obtain Macedonian merger clearance for the acquisition of 83.23% of the ordinary shareholding in Komercijalna Banka a.d. Beograd.	N/A	North Macedonia
22-Jul	Norton Rose Fulbright	Norton Rose Fulbright advised a consortium of ten banks on a PLN 5.5 billion loan to Gaz-System, Poland's designated natural gas transmission system operator.	PLN 5.5 billion	Poland
24-Jul	Kurzynski Kosinski Lyszyk Wierzbicki; Soltysinski Kawecki & Szlezak	Soltysinski Kawecki Szlezak advised IKEA Industry Poland, a member of the IKEA Group, on the sale of its furniture factory in Konstantynow Lodzki to a member of Latvia's Vakaru Medienos Grupe. Kurzynski Kosinski Lyszyk Wierzbicki advised Vakaru Medienos on the deal.	N/A	Poland
24-Jul	Rymarz Zdort	Rymarz Zdort advised PGNiG S.A. on the execution of a five-year agreement with Klaipedos Nafta for the use of the entire capacity of its liquid natural gas tanker truck reloading station in Klaipeda, Lithuania.	N/A	Poland
27-Jul	Allen & Overy; Clifford Chance	Clifford Chance advised a consortium consisting of the EBRD, ING Bank Slaski, mBank, and Santander Bank Polska on financing of PLN 480 million to Polenergia for the construction of a 121 MW wind farm in Debsk, Poland. Allen & Overy advised Polenergia.	PLN 480 million	Poland
27-Jul	CK Legal; Greenberg Traurig	Greenberg Traurig advised UBS and Ipopema Securities on Ryvu Therapeutics' PLN 140 million new share offering. Chabasiewicz, Kowalska, and Partners advised Ryvu Therapeutics.	PLN 140 million	Poland
28-Jul	CMS	CMS advised Bonair on its sale to the Netherlands' Fellowmind group, which is owned by Sweden's FSN Capital private equity fund.	N/A	Poland
28-Jul	GTS Legal; SSW Pragmatic Solutions	SSW Pragmatic Solutions advised Kom-Eko on its acquisition of 69.46% of shares in Lubelska Agencja Ochrony Srodowiska.	N/A	Poland
28-Jul	Noerr; Rapala Law Firm	Noerr advised Telekom Innovation, a strategic investment fund of Deutsche Telekom, on an unspecified equity investment in Poland's RemoteMyApp technology company. The Rapala Law Firm advised RemoteMyApp.	N/A	Poland
28-Jul	Schoenherr	Schoenherr advised Panattoni Europe on its lease of space at Poland's Panattoni Park Ruda Slaska II to Dywidag-Systems International sp. z o.o., a producer of geotechnical and compression systems.	N/A	Poland
30-Jul	Kochanski & Partners	Kochanski & Partners successfully represented Ringier Axel Springer Polska in a dispute with the Polish Filmmakers Association that reached Poland's Supreme Court involving the calculation of royalties.	N/A	Poland
31-Jul	Kochanski & Partners	Kochanski & Partners successfully represented Polish journalist Mikolaj Podolski in criminal proceedings.	N/A	Poland
31-Jul	SSW Pragmatic Solutions	SSW Pragmatic Solutions advised Polish resin manufacturer LERG S.A. on the acquisition of CIECH Zywice, another Polish resin manufacturer.	EUR 36 million	Poland
5-Aug	Baker Mckenzie; Clifford Chance	Baker McKenzie advised PKN Orlen on a revolving facility agreement under English law with a consortium of 16 banks. Clifford Chance advised the lenders on the deal.	EUR 1.75 billion	Poland
6-Aug	KPRF Law Office; Linklaters	Linklaters advised Chariot Group, a company managed by Griffin Real Estate, on the extension of leases with Auchan Poland for six retail properties. The KPRF Law Office advised Auchan Poland.	N/A	Poland

Date covered	Firms Involved	Deal/Litigation	Value	Country
7-Aug	Bird & Bird; Norton Rose Fulbright	Bird & Bird advised Wento and Enterprise Investors on the EUR 50 million sale of Eco Power sp. z o.o. to PGE Energia Odnawialna. The Warsaw office of Norton Rose Fulbright advised the buyers on the deal.	EUR 50 million	Poland
10-Aug	Baker Mckenzie	Baker McKenzie advised ElectroMobility Poland SA on agreements with Torino Design and EDAG Engineering Gmbh regarding the construction and assembly of electric cars in Poland.	N/A	Poland
11-Aug	Decisive Worldwide Szmigiel Papros Gregorczyk.	Decisive Worldwide Szmigiel Papros Gregorczyk advised the Skarbiec Dochodowych Nieruchomosci Fizan investment fund on the negotiation and sale of retail premises in Wroclaw's Old Town.	N/A	Poland
16-Jul	Stratulat Albulescu	Stratulat Albulescu advised digital technology consulting company Brillio on the acquisition of Cognetik.	N/A	Romania
16-Jul	Zamfirescu Racoti Vasile & Partners	Zamfirescu Racoti Vasile & Partners successfully represented Banca Transilvania in a contract dispute before the Court of Justice of the European Union.	N/A	Romania
30-Jul	Clifford Chance; Jankovic Popovic Mitic; Schoenherr	Clifford Chance Badea advised the Kingspan Group, a company specialized in high-performance insulation and building envelope solutions, on the acquisition of TeraSteel SA, TeraSteel DOO Serbia, and Wetterbest SA. Schoenherr advised TeraPlast on the deal.	N/A	Romania
4-Aug	Filip & Company	Filip & Company advised SoftwareONE Holding AG, a global provider of end-to-end software and cloud technology solutions, on the acquisition of B-lay, a provider of Software Asset Management advisory and managed services for SAP and Oracle solutions.	N/A	Romania
10-Aug	Popovici Nitu Stoica & Asociatii	Popovici Nitu Stoica & Asociatii successfully represented the interests of the Association of Romanian Construction Companies and several other large construction companies before the Bucharest Court of Appeal.	N/A	Romania
11-Aug	Zamfirescu Racoti Vasile & Partners	Zamfirescu Racoti Vasile & Partners successfully represented Intermed Consulting & Management before the High Court of Cassation and Justice of Romania in a case involving industrial park real estate tax exemption.	RON 28 million	Romania
20-Jul	Egorov Puginsky Afanasiev & Partners	EPAM advised the VIS Group on the refinancing of a public-private partnership involving the construction of 12 social infrastructure facilities in Yakutsk through the placing of secured social bonds worth over RUB 5.6 billion. The refinancing was arranged by BKS, Otkritie Bank, DOM.RF Bank, and Sovcombank.	RUB 5.6 billion	Russia
23-Jul	Debevoise; Hogan Lovells	Debevoise & Plimpton advised the NLMK Group on a EUR 600 million revolving credit facility, with an accordion option allowing it to increase the funding limit up to EUR 1 billion. Hogan Lovells advised coordinating mandated lead manager ING Bank N.V. and mandated lead arrangers Credit Agricole Corporate and Investment Bank, NATIXIS, SGBTCI, AO Raiffeisenbank, Bank of America Merrill Lynch International Designated Activity Company, Mizuho Bank, Ltd., Deutsche Bank AG, London Branch, Bank ICBC (JSC), UniCredit S.p.A., and Intesa Sanpaolo Bank Ireland Plc .	EUR 600 million	Russia
27-Jul	Bryan Cave Leighton Paisner	Bryan Cave Leighton Paisner helped the PSA Group obtain Russian antitrust clearance for its merger with Fiat Chrysler Automobiles.	N/A	Russia
27-Jul	Ivanyan & Partners	Ivanyan & Partners represented the interests of the Russian Union of Railway Transport Operators and oil products transporter Transoil in antitrust proceedings against railway wheel manufacturer Vyksa Steel Works.	N/A	Russia
3-Aug	White & Case	White & Case advised the Moscow Exchange, Russia's largest securities exchange group, on its acquisition of a 17% stake in BierbaumPro AG and the right to acquire the rest from unidentified sellers.	N/A	Russia
11-Aug	Baker Mckenzie; Semenov & Pevzner	Baker McKenzie advised audio streaming service Spotify on its launch in 13 new markets, giving it a presence in 92 markets worldwide. Semenov & Pevzner advised Spotify on intellectual property issues related to its launch in the Russian market, as well as in Ukraine, Belarus, Moldova, and Kazakhstan.	N/A	Russia
12-Aug	White & Case	White & Case advised VTB Bank and a consortium of investors on the RUB 132 billion sale of a 55% stake in Tele2 Russia to Russia's Rostelecom, and on the acquisition of an approximately 29% stake in Rostelecom.	RUB 132 billion	Russia

Date covered	Firms Involved	Deal/Litigation	Value	Country
14-Aug	Egorov Puginsky Afanasiev & Partners	Egorov Puginsky Afanasiev & Partners successfully represented Finland's Fortum energy company before the Russian government's commission on foreign investments and before Russia's competition authority with regard to the company's acquisition of a majority stake in Germany's Uniper.	N/A	Russia
22-Jul	PR Legal	PR Legal successfully defended the interests of coffee producer and manufacturer Strauss Adriatic in a dispute over the alleged infringement of the "C Kafa" trademark.	EUR 45,000	Serbia
4-Aug	CMS; NKO Partners	NKO Partners advised CTP on financing of EUR 13.5 million from the EBRD for real estate project development in Serbia. CMS advised the EBRD on the transaction.	EUR 13.5 million	Serbia
7-Aug	Bojovic Draskovic Popovic & Partners; JPM Jankovic Popovic Mitic	Jankovic Popovic Mitic advised French multinational company C.D Holding Internationale SAS on its EUR 5 million acquisition of an additional stake in Emergo Sport d.o.o., the Serbian subsidiary of Fitpass Limited. Fitpass was advised by Bojovic, Draskovic, Popovic, and Partners.	EUR 5 million	Serbia
22-Jul	Cooley; Moroglu Arseven; Rajah & Tann; Turunc	Turunc and Cooley advised US-based private equity fund Riverwood Capital on its investment in Insider, a growth management platform for digital marketers. Riverwood led the USD 32 million investment round, which included participation from Sequoia, Wamda, and Endeavor Catalyst. Moroglu Arseven and Rajah & Tann advised Insider.	USD 32 million	Turkey
24-Jul	Aksan	Aksan advised Paket Mutfak Gayrimenkul Isletmeciligi ve Hizmetleri Anonim Sirketi and its shareholders on its latest investment round.	N/A	Turkey
24-Jul	Dentons; Dentons (BASEAK); Herguner Bilgen Ozeke	Balcioglu Selcuk Akman Keki Attorney Partnership advised Anatolia B.V., a subsidiary of agricultural exporter Tiryaki Agro Foods Industry, on the sale of 25.58% shareholding in Sunrise Foods International Inc. to Hassad Holdings Canada. Dentons advised Tiryaki on English law matters, and Herguner Bilgen Ozeke advised Hassad Holdings.	N/A	Turkey
24-Jul	Kinstellar	Kinstellar advised Vivense and its CEO and founder Kemal Erol on a USD 130 million investment into the company by the Actera Group, a private equity firm focusing on investments in Turkey.	USD 130 million	Turkey
5-Aug	Aksan	Turkey's Aksan Law Firm advised Albaraka Asset Management on its investment in Clotie, an e-commerce company that provides personalized clothing services.	N/A	Turkey
6-Aug	BTS & Partners	BTS & Partners advised TechOne Venture Capital and Twozero Ventures, funds managed by Actus Asset Management, on an unspecified investment in FineDine Digital Menus for Restaurants, Cafes & Bars.	N/A	Turkey
11-Aug	Dentons; TOCC Attorney Partnership	The TOCC Attorney Partnership advised Akbank subsidiary AKLease on its EUR 40 million financing from the EBRD. Dentons reportedly advised the EBRD on the deal.	EUR 40 million	Turkey
12-Aug	Caliskan Okkan Toker; GKC Partners; White & Case	White & Case and its associated Turkish firm, GKC Partners, advised Zynga Inc. on its USD 168 million acquisition of an 80% stake in Rollic, a mobile games developer and publisher, from Mehmet Can Yavuz, Deniz Basaran, Burak Vardal, Volkan Bicer, Mehmet Ayan, and Yunus Emre Gonul. Caliskan Okkan Toker advised the sellers on the deal.	USD 168 million	Turkey
16-Jul	CMS	CMS advised the EBRD on a loan of approximately USD 13.9 million to Ukraine's Irshanska SES LLC.	USD 13.9 million	Ukraine
16-Jul	Ilyashev & Partners	Ilyashev & Partners Law Firm successfully defended the interests of Ukrainian pharmaceutical manufacturer Biopharma in a case involving the protection of competition in Ukraine's immunoglobulins market.	N/A	Ukraine
21-Jul	Baker Mckenzie	Baker McKenzie successfully defended the interests of Prandicle Limited – a company owned by former Ukrainian Vice Prime Minister and former Naftogaz CEO Oleh Dubyna – against proprietary and unjust enrichment claims.	N/A	Ukraine
22-Jul	Aequo	Aequo advised Allrise Capital Inc. on the acquisition of the Chornomorets stadium in Odessa from Imeksbank. The sale, which was conducted by auction, was arranged by the Deposit Guarantee Fund.	N/A	Ukraine

Date covered	Firms Involved	Deal/Litigation	Value	Country
22-Jul	Asters	Asters advised the IFC on a USD 20 million loan to Nyva Pereyaslavshchyny, a Ukrainian pork producer.	USD 20 million	Ukraine
23-Jul	Redcliffe Partners	Redcliffe Partners advised the EBRD on an up to EUR 25 million term loan to be provided to Ukrainian State Air Traffic Services Enterprise for working capital needs.	EUR 25 million	Ukraine
24-Jul	Vasil Kisil & Partners	Vasil Kisil & Partners' successfully represented McDonald's Ukraine in a case against the Ukrainian League of Copyright and Related Rights.	N/A	Ukraine
27-Jul	Integrites	Integrites represented Metro Cash & Carry Ukraine in a dispute with a former energy supplier who filed a claim against one of the company's stores demanding that it be fined for changing its electricity supplier.	N/A	Ukraine
27-Jul	Redcliffe Partners	Redcliffe Partners helped Saudi Basic Industries Corporation obtain merger clearance from the Ukrainian competition authority for the USD 69.1 billion sale of 70% of its shares by the Public Investment Fund of Saudi Arabia – the sovereign wealth fund of the Kingdom of Saudi Arabia – to the Saudi Arabian Oil Company.	N/A	Ukraine
4-Aug	Avellum; Latham & Watkins; Sayenko Kharenko; White & Case	Latham & Watkins and Sayenko Kharenko advised JP Morgan and Goldman Sachs as the joint lead managers and joint dealer-managers on Ukraine's successful completion of the settlement of its new USD 2 billion 7.253% Eurobond due 2033, as well as on its first-ever intra-day switch tender offer in relation to its outstanding USD-denominated 7.75% senior notes due 2021 and USS-denominated 7.75% senior notes due 2022. Avellum and White & Case advised the Ministry of Finance of Ukraine.	EUR 2 billion	Ukraine
11-Aug	Redcliffe Partners	Redcliffe Partners advised the EBRD on a USD 27 million short-term secured loan to Nibulon LLC, a Ukrainian agricultural company.	USD 27 million	Ukraine
11-Aug	Vasil Kisil & Partners	Vasil Kisil & Partners advised St Sophia Homes on its lease of office space in Kyiv to Goethe-Institut.	N/A	Ukraine
12-Aug	Sayenko Kharenko	Sayenko Kharenko advised the European Bank for Reconstruction and Development on its entry into the 1992 ISDA Master Agreement with the National Bank of Ukraine.	N/A	Ukraine

The Ticker:

- Full information available at: www.ceelegalmatters.com
- Period Covered: July 16, 2020 - August 14, 2020

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

ON THE MOVE: NEW HOMES AND FRIENDS

Turkey: Semih Metin and Seval Cicek Launch MC Legal

By David Stuckey


Semih Metin

Turkish lawyers Semih Metin and Seval Cicek have founded the MC Legal law firm in Istanbul.

According to MC Legal, Metin "has a wide range of knowledge and experience in various fields such as domestic and international initial public offerings, local and foreign issuances of bonds and other securities, regulations governing publicly traded companies, brokerage houses and other capital market institutions, share and property merger and acquisition projects and conducting due diligences, preparation of all kinds of corporate legal documentation, corporate, and commercial law and establishment of compliance programs on local and international anti-bribery and corruption regulations."

Metin spent 14 years with Turkey's Capital Markets Board, the better part of four years with DLA Piper in Istanbul, a year and half as a Partner at Nazali Tax and Legal Services, and over a year as Head of Legal at Hurriyet Gazetecilik ve Matbaacilik A.S. He graduated from the Ankara University Faculty of Law in 1997 and obtained an LL.M. from the Duke University School of Law in the United States in 1998.


Seval Cicek

Cicek, who specializes in employment law, litigation, and alternative dispute resolution, spent a year as a Senior Attorney at Nazali Tax & Legal Services, then the past ten months at SC Legal Services, which she founded in October 2019. She also spent six years as an auditor in Turkey's Social Security Institution. She graduated from the Marmara University Faculty of Law in 2017.

According to Semih Metin, "we define MC Legal as a boutique law firm which offers corporate & commercial, capital markets, mergers & acquisitions, employment and social security law services for our clients. Although we are capable of handling specific projects on the relevant legal areas, we will have a strong focus on providing retainer legal services, which is highly needed by Turkish companies." ■

Czech Republic: BDO Legal Opens for Business

By David Stuckey

The BDO network of independent tax, audit, accounting, and other professional services firms has launched a law firm in the Czech Republic, with offices in Prague, headed by Partner Jiri Smatlak, and Brno, headed by Partner Lukas Regec.

The opening of the legal practice in the Czech Republic follows the July 1, 2020 merger of BDO Slovakia with Slovakian law firm Nexus.

BDO has been operating in the Czech Republic since 1991. According to a firm press release, the new legal arm in the country will focus mainly on "Corporate law for medium-sized companies," along with representing clients in court proceedings and insolvency and restructuring matters.

Smatlak joins BDO after a year as the head of the eponymous Smatlak Legal firm. Previously he spent a year as a solo practitioner, eight and a half years with Dvorak Hager & Partners (now the Prague office of Eversheds Sutherland), and two and a half years with PRK Partners.

Regec worked with Smatlak Legal for

the past year, after spending the previous three as a solo practitioner in Brno.

Trond-Morten Lindberg, BDO International CEO for EMEA, commented on the new offering in the Czech Republic. "We were all very excited about this new service offering. I appreciate the way our Czech partners keep investing in our clients' needs, aiming to provide them the best possible service. It's also great news for our international clients operating in the Czech Republic as they now get instant access to a well-established and skilled legal team. I would like to wish the entire team a lot of success in their new partnership." ■

Serbia: Doklestic Repic & Gajin Launches French Desk

By Djordje Radosavljevic


Marija Papic

Serbia's Doklestic Repic & Gajin has launched a French Desk, led by Partner Marija Papic.

Doklestic Repic & Gajin describes Papic as "a French-trained and dual-qualified multilingual French and Serbian lawyer who worked in some of the biggest international law firms, organizations and multinational companies in Strasbourg, Paris and Luxembourg." According to the firm, "together with her team, Marija looks forward to providing assistance to French-speaking clients in need of legal assistance in Serbia and the rest of the Adriatic region."

Papic studied at the Faculty of Law at University of Belgrade and Faculty of Law Pantheon-Assas in Paris. Prior to joining Doklestic Repic & Gajin, she spent six months at Dentons, two and a half years at Gecic Law, and two years at Newell Brands. ■

Ukraine: Non-Lawyer BD Specialist Tetiana Tyshchenko Becomes Law Firm Partner

By Djordje Vesic


Tetiana Tyshchenko

In a rare-in-CEE move, law firm business development specialist Tetiana Tyshchenko moved from her previous position as Head of Sales at Aequo to become a partner at Ukraine's prominent Asters law firm.

Her joining of the Asters' partnership in a business development role makes perfect sense, she insists. "People who run a business are primarily high quality managers," she smiles. "They don't need to know how to build a Hadron Collider themselves. They need to be experts in the areas they are heading. The main goal of a business is to make profit. My contribution to that goal is to raise brand awareness in Ukraine and abroad, and to attract new clients. The management of Asters was confident in my expertise, so they decided to promote me to a leading position from which I could contribute the most."

And her contacts don't mind, obviously. "I received more than 600 messages of congratulations on LinkedIn alone," she reports. "I have long-lasting relationships with my clients, and they are very supportive of the move."

In the meantime, Tyshchenko, who holds a degree in Management and an Executive MBA, says her background has prepared her well for working in the legal industry. "During my studies," she says, "I had to choose between a course in pedagogy and psychology or law. I chose the former. The course entailed practicing negotiation with children." She laughs. "And trust me, if you can negotiate with children, you can negotiate with anyone. These skills have a big impact on my current work."

Her transition to Asters was seamless, she says, thanks in large part to the "tremendous support I received from other partners, and the rest of the team. People at Asters have really taken kindly to me. They are taking their time to help me how things operate in the firm."

"My obligations and privileges are not different from those of other partners," reports Tyshchenko. "I am still not an equity partner, but, who knows, maybe that will change in a year or two." ■

PARTNER APPOINTMENTS

Date Covered	Name	Practice(s)	Firm	Country
23-Jul	Milena Pejovic	Corporate/M&A	Karanovic & Partners	Montenegro
28-Jul	Aleksandra Krawczyk	Insolvency/Restructuring	SDZLegal Schindhelm	Poland
28-Jul	Kinga Slomka	Real Estate	SDZLegal Schindhelm	Poland
28-Jul	Dominika Szachniewicz	Labor	SDZLegal Schindhelm	Poland
28-Jul	Witold Slawinski	Infrastructure/PPP/Public Procurement	SDZLegal Schindhelm	Poland
20-Jul	Mihnea Galgotiu-Sararu	Litigation/Disputes	Reff & Associates	Romania
10-Aug	Ali Selim Demirel	Corporate/M&A	Esin Attorney Partnership	Turkey
8-Jun	Vadim Panin	Banking/Finance	Herbert Smith Freehills	Russia
8-Jun	Evgeny Yuriev	Corporate/M&A	Herbert Smith Freehills	Russia

PARTNER MOVES

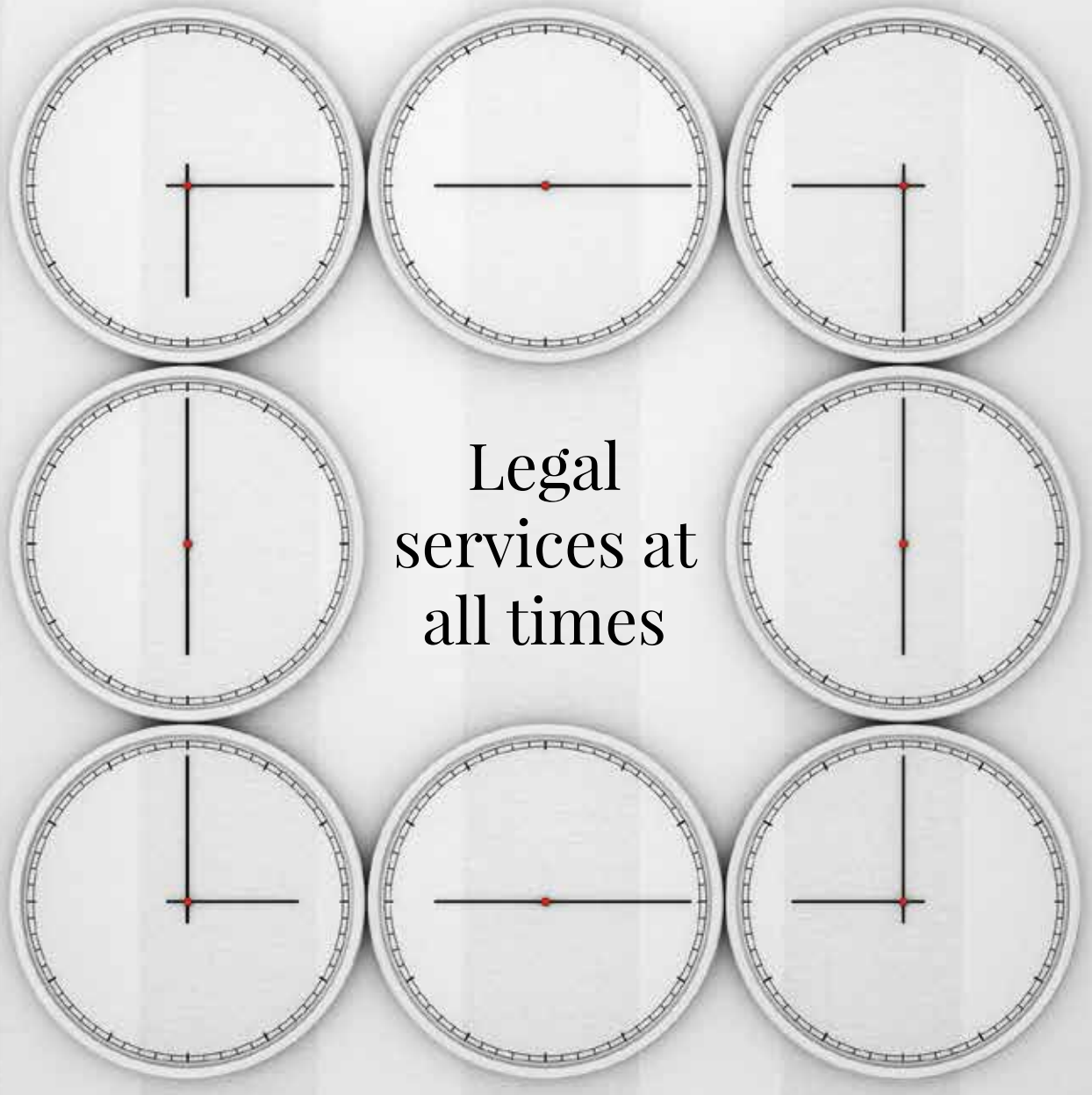
Date Covered	Name	Practice(s)	Moving From	Moving To	Country
20-Jul	Katya Todorova	Capital Markets	Dimitrov, Tchompalov & Todorova	CMS	Bulgaria
24-Jul	Priit Raudsepp	Tax	Glikman Alvin	Derling Primus	Estonia
31-Jul	Merit Lind	Banking/Finance	CORE Legal	Fort Legal	Estonia
3-Aug	Agnieszka Majka	Life Sciences	Hogan Lovells	NGL Legal	Poland
4-Aug	Tatyana Nozhkina	Compliance	Egorov, Puginski, Afanasiev & Partners	ZKS Attorneys	Russia

OTHER APPOINTMENTS

Date Covered	Name	Company/Firm	Appointed To	Country
20-Jul	Katya Todorova	CMS	Head of Capital Markets	Bulgaria
11-Aug	Ewa Kurowska-Tober	DLA Piper	Global Co-Chair of Data Protection, Privacy, and Security	Poland
17-Jul	Simona Marin	Dentons	Head of Banking & Finance	Romania
28-Jul	Olena Kuchynska	Kinstellar	Managing Partner	Ukraine
15-May	Sahin Ardiyok	BASEAK	Named Partner	Turkey

IN-HOUSE MOVES AND APPOINTMENTS

Date Covered	Name	Moving From	Company/Firm	Country
28-Jul	Iliana Byanova	First Investment Bank	Sopharma Trading	Bulgaria
28-Jul	Eva Nikolic	Adria Cluster	Astellas	Hungary
24-Jul	Semih Metin	Hurriyet Gazetecilik ve Matbaacilik A.S	MC Legal	Turkey
27-Jul	Altug Ozgun	Astella Pharma	Cetinkaya Attorneys-at-Law	Turkey
28-Jul	Bora Kaya	Gama Power Systems Engineering and Contracting	Gama Holding	Turkey



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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.

Latvia

Interview with Raimonds Slaidins of Ellex


Raimonds Slaidins

"In terms of national politics, when it comes to Latvia, the word of the day is 'stability,'" says Raimonds Slaidins, Senior Partner at Ellex Klavins in Riga. "The current coalition government has been in power for about one and a half years now, and other than the COVID-19 crisis this has been a good, stable period of time for us – there aren't any indications that something might change in the near future regarding the national government."

The same stability doesn't necessarily apply on the local level, Slaidins says. "The biggest upcoming event in politics is, probably, the snap municipal elections in Riga which are planned for the end of August," he says. Riga, which contains almost half of Latvia's population, has been under the control of an appointed administrator since early March, according to Slaidins, because the "elected officials of Riga [were] unable to make decisions for the city, which triggered the National Government appointing an administrator until elections could be organized." The elections were initially planned for spring, but were postponed by the COVID-19 crisis, which led to the administrator being in charge "longer than initially envisaged."

Overall, though, in terms of the country's response to the coronavirus, Slaidins says, "Latvia has been a success story, considered by most public and international commentators as having done a good job from the very outset, in March." Indeed, he says, although the government "clamped down, enacted strict measures, and sealed off the country," there has never been a "complete and total lockdown," and the social distancing measures proved effective. At the time of writing, the total number of COVID-19 cases in Latvia stands at 1203, with 31 deaths.

"Our success story has been pretty much the case in other Baltic countries as well, so a Baltic-bubble was formed to allow travel between the three countries, and now the country has opened up to other EU members as well," Slaidins reports. He concedes that there have been some "flare-ups" here and there, but insists that the government is maintaining a "high level of diligence."

Finally, on the subject of Latvia's economy, Slaidins says that, "as everywhere else, a major blow was dealt to sectors like tourism and hospitality by COVID-19, but the government tried to help by propping up a support mechanism for the unemployed and the businesses that were hit the most." He says that business sectors that have performed well are, "like in most other countries, food, IT, pharma and transport." Slaidins concludes by saying that he believes things will get better for the economy as long as the "virus situation remains under control and people begin to feel more confident again." ■

By Andrija Djonovic (July 29, 2020)

Slovakia

Interview with Peter Vrabel of Legate


Peter Vrabel

"Slovakia's new Government took office in March this year, exactly at the time COVID-19 hit," says Peter Vrabel, Managing Partner of the Legate law firm in Bratislava. "The Government consists of four parties – three of which are in the Parliament for the first time. Of course, the situation found them unprepared, so some mistakes naturally happened as a result of that. Overall, however, the response they had [to the COVID-19 outbreak] was quick and successful."

Vrabel says that the ultimate question, going forward, is the effect the crisis will have on the country's economy. According to him, the anticipated outcome is "a drop of ten percent in GDP and an increase of unemployment up to 6.5 percent." To some extent, he says, this was unavoidable, and he credits the Government with doing what it could to limit the damage. "Of course," he says, "the restrictions that were applied caused limitations to the economy – but the Government has introduced several packages aimed at helping it recover. Some tend to help the employees, while others focus on businesses, giving them the ability to pay their office rent for an additional year."

In addition, he says, "a so-called temporary protection shield for businesses states that no one can initiate enforcement proceedings or bankruptcy against them and that a company can't initiate bankruptcy even with a negative ballot. This last measure provides a financing line to all business entities in case they decide to go for a new facility loan, in which case the state guarantees 90 percent of the principal loan amount."

On balance, Vrabel says, this is all to the good. "Even though these measures don't cover all of the costs, they are still important and helpful, and they helped stabilize businesses that otherwise wouldn't have survived."

Slovakia is proud of its automotive industry, Vrabel notes, and it continues to operate smoothly. "Volkswagen has announced that it will be producing three new models in Slovakia in the near future, which, of course, is a very large investment," he says. Other sectors, unfortunately, are not doing as well. "With regards to M&A, a lot of the investors postponed their investments, and they are waiting to see how the situation develops. We are generally suffering in almost all fields mostly because of Slovakia's open economy – meaning that we are almost entirely based on import and export. The fact that the supply chain was disrupted due to the pandemic means we are facing huge problems."

Vrabel notes that, as Slovakia is particularly dependent on Germany, Germany's dramatic economic decline is affecting Slovakia's economy as well. "Still," he says, "some sectors, like agriculture, have managed to work well even during the crisis. That is logical, though, because it's not dependent on export, but mostly works locally, so it isn't affected by the supply chain."

Vrabel concludes that "the fact that people are not spending as much as they used to may lead to depression in all sectors." He is particularly worried about a potential second wave of the pandemic, as he expresses doubt about "the country's capabilities in terms of infrastructure, available devices, and medical teams to fight it." ■

By Djordje Radosavljevic (August 11, 2020)

Romania

Interview with Horea Popescu of CMS

"Romania's Liberal government has recently announced a new program of investment," says Horea Popescu, Partner at CMS in Bucharest. "The goal behind the program is an economic relaunch. The government has only published a white paper so far, which is currently being debated and commented on."

The proposed program will focus primarily on investment, Popescu says, "as opposed to other types of public spending. It sets a goal of about EUR 100 billion to be invested over the next decade." The program complements the European Commission's recovery plan, which, together with the amounts allocated to Romania in the future EU budget,


Horea Popescu

is expected to provide "about EUR 80 billion to Romania in grants and loans."

"We're also due to have local elections across the country by the end of September," Popescu continues. "This will be the first test for those running the government – to see if their leadership is favored by the citizens." He says that this will serve as an indicator of what the outcome of upcoming parliamentary elections might be. Of course, the specific date of those elections is unclear, he notes. "The parliamentary elections were initially planned for November, but have since been postponed and are likely to occur by the year's end or early in 2021."

Otherwise, the economy seems to be moving along reasonably well, considering the circumstances. Popescu reports that "the big regional banks have positive forecasts when it comes to Romania's economy – with current predictions indicating a GDP drop in the single digits." He says that ERSTE Bank and Raiffeisen Bank currently predict a 4.7-5% decrease, which he finds encouraging moving into 2021.

And the big deals seem to be moving forward as well, albeit sometimes in fits and starts. Popescu points to AFI Europe's approximately EUR 300 million acquisition of the Romanian office portfolio of NEPI Rockcastle. "The agreement was initially executed last December," he says, "and it was due to close in March, but it nearly fell through when the crisis started – the parties even entered an arbitration proceeding." However, he reports, the deal has since been saved. "It was re-executed this August and is expected to close in the next four months."

Popescu also reports that, like Real Estate, Energy (including Renewables) remains strong. "We are seeing lots of activity in this sector as well," he says, "with many smaller transactions taking place – this will likely be a very active area in the next six to twelve months."

Popescu comments that business in Romania's legal market is "business as usual," with firms getting back to normal, in terms of their operations, and with no significant contractions or closures so far as a result of the crisis. ■

By Andrija Djonovic (August 14, 2020)

Belarus

Interview with Ann Laevskaya of Sorainen


Ann Laevskaya

"We are in the middle of dark hours of Belarusian history," says Ann Laevskaya, Senior Associate at Sorainen in Minsk. "No one remembers COVID-19 crisis and its aftermath anymore. The nation, excited and shocked at the same time, is focused on what is happening now."

"On August 9 we had presidential elections," she reports. "Several popular candidates were not allowed to run. Still, some alternative candidates were registered. The campaign teams of those not allowed to run united to support the candidate who claimed to hold fair elections and eventually gained staggering support. In the evening of the election day people across dozens of cities took to the polling stations and central squares to learn the preliminary election results. At the same time, people all over the country started facing severe disruption of Internet service that continued until Wednesday morning. When we went online again, we saw hundreds of videos evidencing brutal suppression of peaceful protests in Belarus. It was shocking and many people took to the streets to say 'stop' to that violence."

Laevskaya expresses her concern about the reports that are leaking out about the treatment of those who have been arrested and detained." As some start being released, we hear from them and their doctors terrifying stories of torture and see mounting evidence of this torture in photos and videos," she says, the alarm clear in her voice. "People are furious about revelations of brutality against peaceful protesters and unarmed detainees and demand a legitimate election process. They started joining solidarity chains in mass and workers from many factories across the country went on strikes. I very much hope that we find a way to the rule of law, peace, and civil consent." ■

By Djordje Radosavljevic (August 18, 2020)

Poland

Interview with Marta Bijak-Haiduk of Schoenherr

"Poland's Covid policy did not satisfy everyone – especially those in the retail sector," says Marta Bijak-Haiduk, Local Partner at Schoenherr in Warsaw. "However, the market is getting back on track, and it is slowly learning how to move forward amid the crisis."

"The narrow victory of incumbent Andrzej Duda in the presidential elections has proven controversial," Bijak-Haiduk says, noting that Duda's election was challenged in the courts by members of the opposition. Still, she reports, "despite the appeals, the Supreme Court decided that the elections were in fact valid."

Moving beyond the political to the legislative, Bijak-Haiduk points to some positive changes on the horizon. "An amendment to the Construction Law is scheduled to enter into force in September," she reports. "One of the major changes is that it will not be possible to challenge building permits as invalid until five years after they are issued," which she describes as "a change investors are very keen on." The amended law, she says, "will not address every issue in the area, but it will simplify certain procedures in terms of length and necessary documents, and will likely reduce their costs."

"The COVID-19 outbreak may have affected many businesses in Poland," Bijak-Haiduk says, but she notes a significant amount of activity in the warehouses and logistics sector. "Many deals have been made recently, and about 1.8 million square meters of warehouses were developed in the second quarter of 2020." She gives both geographical and technological reasons for the activity. "Logistics is booming due to Poland's location and e-commerce. Many industrial companies decided to set up shop in Poland right now, in order to shorten the chain of production and supply."


Marta Bijak-Haiduk

"There have been few movements of significance on Poland's legal market during the crisis, Bijak-Haiduk reports, "hence there is really nothing much to report on." ■

By Djordje Vesic (August 25, 2020)

BLAZING A TRAIL FOR LEGALTECH IN CEE

By Tereza Green

What It Is

According to its website, Budapest-based InvestCEE aims to "humanize technology" for lawyers and provides services to law firms and in-house counsel in Hungary, Romania, Croatia, Poland, and the Czech Republic.

The company was founded by former White & Case and Dentons lawyer Orsolya Szabo, who says that, while attending the first official Legal Geek conference in London in 2016, she was struck by what she heard and saw. "From one moment to the next I felt like I was finally at home." She says she realized that "although Biglaw had deployed technology for a while, and even local IT developments were in place, there was clearly room for a company whose main role would be to enable legal technology in client-facing work streams." On her return from London, she got to work developing the business model for innovative legal service delivery.

InvestCEE mainly works with corporate in-house legal departments and small-to-medium sized law firms that don't have internal tech teams. According to Szabo, InvestCEE frequently helps clients initially with smaller projects, often simply advising them about which available technology is most useful for their specific needs and helping with the subsequent purchase, then also often helping install and implement the new tools and personalizing the tech to maximize its usefulness.

In addition, Szabo's brainchild provides tech workshops, both in public confer-

ences and meet-ups and at private workshops, where members of InvestCEE's team can discuss the directions the technology is heading and illustrate how it can be used in work-streams. Ultimately, her passion for helping lawyers, teams, and firms use technological solutions to improve workflow, efficiency, and management, shines brightly.

> "although Biglaw had deployed technology for a while, and even local IT developments were in place, there was clearly room for a company whose main role would be to enable legal technology in client-facing work streams."

LegalTech Categories and Work Types

Szabo identifies three key workflow areas for law firms where technology can be particularly useful. First, she says, is *Contracting*. Szabo says that there is no single platform or software that covers all angles and addresses the entire life cycle of a contract, but she insists that this is a benefit rather than a weakness, as software that purports to address everything often fails to do so – and doesn't really excel at the things it does do. Instead, she notes, there are many valuable tools available for each step in the cycle, from pre-signing to drafting, real-time negotiation, signing, and post-signing data-driven management.

The second key area where technology is useful to lawyers is *Matter Management*. According to Szabo, digitizing matter management delivers a data-driven workflow, and goes beyond time management by measuring the value of work in other terms, often more effective and revealing. According to Szabo, this showcases the strategic value and complexity and collaboration of the work by better access to legal data, and it provides better management of resources. "Digital matter management platforms prepare reports that allow you to present to the board what you and your team have been doing and the strategic importance of the work," she says, "at the click of a button."

Finally, Szabo says, the third area is *Document Review*, which she describes as "possibly the most widely known form of LegalTech, and the most sophisticated AI-driven tool." Unfortunately, as Document Review tools are usually English-language-focussed, they can be of limited use to lawyers (or clients) using other languages. Still, Szabo reports that language-agnostic AI tools are in development that utilize system learning by data volume rather by machine learning, by going beyond the keyword search paradigm and focussing on the structure of the language.

Challenges in the Industry ... and in CEE

The biggest stumbling block that Szabo comes across regularly, she says, is decision-making related to the acquisition of new tech projects due to limited budgets and complex security barriers. Petr Zatopek, General Counsel to Skoda Auto DigiLab in the Czech Republic, who is communicates frequently with InvestCEE in his search for tech solutions for his in-house legal team, is familiar with this problem. "Our company is part of the VW group, so our IT system is incredibly complex," he says. "I've been working on the company contract database and automatic workflow and have managed to create a workflow process, but we desperately need the accompanying software. This will be a long and arduous process due to security issues such as tough encryption where everything is stored." Still, he knows that his competitors use the tools, and this knowledge helps him sell the tools internally. "I sometimes see light at the end of the tunnel when other manufacturers in the group manage to put something in place, so I am always hopeful."


Orsolya Szabo, CEO, InvestCEE


Petr Zatopek, General Counsel, Skoda Auto DigiLab


Kamila Kurkowska, Managing Director, Firemind

This hesitation to adopt new technologies is particularly acute in Central and Eastern Europe, it appears Kamila Kurkowska, the Managing Director of Firemind, a B2B marketing solutions company in Poland, who works closely with InvestCEE, reports that, "I also work a lot in the Spanish legal market, which is comparable to Poland's. However, in Spain there are 150 -180 LegalTech start-ups, but in Poland, only 40-50."

Indeed, notes Marko Porobija, the Managing Partner and CEO of Croatia's Porobija & Spoljaric law firm, despite the increasing demands of clients and the growing need for modern technology, the market in individual CEE countries is not well served on a local level. His home is no different, Porobija says, noting that "I can honestly say that Croatia still doesn't have a proper legal tech consultancy market."

"I also work a lot in the Spanish legal market, which is comparable to Poland's. However, in Spain there are 150 -180 LegalTech start-ups, but in Poland, only 40-50."

InvestCEE is filling that gap. According to Kowalski, "there are many LegalTech players, and we have a vibrant community, a dynamic market, but I don't think I've seen an organization as strategically focussed on CEE region as a whole as InvestCEE."

Doru Epure, the Managing Partner of Budapest-based ELA Legal Services, agrees. "InvestCEE is my primary source of knowledge in the realm of smart law. Their guidance on the subject of document automation, on how to present innovative ideas to clients, and how to re-shape our visibility tools to reform our message to clients has been invaluable. We are currently transitioning to a phase of cooperation which entails common offers of managed legal services and other tech-reliant legal assistance solutions to existing and new clients in Romania."

Porobija is enthusiastic about the assistance he and his colleagues have received from InvestCEE. "They connected me with many relevant and upcoming LegalTech startups, some of which are surely going to be our providers in the near future."

The Effect of COVID-19

Ultimately, Szabo believes that the recent COVID-19 lockdowns across Europe will accelerate the adoption of technological tools by the legal industry. "It's their time to shine," she says, confidently. "It has increasingly been in the background – but not as a priority. This will change."

Kurkowska also believes that the demand for LegalTech has sped up since the emergence of COVID-19. "I would say that before COVID, a lot of law firms were treating LegalTech as a nice gadget," she says. "But now lawyers feel that – in a very short space of time – it will change from 'nice to have' into a 'must have'."

Mariusz Kowalski, CEO of Waterwalk Partners, agrees. "The crisis accelerated change in certain parts of the market. Much of the tech available before it happened hasn't really been used. Companies are realizing that staff working from home doesn't mean that things fall apart, so teams working remotely will increase the need for tech tools."

Szabo's passion for her work has led to the creation of a network of legal professionals eager to evangelize about the future of LegalTech and to work together with shared purpose. Considering the pace of change in technology itself, and the increasing recognition of its relevance in the legal sector, it seems the revolution has only just begun. ■

Marko Porobija, Managing Partner, Porobija & Spoljaric

Doru Epure, Managing Partner, ELA Legal Services

Mariusz Kowalski, CEO, Waterwalk Partners

LOGISTICS AND MANUFACTURING IN CEE: TODAY'S TRENDS AND OPPORTUNITIES

While the COVID-19 pandemic has caused disruption to nearly all businesses in the logistics and manufacturing sectors in Central and Eastern Europe, enough time has now lapsed that identifiable trends and opportunities are beginning to emerge. CMS Partners Ana-Marija Skoko, Ivan Gazdic, Iain Batty, and Lukas Hejduk agreed to share their thoughts about the effect of the COVID-19 crisis on logistics and manufacturing developments in their local markets and across CEE.

Iain Batty in Poland

Iain Batty, a CMS commercial partner in Poland, believes that the benefits for the CEE region will include renewed interest in greenfield projects. "The lockdown in China hit many companies from the West," he says, "and now, consequently, they are increasingly wary of investing there, which is compounded by China's worsening relationship with the West. This renders CEE much more attractive to investors." He goes on. "Over the last few years, many investors have limited their investments in CEE due to the increasing pressure of rising salaries caused by a workforce that has nearly reached full employment, which is reflected in the Czech Republic, for example. However, given the effects of the pandemic on employment, more workers are now becoming available. This change will likely encourage investors to reconsider the opportunities that are available in CEE."

However, Batty explains, the COVID-19 pandemic is responsible for new obstacles and concerns. "Many businesses are worried about restarting, about who will be liable if their employees contract COVID-19 at work, and if they can test their employees for the illness. In addition, there are new supply-chain issues, for example if your manufacturing facility in CEE depends on parts from Brazil, which has been very badly affected by the pandemic, then you're going to have problems." Nevertheless, he remains positive regarding the sector's overall performance, saying, "not all industries have suffered from coronavirus," and noting that while "the automotive sector has been badly hit, the technology and pharmaceutical sectors have both done very well."

Commenting on future trends, Batty looks to Poland. "The Polish 'anti-crisis shield' has focused on protecting jobs, not creating them," he says. "It will be important to re-attract foreign direct investment to the country – a way will have to be found." However, he also forecasts an increase in transactions. "In this landscape, I think we'll see an upswing in sales of local companies to foreign investors, particularly from South Korea and the US."

Ana-Marija Skoko and Ivan Gazdic in the Balkans

Ana-Marija Skoko, a real estate and construction partner at CMS in Zagreb, shares Batty's positivity. Skoko notes that, so far, Croatia has handled the pandemic well, and she emphasizes that "a couple of projects were delayed, as foreign directors were unable to travel and complete ongoing negotiations, but because Croatia's logistics and real estate market remains the least-developed, investor demand is still high and investments haven't stopped." In addition, she says, "the Croatian government is actively proposing help for logistics projects," and adds that there is "still a lot of development potential, which makes Croatia a very attractive destination for investors."

Meanwhile, according to Ivan Gazdic, a projects and infrastructure partner at CMS in Belgrade, the logistics sector in Serbia has also failed to experience significant change as a result of the COVID-19 pandemic. Gazdic says that, although "projects continue to be financed and there is an ongoing need for storage, this hasn't been the case for retail and office space, which remains empty due to the impact of the pandemic. Thus, a more economical use needs to be found for this real estate." Regarding financing, Gazdic is keen to


Iain Batty, Partner, CMS Warsaw


Ivan Gazdic, Partner, CMS Belgrade


Lukas Hejduk, Partner, CMS Prague


Ana-Marija Skoko, Partner, CMS Zagreb

point out that suggestions that local Serbian banks are cancelling financing are completely unfounded. He emphasizes the market's attractiveness to foreign investors: "The logistics sector is underdeveloped, the expansion of the road network in the country is continuing apace, and local banks are ready to join international financing institutions in providing finance for local logistic and manufacturing projects."

Lukas Hejduk in the Czech Republic and Slovakia

This theme of stability in the logistics and manufacturing sectors finds further support in CEE as well. CMS Real Estate Partner Lukas Hejduk, who is based in Prague, explains that "these are the most resilient sectors and the most sought-after type of investment." As a result, he says, "indeed, there is a lack of product in all CEE markets, except for Poland." Hejduk also comments on the increase in digitalization over the last few months. "Digitalization has been pushed to another level during the pandemic, even though it was already accelerating," he says. "For example, projects have what are called 'digital twins.' where a model for, say, a warehouse is created virtually and then the parties can model how the building will perform in different environments, with different layouts, staff numbers, volumes, and types of goods, or with differing air-con settings. They can then select the performance model that best suits their business and financing."

Another projected reaction to the roller-coaster events of the last few months is an anticipated increase in sale/lease-back transactions. According to Hejduk, "this is where the owner of a production facility, such as a manufacturing company, sells its real estate asset to an investor and then pays rent for the next 10 to 15 years. By doing this, the owner gains liquidity during challenging times, such as those we are experiencing now." As for future trends, Hejduk believes that "we'll see increasing automation in logistic warehouse robotics and 'last mile' delivery technology. For now, it's quite easy to get goods to hubs and spokes, and the most progress will be made in technology to get products to end consumers."

As one of the industrial sectors hardest hit by the pandemic in CEE, the automotive sector faces some of the toughest challenges. The industry is particularly important in CEE, Hejduk notes, as "many CEE countries have a high dependency on automotive manufacturing and logistics; for example, Slovakia produces more cars per capita than any other country in the world." But the industry relies on demand for the cars built in the region. "A lot depends on German demand for cars," Hejduk notes, "and if, and when, that will recover." In Poland, meanwhile, Iain Batty sees an opportunity: "I think the shift in the automotive sector to e-mobility and electric cars is going to pick up. This will create new possibilities, for example, for battery plants and new assembly plants."

Although the COVID-19 pandemic is set to continue to cast its shadow over the investment decisions of many businesses, the logistics and manufacturing sectors in CEE have, on the whole, proved resilient. This positive trend is likely to continue in the near future, while new and exciting possibilities emerge, driven by the acceleration of digitalization and the move towards electric vehicles. ■

THE CORNER OFFICE: YOUR FAVORITE CLIENT MATTER

In The Corner Office we ask Managing Partners across Central and Eastern Europe about their unique roles and responsibilities. The question this time around: "What is your single most favorite client matter in your career?"

"One of my favorite clients was actually my former Czech teacher. She was an elderly lady, who unfortunately died two years ago. She taught me the Czech language until approximately 20 years ago, but we managed to stay in touch and quite often she consulted me on day-to-day issues. Since I usually advise big corporations on real estate transactions, I appreciated that I could give her real practical advice. My "fee" was – in addition to an honest "thank you" (and how often do we lawyers hear this today?) – either a fresh apple strudel, or around Christmas, her famous "Vanilkove Rohlicky" (vanilla crescent cookies). Needless to say, I shared (almost) all of them with my partners."

Erwin Hanslik, Managing Partner, Taylor Wessing Prague

"It is one of the biggest commercial projects ever done in Montenegro: The Atlas Capital Center Podgorica (known now as "The Capital Plaza." Specifically, this is a business mall in Podgorica that was invested in by the Abu Dhabi Fund from the Emirates. The main project manager, Mr. Mike Tarhini, and I were working on the project, and it was finished with a delay of slightly more than a year. The worth of the investment was about 220 million euros. The project was completed and now it is the best business center in Podgorica (and Montenegro), and it represents one of the landmarks of the city.

At the same time, it is featured on our official website. To us it represents a reference project which is recognized in all legal directories."

Sasa Vujacic, Managing Partner, Vujacic Law Offices

"The project to which I look back with most fondness is the Cerna Wind Farm, a small project on which I worked on at the very beginning of my career as a solo practitioner. It was the dawn of Romania's renewable era when the country seemed the El Dorado of wind energy and everyone in the business was enthusiastic and looking at the future with confidence. Given its novelty, the project faced many challenges, mostly falling under the "never done before" category – be it real estate and construction or permitting and regulatory-related matters. It presented me with the double challenge of being required to both provide and implement the advice. I was simultaneously scared, thrilled, and determined to succeed, with each issue or step forward seeming a matter of life or death. In the end, my contribution to the project was a success and other projects followed suit. The Cerna Wind Farm taught me the importance of being offered the chance to prove yourself and of resilience in one's work and efforts."

Oana-Alexandra Ijdelea, Partner, Ijdelea Mihailescu

"In the mid-00's a friend accepted the CFO role at a prominent Silicon Valley parent's recently acquired subsidiary, a classic "started in a garage" Chicago company then as well-known as Apple. The parent had decided to sell it. I thought he was a bit nuts for doing so but gladly accepted his subsequent summons to pitch my legal services to his team, a group of 30-somethings in blue jeans and T-shirts who were a bit skeptical about me and my navy-blue suit. They gave me the thumbs-up, though, and I immediately began my baptism in tech, along with its 24-7 demands, long before tech was cool. Shortly thereafter, I got a call from my new client's board telling me they had decided to fire the CEO and thought I was the perfect person to deliver the news. We were about to disconnect when I asked them who they were going to name as the CEO's replacement. They had not thought about that. I told them the CFO would be a logical choice, at least on an interim basis. They took my counsel and eventually made him the permanent CEO. The new CEO and I then spent a lot of time trying to advance the original objective of selling the company but we just could not get it done, even as a management buy-out. The CEO became so discouraged that he even thought about not attending a meeting with the parent company where the situation was on the agenda. As the publically traded parent was under pressure because of its disposition announcement, my gut told me that, if I could only get the CEO to go, the parent might just give him the company to get the matter over with. It was his turn to think I was nuts and just would not budge. Nonetheless, on the morning of the meeting I decided to give it one more shot and called him. He ended up participating and, yes, they gave him the company, in a deal that had to be papered instantly – essentially a quitclaim deed to an SPV that was just barely formed. About a year or so later, helped by an improved market, in the "party room" of an L.A. venture capital firm that had emerged out of nowhere, we struck a sale worth many millions of dollars.

So why is all of this special to me? I am indeed proud that I had the where with all to deliver what was needed, when it was needed. However, what still makes me smile is that my friend shared those millions with the management team that had been on the roller coaster ride with him from the very beginning, even though he had absolutely no legal obligation to do so. He simply did the right thing. I wish I could say that I have seen more of that sort of thing over the course of my career. Still, this story shows it does happen, so keep on believing!"

Ron Given, CE Senior Legal Counsel, Deloitte Legal

"They say there is a time and place for everything. Yet, life does not always play along, and it certainly did not on the night I got "the call" regarding my first ICC Arbitration. It was late night back in 2011 when I got a call from the owner of a local pharma company, asking me to take on a matter that was apparently doomed already, and which threatened bankruptcy and termination of employment for over 200 employees. It was not the right place and certainly not the right time, but I heard myself saying: "Send me the file in the morning." The file was a "collection" of wrong steps taken by several counsels in a desperate attempt to defend against a big player from a foreign market and its high-profile legal team including a certain Professor of Arbitration Law at a prestigious university. Regardless of all the odds against, including a number of procedural errors as well as those on the merits of the matter that had already been made, after two years of "struggle" we managed to prove bad faith in negotiating the arbitration clause, and even more, that the wording of the clause was not a valid basis to claim ICC jurisdiction or application of its rules. The Sole Arbitrator rejected its jurisdiction and awarded us all our expenses. The matter was a genuine David-and-Goliath experience in the world of arbitration. It had all the challenges that I, as a young lawyer, aspired to, including a tough legal battle with significant social impact. "

Emina Saracevic, Managing Partner, Saracevic Gazibegovic Lawyers

"Throughout the years there have been many successful client matters, but the one that stands out for me was the successful out-of-court settlement of the grid access fees with the Bulgarian Transmission System operator. It is my favorite matter, because it completed the definition of a "win-win" settlement for all parties involved, which was reached by means of mutual compromises and understanding. On September 14, 2012, the Bulgarian utility regulator imposed 39% retroactive grid access fees on most of the renewable energy producers in Bulgaria, which we challenged and managed to overturn. Following this win, CMS, as a representative of the largest renewable energy producers on the market, faced the next challenge – to recover those funds which the state-owned Bulgarian Electricity Transmission System Operator (ESO EAD) had collected. CMS managed to convince the international investors in the sector to rely on an out-of-court settlement and started negotiations, which took us 18 months to complete, including several decisions of the Board of ESO EAD, the Minister of Energy, and the Bulgarian utility regulator. The first settlement agreement was signed in the presence of the Minister of Energy by the CEO of ESO EAD and the largest photovoltaic investor on the market. Following the signing the CEO of ESO EAD openly said in front of everyone in the Great Hall of the Ministry of Energy, where the ceremony was taking place: "I can't understand you Mr. Sirleshtov; CMS could have made so much on fees from those litigations." This was a very personal note to me. He was right. We could have made our huge fees, but the parties to the disputes would have incurred sufficient losses and the image of Bulgaria as an investment destination would have been damaged further. This matter showed that we not only talk the talk, but we walk the walk when we say "Your World First."

Kostadin Sirleshtov, Managing Partner, CMS Bulgaria

"As an associate at Covington in the early 2000s, I was asked to draft an agreement, from scratch, for Microsoft. The agreement was to license from another publicly traded company a new VOIP feature. There were no model agreements, I had no experience with software or telecoms agreements, and we a hard deadline as a new software version from Microsoft was set to be released. After months of asking questions, drafting (cobbling together many different agreements and making up many definitions based on discussions with the client), and negotiations, a Cooperation and Development Agreement was signed at the eleventh hour. The good people at Microsoft were pleased (though maybe surprised as I had told them I was neither a software nor a telecoms lawyer), as was my supervising partner. Also, the day after signing, the president of the VOIP company personally called me to thank me for my work and, unfortunately, complain about his lawyers, who had almost busted the deal. Looking back, it was one of the my most rewarding experiences as I learned, from being thrown in the deep end, how to truly swim as a lawyer. I am grateful to the wonderful partner who put her confidence in me, the firm, which instilled such a "we can figure anything out culture" in all of its people, the client, who patiently answered any questions and put me in touch with various departments in order to explain the deal and its technical features, and the counter-party's president, who recognized that the importance of getting a deal done should not be overshadowed by zealous lawyers and was willing to talk through and resolve all final issues personally."

Peter Teluk, Partner, Sayenko Kharenko

MARKET SPOTLIGHT BULGARIA

GUEST EDITORIAL: THE DEVELOPMENT OF THE BULGARIAN LEGAL MARKET

By Yavor Kambourov, Managing Partner, Kambourov & Partners

I began practicing law more than 30 years ago. It runs in my family and I guess this is how I acquired my affinity towards it. Even during the communist period in Bulgaria, being a lawyer was among the few relatively independent professions – unconstrained by political, financial, and other pressures. This is another major reason I became a lawyer. The rule of law is something I was born and raised with.

I set up my firm in 1988 and it was definitely not an easy task, given the state of affairs in Bulgaria back then. Among other things, the communist regime consistently insinuated that the law – and the legal profession – would soon become obsolete. Nevertheless, I strongly felt this was my vocation and, like many fresh out-of-school graduates, I was full of optimism and a desire to build something from scratch. At that point, legal work consisted of civil, family, and penal cases, but strictly between physical persons. Company law was not really a thing yet. I recall there was a great deal of respect between colleagues, as well as from the younger generation towards the older one. This is something I rarely see these days.

Democratic changes in Bulgaria in 1989 had an impact on every aspect of life. Thanks to market liberalization, more law firms began emerging in the early 90s. Economic transformation opened the door to corporate law, albeit slowly. Foreign investors were still scarce. The 90s were an altogether difficult period – with ongoing transformation, a lack of investment initiative, and low revenues for law firms. While privatization in Bulgaria formally began earlier, in practice the first significant wave took place in 1996-1997. It was a turning point for legal work and a push for the expansion of law firms – today's leading firms began standing out right about that time. Insolvency procedures emerged as another major source of work.

The second and most important series of privatization procedures took place in the early 2000s, when some of the largest enterprises were transferred into private hands. International financial consultants and law firms were also engaged in these transactions, which was a unique opportunity for local law firms to partner and exchange know-how with well-established experts.

Bulgaria acceded to the EU in 2007, which was another cornerstone for the legal market. European integration meant a boost in foreign investments and participation in the single market. Moreover, it created plenty of legal work related to compliance with EU legislation. EU law established itself as a common practice area among local business law firms.

Perhaps one of the most exciting periods in terms of legal work came after 2010. There were plenty of large-scale and complex projects in many sectors and it was a truly great time to be a business lawyer. Not only because of the dynamic workflow, but also because it was a time of intensive learning and polishing of skills. The more the market grew, the better you had to become to remain competitive and respond to ever-more-sophisticated client needs. Economic, demographic, and technological demands were pushing for a major transformation of our profession.

The start of this decade has forced us all to face the unprecedented consequences of the COVID-19 pandemic. The legal market may have experienced fewer disruptions than other sectors, but there is definitely a negative impact – and this trend will persist. Bulgarian firms have seen an increase in employment and dispute resolution work, while deals and projects have understandably been put on hold. It goes without saying that if the businesses of our clients suffer, ours suffers as well. I believe now is the time for utmost mobilization, flexibility, adaptability, and empathy. Technology will be critical for our profession. Although the sector is among the more conservative ones – especially in Bulgaria – everyone will either have to embrace innovation or simply become irrelevant. That said, technology will not entirely replace people. Attracting and nurturing young talent is crucial. It seems to me that the Bulgarian legal market is still somewhat oblivious to the qualities and potential of younger professionals. They need to be encouraged and pushed to the forefront – we may be surprised at how much they have to show. ■

BULGARIA AT THE BOIL: FRUSTRATION WITH THE STATUS QUO PULLS PEOPLE TO THE STREETS

By Djordje Radosavljevic

Protest in Plovdiv, Bulgaria, on July 10, 2020.

What's Going On?

Already struggling with the international coronavirus pandemic, Bulgaria has recently found itself dealing with a major internal political crisis as well – one which, ironically, despite the general incentive towards social distancing, has brought people outside of their homes and onto the streets of the nation's major cities.

The primary target of the protests, which continue now to disrupt Bulgaria's major cities well a month after they began, is Prime Minister Boyko Borisov, who is facing demands that both he and the country's chief prosecutor resign. Borisov maintains his innocence, instead portraying himself as the country's best hope of moving on a pro-EU trajectory, while accusing the country's socialist party – led by President Rumen Radev – of pursuing a personal vendetta against him.

The public outrage represents a boiling over of frustration with the ongoing corruption and political favors that Bulgaria is famous for, along with – in the words of Politico– "how unaccountable oligarchs have wrapped their tentacles around key institutions such as the judiciary."

According to Pavel Hristov, Partner at Hristov Partners, "Bulgaria is currently in a political and institutional crisis." The tipping point, he says, came on July 9, 2020, "when representatives of the General Prosecutor's office, supported by armed police, raided the Office of

the President of Bulgaria and arrested a couple of the President's advisers." According to him, "the President … publicly accused the current Government and the General Prosecutor of corruption and requested their resignations."

This political crisis comes, perhaps not coincidentally, as the country struggles economically. Bulgarian journalist Elena Yoncheva – a Member of the European Parliament – has summed up the country's manifold challenges in stark terms: "Every year the country is becoming poorer. Foreign direct investment has collapsed, as the country is seen to have a weak judicial system that won't protect investors. Powerful oligarchs seem to have a hold on most of the economy. Education and health systems are also in decline, with people feeling a general drop in their standard of living."

"the situation in Bulgaria is so brutal that I feel that my professional and moral obligation to the firm excludes replies to these questions. The level of hostility against lawyers in Bulgaria is unprecedented – colleagues were thrown in jail, others are being blackmailed by the authorities, etc."

All this as the country continues to suffer significant damage from the COVID-19 pandemic, which continues to take its toll on public health and the nation's economy.

One lawyer we spoke to declined to go on the record, explaining that "the situation in Bulgaria is so brutal that I feel that my professional and moral obligation to the firm excludes replies to these questions. The level of hostility against lawyers in Bulgaria is unprecedented – colleagues were thrown in jail, others are being blackmailed by the authorities, *etc.*"

Times are tough in Bulgaria, and the light at the end of the tunnel seems to be, if anything, getting further away.

We reached out to prominent Bulgarian Lawyers Kostadin Sirleshtov, Alexandra Doytchinova, Pavel Hristov, and Victor Gugushev to get their perspectives on their country's struggles.

How the Lawyers See It

Alexandra Doytchinova, Managing Partner at Schoenherr in Sofia, explains that the conflict between the country's two political leaders is nothing new. "Bulgaria's president and government have been locked in confrontation since day one after the presidential elections in 2016," she says, "leaving no one impartial to their actions and/or inactions." According to her, "the state's handling of the COVID-19 crisis was also a source of discord as the lockdown, without effective and prompt economic support to businesses, left whole sectors wandering between mass dismissals and bankruptcy."

The three Ps that seem to be troubling Bulgaria at the moment – protests, political instability, and pandemic – aren't the only things keeping investors away. According to Pavel Hristov, "in recent years the quality of laws passed by the Parliament has visibly deteriorated, which is an opinion shared by practitioners, academics, and former lawmakers." In addition, he says, even the good laws that do exist are often ignored or violated, with few consequences. "Too many state regulators have failed to diligently and proactively enforce the law, public trust in the judicial system has fallen to very low levels, and public media freedom has been restricted." He points to the inevitable effects on FDI, as "these are all factors that investors evaluate and take into consideration."

Doytchinova admits to frustration with the failure to address these problems over previous decades. "Unfortunately, we haven't witnessed clear political will and real action to implement the necessary reforms for more than 30 years since Bulgaria's transition to democracy and market economy." In her opinion, "a change in mindset is needed."

It's Going to Be a Bumpy Night

Hristov believes that the protesters are taking the streets to effect that change in mindset. "The protests challenge the status quo and are focused on two main goals: anti-corruption and rule of law," he says. "Both would necessarily require a change of guard and replacement of the key players and judicial reform." In his opinion, any judicial reform "must achieve both the independence of the judiciary from political and economic influence and ensure the accountability of the general prosecutor, who in the current system cannot be controlled or corrected by any other institution or any elected body in event of malpractice or unlawful conduct."

"The regulators," Hristov continues, "such as the Bulgarian National Bank, the Financial Supervision Commission, the Competition for Protection of the Competition, the Energy Commission, and the Water Regulatory Commission, must revise their policies and enforcement practices and start exercising their


Pavel Hristov


Victor Gugushev


Alexandra Doytchinova


Kostadin Sirleshtov

powers effectively." According to him, "a stronger and competitive economy will only be feasible if the authorities and the courts create and maintain a level playing field, legal certainty, and justice, effectively and proactively. It is time for a new generation of regulators to step in and replace the old guard."

And, CMS Sofia Managing Partner Kostadin Sirleshtov insists, the public display of outrage has already had positive effects. "The recent protests have affected the Government and there is already a significant change," he says. "The key ministers of finance, economy, healthcare, interior, and tourism were replaced and there is some expectation for further changes in the coming weeks."

For her part, Doytchinova is unsure whether the protest will lead to any significant change, and even though she agrees that "the widespread dissatisfaction and recent scandals have managed to unify the population against the political status quo," she says that the prime minister is unlikely to resign. Ultimately, she says, "finding a successful solution of the political entanglement will require a political consensus, engaging in dialogue, and reaching mutual understanding."

Victor Gugushev points out that "recently, pictures of the prime minister's private bedroom have been leaked, showing a wardrobe full of money behind him. These pictures have been presented to the European Parliament, with verification and confirmation of their genuineness." In this context, he says, "protestors have every right to be on the streets." Still, he warns, "I am unsure this is the best period to do so – not because of the coronavirus, but because it's summer, people are going around, and the willingness to stay on the streets deteriorates." Ultimately, he counts himself among those who are less confident in a positive result. "The outcomes are uncertain at this point, but I'm not convinced it will actually lead to resignations."

Corruption Takes its Toll

The protesters taking to the streets of Sofia and other Bulgarian cities do so for many different reasons – but a common source of frustration is the still-pervasive amount of corruption in the country. Journalist Elena Yoncheva has declared that, "all countries have some corruption, but Bulgaria has become a mafia state," and Bulgaria once again has the lowest score in the EU on Transparency International's Corruption Perceptions Index.

According to Alexandra Doytchinova, much of the progress the country claims to have made is illusory. "The European Commission has assisted Bulgaria through its Cooperation and Verification Mechanism to make progress with the rule of law through judicial reform and combatting corruption and organized crime, yet clear results remain on paper only, and further efforts remain necessary in order to ensure the full implementation of the EC's recommendations."

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because it's summer, people are travelling, and the determination to stay on the streets deteriorates." Ultimately, he counts himself among those who are less confident in a positive result. "The outcomes are uncertain at this point, but I'm not convinced it will actually lead to resignations."

"Bulgaria has achieved a lot in the past few decades: its entry into the EU in 2007 is the apogee, and the next big steps will be joining the Eurozone and the Schengen area. Bulgaria's future is closely related to the future of the EU. This is the future of our country: a common future, common values, and shared responsibilities in a reformed and stronger EU."

Tomorrow is Another Day

Looking into the future, Doytchinova and Sirleshtov express different amounts of hope. For his part, Sirleshtov says that "he is very optimistic about the future." According to him, "before 2007 Bulgaria had a national goal – NATO and EU membership. Foreign investment was growing and there was a clear blue sky." Unfortunately, he says, "following 2007 Bulgaria failed to define new priorities," but he insists that "still, it is never too late, and in my opinion, Bulgaria will need to open up for foreign investment and transparent business practices. Bulgaria needs to develop and maintain its middle class as the foundation of modern civil society."

For her part, Alexandra Doytchinova says, "there is a good reason to worry: an economic downturn has already begun, as the fall in investment began largely due to the collapse of a large Bulgarian bank, due to the red tape, corruption, undeniable administrative burden, and recent anti-money laundering restrictions on opening bank accounts of foreign entities." As a result, she says, "we could be facing a crisis worse than the one in 2008." Still, she says, "while this outcome is likely, it is not unavoidable. We've put a lot of effort into providing a sustainable business environment and attracting foreign investors, now we need to make them stay in Bulgaria through the adequate legal and economic framework. Now is the time for a 'great reset'!"

Kostadin Sirleshtov insists that "it is somewhat unrealistic to expect any significant reforms to happen before elections," but he notes that, while institutional reform may have to wait, the government cannot be accused of inactivity. "There are some very important projects and initiatives which are expected to conclude in the coming weeks," he says, "including important railway infrastructure tenders, a new oil & natural gas offshore tender, a nuclear power plant tender, the Plovdiv airport concession tender, construction of highways, and important international greenfield investments and the like."

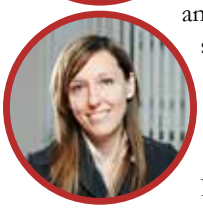
"The country is moving forward," Victor Gugushev says, "not because of the diligent policy of the government, but because of the diligent vision of the private sector – both local and international. Still, he laughs that it's generally hard to predict the future, perhaps now more than ever, as these days "one can't even predict a week, let alone a month." However, he concedes that Bulgaria is going through a rough period, with "COVID and protests, an unstable international environment, and problems all around." Indeed, he says, "the hardest is yet to come, given that the economic impact will be large, and that things won't be better at least until 2021." Still, he says, change will come. "Even though tough are ahead, they will not, as history has shown multiple times, last forever."

Finally, Hristov concludes that "Bulgaria has achieved a lot in the past few decades: its entry into the EU in 2007 is the apogee, and the next big steps will be joining the Eurozone and the Schengen area. Bulgaria's future is closely related to the future of the EU. This is the future of our country: a common future, common values, and shared responsibilities in a reformed and stronger EU." ■

MARKET SNAPSHOT: BULGARIA

LARGE-SCALE ENERGY PROJECTS IN BULGARIA

By Aleksandar Aleksandrov, Head of Energy, and Irina Tsvetkova, Senior Managing Partner, Tsvetkova Bebov Komarevski



Currently, two large-scale energy infrastructure projects are being implemented in Bulgaria: the nuclear power plant near the town of Belene (the NPP Belene Project), where a strategic investor is to be selected soon-, and the construction of an extension of the natural gas transmission system of Bulgaria (the ETSB Project).

The construction of NPP Belene started in 1987, but it stopped in 1990 due to the lack of financing. The NPP Belene Project was revived in 2002; its site was approved by the Nuclear Regulatory Agency of Bulgaria in 2006; an Environmental Impact Assessment / EIA/ was completed in 2004; and a Construction Permit / CP/ was issued in 2008. Then, for a variety of reasons, in 2012 the Bulgarian Government and Parliament imposed a moratorium on the NPP Belene construction. In 2018 the NPP Belene Project was again revived. This time, the Bulgarian Minister of Energy proposed that the project be completed at market conditions, without state guarantees (*i.e.*, no power purchase agreements, feed-in-tariffs, *etc.*). The Minister of Energy suggested that all assets of NPP Belene be set apart in a separate entity, independent from the National Electricity Company, which is the current owner of the assets, and the supplier of last resort /high voltage/ of electricity in Bulgaria.

The procedure for the selection of a strategic investor started on May 22, 2019, and on December 19, 2019, Bulgaria's Ministry of Energy invited China's CNNC, Russia's ROSATOM through its subsidiary ATOMENERGOPROM, and Korea's KHNP to submit offers for participation as a strategic investor, and France's Framatome and the United States' General Electric, to submit offers as equipment suppliers. Rosatom, Framatome, and GE have since announced they are teaming up for a joint bid.

There are currently discussions about which of the Projects' permits remain valid and which have expired. It is possible that a new EIA procedure and a new CP will be required. Notifications to the European Commission and renewed licensing for the site and the power plant are also mandatory procedures.

It may be a lengthy history so far, but NPP Belene is at an advanced stage of implementation compared to the NPP projects starting from scratch. Two Russian WWER reactors with capacity of 1000 MW each have been purchased and delivered at the site, along with other significant equipment. Bulgaria also operates another NPP, NPP Kozlodui, which means the relevant expertise and professional staffing are readily available. Observers value the project at some EUR 10 billion. It is expected it will take at least ten more years to complete.

If the strategic investor and supplier selection procedures come to a successful end, and the contract is signed (which was initially expected before the end of 2020, but in the overall COVID-19 emergency this may be pushed back to 2021), the NPP Belene Project promises to be a major project in Bulgaria, the region, and SEE overall, and it will involve a range of additional stakeholders – lenders, insurers, offtakers, and more.

Another large-scale energy infrastructure project in the making is the extension of the Bulgarian natural gas transmission system from the Turkish-Bulgarian border to the Bulgarian-Serbian border. The ETSB Project is carried out by the Bulgarian natural gas transmission system operator Bulgartransgaz EAD. Its forecast value is EUR 1.5 billion. Once completed, it will be capable of transporting 20 billion cubic meters of natural gas per year. The construction of the pipeline is assigned to a consortium formed by Saudi Arabia's Arkad E&C and Italy's Arkad ABB S.p.a. The two compressor stations should be delivered and installed by a consortium consisting of Germany's Ferrostaal and Bulgaria's Glavbolgarstroy.

As of July 29, 2020, 423.31 km of pipelines out of the total 462.07 km have been welded. The ETSB Project is expected to be completed in the summer of 2021.

In the near future, the pipeline is expected to foster the gasification of the northern part of Bulgaria, where, at the moment, only 15% of the municipalities have access to the transmission system. ■

HOW FINAL IS A "NO" IN A MERGER CONTROL DECISION IN BULGARIA?

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

Until 2018 the Bulgarian Commission for Protection of Competition had never prohibited a concentration. In 2018, however, in consecutive decisions, the CPC prohibited the acquisition of CEZ by Inercom and the acquisition of Nova TV by the investment group PPF. In 2019 two other transactions – Eurohold/CEZ and Emko/Dunarit – were blocked.

All four prohibitions were appealed (although PPF eventually withdrew its appeal). At the end of July 2020, the decision blocking the Eurohold/CEZ transaction was repealed in the first instance by the Administrative court due to breaches of the administrative rules by the CPC. The decision blocking the Inercom/CEZ transaction remains in force but it seems very likely that it will also be repealed due to procedural breaches.

The decision prohibiting the Emko/Dunarit transaction was upheld in the first instance. Still, that decision came only after the CPC first announced that the transaction was not subject to merger clearance. On appeal, the Supreme Administrative Court held that the CPC had miscalculated the turnover and the case was sent back to it for review with mandatory instructions (and following that review came the prohibition).

These decisions make us wonder how strictly the CPC applies the law and its own procedures, and whether a "No" in a merger control case (both "No" for "not allowed" and "No" for "not notifiable") really means "No" or can easily be overcome on appeal? A review the current practice may provide some insight.

Eurohold/CEZ Prohibition: On October 3, 2019, merger control proceedings for the purchase of CEZ by Eurohold Bulgaria AD were opened. Only seven days later, on October 10, the CPC initiated in-depth proceedings (phase II). Fourteen days later, the CPC prohibited the concentration due to its "conglomerate" effect and the significant combined resources of the acquirer's and the target's groups.

On appeal, the Administrative court repealed the prohibition, reasoning that: (1) the prohibition decision was issued 14 days after phase II was initiated, which breached the rule that any interested party can submit its opinion regarding a concentration within 30 days after information about in-depth proceedings appears on the website of the CPC; (2) although the CPC was obliged to send a Statement of Objections (SO) to the notifying party and inform it of the Commission's preliminary conclusions, the SO was never sent; and (3) Although the CPC must invite parties to offer remedies and actively communicate with them if the CPC concludes that a planned merger will likely impede competition, it did not do so in this case.

As a result, the Administrative Court concluded that the CPC had formally opened in-depth proceedings but entirely omitted the phase of in-depth investigation, thereby breaching Bulgarian law and the EC Merger Regulation. The case was returned to the CPC, with mandatory instructions by the court. The court's decision is subject to a second and final appeal before the Supreme Administrative court.

Inercom/CEZ Prohibition: On July 19, 2018, within phase I proceedings, the CPC prohibited the sale of CEZ to Bulgaria's Inercom. A prohibition decision, however, is not among the types of decisions that the CPC can issue within the preliminary investigation phase. Currently, the prohibition decision is being appealed in the first instance and the case is awaiting a decision by the court. Due to the major procedural breach, it seems very likely that this prohibition decision will also be repealed. If so, and the case is returned to the CPC, CEZ would be in the interesting position of having two potential acquirers in two parallel pending merger control proceedings.

Emko/Dunarit Prohibition: After first ruling that the transaction did not require notification, the CPC, in its second decision, prohibited the concentration. The remedies proposed by the acquirer, however, were not discussed since, according to the CPC, they were submitted after the deadline. Considering the court's decision regarding Eurohold/CEZ, however, it seems likely that the prohibition will be repealed by the Supreme Administrative Court since the CPC never invited Emko to submit remedies and refused to discuss them for purely administrative reasons.

These decisions are not a step in the right direction for Bulgarian competition law and practice, and certainly make it questionable as to whether any of the "No's" prohibiting concentration can survive the test of appeal. ■

INSIDE OUT: SABEV & PARTNERS ADVISES THE GOVERNMENT OF BULGARIA ON THE TENDER FOR THE SOFIA AIRPORT CONCESSION IN BULGARIA

On July 28, 2020, CEE Legal Matters reported that Bulgaria's Sabev & Partners law firm, working alongside DLA Piper, had advised the Government of Bulgaria on the tender procedure for the 35-year concession agreement for the Sofia Airport in Bulgaria, which was ultimately awarded to SOF Connect Consortium, led by Meridiam and including Munich Airport and Strabag, on its successful bid. We spoke to Sabev & Partners Iskra Neycheva and Boryana Boteva about the firm's work on the project.

By David Stuckey

CEELM: First, congratulations on the impressive project!

Boryana: Thank you! It was really challenging and exciting for us to work on such an important project. In fact, this is the most significant project in Bulgaria in recent years in the air transport infrastructure industry, as Sofia Airport is the largest airport for public use in the country. Moreover, this is the first project for a concession with cross-border interest under Bulgaria's new Concessions Act (which came into force on January 2nd, 2018, transposing Directive 2014/23/EU on the award of concession contracts). It is a mixed concession – including both construction and operations – and it was awarded via an open tender procedure – which is the most transparent type of procedure, although very difficult to prepare and administer. The result justified all the efforts – there were five excellent offers submitted by highly experienced and reputable investors!

CEELM: Who was on the Sabev & Partners team?

Boryana: I led our firm's team, and I was directly involved in all phases of the project and all tasks performed by the team. My colleague Iskra Neycheva carried out the review of the relevant legal framework and participated in the initial discussions on the structure of the transaction, the tender documents, and the draft concession agreement. Two other partners of the law firm were also involved with different roles: Nevena Stoeva actively participated in the legal due diligence, while Managing Partner George Sabev acted mostly as liaison with the interested governmental bodies.

CEELM: What were the terms of the winning bid? What is the agreement, going forward?

Boryana: In terms of specific undertakings, the following can be outlined: the concession period is thirty-five years, with an option to be extended for up to one third of the initial period; there is an upfront concession fee of BGN 550 million (about EUR 281 million) and annual concession fees (the higher of EUR 24.5 million and 32% of the aggregate concession revenues per year); there is an investment program of EUR 608 million to be implemented by the concessionaire throughout the concession period, which includes building a new terminal – Terminal 3 – by the end of the tenth concession year. More importantly, it is expected – and we believe – that the signing of this concession agreement sets the start of a promising long-term public-private partnership, which will not only be beneficial for the parties to the agreement, but will also contribute to the development of Bulgaria's economy.

"it was obvious that the airport needed fresh funds and premium quality management to stay competitive and develop further – and the previous example of Bulgaria's sea-side airports in Varna and Burgas showed that this can be best achieved through a public-private partnership."

CEELM: Can you tell us how and why the project was initiated? Why a new concession was necessary for the airport?

Iskra: Actually, this is the first concession award procedure for Sofia Airport that reached a successful end. Over the past few years, there were a lot of discussions regarding the most appropriate way of acting – including possible privatization (quickly rejected as an option), a simple service concession (covering only the operation of the airport), or keeping the status as it is, with the airport continuing to be managed and operated by a state-owned company. There were also a couple of attempts to initiate concession procedures, which failed. In any case, it was obvious that the airport needed fresh funds and premium quality management to stay competitive and develop further – and the previous example of Bulgaria's sea-side airports in Varna and Burgas showed that this can be best achieved through a public-private partnership.

CEELM: How exactly did Sabev & Partners get involved in this matter?

Boryana: The main consultant engaged by the Bulgarian Government through the Ministry of Transport, Information Technology and Communications – the concession grantor – was the International Finance Corporation, which then engaged Sabev & Partners as local legal consultants. And, with the support of the European Bank for Reconstruction and Development, DLA Piper was engaged as international legal consultant.

CEELM: What work did Sabev & Partners do on the project, exactly?

Iskra: We did a lot, actually. The main tasks we performed included overviewing and analyzing the relevant legal framework, providing legal due diligence of Sofia Airport (focussing primarily on real estate, contractual and employment matters), advising and assisting in the development of the transaction structure, reviewing drafts of the tender documents (including instructions to


Iskra Neycheva


Boryana Boteva

bidders and a draft of the concession agreement) to ensure compliance with Bulgarian law, providing advice during intensive Q&A sessions, assisting during the launch and carrying-out of the concession procedure, providing post-award assistance, including consulting on specific issues during the appeal proceedings, and, following the confirmation of the award by the court, providing assistance with the commercial close of the transaction (*i.e.*, the signing of the concession agreement).

CEELM: What was the relationship between your firm and DLA Piper like on this matter?

Boryana: Formally, the two firms had separate independent engagements. However, the nature of the work required that we coordinate closely – as the aim was to set up the procedural rules and compile the tender documents


Concession Signing Ceremony

in a way that not only ensures compliance with Bulgarian legislation but also with best international practices for such projects. It was even more important that the concession agreement be structured and drafted as closely as possible to a model that is well-known and acceptable to international investors and financial institutions. To achieve this, the two firms worked together on a daily basis – in particular during the extremely busy Q&A sessions (there were more than 3,000 Q&As processed in two languages!). We are really happy to say that the two teams managed to establish effective collaboration, based on a high level of partner involvement, personal dedication, and friendly atmosphere! In addition, although we already have more than 20 years of legal experience, we gained valuable experience from our joint work with Jasna Zwitter-Tehovnik from DLA Piper Vienna and Francesco Ferrari from DLA Piper Milan.

CEELM: Did the COVID-19 crisis impact the process in any way?

Iskra: The concession award decision was announced in July 2019. Then a review process followed, based on appeals filed by all other bidders. The award decision was finally confirmed by the Supreme Administrative Court of Bulgaria on June 5th, 2020 and the concession agreement was signed on July 22. Unfortunately, the outbreak of the COVID-19 crisis happened in the period immediately before the finalization of the procedure and the signing of the concession agreement. Although the crisis seriously affected the air transport industry, the winning bidder did not step back, and it signed the agreement – a difficult and courageous decision, for which it should be congratulated. Moreover, in view of the type of the award procedure, there was no possibility to negotiate any amendments to the agreement before its signing! However, it has to be noted that there is a transition period of up to 12 months following the signing, during which a lot of conditions precedent are to be fulfilled to complete the financial close of the transaction and the concession commencement date to occur. We do hope that the parties will manage to find solutions to deal with any COVID-19 related issues, and that they are able to successfully complete this phase of the transaction as well.

CEELM: Is Sabev & Partners involved in any way in the ongoing transition period?

Iskra: Our involvement in the matter is 100% concluded at this point.

CEELM: Going forward, what is this concession agreement expected to do for the airport, and for the country?

"Although the crisis seriously affected the air transport industry, the winning bidder did not step back, and it signed the agreement – a difficult and courageous decision, for which it should be congratulated."

Iskra: It is expected that the concession will contribute to the more efficient and effective management of the airport based on the concessionaire's experience and know-how. The concessionaire is required to make significant investments in the development and modernization of the airport infrastructure and to improve the organization and quality of the airport services. The commercial activities of the airport should be expanded and developed further, including by opening new shops, restaurants, and cafeterias. The safety and security of the airport and the flights should be improved through the use of new technologies and the transfer of knowledge and experience. The concessionaire is expected to develop new flight routes from and to Sofia, both for passenger and cargo traffic and enhance the airport's position as a regional hub for flights within the Middle East, Transcaucasia, and Central Europe. The desired result is to promote the airport's status as a world-class airport, increase its competitiveness, and attract more traffic. The achievement of these goals should lead to growth of tourism and auxiliary services, foreign investment, and budget revenues. ■

INSIDE INSIGHT: INTERVIEW WITH ALICE RADU, GENERAL LEGAL COUNSEL FOR ROMANIA & BULGARIA AT BOSCH GROUP ROMANIA

By Andrija Djonovic

CEELM: Can you walk us through your career leading you up to your current role?

Alice: I was born and raised in Braila, a city in the eastern part of Romania, on the Danube river. My parents used to own a restaurant and a hotel near the river, and throughout my childhood I kept telling them I want to be a lawyer, not to continue their work taking care of the restaurant. Fortunately, they were supportive, and right after finishing high school, I went to Bucharest and started both the Faculty of Law and the Faculty of Political Sciences at the University of Bucharest.

Those were the times when Romania was struggling to join the European Union, and at that particular moment I felt that simultaneously attending both these faculties would help me to a potential international career. I always aimed high, even in my childhood, and I had always been encouraged to do so by both my teachers and my parents. With this set-up in mind, in my second year of law, I googled for the best Romanian law firm – which turned out to be Tuca Zbarcea & Associates – and decided to send them my resume, explaining that my desire, in terms of career path, was to learn from the best. They somehow appreciated my approach and hired me as an assistant to one of the groups of lawyers. I then started to work with real lawyers, on real cases, and I soon understood that I was heading in the right direction.

I continued my Master's studies in Business Law while passing the bar exam and becoming a full lawyer. In my early years after passing the bar exam, I worked as a lawyer for KPMG Romania and when I felt prepared I decided to start my own law firm, approaching mostly international clients (most of them active in the IT field or software development) investing in Eastern Europe. After five years working independently in my law firm, joining the Bosch group was the long-awaited opportunity to develop myself in an international environment, at a higher level, in a group of companies with a solid organizational culture, based on leadership, performance, and stability. Currently, I am working as General Legal Counsel for Romania and Bulgaria within Bosch for two years. I am part of Bosch legal team, with more than 300 lawyers worldwide.

If there is a pattern to describe all steps of my career, this pattern is represented by ambition, hard work, and aiming high.

CEELM: What are the most significant changes you've seen in Bulgaria's legal market over your career?

Alice: As with other Eastern European countries, the legal market in Bulgaria is divided between local and international law firms, with an increasing number of boutique law firms. This is a normal

evolution, considering not only the client-oriented approach and expertise in certain fields that boutiques law firms offer, but also the openness of foreign investors to choose what is locally best, despite international contracts with big law firms.

In Bulgaria, Bosch chose a mixed collaboration, with no intention to change the current functional set-up. I appreciate bigger projects are still suitable for international law firms, considering their wide understanding of industries, which are not limited by borders or economic cycles.

CEELM: Why did you decide to join Bosch?

Alice: I was promised to be challenged and the promise was kept. I was promised an international working environment with the real opportunity to develop as a leader within the group and again, the promise was kept. Everybody knows the Bosch Group promotes legality as a first principle. It is the most desired principle for an in-house lawyer. It means the promise to do things legally correct, in the long run, while taking full responsibility for all its actions. Bosch is not only a working environment; it is a model of living your life in balance, harmony, and with all needed technology around you.

I was recruited by managers that have been with the company for a far longer period than the existence of Company Law in the Eastern Europe; I discovered this is a well-grounded pattern within Bosch worldwide. It says about the company as much as its products: it is a company for life!

CEELM: Tell us about Bosch's legal department. How big is your team, and how is it structured?

Alice: The legal services department in Bosch is a central department with more than 300 in-house lawyers worldwide. We are organized in expert teams, such as IP Law, M&A, and Corporate, and regional teams representing different countries where Bosch is doing business. I am part of the regional European team and I am responsible for the legal departments in Romania and Bulgaria.

We have a smart organizational structure and we can easily get in contact with each other. For example, if Bosch wishes to develop a new power tool product in several countries, we group regional lawyers from these countries together with expert lawyers in power tools and thus our clients receive the best advice possible from both a country law perspective and a field expert. This structure also helps us in many standardization processes, and not only do we feel we belong to a large international in-house legal team, but also the externalized legal services are less.

CEELM: What is your typical day at work like?

Alice: Fortunately for me, because I don't like routine, I cannot define a typical day. Each new working day is a surprise. There are two main reasons for this: The first relates to the Bosch business, as it is extremely complex; the second I will associate to the regions I'm covering - Romania and Bulgaria. We have production activities in plants, we have software development and testing in our engineering centers, we have a service solutions division in Timisoara as well as selling products/services divisions in both Bulgaria and Romania. We produce, we sell, we offer services, and we innovate, each day, with roughly 8500 associates, in a region where legislation is changing overnight. Thus,


Alice Radu

I spend an important part of my day in contact with my clients, offering legal advice adapted to their needs or implementing group projects. In addition, as I am part of the management team I am involved daily in several decisional processes.

Before the COVID-19 outbreak, I used to travel a lot between Bosch locations – short and useful daily trips. Nowadays, regular Skype meetings have replaced these trips, but in general, our activities increased due to legislative changes generated by the COVID-19 and the need to safeguard our associates.

CEELM: Was it always your plan to go in-house?

Alice: My plan was always to go international, to work with people all over the world, and to stay connected to the business. In-house was the solution. It came naturally, as an evolution in my professional life. For me, it is more rewarding to see a business growing in one region than being part of an

international law firm. I am not directly earning money for the company, but indirectly, I am saving a lot.

CEELM: What was your biggest single success or greatest achievement with Bosch in terms of particular projects or challenges?

"As with other Eastern European countries, the legal market in Bulgaria is divided between local and international law firms, with an increasing number of boutique law firms. This is a normal evolution, considering not only the client-oriented approach and expertise in certain fields that boutiques law firms offer, but also the openness of foreign investors to choose what is locally best, despite international contracts with big law firms."

Alice: As Legal Manager with a governance role, the success of the business is also a personal success. There is a specific project in Bulgaria that led the local Bosch organization to the next level: the set-up of the Bosch Engineering Center – the ECS – in Sofia. We opened it one year ago – and it started working immediately, with over 100 new Bosch engineers. The team of highly qualified professionals is now involved in the development of over 40 international projects related to technologies for the automotive industry, in areas such as driver assistance systems, automated driving, and electric mobility. The ECS in Sofia works closely with Bosch's development teams in Germany, USA, Hungary, and Romania to provide the best solutions for the world's leading car manufacturers.

For the legal services department, this project started as a challenge, well before its official opening. The negotiation of rent agreements, obtaining the necessary permits and authorizations, signing employment contracts with more than 100 professionals, appointing new managers, going through the know-how transfer phase, and implementing Bosch's directives and guidelines, as well as signing all acquisition contracts for products and services – all these, together with advising on legal regulations relevant to the company's business structure, resolving legal issues that arise in the course of running the business, *etc.* – made the inauguration of the ECS a very demanding project.

The ECS is a leading global provider of technology and services. One year after its opening, Bosch is among the honored companies with the Awards of the German Economy in Bulgaria 2019 for its growing business related to the new Bosch Engineering Center Sofia. The Center was named Tech Growth Business of the Year by Global Tech Summit Sofia and has also received the "Investment for Industrial Development" distinction at the Annual Gala event of the Automotive Cluster Bulgaria.

The legal services department is eager to be further challenged by the development projects initiated by ECS!

CEELM: What one person would you identify as being most important in mentoring you in your career?

Alice: My father. He passed away before I became a lawyer, but he motivated me for the next 100 years. He used to tell me: "If not you, then who?" He believed in me more than I was able to understand; I would like to be able to empower my kids in a similar way! Due to the education he offered me, I was able to develop my ambition and competitiveness; I kept pushing myself and I still do whatever I can to become a better version of myself, always successful. When I get tired, I remember his words. He taught me to trust myself, to act powerfully, and to sell my ideas.

CEELM: On the lighter side, what is your favorite book or movie about lawyers or lawyering?

Alice: I like many as they all have similar patterns: ambitious smart lawyers fighting for their clients and for their own success. Although I cannot nominate a favorite one, there is one which I will always remember: *The Good Wife*. It is an American legal and political drama television series. It focuses on Alicia Florrick, a lawyer who, after having spent the previous 13 years as a stay-at-home mother, returns to the workforce as a litigator to provide for her two children.

I saw this immediately after my first son was born and I somehow identified with Alicia's fears in terms of being a good lawyer again, being able to return, and having a successful career with small kids at home. Fortunately, my real life is not a drama, as my family encouraged and helped me with the kids; thus, I was able not to interrupt my professional activity or to postpone important opportunities. Alicia is a fighter, a good lawyer, a good mother, and a good wife. Although a drama, in the end Alicia is the model of a successful woman. ■

MARKET SPOTLIGHT TURKEY

GUEST EDITORIAL: TURKEY'S NEW NORMAL

By Done Yalcin, Managing Partner, YBK in cooperation with CMS

Are you still reading? Despite the title this is not a COVID-19 piece. Quite frankly we have had enough of that. We want life to go back to how it was – but it won't. Something new is happening. People have been humbled by the effects of the C-word on their very existence. Everyone is suddenly more aware of the need to change – in Turkey, for example, we always kiss and hug upon meeting, and we are not used to the concept of social distancing at all. Now we stand a meter apart and elbow or fist bump – which still feels odd to me. We are aware and we are asking ourselves – "what needs to change? Was this our fault? What is biodiversity? What can we do?"

Well we have been doing things. This issue of being environmentally aware is tucked away nicely into those corporate social responsibility policies we all like to show off. Companies know that they risk losing customers if they do not address the issue of sustainability. These things were nice to have before - now they are mandatory.

Just as the current situation pushed along digitalization and automation at a faster pace, it has done wonders for my favorite topic: Sustainability. I am the lead on Sustainability within my firm. This all happened pre-C, in case you were wondering. When lawyers at our firm become equity partners, we are required to deal with one or two topics that are not directly related to law or our own areas of expertise, but which serve the interests of the firm. My two areas are Legal Tech/Knowledge Management and Sustainability. I am a proponent of the People, Profit, Planet trifecta. My partners and colleagues have supported me with full enthusiasm from the very first second in achieving the not-insignificant goal of becoming a sustainable law firm with a sustainable consulting practice – and we have actually achieved a lot. This is because everyone in our organization, from the lawyers to our support staff, understands and is aware of the importance of this topic. I want to provide legal services that are more sustainability-minded from within a firm that is itself sustainable. I want to encourage our clients to adopt more sustainable practices. I want to offer legal advice on how to be more sustainable within the legal frameworks that affect them. I want to bring together all the professions in my organisation to deliver quality sustainable services.

You may be interested to know what Turkey is doing in the sustainability sphere. Law firms have been empowered to execute certain financial agreements digitally, which will contribute to decreasing carbon emissions by avoiding paper waste and unnecessary travel. We have seen more ESG-related investments in Turkey, such as renewable power purchase agreements and solar panel production. There is an environmental cleaning tax, green leases, a recycling contribution fee based on water consumption, and many more incremental changes.

During lockdown I was invited to lead a global competition project team that was developing a sustainability app as part of a legal innovation 'hackathon' promoted by an international publication. My team involved colleagues from the UK, Turkey, Russia, Germany, and the Netherlands who were all united in their wish for a better approach to sustainability in law firms. We had lawyers, experts from the IT, marketing, legal tech, consulting, and climate change worlds, and (unavoidably) our loved ones locked in with us, as we raced to develop an app concept in three weeks.

I am excited and proud of what we are developing as a profession. I have experienced what the power of uniting together in difficult circumstances can create. In my Istanbul office we are bringing sustainability into everything we do. It goes beyond recycling the thousands of pieces of paper we discard weekly. We are partnering with leading organizations both within and outside Turkey that have been pushing the sustainable agenda for 20 years; it is not new and it is not a fad. ■

TIPTOING IN TURKEY

A CEE Legal Matters special report on how international firms operate in Turkey – and the echoing silence that greets attempts to investigate.

By Andrija Djonovic

"A conspiracy of silence, or culture of silence, describes the behavior of a group of people of some size, as large as an entire national group or profession or as small as a group of colleagues, that by unspoken consensus does not mention, discuss, or acknowledge a given subject."

The relationship between international law firms and their domestic counterparts takes a number of different forms across CEE, with some of the region's emerging markets doing more to protect their local champions than others. Turkey, unbound by the EU's pro-competition requirements, has restrictive (though rarely invoked) bar rules applicable to international firms wishing to capitalize on the still-significant potential of the market.

And yet, despite those restrictions, and while local law firms roll their eyes, a number of international firms in fact operate in Turkey, staying quiet and doing everything they can to avoid waking the bear.

"You'll see the same design language in the local office as you do in the international firm, but you just have a Turkish name on the door. Behind the name of the local partners, however, will simply be another 'Markby, Markby, and Markby."

The Ottoman Omerta

Under Turkey's Lawyers' Code of 2001, only Turkish lawyers are allowed to practice Turkish law or to have rights of audience with clients. "Foreign attorney partnerships" – that is, international law firms – "can only offer services of consultancy in foreign laws and international law." As a result, those international firms wishing to open up shop in Turkey can not directly offer advice or representation on matters of Turkish law.

To satisfy this rule, most international law firms have entered into some form of association agreement – as compared to full partnerships – with Turkish firms (see Bridging the Bosphorus Box, on page 48). The websites of the ILFs often share the same design as their associated Turkish firms indicating a unified presence, and some openly state on their websites that they have lawyers in Turkey who advise on all aspects of the law, apparently indicating that they are disregarding the literal language of the rule precluding them from advising on Turkish law, have found a legally effective way of avoiding the rule, or – most likely – are speaking in general terms on their international websites about the ability of their associated Turkish firms to assist clients with Turkish law matters.

Either way, it appears most of the international firms interpret the rule loosely. As a result, one authority says with a smile, "you'll see the same design language in the local office as you do in the international firm, but you just have a Turkish name on the door. Behind the name of the local partners, however, will simply be another 'Markby, Markby, and Markby."

Still, and although nobody we spoke to was able to recall even one sanction being imposed for violations of the law, few international law firms are confident enough about their compliance to discuss it publicly. In fact, each and every one of the ten international firms that advertise a Turkish presence on their website declined our invitation to go on the record about the rule – sometimes abruptly, and with more than one requesting that we not even mention our attempt to contact them.

In fact, several of those we reached out to predicted – while still insisting on their own anonymity – that it would be "nearly impossible" to find anyone from an international firm willing to contribute to this article. Similarly, their clairvoyance extended to the bar associations, as several predicted – again accurately – that it would be difficult to find someone at the Bar to speak to on the subject (and indeed, neither the Istanbul Bar nor the over-arching Union of Turkish Bar Associations replied or responded to our multiple requests, made by both phone and email, for comment).

If it Ain't Broke, Don't Fix It

Despite sharing the general skittishness, a partner at one international law firm in Turkey – we'll call him Yusuf – is willing to speak candidly on the subject, as long as he can do so anonymously. "The rules allow only Turkish lawyers to practice Turkish law and advise clients," he says. "Foreign firms can register, but only to practice and give advice on international law. It's all crazy if you ask me."

Continuing, Yusuf insists that the rules that prohibit international firms from serving clients on matters of Turkish law are "adverse to globalization" and "go against the fact that capital has torn down national borders."

To a large extent, Yusuf says, the situation can be traced back to White & Case's arrival in 1985 at the invitation of the Turkish government. According to Yusuf, the unique circumstances surrounding the White Shoe firm's

arrival meant that it was on the ground before rules about foreign firms had even been created. As a result, he says, despite the subsequent creation of a legal framework for foreign law firms, "this approach set the standard for how international firms continue to operate in Turkey to this day."

Still, in its early years, Yusuf reports, "White & Case faced a lot of investigations by the Istanbul Bar." In fact, he says, "up until 2010, the Bar was quite harsh in trying to enforce these strict rules, especially with some local firms filing complaints and adding pressure on the Bar to act."

After 2010, Yusuf says, the Istanbul Bar seemed to back down. "The Bar knows that these firms are out there but they are not pursuing them and are no longer trying to enforce the rules aggressively. [Lawyers from our firm] actually met with the Chairman of the Istanbul Bar, and we were quite transparent from the get-go about being above board on everything and, because we never explicitly broke any rules – we're good." Other firms are benefitting from the tacit permission to keep operating on this basis as well, he says, noting the absence of any fines or penalties "at least in the past ten years – and if there were any issues it was all kept quiet."

Accordingly, it appears unlikely that the formal requirements will change anytime soon. The rules remain on the books, with no real push to have them revised or removed, and for the time being, Yusuf believes, the status quo is "pretty much accepted." According to him, "international law firms go about their business, the Bars do not touch us, and the local law firms are not as vocal in their call to action anymore." He smiles. "There seems to be a 'don't ask don't tell' approach here. We stay out of each other's business and keep our heads down."

Bridging the Bosphorus

International Law Firm	Affiliated/Associated/Cooperating Turkish Firm
Baker McKenzie	Esin Attorney Partnership
Dentons	Balcioglu Selcuk Ardiyok Keki Attorney Partnership
White & Case	GKC Partners
Clifford Chance	Ciftci Law Firm
Allen & Overy	Gedik & Eraksoy
Norton Rose Fulbright	Inal Kama Attorney Partnership
Kinstellar	Gen & Temizer Ozer
CMS	YBK Law Firm
Schoenherr	Turkoglu & Celepci
Gide Loyrette Nouel	Ozdirekcan Dundar Senocak

Not Everyone is Laughing

Like their international counterparts, unaffiliated Turkish firms are cautious about speaking out on the matter. Still, those we reached out to rejected the suggestion that they are satisfied with the current arrangement.

"The way these firms operate is that they find a local partner, they include them in their global structure – a partnership, a franchise, or something similar – and they put two names on the walls – a domestic one and a foreign one – and then claim that it is two different firms," says Eymen (not his real name), a partner at an Istanbul-based law firm. "Behind the scenes, however, they share the entire infrastructure, back-office systems, document management systems, and IT. It's all integrated. Even if the 'local' firm uses a different domain name, for example, the differences are purely cosmetic and are in place to go around the rules."

Eymen considers this a "dishonest" way of doing business, one that he believes clearly violates the spirit of Turkish law. "Our legal system specifically goes against workaround solutions – not just in this area, but in all areas," he says. "That's how it achieves the goals of its legal provisions – it cannot be interpreted only textually." What the international firms are doing, he says, is "pure form over substance."

> "International law firms go about their business, the Bars do not touch us, and the local law firms are not as vocal in their call to action anymore. There seems to be a 'don't ask don't tell' approach here. We stay out of each other's business and keep our heads down."

He insists that he is not opposed to foreign firms practicing law in Turkey, but he wants "them to play the game fairly." Instead, Eymen says, the current system puts firms like his at a real disadvantage. "Turkish law firms are subjected to a higher standard of regulation than foreign firms, for example when it comes to billing. A foreign firm often charges its client via a tax haven and thus avoids the Turkish tax system altogether – which is a clear privilege

and an advantage that local firms that play by the rules cannot have!" At the end of the day, he says, they should "stop pretending and play by the rules, comply with the law, and stop with these cosmetic differences."

"The Bar is well aware of this blatant violation of the law and is doing nothing about it, mostly because Turkey is not exactly known for 100% compliance with legal norms, and because the Bar has more pressing matters, like the recent changes to the Law on Lawyers, human rights issues, and overall Turkish problems. A bunch of M&A lawyers hating on each other is not a priority."

Defne (not her real name), also a partner at a prominent Istanbul-based law firm, echoes Eymen about the financial advantage international firms may be receiving under the current system. "Not just invoicing from abroad, but also employing their lawyers from abroad – this creates a financial advantage," she says. "Also, international law firms have a stronger footprint on the global market and do marketing far better than any of the local firms can – especially in Turkey where lawyers are explicitly prohibited from advertising in any way." Indeed, she says, the marketing ban is so rigid in Turkey that lawyers are "not allowed to refer to themselves as experts in any way or to talk about their clients and practice. The greatest extent of advertising allowed is displaying one's academic title!"

Defne acknowledges the great value foreign firms have added, especially in the early years. "At the start, everything was new and exciting," she recalls. "Foreign law firms brought a lot of know-how with them, especially in areas such as M&A, banking & finance, and securities law." Still, she says, the good feelings didn't last forever. "The legal market benefited greatly from their presence, but, over time, the local firms started feeling disadvantaged."

Thus, Defne says, "the international law firms are successfully going around the rules – not just the ones that apply to local firms, but also the ones that apply to foreign firms advising on foreign law. They get the best of both worlds, so why should they desire change?"

Still, Defne insists that she does not feel threatened by the presence of international firms. "I feel no animosity," she says. "Quite the opposite in fact. Like I've said before, the know-how these firms bring is great for us as well, and we're able to learn a lot and improve our own practices." She also says that foreign firms, while they may excel in some practices, "do not have an advantage over local firms when it comes to disputes, litigation, and arbitration. So there's enough for everyone when it comes to work!"

Despite the concern of the international firms, the frustration of unaffiliated Turkish firms, and the potential threat of severe penalties, nobody believes things are likely to change in the near future. "The ban will likely remain in place and the Code of Lawyers will probably not change at all," Defne says. "There aren't even any discussions on this right now."

Eymen agrees. "The Bar is well aware of this blatant violation of the law and is doing nothing about it, mostly because Turkey is not exactly known for 100% compliance with legal norms, and because the Bar has more pressing matters, like the recent changes to the Law on Lawyers, human rights issues, and overall Turkish problems." He sighs. "A bunch of M&A lawyers hating on each other is not a priority." ■

*** CEE Legal Matters believes that these unique circumstances justify an exception to our normal policy of requiring that sources be identified by name. We welcome comment and feedback from our readers on this, as on all, our stories.**

– The editors

MARKET SNAPSHOT: TURKEY

M&A DEALS DURING THE COVID-19 OUTBREAK

By Ersin Nazali, Managing Partner, and Nilay Goker Duran, Partner, Nazali

COVID-19 has swiftly become a global outbreak, affecting not only people's lives but also the global economic conjuncture. Like most countries, the Republic of Turkey, has adopted several measures to eliminate or lessen impacts of COVID-19 on the economy. With this article, we will provide an overview of the Turkish legal market and key legislation enacted during the COVID-19 outbreak.

Overview of Legislative Amendments

Knowing that corporations are the wheels spinning the economy, the Turkish Government has made several amendments to secure the stability and sustainability of the economy that directly affect corporations. Some of the important changes were introduced by the Law on Reducing the Impact of the COVID-19 Pandemic on Economic and Social Life and the Law on the Amendment of Certain Laws No. 7244 (the "Omnibus Law"). The Omnibus Law added an additional article to the Turkish Commercial Code that prohibited: the distribution of dividends by corporations before September 30, 2020 that exceed twenty-five percent of the company's net profit generated in the 2019 fiscal year; the distribution of previous years' profits and free reserves; and authorizations by the general assembly to the board of directors to distribute advance dividends. However, these restrictions do not apply where fifty percent or more of a company's shares are held, either directly or indirectly, by: (i) the state, special provincial administrations, municipalities, villages, and other public entities, or (ii) funds with state ownership of fifty percent or more. This period may be prolonged by the President for a term of three months, until December 31, 2020.

The Omnibus Law also introduced amendments to the Law on the Regulation of Retail Trade No. 6585 (the "Retail Law") that will have important effects on the retail sector by prohibiting exorbitant price increases made by manufacturers, suppliers, and retail businesses, activities that prevent consumers from accessing goods, and activities that narrow the market or disrupt market equilibrium and free competition. These prohibitions will be monitored by the Unfair Price Evolution Board to be established in accordance with the Retail Law.

Affects on Deals and Business

Needless to say, the COVID-19 outbreak made it difficult for parties to a transaction to arrange physical meetings for due diligence exercises, negotiations, or signing or closing phases. Some deals have been postponed to a later date since signing or closing of transaction documents cannot not be done without the physical attendance of foreign investors affected by COVID-19 travel restrictions. However, most transactions are still being conducted, online. From a drafting perspective, COVID-19 has impacted valuations, purchase prices, and payment mechanisms. From a representations & warranties point of view, sellers are preferring additional provisions to cover COVID-19-related aspects, in particular on employment law and compliance-related matters.

In terms of retainer matters, companies have sought answers regarding the potential application of *force majeure* provisions under various types of agreements during the COVID-19 period. Another hot topic was related to renewal, adjustment, and termination of shopping mall and workplace lease agreements, since many companies have been unable to afford the rent or the workplace was determined to be unfit for employees. Last but not least, as the Ministry of Health has published regular guidelines and recommendations about COVID-19 process, many companies have sought advice on how best to comply with them.

In conclusion, the Turkish Government is aiming to minimize the impacts of COVID-19 by adopting new regulations and thanks to the agile adaptation to an online working environment, companies were quick to act and able to sustain the ongoing business. ■

TURKISH CAPITAL MARKETS 2020 OVERVIEW

By Hulya Kemahli, Partner, CMS Turkey

The Turkish capital markets have undergone many regulatory amendments and adjustments this year to provide a more robust environment in terms of transparency, competition, and stability for investors. As regulators have kept manipulative transactions in their sights to overcome the panic created by COVID-19, the Turkish Capital Markets Board (CMB) has imposed many sanctions and penalties.

Amendments to Capital Market Law

Amendments to Turkey's Capital Market Law that came into effect on February 25, 2020 included regulations as to the sanctions and measures available to authorities for infringements and principles as to significant transactions and exit rights and security trustees, as well as increasing flexibility for crowdfunding platforms. The amended CML foresees that, in determining the administrative penalty for legal entities, the highest amount of either the gross profit or sales revenue will be taken into account, and an unintentional obstruction of an audit is included in the actions requiring an administrative penalty.

Additionally, the amended CML enabled investment enterprises to engage in project finance transactions and to securitize project finance tools and introduced the Debt Instrument Holders Board to represent investors and issuers.

Subsequently, as secondary legislation to the amended CML, Communique No. II-23.3 on Significant Transactions and Exit Rights came into force (as published in the Official Gazette of June 27, 2020), setting forth regulations as to the scope of significant transactions and exit rights of minorities. Pursuant to the Communique, certain transactions that had previously been regarded as significant transactions were excluded. Among other things, the Communique also regulates the determination of shareholders entitled to exit and the principles for determining the price of an exit right.

Digitalization of Finance Agreements

The Law Regarding the Amendments to Certain Laws and Decrees No. 7247 allows certain types of financial agreements, such as leasing agreements, factoring agreements, and agreements between finance companies and their customers to be concluded via remote or electronic forms of communication that the relevant institution accepts as a replacement for the written form and through which customer identity validation is possible.

Restriction on Dividend Distributions for Capital Companies

As a precautionary measure to mitigate the negative impacts of COVID-19, a transitional provision was added to the Turkish Commercial Code No. 6102. Accordingly, for all non-state-affiliated companies, where questions about the distribution of cash dividends concerning the 2019 fiscal year are on the agendas of general assembly meetings to be held before September 30, 2020: (i) profits of years before 2019 shall not be distributed; (ii) dividends from the 2019 fiscal year shall not exceed 25% of the net profit of 2019; and (iii) the board of directors shall not be granted the authority to distribute dividend advances.

Amendments Regarding Mortgage Finance Companies

Communique No. III-59.1 on Covered Securities, Communique No. VII-128.8 on Debt Instruments, and Communique No. III-58.1 on Asset-Backed and Mortgage-Backed Securities contained amendments to soften the principles and procedures that mortgage finance corporations (MFC) are subject to.

In this regard, Communique No. III-59.1 states that the threshold regarding the circulation of covered securities will no longer be applicable for covered securities issued by MFCs, while fees payable to the CMB as to the issuance of covered securities will be half for MFCs. Additionally, the fees payable to the Capital Markets Board for MFCs will start to accrue after December 31, 2021.

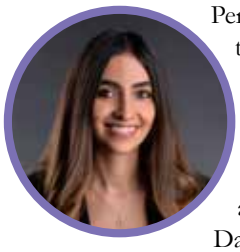
Furthermore, the amended Communique No. VII-128.8 foresees that the issue threshold stipulated by it is not applicable to MFCs, and fees payable to the Capital Markets Board for the issuance of debt securities will not be collected until the end of 2021 – and after the end of 2021, half of such fees will be

collected.

Finally, the upper issuance threshold under Communique No. III-58.1 will no longer apply for asset-backed and mortgage-backed securities issued by MFCs or funds founded by MFCs, and half of the fees payable to the Capital Markets Board will be collected for asset-backed and mortgage-backed securities issued by MFCs or funds founded by MFCs. Communique No. III-58.1 also foresees that fees payable to the Capital Markets Board for MFCs or funds founded by MFCs will start to accrue after December 31, 2021. ■

A REVIEW OF BIOMETRIC DATA PROCESSING SYSTEMS USAGE UNDER THE PERSONAL DATA PROTECTION LAW AND SECONDARY LEGISLATION

By Derya Apaydin, Partner, and Ecem Yildirim, Associate, Apak | Uras



Personal data, one of the most discussed topics in the legal world, is protected in many countries, and it is regulated in Turkey under the Personal Data Protection Law, number 6698 (the "Law"), and secondary legislation. In addition, the decisions of the Personal Data Protection Board established under the Law (the "Board"), provide insight on the rules applicable to data controllers and processors.

There are several general principles in the Law related to the processing of both personal and "sensitive" personal data, with decisions of the Board helping to determine the necessary degree of compliance with them. Biometric data, such as fingerprint, face, and DNA information, is considered sensitive personal data, the processing of which is subject to strict conditions and additional measures. The most important principle applied to processing of sensitive personal data is that it be "relevant, limited, and proportionate to the purposes of processing.

The Board's decisions in cases where data controllers providing sports club services processed members' biometric data are instructive. In these decisions, the Board determined that obtaining the biometric data (related to palm prints) of members who wish to access sports club services is incompatible with the "being relevant, limited, and proportionate to the purposes of processing" principle, since it was possible to control their access by alternative means. As a result, the Board imposed administrative fines on the data controllers and instructed them to control access by alternative means and cease the processing of biometric data.

State Council rulings related to biometric data processing are also instructive. The most important decision for these purposes concerns the rejection of an employee's claim requesting the termination of a face-scanning system used to track employee shifts. The Administrative Court rejected the claim of the employee as: (i) the relevant method was not used in all units; (ii) the system was put in practice after the employer had encountered difficulties using alternative means to control of the employees' shifts and, (iii) the face scans of employees were converted into digital codes. However, and despite the Administrative Court's ruling, the State Council deemed the usage of face scanning a breach of right of privacy as not "relevant, limited, and proportionate to the purposes of processing" principle.

Thus, although there is no established precedent for the usage of biometric data processing systems, the Board and State Council's decisions demonstrate that the principle that the use of sensitive personal data be "relevant, limited, and proportionate to the purposes of processing" is of the highest importance. Therefore, data controller companies using systems that process biometric data, especially for the purposes of tracking personnel or building security, should evaluate whether there is a reasonable balance between the use of these systems and the benefit intended. As it is not yet clear which conditions the Board will accept as being in full compliance

with the above-stated principles, data controllers are encouraged to apply additional administrative and technical measures set out in the Law and in compliance with the Board's decisions. In the upcoming days, one can expect the conditions in which biometric data can be lawfully processed to become clearer as the Board's decisions accumulate. ■

AUTOMATIC EXCHANGE OF INFORMATION IN TAX MATTERS

By Ali Keskin, Partner, and Irem Nacar, Trainee Associate, Keskin & Keskin Attorneys at Law

As national borders lose their importance when it comes to capital mobility, tax revenues have decreased significantly and tax avoidance has become a matter of common concern for countries. Therefore, exchange of information in tax matters has become one of the most important topics on the agenda of countries and international organizations in recent years.

Although the exchange of information was already addressed in many double taxation treaties concluded based on the models introduced by OECD and United Nations, the issue was treated for the first time on an exclusive basis by the USA following the 2008 economic crisis, with the adoption of the Foreign Account Tax Compliance Act. While there are three main methods of exchange (*i.e.*, on request, automatic, and spontaneous), automatic exchange of information seems to be the main focus.

Where Does Turkey Stand in Terms of Automatic Exchange?

The Convention on Mutual Administrative Assistance in Tax Matters (the "Multilateral Convention"), which forms the framework for all types of exchange of information, was signed by Turkey on November 3, 2011 by Turkey. However, the ratification process to put the Multilateral Convention into force took more than six years, and it was ultimately concluded on November 26, 2017.

Following the USA's FATCA, the OECD presented the Common Reporting Standard (CRS): a common system to be used for the automatic exchange of information regarding financial accounts. In this respect, under Article 6 of the Multilateral Convention, the CRS Multilateral Competent Authority Agreement (the "CRS MCAA") was drawn up and signed by Turkey on April 21, 2017. Despite having undertaken to start automatic exchanges by 2018, it took Turkey almost another two and a half years to keep its word, and the CRS MCAA was eventually put into effect on December 31, 2019.

Turkey sent data regarding 2017 and 2018 to 1 and 2 partners, respectively. As of 2020, Turkey will be receiving financial account information from 75 jurisdictions, while it will only share its information with 55 jurisdictions, according to the list of activated exchange relationships published by the OECD; which means that some exchange relationships will be non-reciprocal by nature. It should be noted that these numbers include not only the exchange relationships based on the CRS MCAA but also the ones based on double tax treaties or specific bilateral treaties aiming to enable exchange of information. With that being said, Turkey currently has only two bilateral treaties on the exchange of information: with Norway and Latvia.

A FATCA Model 1 Agreement signed on July 29, 2015, also serves as a basis for automatic exchange of information between Turkey and the USA.

Is It Effective?

Despite the international framework described above, the lack of secondary legislation for the effective application of the automatic exchange remains a chink in Turkey's armor. Although Turkey intended to introduce legislation to implement the FATCA Agreement by September 30, 2015, it wasn't able to complete the internal approval process until the publication of the Council of Ministers' decision regarding the ratification

of the Agreement on October 5, 2016. But yet, diplomatic negotiations to start the exchange of information persist. Once the reporting begins, all the information that would have been reported had the Agreement been in force as of September 30, 2015, will be subject to exchange.

With regard to the CRS, a "Draft General Communiqué on Automatic Exchange of Financial Account Information on Tax Matters" was sent to the banks and other relevant institutions by the Ministry of Finance back in May 2017. Although that draft communiqué is still to be finalized, several Turkish banks have already declared that they are required to obtain certain information from customers to be able to comply with the CRS.

It should also be noted that the term of declaration in order to benefit from the wealth amnesty that allowed Turkish taxpayers to regularize their undisclosed assets in and outside of Turkey expired on June 30, 2020. Taxpayers with undeclared assets in countries having an activated exchange relationship with Turkey now may be faced with tax penalties, as their financial data will be subject to exchange with Turkish tax authorities. We will see how and to what extent automatic exchange will affect tax revenues in upcoming days. ■

TURKISH BANKING SECTOR 2020

By Alaz Eker Undar, Co-Head of Banking & Finance, CMS Turkey

The year started with expectations of growth and stability. Along came COVID-19, and the focus shifted to stability and survival. The Turkish banking sector, used to market turmoil, took proactive steps, and the authorities matched the effort.

The start of 2020 was filled with optimism towards Turkish banks on the global stage after a challenging couple of years. The sector's access to foreign financial assets boosted confidence and made it stand out among other industries, which continue to face difficulties due to fluctuations in the value of the Turkish lira. Their dependence on foreign currency income proved to be problematic in many sectors, while the banking sector remained healthy in comparison.

The pandemic, however, changed the parameters of maintaining a healthy business in most sectors. Just as the economy raced to digitalize and ensure continuity in service provision, so banks as well changed their tactics and increased efforts to ensure a fast and smooth transition to digital platforms. With curfews and reduced working hours in bank branches and workplaces, customers needed to perform transactions in the virtual space. Some banks have reported that transactions through digital channels increased 30% or more during the pandemic period.

On a macro level, the slowdown in operations and loss of income in many sectors led to concerns both from the banks and borrowers about loan repayments. Various banks extended the repayment periods of loans and did not call events of default, although no official moratorium on repayments was announced. However, despite the relatively low percentage – 4.7% – of non-performing loans at the end of May, the high levels of corporate sector debt that were commonplace in the Turkish economy pre-COVID-19 became a grave concern for economic stability. A potential increase in non-performing loans in the near future could cause economic instability unless the market counteracts the adverse effects of the pandemic period.

As might be expected, financial restructurings emerged as another alternative to deferred repayments, and in some cases further financing from banks was obtained. The principles and methods of such restructurings are based on a Turkish law that entered into effect in 2018, regulating the restructuring of debts owed to the financial sector. This piece of legislation, as amended, also made it possible for foreign banks to participate in the restructuring phase, if they are preferred, and made it possible for borrowers to eliminate the risk of execution proceedings initiated by the banks that signed on to a so-called "framework agreement" with them. In some cases, the risk of bankruptcy was avoided.

While banks were focused on the remedies available to them under the applicable law and the contractual arrangements to which they were parties, in March the banking watchdog – the

Banking Regulatory and Supervisory Agency – introduced certain measures to enable banks to provide relief on their minimum liquidity requirements. These measures will stay in effect until the end of 2020. The liquidity relief was followed by the introduction of a new asset ratio calculation formula in April 2020 that aims to minimize the effects of the pandemic period on bank balance sheets and, ultimately, to increase liquidity in the market with bank-injected funds.

As the BRSA incentivized the banks to provide financing to the Turkish market, it has also applied monetary sanctions on several financial institutions which chose not to act in line with its instructions and the measures it introduced.

Needless to say, the adverse effects of the pandemic are ongoing, and it will take some time for the Turkish market, including the country's financial markets, to recuperate from its aftermath. COVID-19 shaped this year and presented a scenario that required businesses to adapt more quickly than they had planned to remote and digital-based operations, while trying to maintain the status quo in terms of the volume of transactions, and therefore income. Banks, borrowers, and other market players will need to continue to monitor the market and the measures implemented by the authorities and will hopefully bounce back from the relentless effects of the pandemic, which continues to create chaos in their operations. The Turkish banking sector will hopefully maintain a level of awareness that allows it to act tactfully in response to any bizarre situation to come. ■

INSIDE OUT: TURKEY'S FIRST UNICORN

By David Stuckey

On June 3, 2020, CEE Legal Matters reported that White & Case and its associated Turkish firm, GKC Partners, had advised interactive entertainment company Zynga Inc. on its USD 1.8 billion acquisition of Istanbul-based mobile gaming company Peak Oyun Yazilim ve Pazarlama, A.S. Baker McKenzie, working with its Turkish affiliate, the Esin Attorney Partnership, advised Peak on the transaction, which represented the largest acquisition of a start-up in Turkey to date, and makes Peak the country's first "unicorn." Dentons, along with its affiliate Balcioglu Selcuk Ardiyok Keki Avukatlik Ortakligi, advised selling shareholder Hummingbird Ventures CVA, Abcoo advised Peak Founder and CEO Sidar Sahin, the Verdi Law Firm advised selling shareholders Earlybird Verwaltungs GmbH, Evren Ucok, and Demet Suzan Mutlu Ucok, and BTS & Partners advised selling shareholder Endeavour Catalyst.

The Players:

- **Counsel for Peak: Eren Kursun, Partner, Esin Attorney Partnership**
- **Counsel for Zynga, Inc: Asli Basgoz, Partner, White & Case**
- **Counsel for Hummingbird Ventures: Selahattin Kaya, Counsel, BASEAK**
- **Counsel for Sidar Sahin: Murat Aygun, Partner, Abcoo**

CEELM: How did you each become involved in this matter? Let's start with you, Eren.

Eren: We first represented Peak Oyun Yazilim ve Pazarlama Anonim Sirketi – "Peak" – in 2017, when they sold their card-and-board-games studio to Zynga Turkey Oyun A.S. Our team had assisted Peak in that initial card-and-board-games sale, and we had also represented some of the sellers in various transactions, so we were familiar with the company and most of its shareholders. We were appointed by Peak and its shareholders in March for this matter.

CEELM: What about you, Asli?

Asli: We represented Zynga in its first Turkish acquisition, of Gram Games, for USD 250 million in 2018 and in its acquisition of the Finnish gaming company Small Giant Games for USD 560 million, also in 2018. So Zynga knows us very well and works with us on their international acquisitions. Very recently, once again we represented Zynga in the acquisition of 80% (and later of the balance) of Istanbul-based Rollic, a fast-growing hyper-casual mobile game company. That acquisition represented Zynga's entrance into the hyper-casual game market, one of the fastest-growing gaming categories.

CEELM: And you, Selahattin?

Selahattin: Hummingbird contacted us in Q4 2019 for the purposes of assisting them on corporate matters with respect to their Peak Games investment and also for a potential sale process.

CEELM: And you, Murat?

Murat: In 2011, we provided legal services to Alpha Investment LLC with respect to the acquisition of 16% shares in Peak. We then represented Alpha in its exit from Peak in 2017. Following the closing of that deal, we met with the management of Peak. They informed me that Peak would have liked to retain us as external counsel.

After obtaining the consent of Alpha in order to avoid any conflict of interest, we started rendering our services to Peak. As such, since 2018, we have been providing legal services to Peak with respect to its daily operations (*e.g.*, the preparation/negotiation of contracts with third parties, providing legal advice in various aspects of law, including advising on the data protection compliance arrangements, *etc.*) as well as managing certain claims and lawsuits involving Peak.

When Zynga became interested in Peak, we were naturally involved in the matter from the outset and asked by Sidar to represent him in this deal.

CEELM: What, exactly, was the initial mandate when you were each retained for this project, at the very beginning?

Eren: Our initial mandate was representing all shareholders and Peak in relation to the sale of Peak.

Asli: We were retained for the entire M&A transaction at the outset. Zynga's legal team, including GC Phuong Philips, Assistant GC Matt Tolland, and Senior Counsel Samir Najam (working closely with their specialist teams) team up with their external counsel early and integrate them into the deal team. That is one of the many reasons it is such a pleasure to work with Zynga.

Selahattin: Our initial mandate was handling corporate law matters, including representing Hummingbird on the Peak Games board. For this purpose, our Managing Partner, Galip Selcuk, was appointed to the board as the representative of Hummingbird, one of the board member of Peak Games.

Murat: The representation of Peak was discussed among the shareholders prior to the kick-off of the project and it was eventually agreed upon by them that it would be best if (i) Peak were represented by a law firm that was not representing Peak and/or any of the shareholders at that time; and (ii) each shareholder appointed his/its own counsel for the project.

It was contemplated by the parties that all the shares of Peak (including those held by Sidar Sahin) would be acquired by Zynga with the current management team remaining in place and Peak continuing to operate in Turkey. In this context, Sidar asked us to represent him to conduct and conclude on his behalf all negotiations with respect to the relevant acquisition. The initial scope of our assignment was completely in alignment with the final product. We represented the management throughout the whole process, as Peak will continue to be managed by the management team.

CEELM: Please describe the deal in as much detail as possible, including your roles in helping make it happen.

Eren: This deal is a landmark in the Turkish startup ecosystem and is Zynga's biggest transaction since its incorporation. Both sides were very enthusiastic about the transaction and excited to make this partnership happen. Within the scope of this transaction, Zynga paid half of the total purchase price in cash and the other half in Zynga stocks, so the sellers, as the former shareholders of Peak, became shareholders of Zynga as well.

The transaction involved seven sellers and four different law firms. We arranged all communication between the sellers and their counsels, and acted as the point of contact for Zynga and their counsel, as the lead counsel for the sellers and Peak. Combining all of the comments from the sellers and our colleagues in different time zones was very challenging, considering the time pressure. However, we managed to complete our drafts and mark-ups, including all parties' comments, in less than a week, as our Istanbul, London, Washington, Chicago, and Dusseldorf teams acted as a single unit and were able to provide fast and accurate advice to Peak. Further, as Peak's legal representatives, we worked hard to align all parties and find solutions that work for everyone.

Asli: Here is some background on the parties: Zynga is a global leader in its sector, founded in 2007 with the mission of "connecting the world through games." Its games, such as Words with Friends, FarmVille, and Zynga Poker are played by hundreds of millions of players each month. Peak, a globally successful mobile gaming company, has two forever franchises, Toon Blast and Toy Blast, that have consistently ranked in the top 20 in US IPhone grossing games and are played all over the world. It was founded in 2010 by Turkish entrepreneur Sidar Sahin.

As for the structure of the deal, this basic information (which has been well-publicized) is summarized from Zynga's own disclosures and filings. Zynga, Inc., (a Delaware Corporation) purchased all of the issued share capital of Peak from the sellers in exchange for consideration of approximately USD 1.8 billion, of which (a) USD 900 million was paid in cash, subject to adjustments set forth in the Share Sale and Purchase Agreement and (b) the remaining USD 900 million was satisfied by the issuance of shares of Zynga Class A common stock, based on the volume-weighted average closing price of the Zynga common stock during the 30 consecutive trading days immediately preceding the date of the Share Sale and Purchase Agreement, subject to adjustments as set forth in that agreement.

The challenges included: (i) Several different groups of selling shareholders (founder, different classes of investors) with sometimes competing interests, priorities and approaches to the transaction and to the transaction agreements, requiring extra coordination and agreement among themselves and with Zynga; (ii) Important agreements to be reached with Mr. Sidar Sahin and the management team of Peak for the post-closing period; (iii) Spin-off of a unit of Peak as part of the transaction; and (iv) Merger clearances needed in the US and Germany during a pandemic.

Peak Games and Mr. Sidar Sahin and Zynga knew each other from when Zynga acquired the mobile card game


Eren Kursun


Asli Basgoz


Selahattin Kaya


Murat Aygun

studio of Peak Games a few years ago. That helped make the deal happen more quickly than it might otherwise have.

Selahattin: We were representing one of the early investors to the PEAK Games, a Brussels-based private equity house, Hummingbird. We assisted our client on Turkish law matters with respect to handling their investment in their portfolio company as well as acting as the transaction counsel to Hummingbird during the sale process.

Murat: The project involved the acquisition of Peak's shares by Zynga in their entirety under the terms and conditions set forth in the SPA. Well, it was agreed by the parties that the closing of the deal would be an "exit" for all the shareholders, except Sidar Sahin, who would remain as the CEO of the company thereafter.

As I mentioned, the management team including Sidar agreed to remain in their then-current positions in Peak after the closing of the deal. This of course affected our level of responsibility and we had to be concerned not only about the completion of the share transfer at the closing but also the status of Peak and the management team at the post-closing stage. It was therefore important for us to close the deal smoothly and consider each and every detail for the Peak team to continue operating at its best following the acquisition. [In the process], we also had to balance the respective interests of Peak's management team and the other parties to the SPA and come up with solutions that satisfies each of them to a certain extent.

Throughout the project, we worked exceptionally closely with the management team. Whenever a document was circulated, the management team members, Beril, and I would review it individually, then have a video call to discuss our comments, and then revise it accordingly and send it to the attention of Baker McKenzie. Since we had already been working with those individuals during the years, it enabled us to truly understand their (and Sidar's) needs and concerns, which we believe accelerated the negotiation process.

CEELM: What is the current status of the deal?

Asli: The share purchase agreement was signed on May 31, 2020, and closing took place on July 1, 2020.

CEELM: What was the most challenging or frustrating part of the process?

Eren: This deal was exceptionally complex, for the following reasons, among others: there was warranty insurance and escrow, the purchase price was paid in cash and Zynga stocks, there were multiple sellers, there were anti-trust filings in multiple jurisdictions, and the governing law of the documentation was UK law with US and Turkish laws applying due to the home jurisdictions of the buyer and the target. Along with us, Baker McKenzie's London, Washington, Chicago, and Dusseldorf teams acted as a single unit and were able to provide fast and accurate advice to Peak, despite the time crunch and various time zones in play.

Another challenging part was managing the communications and negotiations between the sellers. Although everyone cooperated, it was not always easy to get aligned on all legal and commercial points.

Asli: This was a complex, multi-jurisdictional, fast-moving transaction with a US public-company buyer (which brings it with its own requirements) and sellers from Turkey and other jurisdictions. It wasn't frustrating, but it was challenging and required all parties to handle a range of legal issues to reach agreement.

Selahattin: There were multiple sellers in the transaction with different priorities, as can be expected in such transactions. Managing those priorities and finding mutual understandings when the parties were negotiating against the purchaser was challenging. It was also a complex transaction, including an escrow mechanism, W&I Insurance, and partial consideration in stocks, and it was subject to multiple jurisdictions (US, English, Turkish, *etc.*).

Murat: The most challenging part of the process was to adapt to the significant changes that we had to make in our professional and personal lives due to coronavirus, while at the same time working intensively on the project. All negotiations in this project had to be conducted and concluded in an electronic environment since all the parties involved had to adjust to today's pandemic circumstances. I must confess that it was not as hard as I thought, considering that the working from home system has its own benefits, such as being able to be reachable at all times, managing your time more efficiently, *etc.*

Other than that, as in most of the M&A deals, there was huge time pressure on all the parties; yet this was one of those times where it came with a ten-hour time difference between the purchaser (Zynga) and the sellers.

It was also challenging that we had to wear two hats in this deal: We were representing a seller, who agreed to transfer all of his shares in Peak, and an executive, who would continue to serve as Peak's CEO, at the same time.

Since the shareholders of Peak then consisted of four investment funds and three individuals (including Sidar Sahin), there were a lot of different interests and priorities at the table for this project.

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

Eren: Peak and the sellers mandated us in March, and due to the COVID-19 pandemic, that was the only meeting we held physically until the closing meeting. All communications, negotiations and everything other than our kick-off meeting were done over the phone, Zoom, and e-mail. The share purchase agreement was signed on May 31, and the deal closed on July 1, 2020. In such a short period of time, without holding physical meetings, we were able to close the deal in line with expectations and the schedule. I literally did the deal out of a ten-square-meter hut. This was unexpectedly smooth and easy. When governments initially implemented lockdown measures, we were concerned about how to coordinate this deal, but everything went really well.

Asli: The desire to do the deal was there.

Selahattin: The transaction was relatively fast despite the pandemic given that the parties were active in the same market and had a great knowledge about each other. Zynga acquired the board games of Peak earlier so there was lot of rapport between the sellers and Zynga. This helped the process move smoothly.

Murat: After an intensive negotiation process, the SPA was about to be signed in two days. While we were expecting that the tension would increase as we got closer to the end, the parties instead agreed on the outstanding issues more swiftly than we thought. This was unexpected; yet welcomed, since it showed that all the parties were comfortable with their respective positions under the SPA.

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

Eren: The final result matched our initial mandate. Our initial mandate was in March and the deal was signed at the end of May. The entire process was very quick, despite multiple party negotiations, multiple jurisdiction analyses, and COVID-19 social distancing measures.

Asli: It matched our initial mandate, which was to assist Zynga from the term sheet stage all the way through closing of the transaction, putting in place of post-closing arrangements and the like. We were involved throughout and worked closely with the Zynga team.

Selahattin: Yes, it matched our initial mandate.

Murat: The final result did match the initial mandate of the parties: It was contemplated that all the shares of Peak would be acquired by Zynga, while the management team, including Sidar Sahin, would continue to manage the company thereafter. Upon closing of the deal, this mandate was realized. The final result also matched the initial mandate of our client, Sidar Sahin. His priorities were to ensure a smooth transition process for the Peak team and the successful continuation of Peak's operations in Turkey with the same team.

CEELM: What specific individuals from your clients instructed each of you, and how did you interact with them?

Eren: We were instructed by the Peak management team. The Peak and Esin teams acted as one team, communicating on the phone, WhatsApp, and Zoom, basically 24/7. Due to the time pressure and the teams' desire to close the deal as quickly as possible, the Peak management team worked with us every day - they were very capable and

transparent, and not once did we face any difficulty in receiving information or feedback from Peak.

Asli: Ms. Phuong Philips, GC at Zynga, and Mr. Matt Tolland, Assistant GC

Selahattin: We were instructed by Lukas Decoster and Fırat Ileri of Hummingbird and we worked very closely with them.

Murat: As I mentioned before, we worked exceptionally closely with the management team. Considering the time pressure, and the time difference between the parties, every day we spent countless hours having conference calls and working through the project documents together. Well, we already had an established bond with the management team but I think this project took our relationship to a whole other level! Every day and almost every minute, we were either having video calls or messaging each other. Such a busy schedule could have been overwhelming; yet we were lucky to have worked with the management team. We were all excited about the project and trying to enjoy it as much as we could and that created a great harmony among us. We knew that the management team, including Sidar Sahin, had played a significant role in Peak's success, but with this project, we had the chance to clearly understand why their roles had a great impact on the company. As an effective visionary leader, Sidar has formed a team with extensive knowledge and well-earned experience that is passionate about the company's business and their contributions to its success. During the project, we were highly impressed by their work ethic and ability to make the right decisions swiftly, even after having spent restless days and nights. Sidar and the team's energy made this experience unique for us.

CEELM: How would you describe the working relationship with each other on the deal?

Eren: All the communications between the firms were done over e-mail, phone, and Zoom. We had no physical meetings other than the kick-off meeting we held with the Peak management team and the closing meeting held at our offices in Istanbul. We led the negotiations on behalf of Peak and all the sellers. Since we have good relationships with White & Case/GKC Partners and the law firms involved in this transaction, we worked in harmony, trying to accommodate each other's requests.

Selahattin: All the work among counsel for all parties (each investor had its own counsel and Esin/Bakers represented the company and coordinated all the various counsel) was done remotely primarily via Zoom calls. The working relationship among counsel was good, [as] many of us have worked together a lot over the years.

In the busy weeks leading up to signing, there were round-the-clock meetings and calls, negotiations, exchange of drafts and different work streams, some legal, some business, all working at the same time to get there.

Selcuk: Given the number of parties involved in the process, we worked with other law firms, both on the same and opposite sides. It was a pleasure to work with all the law firms involved. We believe all firms did a great job to focus and finalize the transaction in the targeted manner and deadlines. Even though each seller had its own legal representation, given the different priorities involved, all of them used one law firm to negotiate against the purchaser, which eased the process of negotiation and communication with respect to dealing with the purchaser and its legal counsels.

Murat: Since the project had been kicked off during the coronavirus pandemic, all the communication between the parties and the law firms was made over email and phone. No in-person meeting was held on our side, except for the closing ceremony where there had been a physical meeting held with all the parties involved.

Throughout the deal, we worked closely with Baker McKenzie, as the other firms did as well, since Baker McKenzie represented all the sellers. Especially when negotiating the SPA, almost every day we exchanged emails with Baker McKenzie back and forth and had numerous calls to resolve matters as quickly as possible. We were happy that the Baker McKenzie team members always gave quick responses and were reachable at all times. We thank them for all their hard work to make this deal happen.

CEELM: Finally, how would you each describe the significance of the deal?

Eren: Turkey has a young population full of talent and eagerness. However, the startup ecosystem is not as advanced and supportive as it is in countries like the US. These young people who are ambitious to follow their dreams sometimes have questions about whether they should do so in their homeland, or somewhere else where they can have access to better financing and mentoring. Despite the young talent, Turkey had never grown a unicorn. But now the Turkish youth has Peak to look up to - a Turkish start-up becoming a global brand. It is an inspiring story. It is a reason for the youth to stay home and follow their dreams. That's why although in most M&A transactions where the buyer is not Turkish there is a lot of nationalist criticism about Turkish assets being sold to foreign investors, in

"After an intensive negotiation process, the SPA was about to be signed in two days. While we were expecting that the tension would increase as we got closer to the end, the parties instead agreed on the outstanding issues more swiftly than we thought. This was unexpected; yet welcomed, since it showed that all the parties were comfortable with their respective positions under the SPA. "

the case of Peak, they became national heroes. I have never seen a transaction that received so much publicity and lifted spirit of every single Turkish citizen. Even the politicians combined around Peak's success. The closest thing I know to the Peak transaction is Turkish national football team winning third place in the World Cup in 2002!

Asli: This transaction was significant for the sector, for Turkey, for Zynga and of course for us.

As you know, this transaction represents the largest acquisition of a Turkish start-up company ever and makes Peak Turkey's first technology "unicorn." According to Zynga, Peak is one of the world's best puzzle game makers and Zynga considered it a good opportunity to Peak's creative and passionate talent to its portfolio. With the addition of Toon Blast and Toy Blast, in particular, Zynga is expanding its live services portfolio to eight forever franchises, meaningfully increasing its global audience base and adding to its exciting new game pipeline.

This transaction and other Zynga deals that proceeded (Gram Games and, most recently, the signing of Rollic Games) demonstrate that Turkey is a successful worldwide hub for game development, attracting attention from major strategic players who want to add to their portfolios and grow their business and user bases.

For White & Case and GKC Partners, this transaction really played to our strengths. Here, we were able to cover all of the relevant jurisdictions and specialties that played an important role in the transaction, from US capital markets, to M&A, to the critical IT/IP and data privacy components, multijurisdictional tax analysis, competition filing assessment across many jurisdictions. We worked seamlessly across a large multijurisdictional team, worked effectively with many counterparties (the sellers), all coordinated by Baker McKenzie but having their own counsel. We were asked by Zynga's legal team to take responsibility for many critical aspects of the transaction and to work closely alongside them and their business team to drive this deal to signing very quickly given its size and complexity.

It is always a pleasure to work with Zynga because of the quality of their people and how well they function as a team and appreciate the contributions of their counsel. This made the transaction, and others we have done with them, even more important and fun.

Selahattin: It is great to be a part of the first unicorn exit of the Turkish market. It is the biggest transaction in the Turkish market so far and most probably it will stay that way for quite some time. It gives a great message about the Turkish market with respect to the potentials of the start-ups, tech companies, innovative and open minded business models and shows that if supported, we are very well equipped and have the talent and a great potential to create and manage unicorns and companies capable of globally competing in different and new areas.

Murat: Since the coronavirus pandemic, people have been experiencing a slowdown in the world's economy and in most business sectors. Unfortunately, the number and the volume of foreign investments (and therefore of M&A deals) in Turkey also decreased in the past few years. This project, on the other hand, has been conducted and completed during the pandemic and, with a deal worth USD 1.8 billion, makes Peak the first "unicorn" in the technology sector of Turkey and one of the most valuable companies in Turkey's history.

We believe that the project had a great influence on the pessimistic atmosphere in the world and in Turkey and reminded potential investors that Turkey might be the right choice for them. Also the international news on the project showed the world the success of a Turkish start-up company and that there are indeed big and serious Turkish players in the global gaming sector. The project is also promising for the young entrepreneurs in Turkey since they now know for sure that anything can be done with dedicated hard work and a visionary mind.

Finally, we would like to point out that it was highly crucial for the management team that Peak continued its operations in Turkey because Sidar Sahin was always willing to keep contributing to the growth of the Turkish economy. With a vision to change the world, he emphasized from the beginning of the project that this was "just the beginning" .

We feel lucky to have the chance to work with such a leader and his impressive management team, and we are proud to have been a part of this project. ■

EXPAT ON THE MARKET: INTERVIEW WITH STEPHANIE BEGHE SONMEZ OF PAKSOY

By David Stuckey

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

Stephanie: I was born and educated in France, where I earned a double-major degree in French and Anglo-American business law from the University of Paris X-Nanterre, in 1996. I then continued with an LL.M in Trade Regulation at NYU Law (in 1997) and a graduate degree in French Intellectual Property Law back in Paris, at the University of Paris II - Pantheon Assas, in 1998. I was admitted to the New-York and Paris bars in 1998 and started to work at the Paris office of Cleary Gottlieb, where I stayed for eight years. I then relocated to Turkey in 2006, first with the Istanbul office of Denton Wilde Sapte, before moving to Paksoy in 2010 – for the first time experiencing a truly local, independent Turkish firm, albeit with a mostly international clientele and global working standards.

CEELM: Was it always your goal to work in Turkey?

Stephanie: Having grown up in Paris and spent some time in New York, studied different legal systems, started my career at an international firm, and developed a practice in cross-border M&A, I was always open to the idea of pursuing my career in a different corner of the world. The opportunity came through my personal life: a few years after marrying a Turk, we decided to move our family to beautiful Istanbul, a chance for us to raise our children in a multicultural city with a strong historical affinity towards French culture, and for me to further develop and find renewed challenges in my legal practice.

Stephanie Beghe Sonmez

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

"While we may not always realize it, as French people we enjoy the comforts of a wealthy, fairly well-organized country, leading to a more individualistic and somewhat less flexible approach. Turkish people are more likely to accept that certain realities cannot be changed, but also more willing to adapt – to try and find a way to make things work."

the years.

Stephanie: I was always keen to keep wearing two hats as I developed my practice: Corporate/M&A and IP/IT. The intense work at Cleary Gottlieb enabled me to do that, and the fast-developing business law scene in Turkey during the 2000's also gave me the opportunity to keep building up expertise in both areas. In very different ways though: moving my cross-border M&A practice to Istanbul has been very exciting, with Turkey attracting foreign investments in a large variety of business sectors from virtually all regions of the globe. You can cater to the needs of American, Asian, Middle-Eastern, or European clients, with their very different approaches to doing business and varying levels of risk appetite. As for IP/IT, I initially found a much less sophisticated market and body of law than I had known in France, and I have since had a front row seat on major legal developments in these areas, as Turkish legislation has progressively caught up with European legislation over the years, especially for e-commerce and data protection.

CEELM: How would clients describe your style?

Stephanie: Hands-on, thorough, accessible, sometimes a bit tough in negotiations (I heard). To me the best praise comes when the counterparty says they wish they had you on their side, which has happened a few times.

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

Stephanie: Not as many as you'd think. Starting with France's distinctive administrative law and administrative court system, which Turkey has chosen to replicate, for better or for worse, I would say France's and Turkey's approaches to legal doctrine are pretty close. The main difference lies in the fact that many areas of the law in Turkey do not enjoy the same level of development as in France, so you don't always have as large a body of jurisprudence and academic opinions to work with. This means more need for interpretation and creative solutions, and also more reliance on the formal or informal guidance of governmental authorities in regulated sectors.

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

Stephanie: While we may not always realize it, as French people we enjoy the comforts of a wealthy, fairly well-organized country, leading to a more individualistic and somewhat less flexible approach. Turkish people are more likely to accept that certain realities cannot be changed, but also more willing to adapt – to try and find a way to make things work.

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

Stephanie: To my partners and colleagues at the firm, hopefully, a different perspective, the ability to decode situations or behaviours that could otherwise remain cryptic to the Turkish eye, and the benefit of my years of experience at international firms. To the clients of the firm, the comfort of a trusted advisor who can translate local concepts into a framework they are familiar with, understand where they are coming from, and help them determine where to draw the line, keep reasonable expectations, and make the most of opportunities when investing in Turkey.

CEELM: Do you have any plans to move back to France?

Stephanie: No I don't. I accept the fate of all people who have adopted a second country as their own, which is that you'll always miss something even when you're home: the Seine while in Istanbul, the Bosphorus while in Paris.

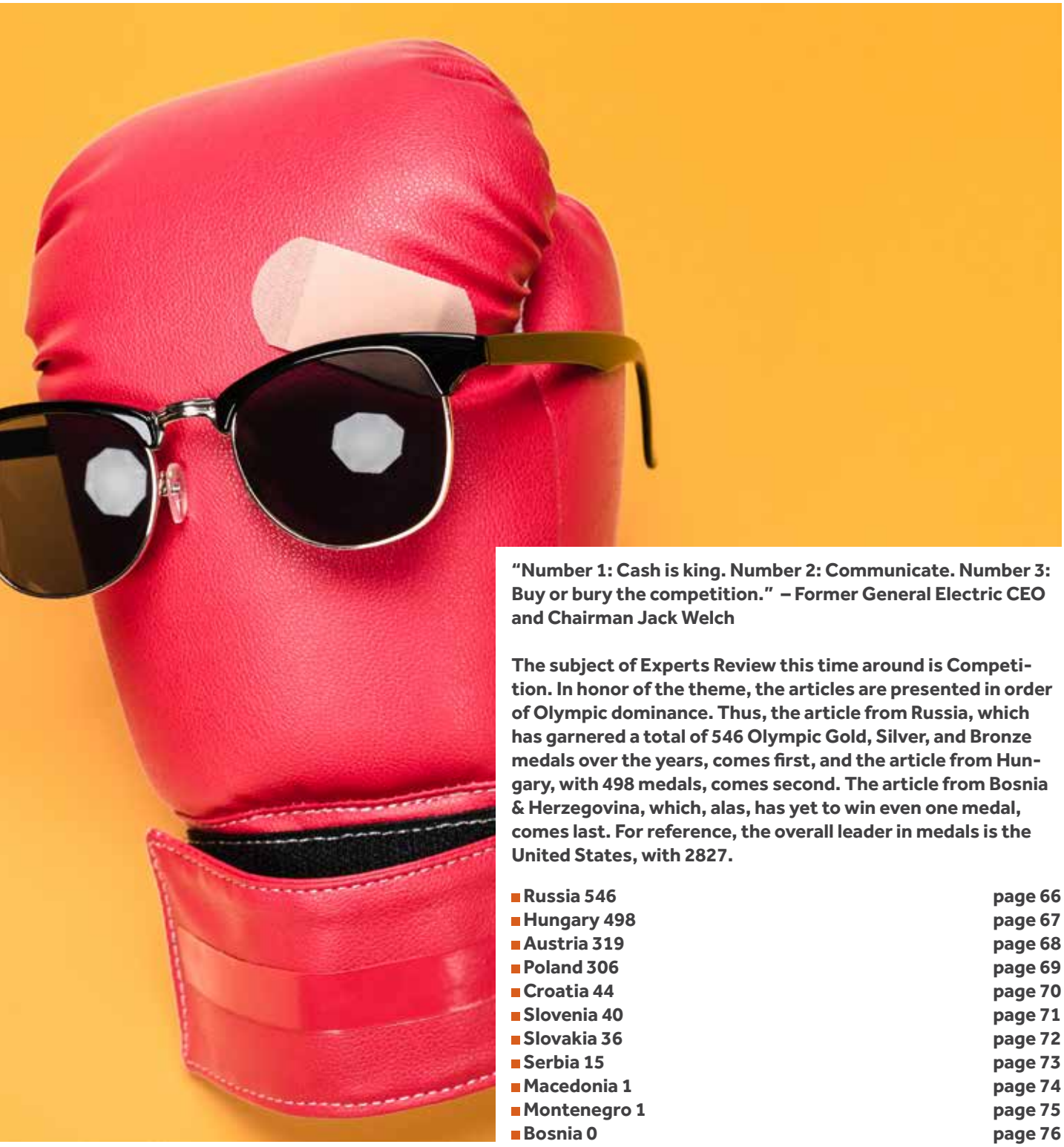
CEELM: Outside of Turkey, which CEE country do you enjoy visiting the most, and why?

Stephanie: I find Montenegro to have quite a lot of charm, with its unique blend of Balkan identity and historical Venetian influence.

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

Stephanie: Istanbul obviously has countless beautiful sites to visit, but you wouldn't want any visitor to leave without having enjoyed the pleasures of raki balik: sharing a meal of fresh fish, meze, and traditional raki while overlooking the shores of the Bosphorus at sunset. ■

EXPERTS REVIEW: COMPETITION



"Number 1: Cash is king. Number 2: Communicate. Number 3: Buy or bury the competition." – Former General Electric CEO and Chairman Jack Welch

The subject of Experts Review this time around is Competition. In honor of the theme, the articles are presented in order of Olympic dominance. Thus, the article from Russia, which has garnered a total of 546 Olympic Gold, Silver, and Bronze medals over the years, comes first, and the article from Hungary, with 498 medals, comes second. The article from Bosnia & Herzegovina, which, alas, has yet to win even one medal, comes last. For reference, the overall leader in medals is the United States, with 2827.

- Russia 546 page 66
- Hungary 498 page 67
- Austria 319 page 68
- Poland 306 page 69
- Croatia 44 page 70
- Slovenia 40 page 71
- Slovakia 36 page 72
- Serbia 15 page 73
- Macedonia 1 page 74
- Montenegro 1 page 75
- Bosnia 0 page 76

RUSSIA: A STEP ON THE ROAD TO IMPROVED ANTITRUST COMPLIANCE

By Torsten Syrbe, Partner, and Ani Tangyan, Associate, Clifford Chance Moscow

Most multinational corporations have internal antitrust compliance policies in place for their global businesses, covering their Russian operations. Following years of debate, Russia has enacted a law meant to improve antitrust compliance by regulating internal compliance policies (the "Compliance Act").

Multinational corporations don't necessarily need to upgrade their compliance policies, at least straight away, as a result of the Compliance Act, which came into force in March 2020 in a watered-down form. However, doing so would have certain benefits, including giving recognition under Russian law to the compliance policy, potentially generating goodwill with the regulator.

The Initial Idea

As in many other jurisdictions, the initial idea behind the Compliance Act was to give corporations credit for maintaining internal compliance programs. For instance, it sometimes happens that employees breach antitrust rules, where management is neither involved in nor aware of the offending conduct. In such scenarios, the breach is often imputed to the corporation itself, potentially leading to liability for it. A simple example of an incentive for corporations would be to offer them reduced penalties upon a showing that the breaches occurred despite their provision of proper antitrust compliance training to employees.

Under Russian law, turnover-pegged fines are generally calculated within corridors ranging from 1% to 15% of the relevant turnover. The Federal Antimonopoly Service (FAS) starts in the middle of the applicable corridor and then factors in mitigating or aggravating circumstances, such as the duration of the breach, the offender's cooperation with it, *etc.*, with each factor assigned a value of up to 1.75%.

It was originally contemplated that having a functioning antitrust compliance policy in place would be treated as a mitigating factor when calculating fines. Provisions to that effect were included by the FAS in the first draft of the Compliance Act, then omitted by the Russian government, and then raised again before parliament. Ultimately, parliament decided not to provide for mitigation in the final version of the Compliance Act, taking away a key incentive for companies to implement such policies, calling into question the practical value of the Compliance Act.

What's Left

The fact an internal compliance policy is in place will be taken into account by the FAS when deciding the frequency of scheduled antitrust reviews. That said, scheduled reviews are not the measures that companies fear the most.

Companies now have concrete grounds in law to cite their internal compliance policies as part of their defense in antitrust investigations. While it remains up to the FAS and Russian courts to decide whether to treat this as a mitigating factor or not, there is at least a chance of benefitting from a reduced fine for those companies that can demonstrate they take antitrust compliance seriously.

Policy Requirements

According to the Compliance Act, an effective antitrust compliance policy must set out risk assessment procedures, mitigation measures, and procedures for making all employees aware of it. As to form, the policy must be in Russian and published on the corporation's website. Notably, it may be either adopted by a Russian corporation or introduced by another group entity, such as a global parent corporation.

Adoption of an antitrust compliance policy is voluntary. A corporation can submit its policy for voluntary review to the FAS, and this may provide a certain level of comfort. However, the legal status of a policy is the same whether it has been approved by the FAS or not.

For What It's Worth

Companies should consider whether to upgrade their existing compliance programs to have them recognized as a sufficient policy under Russian law. Although this is not essential and may only provide limited benefits, any such step may be seen as a sign of respect for the FAS and will enable the corporation concerned to cite its policy should the need arise. Second, Igor Artemiev, the head of the FAS, has emphasized that the FAS has not given up on the idea of introducing more concrete legal benefits, and the authority continues to lobby for legislative amendments to this end. In addition to a potential reduction of applicable fines, the FAS is considering the possibility of fully releasing companies from liability if they have duly implemented a legally sufficient policy. ■

HUNGARY: RECENT COMPETITION LAW DECISIONS TO CHALLENGE YOUR DATA COLLECTION PRACTICE

By Dora Petranyi, Partner, and Szabolcs Szendro, Senior Counsel, CMS Budapest

Some experts say that "data is the new oil," but oil can catch fire easily without proper handling. When you hear concerns about the collection of personal data, you might first associate them with data protection regulations, but competition law can also seriously affect your business. Competition authorities have intervened recently against platforms by using patterns that might be widely applied to other companies. Is this just the beginning? Who is in danger?

The phrase "data is the new oil" is used frequently because data has started to mean power – a meaning that oil used to enjoy. In recent years, personal data has become the most valuable kind of data, which has also led to increasing market power in a new area of economic competition. Increasing market power has also drawn the attention of government agencies, which require special responsibility be taken to ensure that it will not be abused or misused. The main problem here is that there is no clear case law on what these expectations mean in practice.

This problem is being handled in different ways. European privacy regulators have created a new regime, the General Data Protection Regulation, and some experts continue to urge governments to introduce new regulatory powers (see, for instance, the UK's Competition & Markets Authority). The other alternative is to fit the problem into an existing regime. This latter group of competition authorities concluded that the alleged misuse of powerful data could lead to two key problems: (i) abuse by potentially dominant companies; and (ii) consumer behaviour being falsely influenced, even if the company is not dominant.

From this perspective, it is perhaps not surprising that – similar to privacy challengers – competition authorities also focused on one of the world's largest databases: Facebook. All over the world, Facebook has been investigated and several times has been found liable. These cases can be considered pilot projects for the future. The two competition authority approaches described above are adequately reflected in these Facebook investigations. The primary ground-breaking abuse-of-dominance decision came from Germany, and the Hungarian authority recently confirmed a consumer-misleading case. These two cases, considered together, help us to foresee a new era with more concrete expectations.

The German competition watchdog banned Facebook for combining user data from various platforms and using them for its advantage. In the authority's view, Facebook forced consumers to agree to vague data collection from both within and outside its platform (*e.g.*, from Instagram, WhatsApp, and third-party sources). Although the decision is under judicial review, so far it seems that the courts will support the watchdog's position, as Germany's highest court last month approved the enforcement of the interim decision.

The Hungarian competition authority went further and fined Facebook for misleadingly advertising that "*Facebook is free and always will be.*" Contrary to this promise, the authority established, Facebook monetized the user information it had gathered by selling it and displaying targeted commercials. Therefore, the Hungarian body held that Facebook was not, in fact "free," as users paid for the service with their user data. This action follows the European Commission's earlier procedure resulting in the addition of more clarification to Facebook's terms regarding its use of data. The Hungarian competition authority has followed the same pattern consistently, and it has initiated a similar investigation against Viber this year to determine whether it is indeed free of charge.

Given the above, we can easily conclude that if you collect and monetize data – if, for example, you are a FinTech company that collects purchase data and then sells and targets direct advertising out of this information without its consumers' prior consent, or a drugstore that gives access to free promotions, but requires consumers to complete questionnaires to be used in the future – you might be at risk..

Although it is almost impossible to predict the next steps, we can be sure that competition authorities are among the strictest enforcement bodies with adequate toolkits. In the future, we anticipate that these competition authorities will act even more effectively, levy ever-higher fines, and require adequate preventive steps from the relevant companies in response to these new challenges. ■

AUSTRIA: AUSTRIAN CARTEL COURT FINDS ABUSE OF DOMINANT POSITION BY PEUGEOT VIS-A-VIS ITS INDEPENDENT DEALER

By Martin Eckel, Partner, and Julia Lorincz, Associate, Taylor Wessing Vienna

On May 12, 2020 after a long-lasting proceeding between the general importer Peugeot Austria and Austrian Peugeot dealer Buechl, the Austrian Cartel Court decided in first instance that Peugeot Austria had abused its market power vis-à-vis Buechl. The dispute revolved around the imposition of contractual conditions by Peugeot which, in the opinion of the court, put dealers at a substantial economic disadvantage. Peugeot Austria has expressed its surprise at the court's decision and has announced that it will file an appeal.

Inadmissible Terms Applied by Peugeot

The parties used a common business and contract model which confers upon the dealer the non-exclusive right to distribute and provide after-sales service for new and light commercial Peugeot vehicles. Buechl claimed that the conditions imposed on it by Peugeot Austria were abusive and excessive. The Austrian Cartel Court ruled partly on behalf of the plaintiff, holding that certain clauses were inappropriate and in violation of EU and Austrian law.

The court found that the mandatory participation of the dealer in Peugeot Austria's pricing campaigns and promotions disproportionately restricted the dealer's economic activities. In addition to such predetermined pricing campaigns the payments of dealer bonuses were linked to customer satisfaction surveys. The court reasoned that such surveys did not reflect the quality of the dealer's services or the customer's experience, thus again unduly limiting the dealer in its daily business. These and other practices of Peugeot were found by the cartel court to be abuses of Peugeot's market power. Other practices included the setting of clearly exaggerated sales targets and the passing on the costs of "mystery shoppers" and audits to the dealer by disguising them as training costs.

Even though the Court prevented Peugeot Austria from applying numerous trading conditions, it did not fully decide in favor of the plaintiff. For example, claims regarding provisions imposed by Peugeot Austria stipulating flat-charges for mandatory trainings of the plaintiff's employees and investments to ensure corporate identity were rejected by the court.

The Austrian Principle of Relative Dominance

In its ruling, the Court applied European competition law in parallel to Austrian competition law. The distinction is particularly important for the decision's trans-border significance. While European competition law only prohibits the abuse of absolute market dominance, Austrian competition law also recognizes the principle of relative market dominance and prohibits its abuse. This means that a market players' dominance is not only determined by comparing market positions between competitors but also by considering a company's (strong) vertical relationships to its trading partners – both dealers and suppliers.

In the Peugeot case the Court concluded that the plaintiff, Buechl, is in a dependent relationship with the defendant since the absence of the business relations would lead to a severe loss of revenue. This reliance on Peugeot Austria provides it with relative dominance. By making certain business terms compulsory (such as described above), while being in a position of relative dominance, Peugeot Austria violated competition laws by abusing its market power.

Future Relevance of the Decision for Dealers Outside Austria

It can be assumed that the Court's decision is relevant not only for Austrian dealers, but rather for dealer networks throughout Europe. Nevertheless, it must be noted that Austrian competition law differs from European competition law, so that the decision's ultimate significance outside Austria is unclear. Nonetheless, the decision marks a milestone in identifying and clarifying abusive trading provisions, and its significance is not to be underestimated as it will ultimately affect other brand dealers as they deal with similar issues.

Although the decision's ultimate legal impact is uncertain, its key elements have been welcomed by industry representatives. Automotive dealers have been complaining about unfair business practices and predominance of manufacturers. The findings and reasonings of the Austrian Cartel Court therefore contribute substantially to restoring the original negotiation stances between dealers and suppliers by evening out the power imbalance between them.

Regardless of the appeal's outcome, it is imperative to monitor the situation closely, since it will affect the industry significantly with regards to operating in compliance with competition laws. ■

POLAND: THE POLISH COMPETITION AUTHORITY BECOMES BOTH MERGER CONTROL AND FOREIGN INVESTMENT RESTRICTIONS WATCHDOG

By Mikolaj Piaskowski, Head of Competition and State Aid, Baker McKenzie Warsaw

The amendment to the Act on the Control of Certain Investments (the "Act") that came into effect on July 24, 2020 has vested the President of the Office of Competition and Consumer Protection – the UOKIK – with broad new powers. The new rules are temporary and will be in force for 24 months. On July 21, 2020, the UOKIK issued 50-page long, detailed procedural guidelines, which unfortunately are not available in English.

The new rules apply in parallel to the merger control regime, which is also administered by the UOKIK. It is possible that a transaction could require two different filings to the same State body. The UOKIK has declared that, if possible, such submissions would be handled by the same case handler.

Affected Investors

The draft of the Act was controversial at first, as it was not clear which investors would be bound by the new provisions. It was eventually clarified that it would apply to entities that are not from EU/EEA/OECD member states, which maeans it will mainly affect investors from such big economies as Brazil, China, India, and Russia. Also, as the Act refers to natural persons who do not have citizenship in a member state and companies that do not have, or did not have, their registered offices in the territory of a member state for at least two years from the day preceding the notification, it seems to also formally cover Polish companies (controlled by Polish investors) that were created not earlier than two years ago.

Risks

Failure to notify the affected transaction is punishable by a financial penalty of up to PLN 50 million (approximately USD 13.5 million) and imprisonment from six months to five years. What may be particularly important from a transactional perspective is that any transaction made without the required notification or made despite an objection will be invalid (such a sanction is not envisaged by the Polish merger control regime). In certain cases, a sanction limiting the exercising of voting rights will apply.

Transactions

In brief, the UOKIK must be notified about: (i) a direct or indirect acquisition or achievement of significant participation in a protected entity by, in brief, holding shares representing at least 20% of the total number of votes, or reaching or exceeding the thresholds of 20% and 40% of the total number of votes in the protected entity's decision-making body, or the acquisition or lease of an undertaking or its organized part; or (ii) an acquisition of dominance through the acquisition of shares, or the conclusion of an agreement providing for the management of the entity or the transfer of profit by that entity.

Protected Entities

The Act protects the following entities with a Polish turnover exceeding the equivalent of EUR 10 million in any of the two financial years preceding the notification: (i) all public (listed) companies irrespective of the sector they are active in; (ii) all entities that (a) have property disclosed in a single list of the facilities, installations, equipment and services included in critical infrastructure (such as companies providing, for example, food, water, energy, or fuel supplies); (b) develop or modify software for strategic companies, including for the control of power plants or networks, the management and control of drinking water, or equipment or systems used for cash supply or card payments; or (c) conduct a specific business activity in one of 21 industries, including electricity generation, petrol chemicals production, or medicines or other pharmaceutical products production.

Procedure

Affected investors must submit a notification before the conclusion of any agreement or other legal transaction, and in the case of any invitation to subscribe for or exchange stocks in a public company, before publishing the public bid. The latter may be particularly problematic, if even possible, in practice.

As regards timing, the UOKIK should confirm within 30 business days that it does not raise any objections to the transaction, or, if there are reasons that justify a further examination of the acquisition in terms of public security, order, or health, initiate a screening procedure, which may take up to 120 days.

The notifying party and the scope of required information will depend on whether the acquisition is direct or indirect, or whether subsequent achievement has taken place. The notification requires submission of a long list of documents.

Finally, the UOKIK may initiate proceedings if it becomes aware that events covered by the Act have taken place within five years from the completion (in particular in order to prevent circumventions of the law). ■

CROATIA: CROATIAN COMPETITION AGENCY CONFIRMS COCA COLA'S COMPLIANCE WITH COMMITMENT DECISION AND CLOSES INVESTIGATION

By Iva Basaric, Partner, and Lovro Klepac, Senior Associate, Babic & Partners Law Firm

Earlier this month, the Croatian Competition Agency confirmed that Coca Cola HBC Hrvatska d.o.o. had complied with the commitments the company had offered, and which had been accepted by the CCA, in the course of an investigation of vertical restraints imposed by Coca Cola on its distributors (most notably exclusive purchasing and tying arrangements). Early on, the CCA expressed concern that Coca Cola's practices would constitute infringements under Articles 8 and 13 of the Croatian Competition Act (essentially corresponding to Articles 101 and 102 of the Treaty on the Functioning of the European Union). The concerns were that exclusive purchasing obligations and tying arrangements imposed on Coca Cola's distributors could lead to the foreclosure of Coca Cola's competitors, placing distributors at a competitive disadvantage towards other buyers, who are not subject to exclusivity agreements. To a number of local stakeholders, it seemed that the types of violations discussed warranted imposition of fines, which is why the decision to accept and go through with commitments was met with a certain degree of criticism.

Croatia has had relatively few in-depth investigations, especially in abuse-of-dominance cases involving tying practices. In this context, and considering the insignificant precedential value of commitment decisions in general, acceptance of commitments in these types of cases (involving undertakings that are likely dominant) does not benefit the development of Croatian competition law practice. This is largely because commitment decisions do not contain detailed legal findings and typically do not end up in litigation before the courts. In the absence of significant case law with detailed legal reasonings, undertakings can struggle to assess the compliance of their practices with Croatian competition law and the CCA's decisions. Furthermore, commitment decisions are naturally less helpful to victims of competition law infringements that are requests for compensation of damages, considering that a commitment decision does not contain a finding of infringement, but concludes there are no longer grounds for action.

This being said, the CCA's opting for a commitment decision in this case appears to be in line with its practice of accepting commitments offered by dominant undertakings which entered into single branding agreements (most notably the CCA's July 12, 2012 decision in proceedings against Primalab d.o.o., Zabok). CCA's commitment decision also follows the approach taken by European Commission in proceedings against The Coca Cola Company and its bottlers, which had joint dominance in the market for sale of carbonated soft drinks where the restraints imposed on their distributors included, among others, exclusivity and tying arrangements leading to foreclosure of rival suppliers. It would appear that choosing to accept the commitments offered by Coca Cola allowed the CCA to accomplish a relatively quick change of behavior in the market – a result that would probably only be achieved through a prohibition decision after a much longer adversarial procedure, which could go on for several years.

In its March, 2014 policy brief titled "To commit or not to commit?", the European Commission expressed its position that opting for a prohibition decision instead of a commitment decision is suitable if the aim is to punish for past behavior, or if it is important to set a legal precedent, or if the only commitment that can be offered is to cease anti-competitive behavior. Commitment decisions are generally not appropriate in cases where nature of infringement requires imposition of fines, which is why their application is excluded in cartel cases. The situation with abuse-of-dominance cases is not as clear as with cartels, since the gravity of the infringement found in the preliminary assessment significantly influences the decision as to whether commitments are appropriate or if deterrence is required. Still, the European Commission's practice shows a frequent use of commitment decisions in abuse-of-dominance investigations dealing with similar restrictions. For this reason, the CCA's imposition of commitments in the present case – although subject to local criticism – is not entirely unusual. The CCA would, of course, also have the power to impose fines where an undertaking fails to comply with commitments accepted by the CCA. ■

SLOVENIA: COULD COVID-19 INVESTMENT-ENHANCING MEASURES AFFECT THE AUTONOMY OF THE SLOVENIAN COMPETITION REGLULATOR?

By Natasa Pipan Nahtigal, Partner, and Miha Hocevar, Associate, Selih & Partnerji

In addition to the effect of the newly introduced FDI rules, the upcoming post-epidemic period in Slovenia will see extensive efforts to revive the economy. On May 29, 2020, Slovenia's Parliament adopted the Intervention Act to Remove Obstacles to the Implementation of Significant Investments to Start the Economy After the COVID-19 Epidemic to restart economic activity and growth in key investment sectors.

Pursuant to the act, all significant investments will be deemed to be for the public benefit and must be addressed by the competent authorities as a matter of priority. This applies regardless of the source of an investment's financing – whether it comes from public sources, private funds, or a combination of the two. The act sets out criteria for determining what is a significant investment and contains measures designed to speed up the coordination and operation of public authorities in procedures for obtaining certain permits, opinions, approvals, and decisions under sectoral laws (collectively, "Rulings"), as well as other measures designed to remove obstacles to significant investments, including the creation of a special group (the "Coordination Group") within the Ministry of the Environment and Spatial Planning that will coordinate procedures for obtaining Rulings related to significant investments.

On the basis of the act, the Slovenian Government compiled an initial list (which can be amended until December 31, 2021) of 187 future investments across the environment, energy, transport and regional development fields that are considered to be significant, with an aggregate value of EUR 7.7 billion. Some of these projects are small, and clearly and narrowly defined (such as a school redevelopment project), while others are larger and broader (such as the construction of a new nuclear power plant, construction of several motorway and railway sectors, construction of several residential community complexes, *etc.*). Some projects will likely need merger control approval by the Slovenian Competition Protection Agency (the "Agency"), as they either include the establishment of joint ventures or result in a change of control.

The act foresees that the Coordination Group will not make any Rulings itself nor opine on the Rulings, but rather only coordinate the competent administrative authorities, who will in turn make the actual Rulings. It is unclear how this "coordination of procedures" will work, as the general principles of legality and the autonomy of administrative authorities limit interference in administrative proceedings. Moreover, specific provisions grant some public authorities, such as the Agency, an even higher degree of independence and protection from ministerial interference.

The Agency is an independent administrative authority responsible for enforcing antitrust and merger control rules. Its autonomy is essential to its effective operation and is therefore guaranteed by law. Moreover, the Agency's predecessor (the Competition Protection Office) was affiliated with the Ministry of Economy and its lack of organizational independence cast doubt on its impartiality, particularly in proceedings involving the State. During Slovenia's accession to the EU and the OECD, it became clear that more effective protection of competition was required. Specifically, the OECD emphasized the need for appropriate changes concerning matters around funding and prioritizing between cases and decisions in specific cases. Consequently, the Agency was established in 2012 as a more autonomous and independent regulator. Under the amended legal framework, only the Government and the Parliament may give general guidance to the Agency regarding its work and operations, suggesting that a ministry may not do so. Moreover, the explanation of the 2012 draft legislation explicitly stipulated that a ministry will not be allowed to give guidance to the Agency.

The applicable competition legislation therefore prohibits the Coordination Group (as part of a ministry) from offering any instructions or guidance to the Agency, no matter how general or abstract they might be and regardless of their purpose. Any such interference with the Agency's work could be considered an interference with its independence, as well as a breach of Slovenia's pre-accession commitments to the EU and OECD. On the other hand, the scope of the Coordination Group's activities appears to include a degree of control over certain activities of the Agency – for instance in prioritizing of cases. The apparent incompatibility of these legislative provisions may prove difficult to resolve in practice. If the situation is not remedied, the confusion could delay – rather than accelerate – those significant investment projects that involve merger control procedures. ■

SLOVAKIA: NEW COMPETITION ACT IN THE MAKING

By Juraj Gyarfas, Partner, Dentons

The Slovak Competition Act (No. 136/2001 Coll. as amended) has been the cornerstone of Slovak competition law for almost two decades and has seen its share of major amendments. The Slovak Competition Authority has now decided to table a new Competition Act and has submitted a draft for preliminary consultation. The draft transposes the ECN+ Directive (Directive (EU) 2019/1) and addresses a number of competition law issues that have been debated for years in Slovakia.

If approved, the new Act will introduce several significant changes, the most important of which are summarized in this article.

EU-Aligned Definition of Undertaking

The current definition of "undertaking" is derived from the legal personality of a company. The new Act aligns the definition with EU case law and may thus treat a group of companies as a single undertaking. In practice, this means that fines can be calculated based on the global turnover of the entire group, and they can be imposed on a number of affiliated entities that would be jointly and severally liable.

Moreover, the new Competition Act introduces the responsibility of economic successors for competition law infringements. This is also in line with EU case law and it will underscore the need of thorough competition due diligence in corporate transactions.

No Clearance Requirement for Foreign Joint Venturaes

Under the current Competition Act, joint ventures have to be cleared in Slovakia even if only one of the parents has relevant domestic turnover and even if the joint venture will not have any impact on the local market. This will change under the new Competition Act, as the specific notification threshold for joint ventures will be repealed and purely foreign joint ventures are thus less likely to be caught.

This change will significantly reduce the administrative burden of transactions that are very unlikely to give rise to any competition concerns in Slovakia.

New Notification Threshold

The new Competition Act introduces a new de facto notification threshold. Even if a transaction falls below the existing turnover thresholds, the parties will have to request an opinion of the Competition Authority if the domestic turnover of the two parties is at least EUR 4 million and the horizontally or vertically overlapping market share would be at least 40%. The Competition Authority will decide whether the concentration needs to be formally cleared.

In practice, this means that a significant number of transactions that previously were safely outside the notification requirement will now have to be examined and will require an analysis of relevant markets and the parties' respective share of those markets. This will increase the administrative burden in relation to numerous transactions.

Institutional Changes

The new Competition Act introduces a number of institutional changes to the Competition Authority. Most importantly, it introduces a transparent procedure for selecting the Chairman and the Vice-Chairmen of the Competition Authority. It also introduces a cooling-off period that would prevent former Chairmen and Vice-Chairmen from acting in competition matters for one year after they leave office.

The draft also clarifies and widens some powers of the Competition Authority. Most importantly, the Competition Authority will have the power to order interim measures as well as behavioral and structural measures.

Extended Limitation Period

Last but not least, the draft Competition Act extends the existing limitation period for competition law infringements from eight years to ten years. Again, this reinforces the need for thorough due diligence before corporate acquisitions.

* * *

Overall, the draft new Competition Act is a comprehensive and well-drafted piece of legislation. It demonstrates that the Slovak Competition Authority intends to make use of the window of opportunity created by the transposition of the ECN+ Directive to remedy a number of shortcomings that have come to light over the years. For instance, the draft puts an end to the argument that the review of documents seized during a dawn raid is still part of the raid and thus illegal if conducted after the expiry of the authorization. At the same time, if the law is passed, some provisions will give rise to new administrative costs, in particular in relation to smaller mergers and acquisitions that have historically been safely below the notification thresholds and will now have to be analyzed in more detail.

It remains to be seen how the draft will progress through the legislative process and which parts of it will eventually become law. The draft is intended to come into force on February 1, 2021. The timeframe for transposition of the ECN+ Directive is set until February 4, 2021. ■

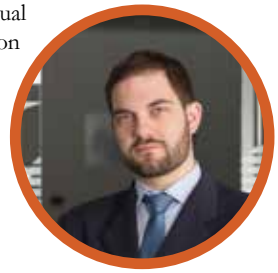
SERBIA: MIND THE GAP! EUROPEAN UNION AND SERBIA

By Bojan Vuckovic, Partner, and Veljko Smiljanic, Senior Associate, independent attorneys at law in cooperation with Karanovic & Partners

It's no secret that competition law across the Western Balkans has been greatly shaped by EU accession, with local developments regularly driven by EU practice and the EU's regulatory framework. Even if this were not the case in practice, the Stabilization and Association Agreements are quite clear: any anti-competitive practices are to be assessed on the basis of criteria arising from competition rules in the EU, as well as interpretative instruments adopted by EU institutions. Therefore, precedents by the European Commission or the Court of Justice of the European Union are routinely referred to in the decisions of the Serbian Commission for Protection of Competition, while the EC's annual progress reports underline that the country's legislative framework is broadly in line with EU rules, and Serbia is considered moderately prepared in the area of competition policy.

The nature of the cases themselves has gone relatively less explored. Indeed, there have been several investigations before the Commission that were clearly inspired by the practice of the EC or specific member states. We are not talking about run-of-the-mill resale price maintenance or bid-rigging cases, which can be found everywhere, but highly specific matters, with clear parallels between the different jurisdictions. This trend of comparative interplay has only increased with the growing sophistication, experience, and track record of the Serbian enforcer.

Maybe the first high-profile local case clearly cribbed from European practice was the Commission's 2012 *Frikom* decision, inspired by the EC's landmark 1998 *Unilever/Van Den Bergh* case, and looking at similar issues pertaining to freezer and outlet exclusivity in the ice cream market. While the lag in this instance was quite long (and involved multiple restructurings of local competition rules, as well as the country itself), further practice would reduce it significantly. The Commission's 2015 *Tobacco Industry* investigation (terminated in 2019) echoed *Container Shipping*, as well as a very similar Romanian investigation pursued between 2010 and 2014, in examining potential price signalling on oligopolistic markets. The Commission's 2018 *Visa* and *Mastercard* interchange fee investigations closely examined the similarities and differences in the framework for payment card schemes in Serbia and the EU. In a recent individual exemption case, the Commission relied on relevant practice by the French Autorité de la Concurrence, decided only a few months prior.



Closely following comparative practice can save the authority significant time and resources by allowing it to focus on issues and matters that have had a recognized potentially detrimental effect on competition. At the same time, since undertakings are more aware of competition rules than ever, both complainants and defendants increasingly rely on examples in international practice to support their claim, finding succour in authoritative analysis and interpretation of often broad rules and principles. This creates a positive feedback loop, forcing the authority to be ever-more vigilant in following the latest trends, lest it risk being overtaken by experienced lawyers. As the world is growing smaller and more interconnected, information about relevant practice has never been easier to track down. This does not mean that the authority should be allowed to uncritically copy/paste international practice – each case is a beast of its own, and local market circumstances might well turn out to be only superficially similar to the original model. Also, the models themselves may be flawed, as a number of decisions and unforeseen consequences by international authorities have proven over the years. However, in Serbian competition law, following authoritative trends and robust analysis and staying updated is no longer a "nice-to-have" perk in your legal representation, but a requirement.

Simultaneously, multinationals should be careful in structuring their operations and procedural strategies with respect to accession countries. Focusing on an investigation by the EC is understandable; however, one should also be mindful of the ripple effects among the EU's neighbors. After all, although it is likely that any problematic practices would be treated similarly, a decision by the EC does not automatically cover any anti-competitive effects in Serbia, BiH, or Montenegro, and the local authorities are fully justified in pursuing a same or similar investigation. And indeed, why not pick the low-hanging fruit? ■

NORTH MACEDONIA: GUN-JUMPING IN M&A TRANSACTIONS IN NORTH MACEDONIA

By Rasko Radovanovic, Partner, and Dusica Bojkovska, Associate, CMS

In merger control, the standstill obligation requires that the parties refrain from implementing a concentration before obtaining the required merger clearance. This duty represents a cornerstone of many merger control regimes and is intended to protect the structure of the market and the consumers from any damage that could result from a transaction that had not been properly examined and could turn out to be anti-competitive.

The Macedonian Law on Protection of Competition (the "Law") also prohibits parties from implementing a concentration before receiving a green light from the Macedonian National Competition Authority.

The standstill obligation is limited to the boundaries of the very concept of a concentration, meaning that refraining from implementing a transaction means refraining from acquiring control over the target undertaking. Any other transaction that contributes to the implementation of a concentration or, following the preliminary ruling of the European Court of Justice in *Ernst & Young*, which represents a direct functional link to the implementation of a concentration and contributes, in whole or in part, in fact or in law, to a change of control over the target undertaking can constitute gun-jumping.

Filing Thresholds

When discussing gun-jumping, it is also important to consider what triggers the notification requirement. The Law sets rather low merger filing thresholds, which can be triggered even in cases where neither of the parties is active in North Macedonia (*i.e.*, in foreign-to-foreign deals); one party having an affiliated company registered in North Macedonia can be enough to trigger a duty to file. Even though the Law formally recognizes the domestic effect doctrine, according to which acts undertaken abroad fall within the scope of the Law only if they produce effects on the local territory, the NCA's practice suggests that this provision of the Law is not observed and the only criterion when determining whether a duty to notify the NCA that a transaction exists remains the merger filing thresholds.

Enforcement

The track record of the National Competition Authority on gun-jumping consists of three cases involving the issuance of fines. The first case sheds some light on the issue at the moment of implementation, and the other cases are relevant to the way foreign-to-foreign deals are handled.

The first gun-jumping case occurred in 2007, when the NCA fined Top Investment Group for acquiring joint control over Zegin without notifying it of the transaction or obtaining merger clearance. The NCA had a clear-cut case here, but it nevertheless examined in detail how and when control was acquired and found that the moment of implementation occurred not when Top Investment Group obtained ownership of a share in Zegin, but when it gained the effective right to block strategic decisions at Zegin.

The other two cases involve Slovenia Broadband and United Media, both members of the Mid Europa Partners Group at the time of the acquisitions in question. The acquirers failed to notify the NCA of transactions involving foreign targets with either negligible or no turnover in North Macedonia. Still, due to the rather low merger filing thresholds prescribed by the Law, the acquirers managed to trigger the filing duty on their own. Following late merger notifications at the end of 2013, the NCA fined Slovenia Broadband and United Media for their failure to notify it of the transactions and for implementing them before obtaining merger clearance, effectively confirming that the NCA is unlikely to consider the domestic effects doctrine for foreign to foreign transactions. The NCA took as mitigating factors the fact that the concentrations did not give rise to any competition concerns and that the parties voluntarily reported the non-notified concentrations and cooperated with the NCA during its proceedings.

Conclusions

The NCA's practice in gun-jumping cases implies that undertakings cannot rely on a domestic effects defense in merger control cases. All three cases, in general, serve as evidence of a very formalistic and strict approach by the NCA, which poses an increased risk of enforcement actions against companies that fail to notify it of their acquisitions and respect the North Macedonian waiting period, even in situations that involve targets with no activities or turnover in North Macedonia. ■

MONTENEGRO: THE STATE OF THE MONTENEGRIN STATE AID CONTROL REGIME

By Rasko Radovanovic, Partner, and Anja Tasic, Senior Associate, CMS

Background

Montenegro first introduced a State aid control framework in 2011 in preparation for initiating the EU accession process. Almost ten years later, as the candidate country currently furthest along its accession journey, Montenegro has largely harmonized its State aid framework with the EU *acquis*. Still, the current level of enforcement and transparency leave a lot of room for improvement.

Competences Switch

In 2018, the competences of the Montenegrin Agency for Protection of Competition (APC) were expanded to include State aid control, in addition to its prior mandate to enforce the Montenegrin competition laws. This rectified one of the most significant flaws of the initial Montenegrin State aid control framework, namely, that the previous regulator, the State Aid Control Commission, was an arm of the Ministry of Finance, which brought into question its independence and the effectiveness of State aid control.

Combining the enforcement of competition and State aid control rules within one body is a solution some other countries in the region have chosen as well (including Croatia, before it joined the EU, and North Macedonia and Croatia). Potential logistics benefits aside, this approach should be beneficial in a jurisdiction such as Montenegro, which has less experience or track record with State aid control, and where further enforcement in the area can build upon the foundation of the antitrust and mergers enforcement history of the authority.

In its newest 2019 Progress Report, the European Commission highlights that the switch of competences to the APC is an improvement but recognizes that the building up of the APC's State aid enforcement record is of great importance going forward. Montenegro's progress in this area was confirmed in June 2020 by the official opening of Chapter 8 negotiations – the final Chapter in the country's accession process – further cementing its frontrunner status.

Enforcement

By the end of 2019, the APC opened its first two *ex post* investigations into aid already granted to the Montenegrin national airline and into Adriatic Marinas, the operator of the Porto Montenegro marina, which had not been notified to and cleared by the regulator.

In 2018 and 2019, the Montenegrin Government seems to have paid out direct grants totaling EUR 12.7 million to Montenegro Airlines without receiving a green light from the regulator. The APC is now looking into the compatibility of these grants with the law. The main issue is that Montenegro Airlines is an undertaking in difficulty, which had already received restructuring aid totaling EUR 35.6 million as part of a 2012 Restructuring Plan; these new rounds of direct grants could thus be in breach of the *one time last time* rule according to which an undertaking in difficulty cannot receive restructuring aid, *i.e.*, be rescued more than one time in a ten-year period.

In the Adriatic Marinas case – which was opened after the European Commission's Montenegrin Delegation inquired about the aid in question – the APC is investigating whether relief of a utilities debt in the amount of EUR 5.6 million provided by the Municipality of Tivat constituted aid incompatible with the law.

Stepping Up the Game

These cases are surely a step in the right direction and are a sign of the APC's readiness to take on bigger cases that involve important market players and high amounts of aid. In the upcoming period, the APC will also need to prioritize its advocacy activities, as stakeholders, and in particular entities that can act as aid grantors, have a rather low level of awareness and familiarity with State aid rules, which leads to grantors failing to notify the regulator about the aid. Similarly, a lack of third-party complaints that could significantly help the authority's investigative efforts is also evident. Now that Chapter 8 has finally been opened, the APC will likely be under more pressure to step up its game and work towards realizing the European Commission's recommendations in this area. ■

BOSNIA AND HERZEGOVINA: ETHNICITY AND COMPETITION LAW

By Nihad Sijercic, Partner, attorney at law in cooperation with Karanovic & Partners

There is an interesting legal tool in the Competition Law of Bosnia and Herzegovina (originally adopted in 2005), that is seldom seen in other jurisdictions. Per the legal framework, the governing body of the local competition authority, the Competition Council, consists of six members appointed in order to reflect the complex ethnic structure of the country: two Bosnians, two Croats, and two Serbs. In order to ensure that ethnic interest is protected, the local competition law has a specific decision-making tool: the "ethnic veto." Specifically, for any decision to be adopted, at least one member of each ethnicity needs to be in favor. If both members appointed from the same ethnic group are against, a decision cannot be rendered, irrespective of the procedure undertaken up to that point or the facts in question. Usually, ethnic considerations have little to do with ensuring a level playing field and market competition; but in Bosnia, an ethnic veto can effectively override an antitrust enforcement.

The European Commission, in its opinion on Bosnia and Herzegovina's May 2019 application for membership in the European Union, explicitly underlined this structure as problematic to the state's accession aspirations. The EC pointed to the Competition Council as one of the administrative bodies that operates "on the basis of ethnic decision-making procedures, in which at least one representative from each constituent people needs to support a decision for it to be valid," in concluding that this is "neither compatible with the [the Stabilisation and Association Agreement] nor with the obligations resulting from EU membership." As a result, the EC recommended that Bosnian decision-makers "ensure that all administrative bodies entrusted with implementing the *acquis* are based only upon professionalism and eliminate veto rights in their decision-making, in compliance with the *acquis*."

Indeed, the ethnic veto has been a serious cause of concern, as in numerous high-profile cases, whether involving abuse of dominance or restrictive agreements, the Competition Council failed to act due to its exercise. In a recent case, even a procedural decision on evidence collection was deemed to run afoul of a critical national interest, although it was mandated by the competent court. The Bosnian judiciary has in the past annulled "vetoed" decisions as depriving interested parties of their right to a fair trial, but this does not seem to have lessened its use. Considering the EC's clear remarks, this mechanism seems to draw Bosnia further away from EU accession, a stated priority for many political actors.

Indeed, competition law is intended to be impartial and not related to ethnic, national, or religious interest; market competition and free trade does not (or at least, should not) care about the ethnicity of an undertaking. While legitimate concerns of specific stakeholders and the broader effects of the decisions are routinely used to scrutinize competition law-related cases, an independent enforcer should not get a free pass based on an undefined, ethnically-based deliberation mechanism, but needs to ground its decisions on solid legal and economic analysis. A certain act, on balance, ultimately either will or will not be beneficial for market competition, and it is difficult enough for regulators to confidently predict the future effects of their actions. But with an ethnic veto, the authority is sending a message that, although a certain behavior might infringe competition law, it should not be sanctioned since it is in the interest not even of the state but of a specific ethnicity. Arguments based on the "*raison d'etat*" ultimately never work well, and are more likely to breed resentment than smooth issues over.

Where the veto will go is difficult to say for now. In June, 2020 the Bosnian presidency initiated activities to harmonize the local legal framework with the recommendations of the EC. Furthermore, the Bosnian lawmaking process is not entirely famous for its efficiency. While it can reasonably be expected that reorganization of the Competition Council will be a hotly debated topic, one can only speculate on the potential competition infringements which might go unpunished in the name of (a) people. *Vox populi, vox dei.* ■

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