Marathons represent a commemoration of the fabled run of Pheidippides, a Greek soldier and messenger, who carried the news of the battle of Marathon to Athens. This month’s cover reflects our determination to go to considerable lengths in our efforts to inform our readers of relevant news and newcomers from Central and Eastern Europe’s legal markets ... and we are in it for the long run!

Before looking at the contents of this issue, we need to extend a thank you to you, our readers. The feedback we received after our launch has been overwhelmingly positive. We set out to become the go-to source of information for and about lawyers in CEE and are particularly thrilled that, as this issue goes to print, we are days away from reaching the astonishing number of 1 million unique hits to the CEE Legal Matters website – all in less than 4 months since its launch. We look forward to building on this growth and are excited to have you by our side in this journey.

While we don’t yet have a million subscribers to the CEE Legal Matters magazine, we are equally proud of its growth. And this issue justifies that pride. Readers will find an expanded Frame section, providing longer articles and analysis from even more jurisdictions, thus offering our readers greater insight into the trends and events that shape the legal industry in their markets. Featured articles in this issue include an in-depth look at why Austrian law firms have offices in all major CEE markets – but not in the biggest market of all; a review of the modern practice of law; our stories this month illustrate some of the ways law firms compete with one another for clients, how women compete for gender equality at law firms, and how lawyers compete for promotions and opportunities. Competition is what makes CEE Legal Matters thrive, improve, and grow.

And, as always: There’s much, much more.

You may think the connection between a marathon and this issue is tenuous. But competition, in its various forms, is a fundamental part of the modern practice of law. Our stories this month illustrate some of the ways law firms compete with one another for clients, how women compete for gender equality at law firms, and how lawyers compete for promotions and opportunities. Competition is what makes CEE Legal Matters thrive, improve, and grow as well. We hope you’ll agree that the progress for CEE Legal Matters is moving along quite nicely.

Though we hope you’ll excuse us for hoping that, unlike Pheidippides, we’ll survive the process.

Radu Cotarcea, Managing Editor
I would like to start with a few words of gratitude to CEE Legal Matters for offering me the opportunity to contribute to the Guest Editorial for the April issue. Last year was memorable in many ways, both for Egorov Puginsky Afanasiev & Partners (EPAM) and for me personally. It was a year of new discoveries and significant achievements.

Our Firm has reached the 20-year frontier in its history with a number of honours and awards bestowed by the Russian and international legal communities. We received awards from The Lawyer in three categories simultaneously: European Law Firm of the Year, Law Firm of the Year: Russia, and European Corporate Team of the Year. In the Pravo.ru-300 national rating, meanwhile, we increased our lead on the competition even more. And in 2014, we plan to go even further. The positive market trends and the Firm’s latest appointments will provide the drive for our next leap forward.

I feel very optimistic about the state of Russia’s legal market, which has matured and diversified despite significant geopolitical upheaval.

EPAM is increasingly focusing on the pressing international private and public law issues related to WTO accession, the tragic events in Ukraine, and the Crimea. We have given rise to a number of significant new risks for the global, Ukrainian, and Russian business communities, which have been forced to take extreme and painful measures. International economic sanctions aimed at a country’s business community do nothing to solve the challenges facing the world, and have a grave impact on global trade and foreign investments.

The fact that the leading American transactional corporations alone have amassed more than a trillion US dollars is a sign of the global crisis, with private companies around the world cutting or rethinking their investment models. It is also obvious that public law models for intergovernmental relations, including economic sanctions, are at odds with private law models for regulating international trade. I am convinced that similar legal and economic dilemmas will have an increasing impact in the future.

When it comes to the development of the legal market in Russia, we cannot ignore the ongoing changes in the judicial system. I am talking primarily about the consolidation of the two highest courts: the Supreme Commercial Court, which considers commercial and economic disputes between legal entities, and the Supreme Court, which mostly handles disputes between individuals. Last year, the Supreme Commercial Court of the Russian Federation also handed down a number of public and civil law precedents that became the focus of active discussion in the legal community. They related to several principal changes in Russia’s Civil Code that address freedom of contract, and the principles of fair and rational application of civil rights. Along with e-justice, open discussions of draft legal positions shaping the country’s high courts have increased the level of trust in the Russian judicial system. Other pressing issues in the development of legal practice are precedents in bankruptcy cases involving legal entities, and the expansion of the set of tools to claim subsidiary liability against controlling parties, including direct owners whose actions have caused or facilitated their companies’ bankruptcies.

Another challenge facing our Firm – and our St. Petersburg office in particular – is the complexity of legal services required by the market. This demands attorneys with increasingly narrow fields of specialization combined with the skills needed to find the inter-sectorial solutions for their clients’ needs. As a rule, legal solutions for the most challenging client business needs – like the ones my colleagues and I deal with on a daily basis – lie in several different areas of law. We believe that these increased expectations give the few firms in Russia able to provide client-oriented solutions and a practical understanding of client needs a unique competitive edge on the legal services market, since the majority of firms in Russia offer only typical, standard services. I am positive that the complexity, difficulty, and inter-sectorial nature of our clients’ needs will only increase in the future.

I believe that the new challenges facing the legal market are related not only to the danger of economic slowdown and stagnation, but also to the danger of stagnation in the skills of attorneys who are not quick enough, or not eager enough, to change their modus operandi to fit the changing business world. Dynamism, openness to change and to new expectations, highly-developed knowledge, and a focus on the business goals of our clients have always been and will continue to be the key to success.

The transfer of Russia’s high courts to St. Petersburg that is scheduled for the next two years is also highly significant for lawyers in this market. Obviously, as the Supreme Court follows the Constitutional Court to St. Petersburg, this will provide a new impetus for the growth of the St. Petersburg legal market as a whole. The Firm is also closely watching the St. Petersburg International Legal Forum, an independent professional platform for lawyers in this market. Obviously, as the majority of firms in Russia focus on the business goals of our clients, we believe only typical, standard services. I am positive that the complexity, difficulty, and inter-sectorial nature of our clients’ needs will only increase in the future.

This year, the Forum will be held in St. Petersburg from June 18-21, in the midst of the White Nights. I would like to take this opportunity to invite all my colleagues and CEE Legal Matters’ readers to take part in the event. I will be delighted to welcome you to our beautiful city!
Letters To The Editors

RE: “Looking Through The Crystal Ball”
March 27, 2014

The recent events in Ukraine obviously affected and still continue to affect most of the sectors of the Ukrainian economy and the legal market is not an exception. As many businesses took “wait-and-see” approach in relation to many of the potential transactions, work pipeline of many law firms tapered. As the situation stabilizes, which we expect to happen after the presidential elections, many of the “frozen” transactions should resume and new transactions should come.

As the world economy continues to show positive signs, we expect many Ukrainian businesses to try to use an opportunity to attract funding on foreign capital markets or through private deals. These efforts should be supported by the reforms, which the government committed to implement in order to enhance the investment attractiveness of Ukraine. All of this should result in new M&A deals (particularly, distressed assets sales), debt restructurings, banking deals and, probably closer to the autumn of 2014 (or, more pessimistically, later this year or early 2015, provided sales will be executed), debt restructurings, banking deals and, probably closer to the autumn of 2014, corporate restructurings.

Moreover, in response to Russia’s territorial aggression, Ukrainians have been boycotting Russian products and businesses. Russian companies operating in Ukraine are monitoring the business impact of boycotts, and some are considering temporary closures, downsizing or full exit. Should Russian players seek quick sales to exit the country, Ukrainian and foreign investors could move to fill the void created by a downscaled Russian presence by buying Russian assets at bargain prices. But such M&A transactions resulting from the departure of Russian businesses will likely not occur until the end of 2014 or 2015.

These opportunities will come to fruition only if Ukraine continues as an independent nation positioned on a path to rebuilding its economy, and with financial assistance and support from the International Monetary Fund, the US and the EU. An added factor which could boost M&A activity would be the new Ukrainian government’s ability to stem pervasive corruption which could jumpstart direct foreign investment in Ukraine.

The current geopolitical situation in Ukraine is fluid and uncertain, and much commercial activity depends on Russia’s next move. If Russia invades Ukraine’s eastern and southern regions, then the two opportunities mentioned above will vanish. In that event, members of the former regime will return to claim their businesses, and Russian companies will expand their Ukrainian operations.

Mykola Stetsenko, Kiev, Ukraine

RE: “Looking Through The Crystal Ball”
March 31, 2014

The modest prospects for 2014 M&A activity in Ukraine predicted by the contributors to “Looking Through The Crystal Ball” evaporated with Russia’s unprovoked invasion and illegal annexation of Crimea.

Although war has not been declared de jure by either side, de facto Ukraine is at war, and unless there is a quick resolution of the conflict, Ukraine’s M&A activity in the short term will probably cease. On the other hand, both the sudden departure of President Yanukovych and his ministers to other countries and Russian occupation of Crimea may create new opportunities. Many members of the former ruling party, facing possible arrest and reluctance to return to Ukraine, are now looking to sell their business interests, and we are now seeing the first signs of such M&A activity. We expect such transactions to develop later this year or early 2015, provided sale prices are reasonably low and the current owners are not subject to US or EU sanctions.

Jaroslawa Z. Johnson, Kiev, Ukraine
**Legal Ticker: Summary of Deals and Cases**

**Date covered** | **Firms Involved** | **Deal/Litigation** | **Country** | **Deal Value**
---|---|---|---|---
March 19, 2014 | Drakopoulos | Drakopoulos advised major Saudi conglomerate on multi-million euro real estate acquisition in southern suburbs of Athens | Greece | N/A
March 21, 2014 | Papapoulis & Papapoulis | Papapoulis & Papapoulis advised BlackRock Solutions in assessment of Greek bank loan portfolio | Greece | N/A
February 15, 2014 | Square Sanders | Square Sanders advised CBRE Global Investors and its Hungarian subsidiaries in connection with a refinancing of a number of its shopping centres and offices | Hungary | EUR 10 million
March 20, 2014 | King & Wood | Multi-firm team advised TransEligm Group on acquisition of Technical Airborne Components of all shares in EMFE Holding | Hungary | USD 47.4 million
March 28, 2014 | Gide Lysteroue Nouel | Gide Lysteroue Nouel advised LEGO on construction of Hungarian plant | Hungary | EUR 354 million
April 7, 2014 | LAWIN | LAWIN advised the Finnish Lassila & Tikkaenen company in its sale of shares to SIA Bioinvest | Latvia | N/A
February 28, 2014 | Hogan Lovells | Hogan Lovells won asylum for lesbian Macedonian woman claiming she would be persecuted if forced to return to her native country | Macedonia | Pro Bono
February 28, 2014 | GESSEL | GESSEL advised Highlander Partners, working through its AKOMEX portfolio company, on the purchase of DRIUK-PAK. | Poland | N/A
February 19, 2014 | Demons | Demons counselled syndicate of Polish banks on multipurpose financing to Inter Cars | Poland | PLN 495 million
March 4, 2014 | Gide Lysteroue Nouel | Gide Lysteroue Nouel advised Unibail-Rodamco on refinancing of Galeria Mokotow Shopping Centre in Warsaw | Poland | EUR 200 million
March 5, 2014 | White & Case | White & Case advised Zomera International Finance on restructuring of outstanding senior secured high yield notes due 2014 | Poland | USD 118 million
March 12, 2014 | Allen & Overy | Allen & Overy's advised on financing of upgrades to power units and refinancing of existing shares from the NewConnect market to the front line of the Warsaw Securities Exchange | Poland | N/A
February 19, 2014 | GESSEL | GESSEL advised Energa to engage in exceptional public offering and transfer of existing shares from the NewConnect market to the front line of the Warsaw Securities Exchange | Poland | N/A
March 19, 2014 | Allen & Overy | Allen & Overy advised on acquisition of units and the residential real estate service business from Prelios Deutschland | Romania | EUR 220 million
March 19, 2014 | Weber, Mousquetaires | Weber, Mousquetaires provided legal support on the transformation of the JDK limited liability company in a family holding company | Romania | EUR 178 million
April 8, 2014 | Dentons | Dentons advised Goodman on construction of central warehouse and office facility in Poland for Handte Group | Romania | EUR 250 million
March 14, 2014 | GESSEL | GESSEL advised Osterreichische Volksbank on the sale of all shares in EME Holding | Romania | EUR 10 million
April 17, 2014 | Schoenherr | Schoenherr advised Osterreichische Volksbank on the sale of all shares in EME Holding | Romania | EUR 10 million
March 4, 2014 | Fenech Advocates | Fenech Advocates advised on refinancing of a number of its shopping centres and office buildings in Hungary provided with a refinancing of a number of its shopping centres and office buildings in Hungary provided | Romania | EUR 10 million
March 12, 2014 | Dvorak Hager & Partners, Manak Schallabock & Partner | Dvorak Hager & Partners, Manak Schallabock & Partner advised related companies on sovereign restructuring of the JDK limited liability company in a family holding company | Romania | EUR 178 million
March 31, 2014 | Allen & Overy | Allen & Overy advised on acquisition of stakes in Rondo 1 office building in Poland | Romania | N/A
February 9, 2014 | Dvorak Hager & Partners | Dvorak Hager & Partners advised on sovereign restructuring of the JDK limited liability company in a family holding company | Romania | EUR 178 million
November 14, 2013 | Allen & Overy | Allen & Overy advised on acquisition of stakes in Rondo 1 office building in Poland | Romania | EUR 178 million
March 14, 2014 | GESSEL | GESSEL advised Konsortium Malta to the sale of a number of its shopping centres and office buildings in Hungary provided | Romania | EUR 178 million
March 14, 2014 | Allen & Overy | Allen & Overy advised on acquisition of stakes in Rondo 1 office building in Poland | Romania | EUR 178 million
April 17, 2014 | Weiszhofer Ever- sheds | Weiszhofer Eversheds advised Polish insurance company on sovereign restructuring of the JDK limited liability company in a family holding company | Romania | EUR 178 million
April 17, 2014 | Dvorak Hager & Partners | Dvorak Hager & Partners advised related companies on sovereign restructuring of the JDK limited liability company in a family holding company | Romania | EUR 178 million
March 5, 2014 | Schoenherr | Schoenherr advised Osterreichische Volksbank on the sale of all shares in EME Holding | Romania | EUR 10 million
March 12, 2014 | Allen & Overy | Allen & Overy advised on acquisition of stakes in Rondo 1 office building in Poland | Romania | EUR 178 million
February 14, 2014 | Allen & Overy | Allen & Overy advised on acquisition of stakes in Rondo 1 office building in Poland | Romania | EUR 178 million
February 10, 2014 | Allen & Overy | Allen & Overy advised on acquisition of stakes in Rondo 1 office building in Poland | Romania | EUR 178 million

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**Across The Wire**

**Date covered** | **Firms Involved** | **Deal/Litigation** | **Country** | **Deal Value**
---|---|---|---|---
March 12, 2014 | CSHH | CSHH advised Raitteisem Bank International on matters related to a recent capital increase | Austria | EUR 2.78 billion
February 20, 2014 | Luthar | Luthar advised Immofinanz Group on legal and tax aspects of acquisition of 18,000 residential units and the residential real estate service business from Preilos Deutschland | Austria | N/A
March 31, 2014 | Allin & Overey, CSHH | Allin & Overey advised the Eastern Europe Real Estate Fund on sale of Telliskivi Loomelinnak to Borenius | Austria | N/A
March 31, 2014 | Feller Weltzfeld & Partner | Feller Weltzfeld & Partner represented BFWG in connection with Austrian participation capital repayment | Austria | EUR 350 million
March 31, 2014 | Allin & Overey, CSHH | Allin & Overey advised Old Mutual on Stundia Germany and Stundia Austria to Car- men and Hennemier Re acquisition vehicle | Austria | EUR 220 million
March 4, 2014 | CSHH | CSHH advised Spiegelflud Hewazi advised German Bond Group and Finnmech Group on acquisition of stakes in RohArB | Austria | N/A
April 10, 2014 | Dvorak Hager & Partners | Dvorak Hager & Partners advised legal support on the transformation of the JDK limited liability company in a family holding company | Austria | N/A
April 11, 2014 | Schoenensch, Fennich & Fennich Advocates | Schoenensch advised Osterreichische Volkshausbank on the sale of its fully-owned subsidiary Volks- bank Malta to Malta-based Mediterranean Bank. | Malta | N/A
March 31, 2014 | Allin & Overey | Allin & Overey advised lending syndicates on new loan facilities for Sherbank Europe and Credi Bank of Moscow. | Russia | N/A
March 4, 2014 | Boyanov & Co. | Boyanov & Co. provided legal support on the transformation of the JDK limited liability company in a family holding company | Bulgaria | N/A
April 6, 2014 | Dvorak Hager & Partners | Dvorak Hager & Partners advised legal support on the transformation of the JDK limited liability company in a family holding company | Bulgaria | N/A
April 11, 2014 | Schoenensch, Fennich & Fennich Advocates | Schoenensch advised Osterreichische Volkshausbank on the sale of its fully-owned subsidiary Volks- bank Malta to Malta-based Mediterranean Bank. | Malta | N/A
March 31, 2014 | Allin & Overey | Allin & Overey advised lending syndicates on new loan facilities for Sherbank Europe and Credi Bank of Moscow. | Russia | N/A
March 4, 2014 | Boyanov & Co. | Boyanov & Co. provided legal support on the transformation of the JDK limited liability company in a family holding company | Bulgaria | N/A
March 5, 2014 | McDermott, Will & Emery, Ashurst | McDermott, Will & Emery, Ashurst, successfully represented Camill Holding in acquisition of Handte Group | Russia | N/A
March 19, 2014 | PRK Partners | PRK Partners advised Best Hotel Properties on purchase of InterContinental Hotel in Prague and related companies | Russia | Czech Republic
March 19, 2014 | PRK Partners | PRK Partners represented Holzum before Czech antitrust authorities regarding divestment of Czech operations to Conca. | Russia | N/A
March 24, 2014 | Binder Grosswang | Binder Grosswang advised Rivestek on acquisition of Interpol hypermarkets and SPAR supermarkets | Russia | EUR 192 million
March 24, 2014 | Borenius | Borenius advised on sovereign restructuring of the JDK limited liability company in a family holding company | Russia | N/A
March 24, 2014 | Borenius | Borenius advised on sovereign restructuring of the JDK limited liability company in a family holding company | Russia | N/A
March 24, 2014 | Borenius | Borenius advised on sovereign restructuring of the JDK limited liability company in a family holding company | Russia | N/A
April 4, 2014 | Task Granite Suktiene | Task Granite Suktiene advised Enterprise Investors on its acquisition of 52.4% stake in Trade- cia Capital | Lithuania | N/A
April 9, 2014 | Castren & Snellman | Castren & Snellman acted as legal adviser for the DT Group in the company’s acquisition of Punktus | Lithuania | N/A
April 9, 2014 | Task Granite Suktiene | Task Granite Suktiene advised Estonian investors Indrek Prants, Sven Mansberg and Armin Koomagi in their purchase of the Roeca-Mad Sports Centre from the Askolaah Grownd Fund. | Lithuania | N/A
April 7, 2014 | TRINITI | TRINITI advised on the company's broadcast, media and IT infrastructure services in the Baltic States and Nordic Countries. | Lithuania | N/A
April 7, 2014 | Raadis Lejnis & Nor cosmos | Raadis Lejnis & Nor cosmos advised UAB LDK Capital and UAB G Capital on their sale of 100% interest in UAB Kruzas Nordic Cosmetics Distribution to Birner | Lithuania | N/A
February 18, 2014 | Watson, Farley & Williams | Watson, Farley & Williams advised HSH Norbank on transfer of 10 distressed vessels to the Navios Group | Greece | USD 30.8 million

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**CEC LEGAL MATTERS**
## Across The Wire

### CEE Legal Matters 11

#### Period Covered: February 12, 2014 - April 15, 2014

Full information available at: www.ceelegalmatters.com

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<th>Deal/Litigation</th>
<th>Deal Value</th>
<th>Country</th>
</tr>
</thead>
<tbody>
<tr>
<td>February 25, 2014</td>
<td>D蚀herr Law Firm</td>
<td>represented PepsCo, its subsidiary Wimm-Bill-Dann Foods, on the sale of five dairy farms</td>
<td>N/A</td>
<td>Russia</td>
</tr>
<tr>
<td>March 7, 2014</td>
<td>BBH Law Firm</td>
<td>represented a lessor on a lease to the Synefa Group in the Comity office park in southwestern Moscow</td>
<td>N/A</td>
<td>Russia</td>
</tr>
<tr>
<td>March 12, 2014</td>
<td>Squire Sanders</td>
<td>advised shareholders of Lenta on sale of shares as part of Lenta’s IPO and GDR listing on the Main Market of the London Stock Exchange and the Moscow Exchange</td>
<td>USD 4.3 million</td>
<td>Russia</td>
</tr>
<tr>
<td>March 14, 2014</td>
<td>Laidlers</td>
<td>supported China Development Bank in granting special purpose loan to Vnesheconombank for financing of construction of large Moscow complexes</td>
<td>N/A</td>
<td>Russia</td>
</tr>
<tr>
<td>March 13, 2014</td>
<td>Laidlers</td>
<td>advised BILI retail chain in Moscow expansion</td>
<td>N/A</td>
<td>Russia</td>
</tr>
<tr>
<td>March 24, 2014</td>
<td>Baker &amp; McKenzie</td>
<td>announced completion as both transaction and tax counsel of bank securesations raising more than EUR 70 billion in investor funding</td>
<td>EUR 40 billion</td>
<td>Russia</td>
</tr>
<tr>
<td>March 20, 2014</td>
<td>Integrites</td>
<td>advised Societe Generale on its acquisition of 100% stake in Vnesheconombank</td>
<td>N/A</td>
<td>Russia</td>
</tr>
<tr>
<td>March 28, 2014</td>
<td>Egoron Puginski</td>
<td>Fasmanov &amp; Partners assists Macfarlanes in representation of Russian claim against London Metal Exchange at the English High Court of Justice</td>
<td>N/A</td>
<td>Russia</td>
</tr>
<tr>
<td>April 7, 2014</td>
<td>CBLSH</td>
<td>advised the Knightsbridge Group in connection with the formation of a joint venture with Inaica</td>
<td>N/A</td>
<td>Russia</td>
</tr>
<tr>
<td>April 9, 2014</td>
<td>Cleary Gottlieb, Steen &amp; Hamilton</td>
<td>advised UOB on a EUR 70 million loan</td>
<td>N/A</td>
<td>Russia</td>
</tr>
<tr>
<td>February 21, 2014</td>
<td>Jankovic Popovic &amp; Mitic</td>
<td>advised MedLife on transfer of life insurance portfolio to Wiener Stadstiegs osiguranje</td>
<td>N/A</td>
<td>Serbia</td>
</tr>
<tr>
<td>March 18, 2014</td>
<td>Zivkovic Samardzic</td>
<td>advised Obilbank in the company’s entrance into Serbia via joint venture with Serbian Public Enterprise Transasia Pancevo</td>
<td>EUR 50 million</td>
<td>Serbia</td>
</tr>
<tr>
<td>March 24, 2014</td>
<td>Jankovic Popovic &amp; Mitic</td>
<td>advised SEE Offices on acquisition of new Belgrade location</td>
<td>N/A</td>
<td>Serbia</td>
</tr>
<tr>
<td>February 14, 2014</td>
<td>Square Sanders, Cleary Gottlieb</td>
<td>advised MedLife on the sale of its flexible packaging business to Schur Flexibles</td>
<td>N/A</td>
<td>Slovakia</td>
</tr>
<tr>
<td>February 28, 2014</td>
<td>Allen &amp; Overy, BBH BRAUTIGAM</td>
<td>advised HB Reavis on the sale of three buildings of the office project Cay Business Center III, IV and V in Bratislava to Real Estate Fund DB and by Tatra Asset Management</td>
<td>N/A</td>
<td>Slovakia</td>
</tr>
<tr>
<td>March 20, 2014</td>
<td>Square Sanders</td>
<td>advised Tesco Stores in several aspects of opening three new large retail stores in several parts of Slovakia</td>
<td>N/A</td>
<td>Slovakia</td>
</tr>
<tr>
<td>March 13, 2014</td>
<td>Wolf Thesis</td>
<td>advised Prametica Real Estate Investors on sale by a fund it manages of part of retail portfolios in Slovenia</td>
<td>N/A</td>
<td>Slovenia</td>
</tr>
<tr>
<td>March 10, 2014</td>
<td>Edwards Wildman</td>
<td>advised the Turkish Privatization Administration on privatization of Bulparazit Port</td>
<td>USD 702 million</td>
<td>Turkey</td>
</tr>
<tr>
<td>March 17, 2014</td>
<td>Mayer Brown</td>
<td>advised Celebi Havacilik Holding on acquisition of German air cargo handling and warehousing business from Aviapartner</td>
<td>N/A</td>
<td>Turkey</td>
</tr>
<tr>
<td>March 25, 2014</td>
<td>Baker &amp; McKenzie</td>
<td>advised ING Group on dual tranche dual-currency term loan agreement</td>
<td>USD 134.4 million</td>
<td>Turkey</td>
</tr>
<tr>
<td>February 13, 2014</td>
<td>Sayenko Kharenko</td>
<td>advised Russian JSC VTB Bank on export loan facility to the National Nuclear Energy Generating Company of Ukraine</td>
<td>USD 40 million</td>
<td>Ukraine</td>
</tr>
<tr>
<td>February 14, 2014</td>
<td>Integrites</td>
<td>successfully defended Philip Morris Ukraine in a dispute against the Specialized State Tax Inspectorate</td>
<td>N/A</td>
<td>Ukraine</td>
</tr>
<tr>
<td>February 17, 2014</td>
<td>Ilyashev &amp; Partners</td>
<td>successfully defended Viessmann-Ukraine in Ukrainian Higher Administrative Court against charges of illegal decrease of negative profit tax by tax authorities</td>
<td>N/A</td>
<td>Ukraine</td>
</tr>
</tbody>
</table>

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**Electronic Evidence Computer Forensics Cyber Security Legal Technology**

October 19 - 21, 2014 Clarion Congress Hotel, Prague, Czech Republic

Media Partner:

**CEE Legal Matters readers can use the following code for a 15% discount:** NW-YKGG

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**Across The Wire**

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<tr>
<td>February 19, 2014</td>
<td>Ilyashev &amp; Partners</td>
<td>successfully represented NetCracker in the Ukrainian Appellate Courts on labor disputes</td>
<td>UAH 3 million</td>
<td>Ukraine</td>
</tr>
<tr>
<td>February 27, 2014</td>
<td>Axter</td>
<td>counselled YTG Aktiengesellschaft on formation of European rail logistics joint venture with Kuhne + Nagel</td>
<td>N/A</td>
<td>Ukraine</td>
</tr>
<tr>
<td>February 28, 2014</td>
<td>Integrites</td>
<td>successfully represented Galika AG in litigation against Ukrainian state authorities on tax matters</td>
<td>N/A</td>
<td>Ukraine</td>
</tr>
<tr>
<td>March 7, 2014</td>
<td>Axter</td>
<td>provided legal advice to the Publicis Groupe and Omnicom Group advertising agencies on Ukrainian merger control law issues</td>
<td>USD 35 million</td>
<td>Ukraine</td>
</tr>
<tr>
<td>March 14, 2014</td>
<td>Integrites</td>
<td>advised Next Group regarding execution and performance of advertising agreements on N/A</td>
<td>Ukraine</td>
<td></td>
</tr>
<tr>
<td>March 17, 2014</td>
<td>Dentons</td>
<td>counselled EBRD on loan to Ukraine’s PJSC Raiffeisen Bank Aval</td>
<td>USD 75 million</td>
<td>Ukraine</td>
</tr>
<tr>
<td>March 21, 2014</td>
<td>Vasil Kis &amp; Partners</td>
<td>advised UBG Corporation is sale of shares to Concord Capital and Oleg Kalashnikov</td>
<td>N/A</td>
<td>Ukraine</td>
</tr>
<tr>
<td>March 21, 2014</td>
<td>Sulejko Kharitonko</td>
<td>advised Deutsche Bank, Raiffeisen Creditbank, and UBS on capital increase of Raiffeisen Bank International</td>
<td>EUR 2.78 billion</td>
<td>Ukraine</td>
</tr>
<tr>
<td>March 27, 2014</td>
<td>Vasil Kis &amp; Partners</td>
<td>advised Amrut Properties minority stake sale to EBRD</td>
<td>EUR 50 million</td>
<td>Ukraine</td>
</tr>
<tr>
<td>April 4, 2014</td>
<td>Vasil Kis &amp; Partners</td>
<td>advised the Marinetti Corporation on Ukrainian trade finance matters</td>
<td>N/A</td>
<td>Ukraine</td>
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On the Move: Firm and Partner Moves

Firm Moves

Four CEE Firms Among 15 World-Wide Launching New Employee Benefits Alliance

On February 13, 2014, four law firms in CEE joined 11 other firms around the world in launching a new global alliance of firms with specialty practices in employee benefits, executive compensation, tax, employment, and labor law. Karanovic & Nikolic (with offices in Bosnia, Croatia, Serbia, Macedonia, and Montenegro), PRK Partners (Czech Republic), LAWIN (Latvia), and Wardynski & Partners (Poland) join 11 other firms in the new “BECTELLA” alliance.

BECTELLA was conceived and founded by King & Spalding Partner Kenneth Raskin. King & Spalding released a statement declaring that “the alliance is intended to be a resource to provide participating law firms’ clients with access to a worldwide network of lawyers who are experts in the alliance’s specialized practices and to enable participating firms to market their expertise on a global basis.”

At the moment, BECTELLA includes firms in 20 countries across five continents, with broader coverage expected in the future. Participation in the alliance is by invitation only.

Brandi Partners Opens Moscow Office

Brazilian Brandi Partners, continues its rapid growth with the opening of an office in Moscow.

The firm, which opened offices in Paris and Dubai in 2013 – and established partnerships with firms in Portugal and Turkey last year as well – announced on February 24, 2014, that its former Russian Desk Head Marc Solovei and former CMS Tax Partner Charles-Henri Roy will work together in Moscow with lawyers Maria Landau, Valentin Borodin, and others.

“This alliance will allow us to extend our services to our international clients in Russia,” explained Roy. “By pooling together a group of Russian lawyers who share the core values initially projected by Brandi Partners: a corporate mind-set and close client-lawyer relationships, we will bring considerable added value to our clients.” Solovei stated that “the establishment of an office in Moscow endorses the original identity of Brandi Partners, i.e. a Brazilian law firm with a strong international reach that is present in emerging markets. We have already forged strong synergies with other offices, notably the Istanbul and Milan teams, and this has already strengthened the services we offer our clients in Russia, Ukraine, and Kazakhstan.” (see page 28 for expanded coverage of this story)

On February 25, 2014, Capital Legal Services announced it has opened an office in Helsinki, making it the first Russian law firm to do so.

The Helsinki office is located at Aleksanterinkatu 48 in the Finnish capital, and will provide on the ground assistance to the firm’s large portfolio of Finnish clients coming into Russia.

Vladislav Zahrobin, the Managing Partner of Capital Legal Services, is enthusiastic. “This is an exciting moment for us. Finland is a key market and an important area for growth. We pride ourselves on innovation and are delighted to be the first ones on the ground. We are driven by the idea of becoming closer to our clients and help them to be successful on the Russian market. Russia is not considered to be a simple market but we strongly believe that this experience can be very successful and this is confirmed by the experience of our existing clients. We also believe that this international integration will be beneficial for all countries and parties involved.”

Finnish lawyer Eero Mora has joined the firm as well to work out of the Helsinki office. Mora was for many years the General Counsel for Alma Media in Finland and Chairman of the Finnish Industrial Lawyers Association. He said of the move that “the mission of Capital Legal Service is to build a bridge over the troubled border between Russia and Finland and to open new horizons for the Finnish companies that are still hesitant to cross it. The Helsinki office will provide a significant level of comfort for Finnish enterprises coming over the border. I am really proud to be able to work together with very talented, motivated and goal oriented lawyers of Capital Legal Services.”

On April 2, Romanian Bostina si Asociatii announced that it will close its Bostina si Asociatii Insolvency and Bostina si Asociatii Industrial Property arms and withdraw from those markets.

The decision to close the two ventures resulted from recent changes in Romanian regulations, which now forbid law firms from using the same brand name on connected consultancy firms, such as Tax, IP, Insolvency, etc. (see page 36 for expanded coverage of changes in Romanian bar regulations).

Bostina si Asociatii Industrial Property was established in 2006, while Bostina si Asociatii Insolvency was established in 2009.

Gheorghe Bostina, the law firm’s Managing Partner, said that they were sad to have to close the two consultancy lines of business but wanted to ensure compliance with the regulations, while keeping focused on their core legal consultancy business.

On February 13, 2014, four law firms in CEE joined 11 other firms in the new “BECTELLA” alliance.

Magnusson Opens Office in St. Petersburg

Magnusson announced that it has opened an office in St. Petersburg together with the Russian Kachkin & Partners law firm. The office’s official opening was on April 4, 2014. Magnusson has been present in Russia since 2005 with an office in Moscow. Kachkin & Partners was established in St. Petersburg in 2001. Its team consists of 22 lawyers, including 3 partners, and its main practice areas are real estate, construction, corporate, M&A, PPP, IP/IT, dispute resolution and arbitration.

Denis Kachkin, founder and Managing Partner of Kachkin & Partners commented: “Together with Magnusson we gain access to a broad international network and are better positioned to attract cross-border work. We very much look forward to working jointly with our colleagues in Moscow and in all other offices of the firm.”

New Baltic FORT Firm Adds Team

The Riga office of the Krodere & Judinska law firm has joined the Baltic FORT law firm, formed at the end of 2013 by merger of the Estonian NORDEUS and Latvian ADVERSUS law firms, along with a team from the Latvian Pavlov & Mamontovas law firm (see page 17). The addition of the team from Krodere & Judinska (the entire office except Ineta Krodere–Iums, who did not join the team in moving) gives FORT a total of 18 lawyers in the Latvian capital. Ieva Judinska-Bandeniece, Brigita Terauda, Ramona Tihina, Uldis Judinskas, and Legal Assistant Inga Grauzina bring expertise in intellectual property issues (including copyrights and trademarks), banking and finance law, mergers and acquisitions, and general corporate and commercial law.

“Merging with FORT will provide us an opportunity to develop more rapidly, serving clients in all three Baltic States and Belarus,” said Judinska-Bandeniece. “Furthermore, it will give us a chance to work on major projects where we could not get involved before due to the relatively small team. I am sure that, by integrating the teams, we will be able to provide the clients with services of higher quality on international level as well.”
### Summary Of New Partner Appointments

**Date Covered** | **Name** | **Practice(s)** | **Firm** | **Country**
--- | --- | --- | --- | ---
February 12, 2014 | Roman Zaitsev | Corporate/M&A, Dispute Resolution, Insolvency/Restructuring | Dentons | Russia
March 4, 2014 | Svitlana Chepsuna | Corporate/M&A, Dispute Resolution | Asters | Ukraine
March 4, 2014 | Yevgen Porada | Corporate/M&A, Banking/Finance, Capital Markets | Asters | Ukraine
March 4, 2014 | Andriy Pshylidayev | Corporate/M&A, Dispute Resolution, Insolvency/Restructuring, White Collar Crime | Asters | Ukraine
March 10, 2014 | Sergey Paraliev | Corporate/M&A | Lifelings | Russia
March 17, 2014 | Tijana Lalic | Competition, Banking/Finance, Dispute Resolution | Prica & Partners | Serbia
March 17, 2014 | Mikos Vulc | Real Estate, Energy | Prica & Partners | Serbia
March 25, 2014 | Pavel Lipski | IP/TMT | Eversheds | Poland
March 26, 2014 | Marve Kaplushky | Corporate/M&A, Insolvency/Restructuring, Private Equity | Berwin Leighton Paisner | Russia
April 4, 2014 | Laura Streu | Corporate/M&A, Insolvency/Restructuring, Banking/Finance | Wolf Theiss | Romania
April 4, 2014 | Katerina Kneva | Corporate/M&A, Banking/Finance | Wolf Theiss | Bulgaria
April 4, 2014 | Radoslav Mikov | Energy | Wolf Theiss | Bulgaria
April 4, 2014 | Sebastian Obenauscher | Infrastructure/PPP | Wolf Theiss | Austria
April 8, 2014 | Jasiel Chauhan | Corporate/M&A, Insolvency/Restructuring, Private Equity | Holman Fenwick Willan | Greece
April 8, 2014 | Madalina Berechi | Dispute Resolution | Musat & Asociatii | Romania
April 8, 2014 | Madalin Enache | Penal Law | Musat & Asociatii | Romania
April 8, 2014 | Iulian Iosif | Insolvency/Restructuring | Musat & Asociatii | Romania
April 8, 2014 | Razvan Graure | Tax | Musat & Asociatii | Romania
April 9, 2014 | Igor Augustinic | Banking/Finance, Real Estate, Competition | bps Braun Partners | Slovakia
April 15, 2014 | Szabolcs Mesityan | Banking/Finance | Lakatos, Kovacs & Partners | Hungary

### Summary Of Partner Lateral Moves

**Date Covered** | **Name** | **Practice(s)** | **Firm** | **Moving From** | **Country**
--- | --- | --- | --- | --- | ---
April 10, 2014 | Stefan Kuehnebl | Labor | Schönherr | Engelbrecht und Partner | Austria
March 4, 2014 | Vytautas Mirzana | IP/TMT | LAWIN | Vilnius University | Lithuania
April 3, 2014 | Michal Sweck | Real Estate | Magnusson | SM Sweck & Partners | Poland
March 10, 2014 | Peggy Suze-Neagu | Dispute Resolution | Nestor Nestor Diclewko | White & Case | Romania
March 21, 2014 | Mihaiu Bondoc | Corporate/M&A, Real Estate | Bondoc & Asociatii | KPMG | Romania
April 15, 2014 | Raul Mibu | Competition, Life Sciences | Dentsons | Voce & Filipescu | Romania
March 14, 2014 | Dmirty Glazunov | Banking/Finance, Capital Markets | Eggerov Pagnikey Afamaske & Partners | Liniya Prava | Russia
April 3, 2014 | Philipp Wiedemuth | Corporate/M&A, Real Estate | Dentsons | Ortic | Russia
April 8, 2014 | Dominic Pelley | Dispute Resolution | Dentsons | Baker Bors | Russia
March 12, 2014 | Dragan Demirovic | Tax | BDK | Deloitte | Serbia
April 1, 2014 | Erdal Ekinci | Tax | Enderlen Tax Consultancy | Turkey
March 14, 2014 | Oleksandri Padalka | IP/TMT | Sayenko Kharenko | Asters | Ukraine
April 9, 2014 | Victoria Pankowska | Real Estate | Legal Counsel | CMS Cameron McKenna | Ukraine
March 16, 2014 | Philip Ahlrott | Banking/Finance | Field Fisher Waterhouse | Simmons & Simmons | United Kingdom

### Other Appointments

**Date Covered** | **Name** | **Firm** | **Appointed to** | **Country**
--- | --- | --- | --- | ---
April 7, 2014 | Ivans Stokberg | LAWIN | Board of Directors of the Foreign Investors’ Council | Latvia
April 8, 2014 | Matisius Dukainis | Spigulis & Kupinaitis | Chairman of the Board and President of the American Chamber of Commerce | Latvia
March 12, 2014 | Jaroslav Grzegowski | FKA | State Examination Committee for conducting the Polish bar examination in 2014 | Poland
March 14, 2014 | Adam Kraszewski | GESSEL | Vice President of the Polish Union of Consulting Sector Employers of the Lewiatan Confederation | Poland
February 18, 2014 | Ilya Nikiforov | Eggerov, Pagnikey, Afamaske & Partners | Vice-Chair of the ICC Commission on Arbitration and Alternative Dispute Resolution | Russia
March 13, 2014 | Sergey Trakhtenberg | Dentsons | Head of the Russian Real Estate/Construction Practice | Russia
April 8, 2014 | Ivan Smirnov | Eggerov Pagnikey Afamaske & Partners | Managing Partner of the firm’s St. Petersburg office | Russia
February 28, 2014 | Svitlana Musienko | DLA Piper | Board of the International Fiscal Association | Ukraine

Full information available at: [www.ceelegalmatters.com](http://www.ceelegalmatters.com)

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
CEE Rank | Country | Merger Control Index
--- | --- | ---
1 | Hungary | 5.47
2 | Macedonia | 5.44
3 | Turkey | 5.13
4 | EU Average | 5.09
4 | Austria | 4.88
5 | Estonia | 4.88
6 | Greece | 4.88
7 | Lithuania | 4.88
8 | Slovakia | 4.88
9 | Belarus | 4.69
10 | Latvia | 4.59
11 | Croatia | 4.5
12 | Romania | 4.47
13 | Serbia | 4.44
14 | Bulgaria | 4.41
15 | Czech Republic | 4.38
16 | Moldova | 4.38
17 | Poland | 4.34
18 | Ukraine | 3.94
19 | Russia | 3.84

Source: The Global Merger Control Index 2014, Center for European Law and Economics

A FORT in the Baltics

If you can’t beat ’em, join ’em. Born out of the recognition that foreign clients in any one of the Baltic countries are probably in all three, strong independent firms in Latvia, Estonia, and Lithuania merged in December, 2013, to create the new trans-Baltic FORT firm. The Estonian Nordeus law firm, the Latvian Adversus law firm, and lawyers from Lithuanian Pavelv & Mamontovas came together to create a new firm, serving clients needing cross-Baltic advice. The firm also has a strategic partner firm in the Belarusian Sysoev, Bondar, Khrapoutski law firm. And with the April, 2014 addition of all but one of the lawyers from the Latvian Krodere & Judinska law firm, FORT continues to grow.

Sandis Bertaitis, a founding partner in Adversus before it merged with FORT, explains that regular cooperation between firms is critical in the Baltics – three independent markets and legal systems, almost inevitably treated as one by foreign investors. Bertaitis explains that, “clients perceive the Baltic markets as one market. Really, investors come here, and they don’t consider that they are in three individual markets. They are one whole. And so the fact that … client projects are integrated in all three of these countries, it’s usually necessary for us to work together, so that any lawyer in one country is able to get immediate assistance in legal fields in other countries.”

Kuldar-Jaan Torokoff, FORT’S Managing Partner in Tallinn, says that previous cooperation between the three law firms showed that “we share a great deal of principles and values.”

And Torokoff is confident that the quickness with which Nordeus had established itself in Estonia – it, like the other original merging firms, was established between 2010-2011 – indicates the need for firms with a new approach. “We represent the new generation of law firms,” he says.

FORT is still coalescing, and the partners are still deciding what institutions and structures make sense. At the moment, there is no firm-wide managing partner, for instance. “What we see is that other law firms have one or two managing partners,” Bertaitis says, “but this is only due to historical reasons. We are all new, we all feel that we are professional, and we are all equal in professional positions. So we are a little bit afraid of putting someone as a managing partner, as we all feel that decisions should be made jointly, and if there are issues where a joint representation is necessary, than we decide who in a specific case is best to represent the firm.”

And the firm continues to attract new partners. Latvian Partner Ieva Judinska-Bandeniece, who joined FORT in April, with colleagues from Krodere & Judinska, was attracted to the new model and the opportunity to provide a regional service to her clients. “Merging with FORT will provide us an opportunity to develop more rapidly, serving clients in all three Baltic States and Belarus. Furthermore, it will give us a chance to work on major projects where we could not get involved before due to the relatively small team. I am sure that, by integrating the teams, we will be able to provide the clients with services of higher quality on international level as well.”

The decision to merge may have been relatively simple – but finding a name for the new entity wasn’t easy. “We were searching for a name for the office for a long time – approximately half a year,” Bertaitis laughs, explaining that “it was a really difficult decision, because it was very important that we find a name that was not being used in any specific jurisdiction, doesn’t possess any negative connotations or any other problems, and can be pronounced in Russian without any problems.” The partners decided that the implications of security and stability in FORT made it ideal. “It is a good name, we think,” says Bertaitis.

And Bertaitis reports that initial feedback from clients and counterparts at other firms has been great. “So we think things are going in a positive manner, and this is the way we need to go,” he says.

With the new team in Latvia, is FORT’s initial growth period finished? “You never know!”, Bertaitis laughs.
CEELM: You have a team of 18 lawyers working under you at Lightsource – including 3 Turkish lawyers. And you yourself are Turkish. Why so many Turkish lawyers? Do you have any other non-English lawyers working under you?

E.G.: The Turkish-qualified lawyers in my team are uniquely positioned to excel in the in-house system. They graduated in the top three of their Turkish law schools and also have outstanding academic backgrounds from prominent UK universities. The advantage that Turkish lawyers have is that their professional experience has given them a broad range of legal focus, as opposed to the English system which produces lawyers strictly specialized in certain areas of law. I find that this is more suitable for an in-house legal environment with cross-specialty demands. The fact that I have worked in two jurisdictions also makes me easily approachable to Turkish lawyers. Additionally, we have five UK-qualified solicitors in our team, three dual-qualified with French, Turkish and Irish qualifications alongside their UK qualifications, and three Australian, one Malaysian, one Spanish, and two New Zealand qualified lawyers.

CEELM: You’ve expressed dissatisfaction with the rigidity of law firms and the flexibility of (and business elements in) your role with Lightsource. Is there something you think law firms could or should do differently to become more attractive to lawyers like you in the future, or is that simply an unavoidable element of a major international law firm?

E.G.: It is a cliché but it is really important for a law firm to understand the needs of their client’s business, particularly if the assignment is not a one-off big project, but a series of projects in a
In our business model, our projects are comprised of energy, regulatory, property, planning, construction, mergers and acquisition, and other specific finance structure aspects and we have an average pipeline of 40-65 projects in a given year. In order to achieve such ambitious targets on an ongoing basis, we need centralized external legal support as opposed to shopping around to each and every department of a law firm to complete a project.

Delegation is key and I have therefore established a fully functional legal team comprised of property, construction, corporate, and finance departments, all capable of working on various aspects of these projects. However, as the team leader I still need to steer the group in the right direction and supervise the projects day-to-day by considering the big picture and the Company’s global targets. Lightsource may be a special case, however, private practitioners considering jumping ship to become in-house lawyers should bear in mind that in-house positions also demand constant long hours and heavy project volume.

CEELM: You’ve also mentioned that, in your current position with Lightsource, you work the same kind of long hours as you did at the major law firms you’ve worked at before. Do you expect that to change over time — as the company itself becomes more established and your ability to delegate work to others grows — or is that fundamentally the nature of the role?

E.G.: It is the nature of the job and the company I’m afraid. I started alone in the legal team and built a team of 23 people within two years’ time. Lightsource has grown significantly in parallel over the past three years and has become the leading utility scale solar power generator in the UK. The sector itself is driven by very strict regulatory deadlines. If you want to benefit from the higher government incentives, you need to make sure that your projects are completed by the given deadline. In addition to such strict deadlines, if you have ambitious targets like acquiring, developing and constructing 300MW solar plants in a given year (it is 550MW for the year of 2014), you end up working on 20 different projects at the same time in a given month and completing at least 8-10 projects amongst them. Each year refinancing of the existing projects and management of the existing assets and fund structure are added on top of the development business. This accumulation creates significant ongoing business volume and you end up working the same kind of long hours as in private practice in addition to feeling the pressure and responsibility of the business.

CEELM: How would you describe your management style: More hands-on, or more laissez-faire? Do you provide trainings, or do you expect them to learn and grow on the job? Can you provide any useful/in- teresting examples of empowering or team-building activities you’ve instituted?

E.G.: I bet my team members would describe me as the former! For sure this does not mean that I do not delegate. If you have a team of 23 people like we have in Lightsource you cannot be person- ally involved in each and every piece of work delivered by the team. In order to steer the legal team in the right di- rection to achieve the company’s goals, I need to keep myself involved in the day-to-day workload of the team by staying in close contact with each team leader and by organizing weekly legal team meetings where we discuss all the matters that the team is working on.

CEELM: Finally, do you see your- self moving back to Turkey some- time, or are you in London for the long-term?

E.G.: For the moment there is still a lot to do at Lightsource, but no one knows what the future holds for us.
The Reality Today: Sayenko Kharenko’s Crimea Desk in Unsettled Times

The Ukrainian Sayenko Kharenko law firm claims to have unique Crimean capabilities and the strongest Crimea Desk of any firm in the country.

CEE Legal Matters asked Vladimir Sayenko, one of the founding partners of the firm, to describe how the ongoing crisis in Crimea relating to the recent Russian annexation of the region has affected the firm’s Crimean practice and its clients.

Mr. Sayenko’s comments were made to CEE Legal Matters on April 9, 2014.
CEELM: Where did your firm go from Crimea in 2014?

VS: First of all, we did not involuntarily leave Crimea. And after the crisis, we did not return to Crimea because of political reasons. 

CEELM: What about business and your clients?

VS: Obviously, the clients are very concerned with the current legal uncertainties, and they come with numerous problems that arise in their day-to-day operations. It’s impossible to trade properly, it’s impossible to sell and register real property, it’s impossible to pay taxes and operate as a Ukrainian company in Crimea, so you have to incorporate as a new entity there or somewhere in “continental” Russia. The current situation there has created a lot of problems for businesses, and we’re doing our best to help solve them as quickly and efficiently as possible.

CEELM: So are things on hold for now, or is there a new reality on the ground that you have to deal with?

VS: Things are a mess at the moment, if I may say bluntly, without trying to be politically correct. We are facing a reality where, for a legal standpoint, Ukraine continues to treat Crimea as part of its territory, while at the same time Russia is doing the same thing – they view Crimea as part of their territory – and they physically control it. Russia has a clear advantage there now, despite the lack of international recognition of the accession. Businesses have to adapt to that somehow. These are Ukrainian businesses – all of the businesses that are in Crimea, they used to be Ukrainian companies, incorporated and operating within the framework of Ukrainian law. Many of them are branches of companies that are incorporated elsewhere in Ukraine. So for them to restructure their operations is a very difficult task. And at the moment it is still not entirely clear what the best solution will be in each particular case. So for a trading company, for instance, it is easier to transfer the assets to some Russian affiliate and operate as a Russian company in Crimea, than to continue the current operations. For someone else this may be impossible. Those are the type of issues we are facing, and for which we are trying to come up with solutions, but for many problems the solutions are not there yet. Since Ukraine sees Crimea as part of its territory, there is no customs border, so you can not clear goods through customs. But then there are situations view it as Russian territory, so if you do not clear goods through customs you are not supposed to enter the country. Yet, today trucks can still go through the border and goods reach Crimea with such goods, because commercially it is not attractive, it’s of no use to us. Well, it was of no use to us at the time, but who could have predicted what would happen? Now that Russia has established its jurisdiction over Crimea, we need to deal with client demands, so we are reestablishing the links to those people.

CEELM: Are those people on your Crimean Desk going back and forth now?

VS: Well, the Crimean Desk within our firm stays in Kiev. Obviously, our lawyers travel back and forth for personal reasons, for client matters, but we spent most of their time in Kiev. Our colleagues from Crimea also travel to Kiev occasionally. Unfortunately, soon there may be some limitations imposed on the ability of Ukrainians to travel to Crimea. We closely follow all the legal developments. Our partners participate in the working group within the Ukrainian parliament that is preparing the draft law governing the status of Crimea as an occupied territory for the second reading. If we are not able to convince the parliamentarians to relax the restrictions we are fully prepared to continue our operations without putting our lawyers in Kiev or our Crimean colleagues at risk.

CEELM: Is there any suggestion that with all the confusion and uncertainty this could be good for business in the short term? You must have a lot of clients needing your help right now.

VS: Frankly, I wish we did not have all this situation in Crimea. And even all the demand and all the clients with their current headaches related to asset protection. Again, we have always had more work in Crimea than any other firm, I suspect. And I wish we could continue this cooperation – transactional support and investment projects – rather than dealing with the current security issues. We prefer long-term relationships with clients, while the current restrictions will be completed quickly and the flow of legal work will dry out.

CEELM: What percentage of the firm’s work or clients would you say involve Crimea? 5%?

VS: Yes, something like that, maybe slightly more. In real numbers that’s still quite significant, as we are one of the largest firms on the Ukrainian market.

CEELM: What’s the most common issue you’ve had to deal with involving Crimea in the past three weeks?

VS: The most common issue is that many people want to sell their assets in Crimea, and if you’re talking about real estate, it’s impossible to do that. Because the register of the property is in Ukraine. However, Ukrainian notaries in Crimea are not able to work, they cannot access the register, for example. You can not really transfer property in Crimea at the moment without a register. Still there are some solutions. You can go to the Kerch region in Southern Ukraine and try to do this transaction... but the technical documents are in Crimea, and you cannot take them out to a Ukrainian notary in a different region. So what do you do, is a big question. Now we have developed some proposals and we are waiting for some solutions, and we think the local authorities in Crimea will allow access to the technical documentation, and this will allow transactions to take place. But it hasn’t happened yet. So when developing legal solutions we have to be practical and we have to take into account all the legal uncertainties, and we are very concerned with the issues of international security and rule of law. It looks like the good old Latin saying Pacta sunt servanda (“agreements must be kept”) is no longer relevant and international treaties can no longer be relied upon. It is very worrying to live in the age when on the international arena the one with the strongest army can do whatever he wants.

Note: The “Kiev” spelling of the Ukrainian capital is used in this article, and across all CEE Legal Matters publications, instead of the “Kyiv” spelling. Mr. Sayenko was kind enough to let us know that his editorial policy for the “Kiev” spelling simply reflects a consensus in consistency to such matters, and does not reflect any personal or political preference.
Mastering Law in Magyarorszag: The LL.M. in European and International Business Law Program in Hungary

Gabor Palasti is an Associate Professor in the Faculty of Law at the Karoli Gaspar University of the Reformed Church in Hungary and at the Riga Graduate School of Law in Latvia. He specializes in private international law and international business law. Throughout his career, he has worked with a number of international organizations, including UNIDROIT, WIPO, EUIPO, IPR Verlag, and he has published a huge number of articles and reports around the world.

Palasti has recently taken a leading role in the creation of the first accredited LL.M. program in Hungary. We asked him to describe the program for our readers.

Any lawyer seeking to enhance his or her academic knowledge in a specific field of law would start by considering LL.M. program offerings around the world. These LL.M. programs (Legum Magister – Master of Laws) were once nothing more than a second phase of degree programs in national law in countries in which degrees in law were divided into a Bachelor level and a Master level, as the system of legal higher education traditionally is in common law countries. But today the term “LL.M.” has become a universally-recognized label for programs (usually) focusing on international law and designed for students who already hold a Bachelor degree in law from their home country.

The program has already shown itself capable of serving multiple purposes and appearing in multiple forms. ELTE University has offered it as a weekend course mostly for local practitioners. The University of Pecs has incorporated it into its regional CEEPUS program; ELTE University offered it as a full-time daily program (Central European Exchange Programme for University Studies). The University of Debrecen is offering it both for locals and foreigners. And the Karoli Gaspar University is preparing to offer it as a full-time daily program targeting mostly foreign applicants.

In the three years since it has been introduced, the LL.M. program has proved to be successful and valuable, and it has in that short time become a critical component of Hungarian legal education.
SAMBA IN CEE: Brandi Partners Expands Across Europe

“We are building up the brand, this is the idea, and the exciting thing to build something new, from scratch, and we are all very excited about the project.”

Confidence and creativity underpin success. Babe Ruth, the famous American baseball player, was once accused by a policeman of driving the wrong way up a one-way street. Ruth explained, inarguably, that he was only going one way. Operating on similar principles, the Brazilian Brandi Partners’ expansion into Europe and CEE goes against the tide of foreign firms expanding into Brazil. And, like Ruth, the firm seems to be confident in its direction.

History and Background

In 2010 French lawyer Guillaume Dolidon found his plans to fully serve his Latin American clients stymied by a controversial Brazilian Bar Association rule forbidding foreign firms from tying up with Brazilian counterparts. Reversing his field, Dolidon suggested to friend and Brazilian lawyer Arthur Brandi that the French bar imposed no such prohibition on foreign lawyers, and proposed that instead of Dolidon bringing his brand to Brazil, Brandi should bring his to Paris. Brandi Partners’ office in the City of Lights opened in September, 2012. Seeing no reason to stop, within months Brandi Partners had opened offices in Dubai, Milan, and Istanbul as well. Despite its size and reach, Partners at Brandi Partners all reject the suggestion that they are a “traditional law firm,” and they refer to themselves as an “association,” an “alliance,” or a “network”—and the firm’s marketing material describes Brandi Partners as an “international organization.” They happily point out that there are no global partners or shared profits across offices—and that same marketing material claims that “there is no governance, no hierarchy and we are free of nationalitiy.”

Thus, as Dolidon and his counterparts around the world see it, they can share best practices and information and a productive client referral network, while allowing their members to stay wholly independent and avoid the administrative costs and challenges inherent in full integration. The model has attracted firms and lawyers in a number of markets eager to take advantage of the international referral network and international brand while retaining full independence. And the firm is looking, more and more, towards CEE.

Expanding in CEE

In February 2013, Turkish lawyers Stephane Guthan and Belgin Ozdilmen—who had worked briefly with Dolidon at Sherman & Sterling in Paris in 2009—agreed to align their Turkish law firm with Brandi Partners. A year later the firm expanded its Russian capabilities by hiring CMS Bureau Francis Lefebvre Partner Charles-Henri Roy to head up the new Moscow office with Partner Marc Solovei, who had coordinated Brandi Partners’ Russia/CIS practice from Paris since 2012 after spending many years in Moscow with Gide Loyrette Nouel.

The Partners in Istanbul and Moscow are confident in the brand. Ozdilmen, in Istanbul, says that they weighed the pros and cons before joining Brandi Partners—but “actually there were a lot of pros.” She explained that “in Turkey labels are very important. We have a more international image aspect now thanks to Brandi Partners, [and clients] are more interested in our law firm.” The firm’s model was a strong selling point. “Actually, it is why we chose Brandi Partners,” Ozdilmen says, “because we kept our independence, and at the same time we have increased our network.” And times are good—the office in Istanbul had 5 lawyers when it joined Brandi Partners, currently has 7, and hopes to grow to 10-12 by the end of the year.

Roy, in Moscow, was also attracted by Brandi’s “network of independent lawyers.” He explains that, after 10-12 years with an international firm, he wanted to do something new—but felt that, without an international brand, he’d be unable to compete against the major players for major clients. “This was the main idea of this partnership, to have something where we are all independent, like a ‘brand’ I would say, and then we can use it or not use it, as we want, as an international ‘association.’”

The initial results, in Russia, have been encouraging. Roy concedes that “it’s still very early … but from the feedback I have from the clients it’s something interesting. I see that I have already other markets. Dolidon says he expects to see a number of offices join the firm in coming years, and expresses particular interest in adding an office in Poland and northern Africa. Roy also mentions Poland, the Czech Republic, and Kazakhstan as potential steps in the plan “to create a Brandi network in CEE and CIS.”

Ultimately, the firm is willing to consider options anywhere. Roy says, “the idea is more to find the best lawyers, who are willing to work independently and who are entrepreneurs, to develop their own law firm, to use the brand of Brandi if they need.”

The firm’s—sorry, the “international organization”—rapid growth in recent years, then, can be seen as a reflection of Dolidon’s conviction that clients are far less concerned with internal organi-
Avoiding the Void: Czech Law Firms Survive the Crisis

Few law firms in Europe were able to completely escape the punishing effects of the recent global financial crisis. Russian lawyers in particular were laid off in unprecedented numbers. And across CEE, firms were forced to take steps to limit risk or adapt to the new reality, including, in some cases, cooling plans to formalize market entry (see: Allen & Overy/Romania) or actively closing offices and withdrawing altogether (see: Beiten Burkhardt/Warsaw).

But while the Czech Republic suffered badly from the crisis, partners at many of the leading Corporate/M&A law firms in the market claim that, by and large, they were able to survive its darkest days without substantive change. Of course, rare is the partner willing to concede financial challenges or anxiety to outsiders, and optimism is de rigueur in conversations about business, so to some extent simple assertions of confidence should be taken with multiple grains of salt.

Still, it appears that the leading law firms in the Czech Republic were able to adapt to this more challenging climate without too great a disruption of their operations by slowing growth, freezing salaries, limiting promotions, and finding other ways to cut costs without laying too many law firms off — and by fighting harder to win and keep clients than they had to do before.

Of course, some layoffs were inevitable. CMS Cameron McKenna, Baker & McKenzie, Kocian Solc Balašík (KSB), and Squire Sanders, among others, acknowledged that they were forced to let some of their lawyers go as a direct result of the financial crisis. Other firms as well, while demurring about specific ties between the lawyers who were shown the door and the crisis, made the strategic decision to not replace lawyers who were let go for other reasons — or who left on their own initiative. As a result, most of the top-tier Corporate/M&A firms shrunk somewhat from their 2006 numbers, or, at best grew only slightly (Baker & McKenzie, for instance, has 26 fee-earners, compared to the 23 it had in 2007).

And the changing climate required other cuts as well. Cesar reports renegotiating his office’s lease, eliminating extra bonuses, and freezing salary — instituting what he described as “more reasonable form of remuneration.” He sighs at the increased time and attention he’s had to spend defending his bills to clients, renegotiating arrangements with service providers, renegotiating his lease, etc.

Nonetheless, he notes with pride that the most recent fiscal year for the firm, which ended in July of 2013, was their “most successful ever” — and was in fact 40% better than 2007. But the cycles, he says, seem to be shortening — this fiscal year has been nearly as profitable as last — and he’s now seeing noticeable changes in profitability and utilization every 2-3 months.

As a result, Cesar also draws attention to the increased competition for clients, saying that, “across the market you have to fight harder to get the business than you did in 2007.” Six years ago finding business was an easier proposition. Now, Cesar says, “the pie is still the same — but it’s getting smaller and colder.”

Cesar also says of the pressure to lower fees that “sometimes it’s unbelievable.” He rolls his eyes at the low fees he’s obliged to bill his attorneys out at, and jokes that, given their respective rates, he’s given thought to hiring his lawyers to replace the man he pays to check his home gas heating boiler going forward.

Still, he’s confident, and says that the firm’s average business over the 6 years of the crisis has been good.

Of course, even the business that does come through the door needs to be done more cheaply than before. Helen Rodwell, the Managing Partner at CMS Cameron McKenna in Prague, says her firm has begun offering different rates for different kinds of work, tailoring its rates to the sophistication of work involved, with the more complex and challenging work costing more. Rodwell also notes that the scrutiny clients are increasingly applying to their bills means that “it is essential that your financial hygiene is in order, as transparancy on fees and regular reporting are essential for most clients these days.”

“I think our firm wasn’t affected a great deal, to be frank. Since the beginning of the crisis we’ve watched costs much more carefully. Well, we started to watch costs period, for the first time. But if I look at the impact the crisis has had on our activity, I’d say we had one slightly weaker year since 2008 (2010), but otherwise we’ve had very strong years.”

Radan Kubr
Partner, PRK Partners

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aggressive price dumping.” And Kubr, like Cesar, draws attention to the plunging rates of lawyers compared to blue collar workers, albeit in a less jocular way. “We’re not ready to underrate ourselves and to try to match the cheapest offer, because the price levels are just so ridiculous in the Czech Republic that we don’t want to work for the rates of a cleaning woman. If there are other people in the business who are willing to play that game, they can do that, but we’d rather close shop than work for the fees of a janitor.”

Radek Janacek, the Managing Partner of Squire Sanders’ Prague office, rolls his eyes at any suggestion that firms haven’t been forced to adapt to the new economy. “I do think there are changes,” he says. “I don’t think it’s anything like before the Lehman Brothers fall, so that’s just plain stupid to say there’s been no change. The stagnation of the economy continues, and there’s not really been any major pick up in the GDP growth.”

Janacek admits that Squire Sanders was forced to lay off several long-time associates, as well as a mandated overall pay cut for 2009/2010. According to Janacek, “we were unfortunately forced to let some people go who had hit the ceiling. Senior people who never developed their own business or practice, and were impeding the growth of more junior people. We just did that gradually over a couple years. We’ve always been fairly mid-sized – 20 or 25 people – so we could afford to swap one person one year and one person the next year.” As a result, “in terms of size we’re pretty much the same we were 5 years ago, but we’ve gone through fairly big changes.”

Still, the firm saw about a 5% growth in revenue in 2013, Janacek reports, and he expects about the same this year. But he doesn’t expect a much bigger revenue in 2013, Janacek reports, and we’ve gone through fairly big changes.”

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“Every country in Eastern Europe is different, and the culture is different, we know that. But we here in Central Europe and in particular in Austria are probably closer to every other Eastern European culture than we are to the Russian culture. This is something different.”

“Different” or not, most of the Austrian firms are comfortable with remaining CEE/SEE-focused. Indeed, Alexander Pop, Partner at Schoenherr – the firm with the largest number of offices outside Vienna of any Austrian firm (including one in Brussels) – is up-front about his firm’s focus. “The geographical footprint that makes sense for us as a strategy is Central and Eastern Europe.”

But not one Austrian firm has an office in the largest country in the region/the continent/the planet. Russia, it seems, despite having the largest economy in all of CEE, stands apart from the other countries in the region as a uniquely intimidating challenge, one considered and then rejected by the firms that otherwise reach across it.

Of course, there’s no mandate that a firm try to be everywhere anyway – especially when it’s not clear that CEE means much more than the official Scrabble spelling for the third letter in the English alphabet. Albert Birkner, Partner at CHSH, makes that point. “You are aware that Eastern Europe is not Eastern Europe. You have to differentiate among the various markets and various jurisdictions. For example you can not compare Hungary to Romania, only because it’s all Eastern block – it doesn’t mean they have anything in common.”

Raimund Cancola, Managing Partner at Taylor Wessing ENWC, concurs. “Every country in Eastern Europe is different, and the culture is different, we know that. But we here in Central Europe and in particular in Austria are probably closer to every other Eastern European culture than we are to the Russian culture. This is something different.”

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- Albert Birkner
Russia, because the market is important.” Schoenberr’s solution – as that of the other leading firms in the market – involves the good relationships it has built with the leading Russian and international firms already there. And thus, when his clients in Ukraine and Slovakia, for instance, ask for an extension of their coverage into Russia, his response is straightforward. “We don’t have an office in Russia, but we work together with Russian firms, and this is how we cover it.”

Erik Steger, one of three members of the Wolf Theiss Management Board, says that, “we feel we’re everywhere we need to be at the moment.” Wolf Theiss traditionally follows client demand in deciding which markets to open offices in, Steger says. “And, from a strategic perspective, whether Russia is an option for us, must be evaluated on the basis of how many of our clients that are in the CEE/SEE region, also go into Russia, and go to Russia so much that they would ask their lawyers to be there as well. Now if you look at Wolf Theiss, we have a huge client base in Banking and Finance, we have a huge client base in Real Estate, in Infrastructure and Energy, you will be able to see that some of these clients, yes they do have Russian operations, but the majority not. So Russia appears to be, for our clients, every now and then maybe too big to dare move.”

And if it’s too big for the firm’s clients, it’s too big for the firm. “If you were going to move to Russia,” Steger explains, “you can’t do that with 7 or 8 people. You could do that if you had a niche offering – so if you had a firm that focuses only, say, on Real Estate. Then you could have 8-10 lawyers in an office there, and just do fine. But if you offer more than that – if your offering is broader, just like ours – then you need a massive operation there … you need a massive operation there … and if you need 50 in Poland, you probably will need 100 to 150 in Moscow to meet client expectations. What that means is you need a massive investment. And the question is whether a partnership of our size can, risk-wise, manage such a step.” His question is rhetorical – the answer, obviously, is no.

“The Russian market, in my view, is so huge, it doesn’t make a lot of sense to start with a small unit. You will most likely be more effective by being present with a remarkable size from the beginning, which requires a certain investment.”

The cost of entering in appropriate numbers is a common refrain. Cancola, at Taylor Wessing ENWC, also refers to that particularly intimidating obstacle. “The Russian market, in my view, is so huge, it doesn’t make a lot of sense to start with a small unit. You will most likely be more effective by being present with a remarkable size from the beginning, which requires a certain investment.”

Clemens Hasenauer, Partner at CHSH, agrees. “Russia is a huge market, it’s farther away from Austria, and you have a lot of large firms still located there, also US firms, where you have high barriers to entry, when it comes to costs you incur, in order to get office space in a decent location, and get good lawyers – it’s all very costly there.”

In addition to the cost of doing business in Russia, partners at the Austrian firms often make explicit reference to the historical connection between Austria and its closer neighbors in explaining their lack of interest in that farther country. Birkner, for instance, explains that CHSH has focused its Eastern European expansion primarily on Southeastern Europe, “because those countries are smaller jurisdictions that have a history of being a kind of backyard market for Austria.” He continues, “so this makes perfect sense for Austrian investors to be there, and together with them we kind of accompanied them and set up our offices there, particularly because we have a very strong Austrian client base.” Raimund Cancola also refers to Austrian history and geographical proximity when considering why ENWC stayed out of Russia even before its 2012 tie-up with Taylor Wessing. “It’s a funny thing with Russia: We always had the philosophy that we look at new markets from our perspective, and … we always had the philosophy of ‘we go where we feel more at home’ … so if you look at our history – from Hungary, we moved further and further down the road of our historic roots.”

The question of Russian expansion is no longer his to struggle with, Cancola notes. Taylor Wessing ENWC is the “competence center” for SEE and CEE, “but because Russia has such a global impact, Russia is dealt with on the Taylor Wessing international level.” Still, Cancola believes that “looking at Taylor Wessing’s international road map, I can say that, we will look into Russia in the next 4-5 years. However that also depends on the nature of demand of our clients.”

Explanations for Austrian firms’ avoidance of Russia may differ to some minor extent, but none of them see any reason to incur the significant costs and face the undeniable competitive, legal, and cultural challenges involved in opening an office in the country. The firms are already profitable and content in the rest of CEE, and none faces significant pressure from clients to be on the ground in Moscow. Ultimately, even while they compete with one another for clients across CEE, one thing Austrian partners seem to agree on is: “Russia is different.”

David St Hubay
Legal Matters

Women’s Day is behind us, but the subjects of gender equality and equal opportunity are of year-round concern. This, the first part of a special two-part CEE Legal Matters article on women in private practice in CEE, provides the numbers and percentages from leading law firms across CEE, as well as a more thorough snapshot of one representative market. Part II of the report, in the June issue, will pull back the curtain even more, providing feedback and perspectives from lawyers across the region.
The Glass CEEling

Introduction to Report

What is “gender equality” in a workplace? Is it equality in terms of gender proportionality? Or perhaps a simple refusal to make decisions when hiring or promoting based on pre-formed expectations about gender? If gender equality is assumed to be a desirable goal, is it best achieved through affirmative action or through non-preferential treatment?

The dialogue on gender roles is a heated one. With thousands of studies – often contradictory – conducted on the subject, opinions often fly ahead of the facts. Does gender equality exist, or can it – or should it – be politically correct? Are societies moving towards it in productive and observable ways? How often does a call for it – or should it? Are societies moving towards it in productive and observable ways?

Regardless, the facts are key. With this issue CEE Legal Matters introduces a two-part report on gender equality at law firms in and across Central and Eastern Europe. This month’s focus will be on the numbers. In the next issue, mid-June, the focus will turn to the explanations, justifications, reasons, and underlying causes. The debate will presumably never end – not, perhaps, should it – but a greater understanding of the facts and insightful analysis should at the very least provide the basis for a more enlightened and informed conversation.

The Methodology

Basic Statistics

<table>
<thead>
<tr>
<th>Number of offices looked at</th>
<th>488</th>
</tr>
</thead>
<tbody>
<tr>
<td>Firms/offices that do not list associates</td>
<td>60</td>
</tr>
<tr>
<td>Firms/offices with at least 5 Partners</td>
<td>239</td>
</tr>
<tr>
<td>Firms/offices with at least 10 Partners</td>
<td>89</td>
</tr>
<tr>
<td>Number of offices of US or UK firms in CEE analyzed</td>
<td>115</td>
</tr>
</tbody>
</table>

“Associates” for the purpose of the survey includes any lawyer not identified as Partner (i.e., Junior Associate, Associate, Senior Associate, (of) Counsel, etc.).

The data in this report was gathered from the websites of 488 law firms ranked by Chambers & Partners – in any practice area – across 20 CEE jurisdictions: Albania, Austria, Belarus, Bulgaria, Croatia, Czech Republic, Estonia, Greece, Hungary, Latvia, Lithuania, Macedonia, Poland, Romania, Russia, Serbia, Slovakia, Slovenia, Turkey, and Ukraine.

The remaining countries in CEE had fewer than 5 ranked firms with useful websites, and were thus excluded as providing insufficient data. In addition, law firms ranked by Chambers but with websites that do not distinguish between Partners and Associates – a total of 60 in all – were excluded from consideration.

The various offices of law firms with bases elsewhere were included for each country (i.e. DLA Piper Romania, Allen & Overy Moscow, etc.).

Data was collected from law firm websites between April 1, 2014 and April 7, 2014, and the accuracy of the final figures thus depends on the accuracy of those sites at those times.

The Data

Discriminatory hiring practices against female associates appear not to be present in Belarus, at least, as women in that country account for 77% of all associates. Macedonia is another outlier, with women taking 79% of all associate positions in law firms in the country. Women in Hungary, by contrast, make up the lowest percentage of associates in law firms in the region, accounting for only 44% of the roles. Austria and the Czech Republic (both 45% women), and Poland (46%) show very similar results to Hungary’s, while female associates in other CEE markets make up between 48% and 66% of the total in those countries.

The numbers for partners are very different. Austria has the lowest percent age of female partners, with just 15%, Romania has the most, with 45%. And Belarus, which had far and away the highest percentage of female associates in CEE, seems to lose them before partnership, since only 31% of the partners in that country are women.

Of course, while the ratio of men to women partners in a given law firm may be similar or even identical to the ratio in the country as a whole, in many law firms the proportions are very different. The top five firms in terms of the percentage of women in partnership are: Red Attorneys at Law (Latvia) – 100% (5 of 5), Vlasova, Mikhail & Partners (Belarus) – 86% (out of 7), NNDKP (Romania) – 84% (out of 19), Akol Avukatlik Burosu (Turkey) – 80% (out of 5), and Veronos David (Romania) – 80% (out of 5). Of the 89 offices with at least 10 partners in CEE, only three have more female partners than male – and all are in Romania: NNDKP (84%), the Bucharest office of Schoenherr (64%) and Musat & Associates (56%). The fourth position is shared by four firms, all with 50% female partners: Herguner Bilgen Ozei and Mehmet Gun & Partners in Turkey, Cerha Hempl Spiegelfeld Hlawati in Hungary, and Tark Grunte Sutkiene and Partner Level

<table>
<thead>
<tr>
<th>Country</th>
<th>Total Number of Partners</th>
<th>Total Number of Associates</th>
<th>Total Number of Female Associates</th>
<th>% Of Female Partners</th>
<th>% Male Partners</th>
</tr>
</thead>
<tbody>
<tr>
<td>Albania</td>
<td>26</td>
<td>62</td>
<td>9</td>
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<td>65.38%</td>
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<td>389</td>
<td>754</td>
<td>57</td>
<td>14.65%</td>
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<td>3</td>
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<td>33.33%</td>
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<td>80.56%</td>
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<td>302</td>
<td>43</td>
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<td>364</td>
<td>41</td>
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<td>66.39%</td>
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<tr>
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<td>10</td>
<td>41.32%</td>
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<td>Russia</td>
<td>405</td>
<td>735</td>
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<tr>
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<tr>
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<td>Slovenia</td>
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<tr>
<td>Turkey</td>
<td>132</td>
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<td>Ukraine</td>
<td>136</td>
<td>356</td>
<td>45</td>
<td>28.32%</td>
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<td>Total</td>
<td>3,006</td>
<td>7,743</td>
<td>919</td>
<td>27.06%</td>
<td>72.94%</td>
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</table>

Average Statistics of Female Associates and Partners by Country
In contrast to the 1 firm/office with at least 5 partners, none of whom are male (Red Attorneys at Law, in Latvia), 142 firms/offices have a minimum of 5 male and no female partners – and 5 offices in CEE have partnerships of 10 or more, none of whom are women. The Austrian offices of Binder Grosswang and Freshfields, the Czech offices of PBK Partners and BBH, and the Polish office of Greenberg Trautman, each fits this description.

Conclusion and Invitation for Comment

We recognize that the subject is controversial – and it has already inspired more than one heated conversation around our editorial table. We look forward to hearing comments from our readers on the subject. We will include as many of those comments in the next issue as possible, along with the second part of the report.

Legal Matters

Not Just a Man’s World: Women in Bulgaria’s Legal Labor Market

CEE Legal Matters Correspondent John O’Donnell has paid particular attention to the Bulgarian legal market, first as an international legal recruiter, and then as a matter of personal interest, for over 5 years now. He analyzes the gender breakdown of law firms in the country, with a spotlight on the particular circumstances and challenges Bulgarian law firms face.

A stuffy and hierarchical man’s world. That’s how many people see law firms – and indeed, for many years until the 1980s in the US and Europe, that’s exactly what many firms were. Under communism, however, the percentage of women in the workforce in many CEE countries was much higher than it was in their Western counterparts, and law firms were no exception.

Of course, with captive economies and politically dominated judiciaries, law firms then were very different than the ones of today. That’s how many people see law firms – and indeed, for many years until the 1980s in the US and Europe, that’s exactly what many firms were. Under communism, however, the percentage of women in the workforce in many CEE countries was much higher than it was in their Western counterparts, and law firms were no exception. Of course, with captive economies and politically dominated judiciaries, law firms then were very different than the ones of today.

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In modern times, however, the percentage of women has fallen. Women now hold a minority of partnership positions within the industry as a whole, they are strongly represented in some of the leading and most influential firms. Overall, as reflected in Chart 1, approximately one third of the partners at the firms ranked at the very top of the market by Chambers & Partners for 2013 are women. This percentage falls back to one fifth at firms in Chambers Tier 2, before rebounding in Tier 3, and actually reaching full parity with male partners in Tier 4.

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A stuffy and hierarchical man’s world. That’s how many people see law firms – and indeed, for many years until the 1980s in the US and Europe, that’s exactly what many firms were. Under communism, however, the percentage of women in the workforce in many CEE countries was much higher than it was in their Western counterparts, and law firms were no exception.

Of course, with captive economies and politically dominated judiciaries, law firms then were very different than the business-oriented firms which dominate the landscape today.

Bulgaria has often been seen as a laggard among post-communist countries on legal and economic reform. It entered the EU only in 2007, and is still monitored on judicial reforms by the European Commission under the cooperation and verification mechanism. However, the Bulgarian legal market has made enormous strides, to the extent that women now outnumber men in many firms.

Pioneers like Anelia Dinova at Dinova, Russe, & Partners and Irina Tsivetkova at Tsivetkova, Bebov & Partners have definitely answered any questions that may have once been asked in the country about whether women can successfully run law firms. Many smaller firms boast women as their leading partners as well, and several international firms are managed by female partners, including Alexandra Doychinova at Schoenherr and Anna Rizova at Wolf Theiss (and formerly DLA Piper).

And although it can’t be said that women hold a majority of partnership positions within the industry as a whole, they are strongly represented in some of the leading and most influential firms. Overall, as reflected in Chart 1, approximately one third of the partners at the firms ranked at the very top of the market by Chambers & Partners for 2013 are women. This percentage falls back to one fifth at firms in Chambers Tier 2, before rebounding in Tier 3, and actually reaching full parity with male partners in Tier 4.

As and shown in Chart 1, female associates have achieved at least statistical parity with male associates in every tier, and actually fall over 70% of all associate roles in the third and fourth tier firms (and the second tier as well, if the radical outlier Penkov Markov Partners – with 20 male to 11 female associates – is excluded). Indeed, this imbalance – which presumably holds true for the larger unranked firms as well – is intriguing that some firms have begun expressly focusing their hiring and recruiting efforts on finding qualified and skilled male associates.

One concern often cited by partners is that the low pay for skilled Bulgarian workers (including lawyers) relative to the European average for those professions may be leading the more capable candidates to move abroad to look for higher salaries. This phenomenon, some sources report, may be pulling more skilled men than women (who may find family ties or obligations harder to break) out of the country. Others believe that Bulgarian women are more willing to accept a long career track at firms, or even to accept positions where partnership is not likely, than men are. This would explain why a number of firms have reported losing male associates dissatisfied with what they felt was a slow career progression, and actually fill over 70% of all associate roles in the third and fourth tier firms (and the second tier as well, if the radical outlier Penkov Markov Partners – with 20 male to 11 female associates – is excluded). Indeed, this imbalance – which presumably holds true for the larger unranked firms as well – is intriguing that some firms have begun expressly focusing their hiring and recruiting efforts on finding qualified and skilled male associates.

Many possible explanations for this phenomenon have been proposed. One concern often cited by partners is that the low pay for skilled Bulgarian workers (including lawyers) relative to the European average for those professions may be leading the more capable candidates to move abroad to look for higher salaries. This phenomenon, some sources report, may be pulling more skilled men than women (who may find family ties or obligations harder to break) out of the country.

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While some in the industry have clearly identified this imbalance as a potential concern and have looked for ways to increase gender equality at the associate level, no clear solution has yet been found.

To learn more about the survey and data please visit the CEE Legal Matters website, which contains an expanded version of this feature, including data for all 488 firms/offices that were surveyed.

As always, we welcome your feedback and comments at press@ceelm.com.
Guest Editorial: Springtime in Romania

What is the word that best describes the Romanian legal market this spring? Some may say “apathy”, and others may say “business as usual”. Very few people – if any – will say “excitement”. After all, the renewable energy boom is pretty much over (with the corresponding legal work that kept many firms going through the crisis drying up), banks are still recovering from the crisis malaise (translation: banks are still lending very little), the skyline is not yet punctured by construction cranes everywhere you look, the public sector is as slow as it has ever been, and last time I checked, Romania had not yet become a hotbed of M&A activity. Add to this a couple of high-profile withdrawals of international firms from the Romanian legal market and the picture appears rather discouraging: the market is not going very well, it seems. Coming back to the one word description of the current status, perhaps the best such word would be “fatigue”, as that felt by people coming out of a long, long winter. But the analogy is appropriate in more than one way. Even the longest winter is followed by spring. And spring is coming to Romania, not only in terms of the sunny and warm weather, Easter holidays and so on, but also in terms of the economy. At the beginning of this year, Romania was able to place a reasonably priced 30-year bond in the international markets. One billion dollars worth, in fact. Some obviously believe that Romania has a long-term future. One of the fund managers I spoke to recently was very bullish on Romania: the boom is around the corner, he said. He was talking about the economy in general, not the legal market in particular. However, the legal market does form an integral part of the economy and is likely to experience similar trends, albeit with the usual volatility dampers: inertia in terms of pricing, capacity constraints, etc. If the fund manager is right about the economy in general, we should also see in the legal market a surge in client demand, improved pricing, and a scramble for resources (meaning good lawyers to put on cases).

Are there any signs that this may come true? Judging by the level of activity in my own firm, and by the number and quality of requests for proposals we get, yes, there are. Judging by the continued pressure on pricing, it seems that very few people are noticing it. Or, if they are noticing, few people believe that these are really signs that spring is coming, rather than weird flukes of the weather (after all, with all this global warming, weather patterns are being distorted, right?). However, there is a danger in not noticing. Spring may come and go sooner than you think. When it goes, it is replaced by the blazing-hot summer, when overheating is the main concern. Spring is the time to do some work around the house: to dust things off, check the air conditioning, plant seeds or seedlings in the garden, turn the sprinklers on, paint the main door, etc. Can you plant in the summer? You can, but most likely things do not take root.

What does all this spring metaphor mean for lawyers and their clients operating in the Romanian market?

For lawyers, I would say this means making sure that your organization is in good shape, in terms of the right level of expertise, capacity to deliver quality legal work and a good service to clients. Although the received wisdom will have you believe that all you need to do these days to survive in the very competitive Romanian legal market is to offer clients a lower price than your competitors, I think that it is becoming clear where this model breaks down. Low price in itself is not enough. Clients like low prices, but not at the expense of quality and service. Low prices can induce a vicious circle of pressure to lower the costs, low morale, low quality. Law firms in Romania have been remarkably good at coping with the crisis without significant downsizing. It is not the time to give up, not just yet. On the contrary, it is time to do that spring-time work.

For clients, the spring-time metaphor means that it is time to start building relationships with firms that do provide quality and service. When the boom-time comes, these may become scarce commodities.

Marian Dinu, Country Managing Partner, DLA Piper
Bar associations are responsible for the regulation of the legal profession as well as professional organizations dedicated to serving their members. In Romania, the Activity Report for 2013 of the Romanian National Union of Bar Associations (UNBR) states that the UNBR Congress’ mission is to “constantly support the development of the training level of lawyers, enhance relationships between the different Bar Associations in the country and, where needed, make decisions with regards to the deontological regulations of the profession.”
The UNBR also highlights on its website what it calls “several current and future preoccupations” with regards to the legal profession. Among other things, the UNBR stresses the fact that, in the 21st Century, the legal profession is strongly shaped by the economy: “The cultural identity of the lawyer is influenced to an increasing degree a socio-cultural path [it is unclear what path it’s referring to] and increasingly marked by the economic component of the profession, a situation which is leading to a considerable change in the content and equilibrium of the system of values at the core of the profession.” As a result of this analysis, the UNBR states: “…a re-evaluation of the institutional position of the lawyer is warranted, both relative to the judicial branch and relative to the business world and civil society.”

It is perhaps this “economic environment” pressure on the “system of values of the legal profession” that led the UNBR to modify its Statute of the Legal Profession in December 2013. One change in particular proved to be particularly difficult for law firms in the market to digest: the new provisions related to commercial communications by lawyers and law firms. Specifically, the manner in which law firms can and cannot advertise is now unclear, and nearly all PR/Marketing professionals at leading firms in the market have had to put their efforts on hold.

What, if Anything Has Changed in the Market?

On December 14, 2013, the UNBR Council issued Decision No. 852 which, in Articles 243 and 263, contains several changes to the Statute of the Legal Profession regarding ways lawyers can communicate with the public. As there are currently over 7,000 law firms registered in Romania, the type, and impracticality regarding the new restrictions are almost unavoidable.

The reality is that nothing has changed. The Emergency Ordinance No. 49 of 2009 and Law No. 68 of 2010 clearly states that all economic agents will enjoy freedom in commercial communications with the note that, in regulated professions, they need to respect the professional norms set by the professional regulatory body. In this case, the main criterion that needed to be respected related to the independence and dignity of the profession and a respect towards professional secrecy. There is nothing that would ban advertising or commercial communications all together as long as these principles are respected.

And indeed, many of the existing restrictions on the legal professions with regards to commercial communications extend beyond the principles set forth in the legislation quoted by Florea. For example, the Statute of the Legal Profession in 2011 already specifies in Article 247 that a “general presentation brochure” is not allowed to identify names of clients. However, the original article contains an exception allowing firms to identify their clients when those clients have given permission. In the new Statute, Art 249.1 was inserted, which states simply that, “irrespective of the channel used it is forbidden — to nominate clients in the portfolio or indicate litigations worked on.” The exception allowing firms to identify clients with their consent is no longer included (although Article 247 has not been amended, and thus remains in its original form).

When asked for clarifications on this apparent contradiction, the UNBR President explained that: “Professional secrecy is an absolute value at the very foundation of the legal profession and we believe – and it is also a matter of law – that it is not to be compromised under any circumstance, even with regards to basic elements such as identifying a client and even if the client should choose to waive it.” When asked why a client waiver would not suffice, he did identify one change in publicity regulations and stated that: “It removes any risk whatsoever of infringement of the rights and liberties of these clients. It also removes any remote temptation for those limited few, who in their overzealous communication strategies, might overlook carrying out the proper due diligence with respect to this. I am not saying all or most would not carry it out but I believe the rights of the client should be put first and not allow for any risk to compromise on those.”

Uncertainty in the Market

One marketing expert at a firm in Bucharest who requested not to be named conceded that, while there are several changes in the regulations themselves, many of them have, “been around on paper for years, albeit not always enforced to their full extent.” What has changed considerably with the new Decision in December, aside from the tightening of rules here and there, is the increased ambiguity due to specific wording and increased threat of potential sanctions for lawyers and law firms. And advertising in the market is on hold until clarity is brought back. As one Marketing Manager described it: “We’re waiting. We definitely do not want to be the first caught off-side and be made an example of.” And apparent contradictions, such as the ones mentioned above, are not the only source of uncertainty. Additional ambiguity comes from vague wording. For example, Article 244 states that certain types of communications are allowed in “industry magazines and other publications,” but not allowed in those “addressed to the public at large.” Many professionals have expressed frustration at the lack of clarity on this subject as well.

Questions also exist about the practicality of some of the new restrictions. For example, the Statute requires that communication carried out through a variety of channels such as brochures, websites, auto-signatures, e-mail, and logos need be pre-approved by authorities of the profession. As there are currently over 7,000 law firms registered with the Bucharest Bar alone, with many of these using a mix of the channels mentioned, and with these communications likely requiring updates several times a year, logistical logjams in obtaining the required pre-approval are almost unavoidable.

The result of the ambiguity, uncertainty, and impracticality regarding the new rules has been extreme caution. Nestor Bejenaru & Partners firm has taken specific pieces of news about recent deals down from its website, while Peli Filip’s website now features a disclaimer, and with these communications likely requiring updates several times a year, logistical logjams in obtaining the required pre-approval are almost unavoidable.
Marina T. -<br><br>When asked about the situation in the market, Florea is unmoved. “If any ambiguities exist our institution has every intention to facilitate open and good-will discussion in order to offer clarifications. For example, we issued a statement whereby we invite lawyers to submit queries to the Department for Studies, Judicial Research and International Cooperation at the National Institute for Training and Development of Lawyers (“INPPA”). These can be either requests for clarifications as well as input towards the development of a best-practice handbook with regards to commercial communication.”

In theory, the proposed solution sounds good—but it appears the leading firms in the market are unpersuaded. We were shown copies of two letters, each signed by 36 leading law firms in the market and officially sent to and received by the UNBR (one on February 24, 2014 and one on March 17, 2014), calling on the institution to engage in a “dialog towards improving the regulations related to public communication and to offer specific clarifications as to how these regulations are to be applied in practice.” The letters point to economic considerations, noting that more communication—not less—regarding the economic activity of lawyers and the benefits they bring clients is desirable to further develop the practice of law in Romania, including through the development of more ways that the legal profession can contribute to economic gain.

The letters have yet to be answered.

Informed Decisions and Competition

Florea points out that lawyers in the market had ample opportunities to object to the “modifications” before they were finalized. “One needs to first of all understand how the Romanian National Bar Union works. It operates under representative democratic principles by bringing together 42 Bar Association representatives (one for each county in Romania), which, in total represent 30,922 members. Initially, the UNBR issued a call for prudence in commercial communications urging lawyers across the country to adhere to the principles mentioned above. Later, a decision was issued which set circumstances under which these should be limited. In adherence to our by-laws and the operating procedures of our organization, we held a council of the 42 member Bar Associations in March, where, should there have been any issues with the recent modifications in the Statute of the Legal Profession, they could have been voiced—no objections where raised at all on this matter.”

According to the UNBR President, “the goal [of the changes] was fundamentally to make sure that we provide accurate and relevant information to the end consumer of legal services so that he or she may be able to make a truly informed decision.” By clearing the market of the white noise of firms announcing deals they worked on or lawyers naming former public offices they held (another aspect specifically forbidden), he hopes to achieve this goal.

The European Commission Report on Competition in Professional Services in 2004 concluded, however, that: “Advertising restrictions may thus reduce competition by increasing the costs of gaining information about different products, making it more difficult for consumers to search for the quality and price that best meets their needs. It is also widely recognized that advertising, and in particular comparative advertising, can be a crucial competitive tool for new firms entering the market and for existing firms to launch new products.”

Whether information about which clients prefer which firms and which lawyers have experience in government—information that appears to be forbidden to consumers by the UNBR—would assist in the performance of an informed decision is the question that divides the UNBR and the leading law firms in the country.

Surprisingly, Florea denies that the new rules preclude firms from providing information about clients and professional background to consumers—and insists that they are only barred from doing so for “purposes of publicity.” He explains: “Professional secrecy and access to information/informed decisions are not mutually exclusive if done right. Nothing prevents lawyers from presenting a track record of former deals—the regulated aspects are related to them reporting on them for publicity purposes. At the same time, the often-met practice of putting forward former public offices held as a calling card is definitely a vector for corruption. There is nothing preventing lawyers from having a profile/CV or reporting on their activities but hinting, for the former, that I speak Italian is likely to remain a key aspect in a field and very ‘well connected’ risks stemming a considerably high level of corruption.”

Perhaps the long-awaited best practice handbook that Florea mentions will be published soon and will provide clarity. Until then, uncertainty is likely to remain the order of the day, and firms are likely to remain hyper-cautious—and to keep information about the deals they’ve worked on, the clients they’ve assisted, and the qualifications of their lawyers off their websites. The impact on “informed decision making” on the side of clients is up for debate.

“Nothing prevents lawyers from presenting a track record of former deals—the regulated aspects are related to them reporting on them for publicity purposes.”

-Gheorghe Florea

Interview: Daniele Iacona

Head of Italian Desk at Schoenherr

Admitted to the bar: 2008, Italy
With Schoenherr since: 2008

Practice Areas

Corporate / M&A, Energy

Education

Unindustria di Padova, Padova/Italy
(Master’s degree in International Relations 2006)
University of New South Wales, Faculty of Law, Sydney/Australia
(Post-graduate degree 2004)
Alma Mater Studiorum - Universita degli Studi di Bologna, Bologna/Italy
(Graduated 2003)
Universidad Complutense de Madrid, Madrid/Spain
(Scholarship 2002)

Languages

Romanian, English, Italian, Spanish

CIEELM: Daniele, how does an Italian lawyer end up working in Romania?

D.I.: Long story. During my law faculty in Bologna I received a few scholarships to study abroad (Spain, Australia and Brazil) and after that I applied for a new exotic country: Romania. The original internship program was for three months. I’m still around.

CIEELM: You built an interesting practice within Schoenherr, a dedicated Italian Desk. Aside from the natural fit for you, did you believe there was a strong demand for such a practice in the country, or did you build that demand?

D.I.: We knew that there were a lot of Italian companies doing business or interested in doing business in the CEE region and we wanted to try to take advantage of that. I am an Italian lawyer with Italian know-how and with knowledge of the region. This – combined with the fact that I speak Italian and Romanian and have experience working for other law firms in Romania and abroad – made it a logical decision for us to set up an Italian desk with me as its head. Speaking Italian is especially important as many Italian clients prefer to operate in their own language. In recent years I’ve started working with non-Italian companies as well.

CIEELM: Where are you active?

D.I.: At the moment as an Italian desk we are active in Romania, Serbia, Bulgaria, Czech Republic, and Turkey. In 2014 we expect to develop this concept, together with local partners, in other CEE countries as well.

CIEELM: Do you work in other markets as well, or only in Romania? If the former, how do you split your time?

D.I.: I am involved in other CEE markets also if I try to delegate. Team spirit is a key aspect in our firm. My time is often limited but I do my best in order to properly balance work and personal life.

CIEELM: Your role entails a lot of value-added services. What do you think were the key best practices?

"Eastern European law firms were used to obtaining mandates based only on marketing activities, but recent years have increased the importance of Business Development. Better commercial awareness of clients’ business and more value-added services are probably the key best practices.”
Like other foreign investors, Italians are more prudent in this period. Romania’s financial instability, caused mainly by the imminent elections, has resulted in a slow-down. This has led us to turn our attention to other countries, such as Turkey, Poland and Slovenia.”

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D.I.: Business development is, mostly, a natural attitude/skill which you possess or not, in my mind, but knowledge-wise I think it is still possible to learn the basic tools and practices. Eastern European law firms were used to obtaining mandates based only on marketing activities, but recent years have increased the importance of Business Development. Better commercial awareness of clients’ business and more value-added services are probably the key best practices.

CEELM: What advice would you give to any lawyer to improve his or her BD skills?

D.I.: That would vary based on the seniority level of that lawyer. For young associates I usually recommend that they start learning about the potential clients they are “chasing” and about the industry as a whole. First step, spend more time reading up on the news to understand patterns. Build your personal brand by writing articles and attending events. Learn to socialize – read a few psychology books, force yourself to network more at any events you attend, and learn foreign languages. Last but not least, never stop learning and get a life outside the office both because you need to decompress and because you never know where your next opportunity will come from.

CEELM: What do you think are the most common mistakes that lawyers in Romania make when it comes to BD?

D.I.: Often lawyers do not like to make “sales” and, if they have to do it, it is obvious that they do not like it. BD is a medium-long term process, composed of several steps, which have to be respected. Speeding up the process is not recommended, and this is a common mistake, not just in Romania.

CEELM: What is the current attitude of Italian investors about investing in Romania? In CEE?

D.I.: Like other foreign investors, Italians are more prudent in this period. Romania’s financial instability, caused mainly by the imminent elections, has resulted in a slow-down. This has led us to turn our attention to other countries, such as Turkey, Poland and Slovenia.

A Judicial Career of Over 30 Years in 30 Seconds

Gheorghe Buta’s outstanding judicial career spans over three decades. He gathered trial experience first as a prosecutor and then as a judge in courts of all levels, including 6 years at the High Court of Cassation and Justice. He held various leadership positions as well – he was the Chairman of the Bistrita Nasaud Tribunal and of the Cluj Court of Appeal and, towards the end of his magistrate career, the President of the High Court of Cassation and Justice – Commercial Division. Twice member of the Superior Council of Magistracy, Buta’s nomination in 2004 to Chairman of the High Court of Cassation and Justice was followed by his nomination in 2007 to the Romanian Government as the country’s candidate for a position as judge in the European Court for Human Rights.

In 2010, Gheorghe Buta joined Musat & Asociatii, where he took on the challenge of developing the firm’s litigation and dispute resolution practice. Shortly after joining as a Partner, he was appointed to the role of (then co-) Deputy Managing Partner within the firm. Meanwhile, he also serves as an arbitrator on the panel of the International Commercial Arbitration Court attached to the Chamber of Commerce and Industry of Romania.

His judicial and private practice careers are complemented by a strong academic one, as Buta has been a teacher at the “Babeş-Bolyai” University of Cluj-Napoca for the last 10 years, and has held the rank of Scientific Researcher 1st Degree at the Scientific Research Institute of the Romanian Academy for the last 5 years. Currently, he is also a member of the Scientific Board of the same institute.

Returning to The World of Lawyers

Buta smiles at the suggestion that his return to private practice was a surprise. “Many overlook the fact that I have been admitted to the Bucharest and Romanian Bar Associations since 1991. Indeed, I only re-joined the practice of law as a lawyer in 2010, but that does not mean I was not toying with the idea long before that happened,” Buta says. He never ended up pursuing the idea though, because the challenging environment for magistrates at the time was too interesting for him to give up. “I always had the deepest respect for lawyers and I was convinced I could apply my extensive experience as a magistrate to work on high complexity matters and deliver a high-quality work product. I just needed a catalyst to make the transition, and when I was invited to join Musat & Asociatii and take on the challenge of rebuilding its dispute resolution practice I simply could not pass it up,” he explains.

4 Years Later

According to Buta, when he first joined the team there was a small number of lawyers in the dispute resolution practice. Having “poached” 5 members from other practices at Musat & Asociatii, he says he basically started off...
Building The Team: Step 1 – Making the Right Hires

Buta uses two main strategies in making hires for his team. He prefers to hire fresh graduates and offer them a platform to grow within the firm. “We like to offer a lot of summer placements and internships. Naturally we undertake a thorough selection process where we look at the candidate’s experience and academic record — and have several rounds of interviews with them. We like this solution because it gives us the opportunity to see the other side of their academic record and see them in action to assess who would be best suited both in terms of skills and team dynamic to be made a full-time offer,” he explains. In terms of lateral hires for his teams, Buta said that an invaluable source is the courts themselves: “Especially in a large firm such as ours, you can rely on the consultancy practices within the firm to offer support in documentation for a case. What truly matters for a litigator is how persuasive they are in court. As a result, many of the candidates that we end up considering are ones that we identified and were impressed by in actual trials.”

Buta believes that the difference between good and great litigators rests in their ability to build an argument and deliver it effectively in a court. As such, investing a lot of time in constantly developing these skills within his practice is a critical aspect of his role. In terms of actual tools used to develop his team’s skill set, Buta comments: “We do try to set up several processes. Firstly, we ensure that on any file, we have at least two lawyers working together: one senior and one junior (or even a freshly-appointed senior at times). Aside from the obvious shadowing benefits, they also work separately most of the time on the documentation and case building to be able to later compare notes. Secondly, we try to make sure that we have the same shadowing system implemented in courts. Furthermore, at the end of each project, we try to make sure we create a learning loop with team members reflecting and receiving feedback on their work in the project.”

Market Spotlight

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Building The Team: Step 2 – Developing the Needed Skills

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The process is a serious one. “Even the project team round tables that we run as preparations end up being rather intense since we always assign one or two to act as opposing counsel,” he adds. “This turns the meeting into a border-line mock-trial which further lets our team members exercise their skills.”

On Clients: Handling Work From Existing Ones and Business Development

Buta reports that he ends up being able to free 6-7 hours for his own work after managing and training his team out of the (at least) 12 hours that he works each day. “I do try to delegate a great deal of this to other partners in the team and managing associates but there is only so much of that that you can do. I will say, spending time with a young lawyer to review his work for a client is, in my mind, time well spent because I add value directly to that client as well as help develop a team member. If you ask me to get involved in marketing efforts or trips or invoices — now that is time I feel I waste,” he continues.

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In terms of generating new clients for the litigation practice, Buta explains that about half of new work comes from other practices, with clients from Musat’s IP or Energy or other groups turning to the litigation practice when necessary. Buta points out that it is a two-way street, with clients who were happy with his practice’s work later asking for advisory support from the firm as well. The other side is the harder one. “In light of the sporadic nature of our work it is hard to be proactive at times,” Buta says. “Of course, marketing/brand visibility efforts are important so that, when in need, a company thinks of our firm as a potential solution. A great deal of new work also comes from referrals from happy clients in the past. The new clients that I take particular pride in acquiring are the ones who, at one point in the past, were on the opposite side of the table and, who, following our interactions then, decided to have our team represent them in their new challenges.”

**The Litigation Market in Romania**

Trust in the arbitration panels and Romanian courts is always going to play a big role in his view. “With regards to the courts, I think lawyers have a relatively good level of trust in them and I think it is important to remember that it does not depend necessarily on whether you win or lose a case — rather on the performance of the judge in court and in drafting solutions. I think there is plenty of room for improvement in building up the image of these institutions but I definitely see signs of improvement. With regards to ADR, as I mentioned before, clients are still rather reluctant to explore it as a solution and seem rather trigger-happy in getting in front of a judge. The paradox, however, is that their trust in the courts does not seem to be proportional with their keenness to get into one,” Buta explains. He adds that, “the new Codes that came into force in Romania recently still pose a great deal of challenges in interpreting, which, unfortunately, does not help the manner in which courts are perceived.”

Buta points to a mild increase in the amount of litigation, which, however, “is not by far registering the same rhythm of growth as the number of litigants in the market.” This, in his view, is also the primary explanation for the considerable fee pressure from clients at the moment. He believes that work that involves restitution has slowed down, with Penal, Tax and PPP litigations likely to increase in the short-/mid-term.

More recently, I have spent a lot of time in our Kiev office, supporting a shale gas project. Somewhat, my next move seemed a natural development for my career, as I joined the Romanian office of the largest law firm in the world — Clifford Chance Badea — as Partner, in 2007.

CEELM: What were the main challenges you faced when starting to work in Romania, and are those the same challenges you face today?
P.Z.: Definitely, the legal profession in Romania has significantly evolved over the past 11 years. Our own attorneys are educated at top schools and undergo continuous training within Clifford Chance to be able to keep up with a rapidly changing international legal environment. We encourage our attorneys to do secondments in other Clifford Chance offices and we have welcomed attorneys on secondment from London and other offices.

The pool of investors is, obviously, larger now. When I first came here, Romania was mostly the target of small investors from the eastern Mediterranean, such as Greece, Israel and Turkey, with a few large multinationals and some manufacturing by mainly Italian SMEs in the west. While Romania has evolved as a society and market economy, investors have become more sophisticated and aligned to international business standards and best practices. We now see more emphasis on corporate governance, for example.

On the other hand, concerns remain about corruption and predictability of the judiciary system.

**CEELM:** How do you think your career was influenced by the decision to move outside of the US?
P.Z.: Practicing in this region is certainly more challenging. I always say that if you get 5 Romanian lawyers in a room, you can get 10 different opinions. The law tends to be unclear, with large gaps and inconsistencies that are difficult to reconcile.

By contrast, in the US, the law is much more settled on the “black picture” issues, and lack of clarity in the law tends to relate to very specific controversies on narrowly defined issues.

Much of my work, however, would be the same whether I am sitting in London or New York or in Bucharest. That’s because a lot of it involves working with local counsel to structure transactions and negotiate documentation. In this case, the “local counsel” simply sits a bit closer to my desk than if I were in a big money center.

**CEELM:** What have you identified, over the years, as the unique cultural aspects to keep in mind as an expat working in Romania?
P.Z.: Romania is split between two extremes. On one hand, there is an old mindset, the legacy of the former regime. It is the mindset of “No, it cannot be done.” On the other, it’s the new generation of dynamic, open-minded and customer-oriented people who represent – I hope – the future of Ro-
However, there is often even among those with this forward-looking mindset an instinct to mistrust foreign investors. The paradigm is that of the business person who believes that if a counter-party is happy with the outcome of negotiations, then he himself must have gotten a raw deal and missed something.

CEEELM: In general terms, how do you think the lawyers in Romania compare with those in the more established legal markets of the UK or US? Have you seen improvement in the market since you arrived? Are there particular areas they need to improve even more?

P.Z.: The best of the Romanian legal profession is sophisticated, skilled, and experienced, and can easily match peers from any country. Clifford Chance lawyers are among the top of their profession, and our office is no exception, with a strong portfolio and top rankings in legal directories.

Litigation/dispute resolution remains underexploited by most large international firms in Romania. Many strictly local practitioners merely stumble from hearing to hearing, using tactics but lacking strategy. Investors are increasingly looking to international law firms to fill the gap and bring more sophisticated approaches to this area of law.

CEEELM: On the lighter side, what is your favorite spot in Bucharest and why? What about the rest of the country?

P.Z.: I cannot imagine living anywhere in Romania except Bucharest. It is crazy, chaotic, frustrating yet alive and buzzing with activity, more interesting than many other major cities in Europe (think Brussels: a snoozefest!). As for the rest of the country, the Fagaras Mountains are breathtaking and Brasov is stunning (if still a bit lacking in quality restaurants, bars and hotels).
Experts Review: Competition

In This Section:

Interview: Andras Mohacsi
Assistant Regional General Counsel at British American Tobacco

Experts Review Competition Matters In 23 CEE Jurisdictions

EU Nears Finalization Of New Law To Promote Anti-trust Claims
Interview: Andras Mohacsi
Assistant Regional General Counsel at British American Tobacco

Based in Holland, Andras Mohacsi is currently the Assistant Regional General Counsel responsible for Western Europe at British American Tobacco (BAT) and the Head of Competition for the region. He is soon to move to London to take on the same role for BAT globally. Mohacsi agreed to talk to CEE Legal Matters about the competition challenges faced by a company as large as BAT and best practices in building a compliance system and culture within such an organization.

American Tobacco (BAT) in 1998. I first worked as a generalist senior lawyer and leader of legal teams. As part of the executive legal team within BAT, I worked and supervised teams in Hungary and later in the Netherlands, after which I focused on the area or cluster of legal teams in Central Europe and Northern Europe. More recently I specialized in Competition law; and obtained a post-graduate diploma in EU Competition Law at Kings College London. Currently I live in Amsterdam and expect to move to London soon with my family. My daughter is 14 and my son is 21 and studies in London, so I am looking forward to the family reunion and playing golf together. That, by the way, is my dearest hobby. I picked it up 2 years ago and now I ask myself how I could live before without it.

CEELM: To start, please tell our readers a bit about you and your background.

A.M. I am a Hungarian lawyer. I first worked 6 years in banking following which I started working for British American Tobacco (BAT) in 1998. I first worked as a generalist senior lawyer and leader of legal teams. As part of the executive legal team within BAT, I worked and supervised teams in Hungary and later in the Netherlands, after which I focused on the area or cluster of legal teams in Central Europe and Northern Europe. More recently I specialized in Competition law; and obtained a post-graduate diploma in EU Competition Law at Kings College London. Currently I live in Amsterdam and expect to move to London soon with my family. My daughter is 14 and my son is 21 and studies in London, so I am looking forward to the family reunion and playing golf together. That, by the way, is my dearest hobby. I picked it up 2 years ago and now I ask myself how I could live before without golf?

CEELM: At BAT, you are responsible for competition matters for a wide range of jurisdictions. Which aspects of your role are most challenging and why?

A.M.: In the last 3 years I have been coordinating competition law matters, including putting in place a robust compliance program in our Western Europe Region, which includes the EU and EFTA. In the next few months I expect to start a new role in which I will essentially be doing the same but with a global responsibility.

Arguably the most challenging topic is competitive information. Our industry is quite oligopolistic with a few global players competing with each other for a long time in most markets of the world. In order to be successful in the market, we cannot operate in isolation. We need information from the market on what our competitors are up to and how they are performing. At the same time, we do business with common trading partners, wholesalers, key accounts, distributors, etc. As a result, we need to counsel other business units very carefully as to how far we can go in collecting and relying on information related to our competitors and how we can communicate our own price decisions to the market while staying on the right side of the law.

The law governing competitive information is not always clear and, in some jurisdictions, there are definitely a lot of nuances of grey in interpreting it. For example, it is far from clear whether the legal test in the so-called “hub and spoke” exchange of information situations that has been elaborated by UK courts in the “Replica T-shirt” cases and reinforced later in the Tesco case could serve as a guidance in the rest of the EU and beyond, or whether the Commission or other anti-trust authorities would use a different legal test to establish the existence of a 3-party agreement between retailers and their common supplier.

At the same time, it is unclear whether this legal test would be applied if the triangle is up-side down, i.e. among two suppliers and their common distributor. Arguably, a supplier like us needs to be able to discuss a broad set of commercial issues with our distributors. In certain cases there is a strong commercial interest for the distributor to share some of the information with another supplier. It is very challenging to put in place and operate a compliance program that allows a business to maximize opportunities and stay on the right side of the law in this area.

CEELM: Competition-related fines have become an increasingly expensive burden. What are the best practices a company of BAT’s size can employ to avoid them?

A.M.: Before I specialized in competition law, I was a generalist business lawyer counseling different business functions at various levels. My number one objective was, together with all other executive team members, to enable the company to win in the market place. As lawyers, we are risk managers and our role is to find solutions in our counseling and with the controls we put in place whereby we maximize our business opportunities while ensuring that the various kinds of risk we take are at an acceptable level. As you say, the consequences of breaching competition law are very severe.

“As lawyers, we are risk managers and our role is to find solutions in our counseling and with the controls we put in place whereby we maximize our business opportunities while ensuring that the various kinds of risk we take are at an acceptable level. As you say, the consequences of breaching competition law are very severe.”

It is not just about the fines – the levels of which are increasing in many jurisdictions around the world – but also criminal liability in some jurisdictions, or being sued by victims of anti-trust infringement, reputation, time-management, legal cost, etc. The challenge is, on the one hand, that the law is not always terribly clear, as we discussed already, while on the other hand, in a company employing more than 55,000 people worldwide, you have at least several thousand who could potentially be in the position to breach or contribute to the breach of Competition law at any given time.

Our compliance program rests on the assumption that infringements occur either because of lack of knowledge or lack of control. Therefore, through our compliance machine, we need to mobilize knowledge and operate control processes where it matters. Some companies believe that printing a nice booklet containing some dos and don’ts or a generic description of the main prohibitions of competition law, and maybe a few presentations to staff once in a while, is enough. I have seen such booklets actually titled “Competition Law Compliance Program.” This is a very static approach and I cannot imagine that such an approach can work in a big and complex organization.

An effective compliance program is dynamic, much more of a comprehensive approach consistently implemented in regular cycles. The program that we have already implemented in our Western Europe Region and that I am planning to roll out in our other regions has 7 building blocks:

The first is “The Organization.” In a global consumer business like ours, business is conducted mainly via end market subsidiaries. For example, BAT Germany is managing our business in Germany and so on. Our lawyers sit in the end markets and counsel their respective businesses. These lawyers are generalists with varying level of competition law knowledge. In the last 3 years I used to be the competition expert coordinator for Western Europe, and in the future I will be the global such coordinator. We have formed what we call the “Competition Law Community” and the members are all lawyers who are involved in competition law matters.

The second is “Defining focus areas on an annual basis.” Under my supervision, the members of the Community do a risk assessment in their respective markets on an annual basis and do a compliance plan defining the most relevant and important focus areas. We also group markets with similar characteristic features together and where we find a group of markets with similar risk areas we seek and implement coordinated compliance solutions. One example of this has been the Self-Assessment Guidelines that we developed with our regional external antitrust law firm, which addressed several aspects of exchange of information in groups of European countries.

The third pillar is “The How.” We have developed and rolled out within the legal function a set of Guidelines on how to counsel the other business functions on antitrust matters. This field of law...
requires a special counseling approach because of unique procedural issues (such as legal privilege, leniency, etc.), the high level of fines, and the critical role of documents. Neutralization of potential competition concerns requires special skills and we had to make sure we build them within our team.

In the forth, we “Connect the Communities.” Specifically, we provided access to our entire legal community involved in antitrust matters to a dynamic electronic library to share knowledge and best practices. Along the same lines, in the fifth, we “Connect the Business” with knowledge tools, appropriate controls, guidelines, trainings, awareness programs and deep dive sessions for senior top teams. The sixth block is “Connecting the Counsel.” We have identified one global law firm with a very broad footprint as our regional strategic firm in competition law matters. This approach gives us better knowledge management, and a lot of other synergies. The seventh, and final block, we call “Connect the Word.” It contains our coordinated activities to keep up with developments in competition law globally, representing ourselves in various associations for competition lawyers, such as ICLA, and contributing through various bodies to the shaping of key regulations in this field of law.

CEELM: As the competition expert in your company, how do you disseminate best practices throughout the organization in other business functions?

A.M.: Knowledge management is absolutely central in our compliance approach. In fact, our European Compliance program (the 7 building blocks described above) was born in the context of knowledge management, when our Global Legal Board mandated 4 pilot programs in 4 different areas of law with the aim of seeing how we, as a global function, can be better in knowledge management.

We found that a mixture of a formal and informal, actual and virtual organization is needed. You need a dedicated expert with formal authority to lead the coordination. You need the Community, essentially all lawyers who are involved in antitrust matters. You need to encourage the creation of sub-groups with similar issues. You need to promote the use of technology, virtual meetings, webcasts, tele-presence, and libraries. You need to have an annual training plan, which is linked to the strategic priorities of the various markets identified through the risk assessment exercise.

Between the community, which consists of all the lawyers, and the regional or global coordinator, sits a smaller informal virtual team, that we call “the Competition Law Practice Group (CLPG).” We select 5-6 lawyers, risks, and region to the CLPG and we change the CLPG every 1.5 - 2 years. They have a more intensive learning plan, they review and comment on regional compliance initiatives, and they are the main implementers of new compliance initiatives for better buy-in. In terms of disseminating knowledge to the business, we try to be very targeted, instead of overloading everyone with irrelevant information. We focus on key risk groups. The most important element is the deep-dive sessions that we have for top teams, where we talk about the business of a particular subsidiary in a market, what are the key objectives, risks, and we try to conclude with very practical suggestions and measures to help to achieve the business objectives with acceptable risk.

CEELM: When your company hires country heads of legal, do you look for individuals with specific competition matter experience or do you train them in-house in that direction?

A.M.: It depends on the market position of our subsidiary. For example, when I hired the future legal director for BAT Denmark, experience in competition law was key, since in Denmark BAT has around 80% market share. Otherwise, we do a lot of training in-house in the strategic context.

CEELM: From a regulatory standpoint, what do you perceive as the biggest challenges companies in CEE will have to face in the near/ mid future?

A.M.: I think that the key challenge for CEE is economic growth. We still do not seem to be out from the negative consequences of the financial crisis. There is a lot of frustration in societies and governments around the EU with protectionism in certain places seeming to win votes. I am a big fan of the single market. Governments need to be careful with the re-creation of national monopolies and protecting existing ones. I am personally in favor of more Europe rather than less Europe, though, Brussels needs to listen to valid claims of member state governments and societies for serenity where the single market is not really an issue. Companies can grow and flourish in a stable legal environment. There is a lot to be done in that area in CEE.

CEELM: How transparent do you find CEE competition regulators relative to those in Western Europe? Has there been development in this regard in recent years?

A.M.: Some are easier to predict than others. It is understandable to a certain extent that the enforcement priorities of NCAs are often politically driven. The European Competition Network is a very important forum and contributes to the transparency of NCAs and the dissemination of best practices. The Commission still has a lot to do to promote the concept of the single market though.

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**Austria**

**Cartel Damage Claims in Austria – A Boost From the legislators?**

Private antitrust litigation in Austria has developed significantly over the past few years. The increase in enforcement decisions by the Austrian cartel courts with sometimes hefty fines against members of cartels also increases the number of damage claims brought before Austrian civil courts. After the Cartel Court “clarified and escalated cartel decision of 2007” was confirmed by the Supreme Court in 2008, a significant number of public and private companies initiated private antitrust litigation before the Commercial Court in Vienna in 2010 and 2011. No damages have yet been awarded in these cases, as the judges have so far been dealing with a number of legal arguments invoked by the defendants (such as statute of limitations, impossibility of proving common actions or liability of directors and/or mother companies of the members of a cartel) on which Supreme Court decisions were obtained in the meantime. However, there are also other relevant pending cartel damage claim cases, including one brought by a payment system operator following a Cartel Court infringement decision of 2006 (confirmed by the Supreme Court in 2007) regarding fees charged by the market leader for access to its POS terminals in shops.

The development of ‘Austrian private antitrust litigation is expected to be further promoted by amendments to the Austrian Cartel Act in March 2013. The new Austrian law anticipates many elements of the EU directive on antitrust damages claims and EU recommendations for collective redress, which should be adopted by the European Parliament in April 2014.

The Austrian Cartel Act now stipulates, inter alia, that a damage claim by a cartel victim shall not be dismissed merely because the cartel victim itself passed the cartel overcharge on to its customers (section 37a para 1, second sentence). It is still unclear how this will affect the use of the “passing-on defence” in the future. Hence, this is still to be clarified by the Austrian Supreme Court.

Austrian civil procedure law empowers the court to determine, at its discretion, the amount to be compensated if the plaintiff’s entitlement to damages is clear but the specific amount cannot be ascertained in the proceedings (or only with disproportionate difficulties). Now the Cartel Act clarifies that in determining the amount of damages any advantage gained by the tortfeasor as a result of the infringement can be taken into account (section 37a para 1, third sentence).

Damage claim proceedings based on competition law infringements can be suspended by civil courts for the duration of competition proceedings regarding the alleged infringement (section 37a para 2). Civil courts shall be explicitly bound by the decisions of the Cartel Court, the European Commission, or other national EU competition authorities finding a competition law infringement (section 37a para 3).

Furthermore, the three-year limitation period under sec 1489 of the Austrian General Civil Code for “follow-on claims” shall, in cases involving a decision by a competition authority, be suspended for six months after a competition authority’s decision establishing the violation has become final (section 37a para 4).

Moreover, the new law aims to promote private enforcement of competition law by establishing that final and binding decisions on, inter alia, the prohibition of competition law infringements or the redressment of past infringements and the imposition of fines shall be published. The names of parties and the essential contents of decisions as well as the sanctions imposed shall be included in this publication. The publication is intended to give potential cartel victims better access to information for damage claims.

There is no case law yet on the substantive rules summarised above (given their applicability only to competition law infringements as of March 2013). However, there have been some important developments in this area in 2013: in a judgment of December 16, 2013 (Case no. 60/186/12), the Austrian Supreme Court confirmed that a claim was not time-barred because the trigger date for the statute of limitations for such damage claims was only the date of publication of the final
An Overview of Merger-Control Activity in Greece in 2013

Introduction

Greece has suffered six years of deep recession, which has led to a significant decrease of the GDP by approximately 25% and to unprecedented unemployment rates exceeding 27%. The political situation has been turbulent for a long time, while the banking system has been unable to finance companies and individuals.

The prevailing general feeling has been fear and clear pessimism as to how the Greek economy will manage to cope with all its structural problems. Because of these factors, the surrounding financial environment has heavily affected M&A activity and there have been only a few recent deals, mainly in the category of ‘rescue merger’ (i.e., to ensure the viability of the involved enterprises).

Needless to say, periods of crisis are periods of opportunity. The current crisis will function to a great extent as a corrective measure in the past ‘evils’ of the Greek economy. Measures and changes that appeared inconceivable in the past due to their political cost will become inevitable. The structural inefficiencies of the Greek economy, even if not entirely cured, will improve; the unproductive cost of labour will decrease, inflationary trends will be harnessed, and a lot of other disincentives, including the negative climate for enterprises and entrepreneurs, will be reduced. The new conditions will necessarily improve the country’s poor productivity ranking.

At last, it seems that a turnaround in M&A activity is now taking place, taking advantage of the above opportunities.

Banking sector

In the banking sector, consolidation through M&A activity has been long awaited, and this year there have been significant movements due to the deteriorating circumstances of the Greek economy and the Greek banks.

Following several previous attempts and schemes (Alpha Bank and EFG Eurobank, NBG and Eurobank Ergasias SA), which were finally abandoned and/or not completed, the final combinations for the four “systemic” banks of the Greek banking system have progressed as follows:

- Alpha Bank (HCC 575/VII/2013) and Emporiki Bank (HCC 556/VII/2012),
- Piraeus Bank acquired state-owned Agricultural Bank of Greece (its “healthy” part), Geniki Bank (a member of Societe General Group), Millennium Bank and Cyprus Popular Bank (the Greek business).
- All the above acquisitions by Piraeus Bank have been already cleared by the HCC (decisions nos. 549/VII/2012, 553/VII/2012, 566/VII/2013 and 574/VII/2013 accordingly).

Aviation sector

One of last year’s highlights for M&A deals in Greece would certainly be the second attempt for the concentration between Aegean Airlines and Olympic Air (Aegran/ Olympic II). Following the 2011 prohibition by the European Commission, Aegean Airlines announced on October 2012 a new agreement with Marfin Investment Group SA for the purchase of 100% of the share capital of Olympic Air SA.

The significance of this deal was again the intended formation of a consolidated Greek air carrier, following the international tendency for consolidation in the aviation industry. The deal had a different structure, i.e., it led to acquisition of sole control by Aegean Airlines over Olympic Air, while previously there was to have been joint control of three groups of shareholders over the merged entity. Therefore, there was no European dimension this time and, as far as the EU is concerned, the transaction was only to be notified in Greece and Cyprus.

However, the European Commission requested unilateral referral, and the case was examined in depth by the competent Directorate General (DG Comp). In October 2013, the European Commission finally cleared the deal based on a failure of the market to consolidate and the existence of complementary networks. Interestingly, this seems to be the first case to be unconditionally cleared by the Commission following a previous blocking decision.

Energy sector

One of the few privatization deals which moved ahead this year relates to the acquisition of 66% of DEMS SA (a natural gas transmission System Operator in Greece) by SOCAR. It is actually the first case within the EU where a third country undertaking seeks to acquire control of an EU member state company. The deal is under examination by the European Commission and still in progress.

Other than that, the Hellenic Competition Commission recently cleared (HCC 587/VII/2014) a joint venture in the energy sector (PPC Solar Solutions), established between Public Power Company (manufacturer of Greek solar электросети for large-scale use) and the company Energeist (a major private investor), which is expected to offer integrated solutions for household photovoltaic installations and energy saving products in Greece.

Slovenia

Competition Law in Slovenia: Review of Underlying Law

The scope of Slovenian Competition Law has undergone several changes since the country’s independence, especially following Slovenia’s accession to the EU and the approximation of its Competition Law to EU legislation. The basis of Competition Law is found in the Slovenian Constitutional Act, which provides for a free economic initiative while prohibiting anti-competitive practices.

Slovenian Competition Law takes two forms: The suppression of unfair competition, which is regulated by the Protection of Competition Act (ZVK), and the prevention of restrictions on competition, which is regulated by the Prevention of Restriction of Competition Act (ZPOMK-1).

Unfair competition consists of actions on the market which are contrary to good business practices and which cause or may cause damage to other market participants (e.g. false advertising, error concealment, unauthorized use of trade names or trademarks). The second form of Competition Law prohibits certain practices that prevent, hinder, or distort competition on the market. Thus, ZPOMK-1 prohibits the restricting of competition through agreements, decisions by associations of undertakings and concerted practices, as opposed to individual and unilateral practices with minimal differences the same as the EU counterparts.

The relevant decision-making bodies of Competition Law issues in Slovenia are the Slovenian Competition Protection Agency (the “Agency”) and judicial authorities. The Agency exercises control over the application of the provisions of ZPOMK-1, monitors and analyses market conditions, conducts procedures and issues decisions in accordance with the law, and gives opinions to the National Assembly and the Government on issues within its competence. The Agency also reviews alleged infringements of ZPOMK-1 and of dominant positions. Based on its conclusions it then approves or prohibits them in accordance with applicable competition rules. It also applies the leniency program.

The Agency leads two procedures regarding the promotion of competition in Slovenia. One is an administrative procedure, affecting the decision-making of the management of companies and the impacts of those decisions on competition, while the other is an operational procedure in which the Agency decides on sanctions for infringements of Competition Law. In order to ensure greater transparency and publicity the amendment of ZPOMK-1 in 2009 called for the publication of the Agency’s final decisions. As a result, the Agency now publishes its final decisions regarding administrative and other minor offence procedures in the website, as well as final orders that result from the procedures, without confidential information. As a result, Slovenia has joined the other competition authorities around the world which publishes their decisions.

The Slovenian judicial authorities review the Agency’s decisions in civil claims of invalidity and claims for damages resulting from intentional or negligent violations of the provisions of ZPOMK-1 and Articles 101 and 102 of the Treaty on the Functioning of the EU.

Civil claims for damages due to violations of competition rules in Slovenia are very rare, primarily because of the length of the procedures, the costs of litigation, difficulties in collecting evidence, and the usual inexperience of judges in the field. This last phenomenon derives from the fact that in the few cases that have been heard in court (especially in conjunction with Telecom d.d., which allegedly was a main offender of the provisions of the Law), the judges have shown a demonstrated prejudice against the use of evidence in cases involving breaches of dominant position)

Is Prior Judicial Consent Required for a Dawn Raid?

Czech Legal Battle Now Pending Before European Court of Human Rights

It has been a long and arduous road for Delta Pekman, one of the largest companies on the Czech fast food bakery market. For more than ten years the company has sought to have its right to privacy protected as guaranteed by Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“Convention”). Now, after all domestic instances have been unsatisfactorily exhausted, Delta Pekman’s last hope lies in the European Court of Human Rights in Strasbourg (“European Court”), which admitted Delta’s application and began to deal with the case in 2013. In turning to the European Court, Delta Pekman seeks a declaration that in certain cases in which privacy in its place of residence was violated by the Czech state, or more precisely by the Czech Antimonopoly Office (“Office”).

It all started with a dawn raid carried out by the Office at Delta Pekman’s business premises on November 19, 2003. Without informing the company or any other relevant persons for the inspection or presenting any evidence to justify the raid, the Office’s inspectors entered the premises based only on a notice of administrative proceedings. In
the notice, the Office only point- ed to Delta’s “possible violation” of Section 3 (1) of the Czech Competition Act (an equivalent of Article 101 (1) of the Treaty on the Functioning of the EU), represented by the alleged “conduct of the participants to the pro- ceedings in mutual concert in determining the sales prices of bakery goods.”

The notice, however, was not in the form of a formal decision and was not preceded by any other decision that could have been re- viewed any time before or after by independent judicial authorities. Consequently, the inspection was initiated and carried out exclusively on the basis of the Office’s notice, which only included a general reference to the statutory provision that Delta had allegedly violated.

Nevertheless, the inspectors demanded access to all Delta Pekarny’s business records and e-mail correspondence, which they copied and most of which they took with them even though—as it later turned out—the documents were unrelated to the subject matter of the raid. As Delta Pekarny refused to grant the Office access to all of its employees’ correspondence, including private correspondence, the Office imposed a penalty on Delta in the maximum amount permit- ted by Czech legal regulations at that time.

Following the inspection, Delta Pekarny actively sought redress against the Office’s conduct. Eventually, the case was dealt with by Czech courts, including the Czech Supreme Administrative Court and the Czech Constitutional Court. During the proceedings, Delta claimed its rights had been violated, but the Office adhered to a previous decision of the European Court from April 12, 2002, So- and the Czech Constitutional Court. During the proceedings, Delta Czech courts, including the Czech Supreme Administrative Court, found that the Office was authorized to carry out the dawn raids and that it was not necessary to comply with any judicial process during the visits.

First of all, individuals (including ex-employees) will be applied for in case of leniency. Currently, that right is available to undertakings only. For leniency, that right is available to undertakings only. Furthermore, that right is available to undertakings only. For leniency, the proposed provision should itself increase the predictability in the PCA’s decision-making process. Interestingly, that increased awareness is not only due to the risk of competition law related fines but also to the risk of public misbehavior. Obviously, the system was ill-prepared for such a scenario and while the Agency successfully established violations of Croatian Competition Law in particular cases, determining the actual punish- ment was a different matter. Unfortunately, although the 2009 Act and its provisions for fines for antitrust violations (generally modelled on EU law solutions) have been welcomed by the interested public hoping for new vigour in the Agency’s enforcement activities, problems have arisen as well. The victory indeed came, but to great surprise, it was inter alia directed towards the Polish enforcement agency. The Competition Law Act rules under the previous regime. Apparently, after several decisions of the misdemeanor courts concluding that the 2009 Act had re- duced the threshold for applying the fines in- cluding the cases under the 2003 Act back to the Agency, the Agency decided to exercise its newly-granted authority by imposing fines in these “old” cases.

Besides legal and factual concerns related to the simple passage of time (some of the reopened cases refer to the Agency’s decisions dating back to 2006 and relate to proceedings in the 2003 Act), the reopen- ing of these proceedings posed serious challenges to the core principles of the Croatian legal system. Even conceding that legislators may have done a less-than-perfect job in “targeting” to address the cases pending before the Polish enforcement agencies under the 2003 Act, and appreciating the Agency’s reluctance to let viola- tors go unscathed, the Agency’s decision to independently fill the statutory gap by reopening cases closed under the “old” law necess- aried all sorts of judicial promotions. And in addition to struggling with substantive and procedural technicali- ties (e.g. by “creating” procedural steps for initiation of these special proceedings or by clarifying what legal provisions in the 2009 Act read the same as in the 2003 Act that the new fines could be applied equally), the Agency also disregarded fundamental legal principles such as double jeopardy and the prohibition of retroactive application of punitive measures.

Accordingly, the single most positive aspect of the competition law reform that may materialize in Poland may simply be a more mindful approach to compliance issues—which—not surprisingly—is also an obvious objective of the PCC.
Experts Review

Slovakia

Envisaged Substantial Changes to Slovak Competition Law

The Slovak Parliament is currently deciding on a set of amendments to the Slovak Competition Law (the “Amendments”), prepared by the Slovak Competition Authority (the “AMO”). If approved in time, the Amendments will be effective as of July 1, 2014. Below, we provide an overview of the most significant changes.

The most significant of the Amendments are aimed at providing higher efficiency and speed for merger filing procedures. Following on the 2-phase procedure implemented in 2012, the Amendments propose to introduce a simplified form of notification in cases involving: (i) the acquisition of sole control instead of joint control by the acquirer; (ii) no horizontal/vertical overlap in the activities of the parties to the concentration; or (iii) overlap in activities not exceeding 15% (horizontal overlap) or 30% (vertical overlap) of the respective market. This approach has been long desired by practitioners. Parties would retain the existing right to apply for a decision to submit a reduced amount of the other information on market or business issues that would be necessary for a full examination of the case and for an investigation to discover if there are reasons for the commencement of an administrative proceeding. The new simplified merger regulation specification would apply to the concentration of an enterprise with a market share below the level of 40% of turnover as a result of a merger of a shareholding in a private company.

The Amendments also propose more severe sanctions for administrative offenses committed in the course of dawn raids carried out by the AMO. A fine of up to 5% of an undertaking’s worldwide turnover could be imposed on its premises or in cases where the undertaking damages a seal of the AMO. For similar reasons, an individual could be fined up to EUR 80,000 as a result of dawn raids in private premises.

Experts Review

Estonia

Competition Law in Estonia: Estonian Parliament Considers Decriminalizing Abuse of Dominance and Increasing Fines for First Offenders

The Estonian Parliament has been placed under pressure by the European Commission to bring its competition law into line with EU law. One of the most pressing issues is the decriminalization of abuse of dominance, which Estonia currently punishes only as a civil offense, with fines of up to EUR 32,000.

In a letter to the Estonian Government, the European Commission expressed concern that the current legal framework does not effectively deter dominant companies from engaging in anti-competitive behavior. The Commission noted that fines are too low compared to the potential damage caused by such behavior and that there is no criminal liability for abuse of dominance.

The Estonian Parliament is currently considering amendments to the Competition Act that would decriminalize abuse of dominance and increase fines for first-time offenders. Under the proposed amendments, fines for abuse of dominance would be increased from EUR 32,000 to EUR 320,000, and individuals found guilty of abuse of dominance would be subject to fines of up to EUR 100,000.

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Experts Review

Bosnia and Herzegovina

Competition Issues in the Bosnia and Herzegovina Telecommunication Market

The central government’s pow- er to the Federation of Bosnia and Herzegovina (“FBiH”) is limited, as the country is largely decentralized and consists of two autonomous entities, the Federation of Bosnia and Her- zegovina (“FBiH”) and Republika Srpska, with the Brcko District as a third entity. This complex legal and political country also competes for telecommunications legislation is adopted on the state, entity, and – in FBiH – cantonal level, depending on the allocation of competences.

Nonetheless, and despite the complex legal and political structures, which sometimes represent a challenge for conducting business, BiH has a clear goal: membership in the European Union. The institu-

tions and competent bodies are therefore constantly engaged in an ongoing – albeit slow – process of harmonizing domestic legislation with EU law. This is reflected in the Competition Act of BiH, as well as in the Competition Council of BiH (“CC”), established in 2004.

As BiH has an express obligation to harmonize its legislation with EU law, the CC must ensure that its decisions are legal and substantively equal to EU competition rules. Moreover, the Competi-
tion Act of BiH explicitly states that the CC may in its work use the practice of the Court of Justice of the EU and the decisions of the European Commission as guidance. This suggestion has been adopted by the CC in practice, especially in matters of merger control and abuse of dominant positions. In 2013, the CC adopted eight antitrust decisions and 16 merger decisions and issued 25 official opinions. Eight mergers were dismissed, while the other were authorized unconditionally. The CC imposed fines totaling about EUR 1.8 million on companies that infringed competition rules.

Despite this progress, the field of telecommunications has in recent years focused on the enforcement of the Competition Act of BiH. Last year the CC found that the IKO Balkan S.R.L media company was dominant in the football content market. The CC assessed that football content of high quality is a very important factor in the development of the football market in BiH, and thereby restricted competition in the Telecommunication sector.

like EU law, Estonian Competi-
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nance. But, there’s also a flip side to this reform. Namely, there is a significant increase of potential fines for first time offenders of the ban on abuse of dominance written within the current draft. Today, first time offende-
s would have to pay a maximum of EUR 400,000 in a situation where a company's offer to alter its pricing practices would be binding upon it – which the ECA can later enforce by imposing (periodic) penalty payments.

A misdemeanor procedure, a sort of a fining procedure, is used when the firm involved is a first time offender – including both those who have never committed an abuse of dominance and those who have but who paid fines more than a year ago – but the ECA wants to impose fines either to stop any further abuse or when remits are no longer available.

A company is a repeat offender – that is, it has been found guilty of abuse of dominance and less than a year has passed from paying the resulting fine – then a criminal investigation will be initiated and, if the company is found guilty, a criminal fine will be imposed. The CC can fine companies up to EUR 16 million for companies, whereas individuals acting for the company are exposed to a criminal fine (up to 500 days average income) or a prison term of up to 3 years.

On December 9, 2013, the Estonian parliament started formal legisla-
tive proceedings aimed at adopting legislation, introduced by the Min-
istry of Justice, that would decriminalize abuse of dominance offen-
des. The specific piece of legislation has the first reading (three in total are needed) and is currently being discussed in the Legal Affairs Committee. It would mean that in the future abuse of dominance cases will be handled under either the administrative or misdemeanor procedures and no criminal investigation or criminal fines will be imposed.

The CC imposed fines totaling about EUR 1.7 million on companies that infringed competition rules.

Last year the CC found that the IKO Balkan S.R.L media company had abused its dominant position in the market by imposing condi-
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Is Money Lending Subject to Merger Control?

In the ordinary course of business, banks and other credit institutions exercise various means to mitigate the inherent risks involved in money lending. As there is very little protection offered by statute, creditors usually protect themselves by contract. And in addition to the particular risks posed by the provisions of loan (credit) agreements, competition law and merger control issues can come into play in surprising ways as well.

As a means of risk mitigation, financial institutions lending money to companies usually include provisions which might result in the acquisition of interest in the assets or business of those companies at the time of sale and/or upon default, or the gaining of control over the business or part of the business or business assets wherein no control was exercised previously. Those transactions may technically fall within the ambit of merger control statutes.

Due to the global financial crisis that started in 2008, some Lithuanian debtor companies were tempted to find new and innovative ways to avoid contractual liability under loan agreements. And, in a sense, they did. This is reflected by recent practices in Lithuania.

Even though the regime of Merger Control in Lithuania is essentially based on the framework of European Union competition law, it nevertheless has, at least to some extent, peculiarities. Provisions of the national competition law effective until May 1, 2012, stated that failure to satisfy the prior notification and standstill obligations – the “Consent” of Merger Control Act – should not be an obstacle to acquire alternative obligations which, by their nature, have no reasonable connection with that kind of agreement. Operators with significant market power (of which BH Telecom is one) prepare reference interconnection offers ("RIO") – documents describing conditions and modes of connection to their infrastructure – and the Agency gives consent to the contents and conditions contained therein. Operators with significant market power must lay out their infrastructure through RIOs to alternative operators when providing services. BH Telecom had a dominant position in its market and, as such, a special responsibility and obligation to provide interconnection to its fixed network to operators with significant market power lay out their infrastructure through RIOs to alternative operators when providing services. BH Telecom had a dominant position in its market and, as such, a special responsibility and obligation to provide interconnection to its network under the conditions set forth in the RIO documents. The CC fined BH Telecom BAM 150,000 (approximately EUR 76,000) for abuse of dominant position in the market for interconnection.

While the meaning and impact of these cases is subject to further discussion – for example to determine if the relevant market was appropriately identified – they clearly show that a liberalization of a market will also cause the CC to react accordingly. The question is if market players in BB are really as prepared as they should be.

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Hungary

Introducing a Suspension Obligation into Hungarian Merger-Control Law

Nontrivial important business opportunities often require immediate decisions. Such opportunities may arise at companies to be acquired, during, for example, the few months between the signing of an agreement concerning the closing of the transaction and the closing of the transaction. For example, the target companies’ management with their own can get involved in strategic decision-making, and can even integrate the target into their own group. There is no suspension obligation or mandatory waiting period under Hungarian merger-control law, so the parties are allowed to implement the transaction prior to the receipt of approval from the Hungarian competition authority (the “GVH”). Obviously, acquirers run the risk that the GVH will eventually decide to prohibit the transaction, but in most cases where the competition authority does not possess any significant competition-law concerns, the risks are minimal in practice.

However, a recent amendment introduced a suspension obligation into Act LVII of 1996 on the Prohibition of Unfair Market Practices and the Restricion on Competition (the “Competition Act”), setting out Hungarian merger-control law, to take effect July 1, 2014. Transactions concluded after this date must not be implemented in the absence of (i.e., prior to the receipt of the GVH’s approval. In this context, for example, acquirers must not exercise any voting rights attached to the ownership interests to be acquired, and they must not exercise their right to appoint or elect the target’s executive officers. Further, the target’s business decisions must be adopted and the business relations between the parties must be operated on the basis that no concentration has taken place. The ruling was upheld by the Supreme Court of the Republic of Lithuania. By its decision of December 12, 2013, the Supreme Court refused to declare the concentration agreement invalid on the grounds that a concentration had taken place. The Supreme Court explicitly stated that in today’s world business typical contractual provisions on credit risk mitigation by themselves cannot be considered illegal either under the national rules of competition law or on any other legal ground. It is worth mentioning that the court of first instance in this case had in fact concluded that a concentration did take place, only later having its judgment reversed by the court of the second instance (appeal) – which decision was later upheld by the Supreme Court.

Thus, although the Appellate and Supreme Courts found that impropriety concentration did not take place in this particular instance, the case clearly shows that under the regime of Merger Control of the Republic of Lithuania even relationships of purely economic nature (i.e. debt financing) may indeed be subject to Merger Control. Therefore, it is highly advisable for undertakings and their counsel to pay attention to and other agreements which might conceivably lead to acquisition of control by one entity over the assets or business of another entity, to take the possibility into consideration and, in case of doubt, to consider pre-notification consultation with the Competition Authority. The Competition Authority may indeed be interested in the case even if it does not fall within the competition Act, if they believe a notification is required in order to prevent the concentration.

Further, consent can be sought from the GVH for the pre-clearance of controlling interests, e.g., to preserve the value of the investment, and the GVH may set conditions to, or may impose conditions for, its consent.

To be fair, this change merely brings Hungarian merger-control law in line with other member states and most EU members, not just merger-control laws, which all contain a suspension obligation. However, companies should keep this change in mind when planning and structuring their deals. There are many practical solutions by which unintended violations can be avoided and the target’s proper operation during the interim period can be ensured. For example, an undertaking can be appointed, the transaction agreement may prescribe how the target should operate during the interim period, or a consent can be requested from the GVH for the pre-clearance of controlling rights. The GVH will presumably only grant its consent, and only for certain actions, and the conditions of such consent are yet to be developed in practice.

Therefore, parties may prepare for such suspension obligations and for the interim period between signing and closing if the transaction lawyers adopt international practice.

However, target companies’ business partners face significant legal risks, often without even being aware of it, during the interim period. The Competition Act’s Section 259.1 (4) provision expressly provides that deals and statements violating the suspension obligation and/or the terms of the GVH’s consent are null and void if the GVH prohibits the concentration. This means that the target company’s business agreements concluded during the interim period on the basis of the acquirer’s illegal control over its business decisions are null and void, even if they are lawful in all other aspects. Although the acquirer can not refer to the nullity, the target company, for example, may do so vis-à-vis its business partners. Such business partners can then only sue the acquirer for damages.

In summary, the introduction of the suspension obligation into Hungarian merger-control law will not materially alter day-to-day M&A practice, but parties should prepare for the interim period by including provisions on the supervision of the target’s business into the transaction agreement. The amendment also increases the legal risks for target companies’ business partners. Such legal risk can be mitigated by inquiring about any possible concentrations involving business partners and by seeking expert legal advice in order to assess the legal risks resulting from the merger-control process.

Peter Varadi, Partner, Kajtaz Takaci Hagymari-Bakery Barni & Molnodi

Macedonia

Competition Law and the Oligopolistic Market

Regulatory overview

The governing legislation in the Republic of Macedonia regarding competition matters is the Law on the Protection of Competition (Official Gazette of the Republic of Macedonia nos.145/2010 and no. 136/2011) and the Law on Control of State Aid (Official Gazette of the Republic of Macedonia, n. 115/2011). Such legislation is also based on the EU competition law and state aid law, encompassing standard competition law institutions: restrictive agreements and practices, abuse of dominant position and control of concentrations, and regulation of state aid. The mandate of the Commission for the Protection of Competition consists of a chairperson and six members. The Commission has the authority to adopt procedural rules, besides the rules on general administrative procedure.
Restrictive agreements and practices

Restrictive agreements and practices are defined in Article 7 of the Law on the Protection of Competition, which is in line with Article 101 of the Treaty on the Functioning of the European Union (TFEU).

With regard to restrictive agreements, in the Macedonian legal framework the system of block exemption and individual exemption apply, so that if a block exemption is not available to the parties, they may apply to the Commission for an individual exemption.

The law also contains the “de minimis” rule, which is applicable in situations where total market share does not exceed 10% for horizontal agreements, or 15% for vertical agreements. If it is not possible to determine whether the agreement is horizontal or vertical, the threshold of 10% applies.

Recent developments and case law practice

A recent case regarding the alleged fixing of prices in the pharmaceutical sector involved two major pharmaceutical companies found by the Commission to have struck an agreement to charge different prices to different customers. The companies were alleged to have agreed to set prices for certain products. The two companies appealed the Commission’s ruling in the Administrative Court of the Republic of Macedonia, arguing that the Commission had not established the existence of the prohibited price-fixing agreements because the criteria for the economic and legal approach and the conditions set out by the law were not fulfilled.

The companies argues that the market had their behavior with other setting a specific price to reach a desired goal. In order to compete with them to determine basic market parameters, the companies set a "fixed price," without any communication between one another. As a result, the practitioners were not aware of the so-called “monopoly price”; rather they were led by the market to behavior which was but different from a restrictive practice – in other words, the prices offered by the two companies were set by the market and the establishment of the maximum price of the drugs by the Macedonian Bureau of Drugs.

Agreeing with this argument, the Court found that the Commission had failed to establish the existence of an agreement (written or oral) regarding the fixing of prices. Instead, the Court found, the companies engaged in parallel pricing behavior resulting from the same factors that led to different prices. The Supreme Court, in 2009, delivered a judgment in case No. SKA-234 stating that all types of agreements listed under Article 11(1) of the Competition Law (Latvian equivalent of Article 101(1) TFEU) are per se anti-competitive, and thus essentially negating the requirement to evaluate whether a particular agreement was anti-competitive by "object or effect." This approach was convenient for the Competition Council, as it eliminated any need for in-depth analysis, and allowed the Council to label any arrangement as anti-competitive regardless of the factual background. And the approach found unexpected and strong support in the courts. The Supreme Court, in 2009, delivered a judgment in case No. SKA-234, stating that all types of agreements listed under Article 11(1) of the Competition Law are to be regarded as agreements whose object is the achievement of a business advantage and usually result in hindrance, restriction, or distortion of competition.

This passage became widely cited in subsequent judgments. In reaction to the Supreme Court’s decision, the Council became reluctant to issue such ex-ante advice. The meandering journey of court practice demonstrates that Latvian judges are struggling hard to apply basic concepts of competition law.

The Supreme Court also stated that the fact that an undertaking is penalized for a type of activity which does not have a precedential should not have any bearing on the amount of penalty imposed, because if adjusting a penalty on this account would "endanger effective implementation of competition policy and trivialize the undertaking’s management." According to the Supreme Court, undertakings have ample possibilities to clarify their legal position, including individual legal advice, and even public advice, issued in response to a specific request, that later binds the authority. The last items mark yet another expanding battleground: namely, the scope of Competition Council’s powers to issue such an authority cannot retract to the disadvantage of the recipient. General administrative law clearly provides private entities this path to legal certainty; yet, the Latvian competition authority occasionally has been reluctant to issue such ex-ante advice.

The notification of concentration has to take place within 15 days following the earlier of: (i) the execution of the agreement; or (ii) publication of a public bid; or (iii) acquisition of control. A request to approve concentration can also be filed based on a letter of intent or a fully-pledged notice. For example, parties are instructed to provide: (i) information on competitors from whom the parties have acquired control who are not directly or indirectly present on the Montenegrin market; (ii) information in possession of the applicants on all undertakings that have entered or exited the relevant Montenegrin market and on all concentrations in the relevant market, in each case for the period of 3 years prior to the concentration; (iii) information on horizontal agreements between the applicants and/or their affiliates in and outside Montenegro; and (iv) information on projected market shares of the undertakings concerned over a period of 3 years following the implementation of concentration; (v) assessment of other competitions which are or may be dependent on the undertakings concerned or on the relevant market or products from other markets that are purchased by the same group of customers, together with the estimated impact of the concentration on those markets and the value of such undertakings concerned or on the relevant market or products from the year preceding the concentration (even foreign-to-foreign transactions are subject to the duty to communicate concentration to the Competition Authority within one day of becoming aware of the transaction). The Authority also examines: (i) whether the undertakings concerned achieved EUR 1 million in the Montenegrin market (turnover data in each case from the year preceding the concentration). Even foreign-to-foreign transactions are subject to the duty to communicate concentration to the Competition Authority within one day of becoming aware of the transaction). According to its Article 2, the Competition Act applies to all acts and practices undertaken in Montenegro, as well as "acts and practices that are a consequence of acts and practices undertaken outside its territory which have as their object or effect distortion of competition on the territory of Montenegro." It should be noted, though, that the juridical defense has not yet been verified before the Agency or the Montenegro court.

Notification of concentration has to take place within 15 days following the earlier of: (i) the execution of the agreement; or (ii) publication of a public bid; or (iii) acquisition of control. A request to approve concentration can also be filed based on a letter of intent or a similar document demonstrating the parties’ serious intention to proceed towards concentration.

The Ministry of Economy has issued an instruction on the content of and the manner of submitting a notification including a concentration notification. Unfortunately, the guidelines overcomplicate the content of the notification by fully-pledged notice. For example, parties are instructed to provide: (i) information on competitors from whom the parties have acquired control who are not directly or indirectly present on the Montenegrin market; (ii) information in possession of the applicants on all undertakings that have entered or exited the relevant Montenegrin market and on all concentrations in the relevant market, in each case for the period of 3 years prior to the concentration; (iii) information on horizontal agreements between the applicants and/or their affiliates in and outside Montenegro; and (iv) information on projected market shares of the undertakings concerned over a period of 3 years following the implementation of concentration; (v) assessment of other competitions which are or may be dependent on the undertakings concerned or on the relevant market or products from other markets that are purchased by the same group of customers, together with the estimated impact of the concentration on those markets and the value of such undertakings concerned or on the relevant market or products from the year preceding the concentration (even foreign-to-foreign transactions are subject to the duty to communicate concentration to the Competition Authority within one day of becoming aware of the transaction). According to its Article 2, the Competition Act applies to all acts and practices undertaken in Montenegro, as well as "acts and practices that are a consequence of acts and practices undertaken outside its territory which have as their object or effect distortion of competition on the territory of Montenegro." It should be noted, though, that the juridical defense has not yet been verified before the Agency or the Montenegro court.

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Monteregueil Merger Control in Montenegro

The Montenegrin Law on Protection of Competition ("Competition Act") came into force in 2012. The provisions of the law on restrictive agreements and practices concern the market dominance are modeled after Articles 101 and 102 of the Treaty on the Functioning of the European Union. This article presents a brief overview of the provisions on merger control.

The law provides that the Montenegrin Agency for Protection of Competition must be notified of any merger between undertakings or acquisitions of sole or joint control over an undertaking, if at least one of two alternative thresholds is met: (i) the aggregate annual turnover of the undertakings concerned exceeds EUR 10 million; or (ii) the combined aggregate annual worldwide turnover of the undertakings concerned exceeds EUR 20 million.
tration. There is a presumption that approval is granted if the Agency fails to render its decision within any of the mentioned deadlines. It is, however, unclear how the presumption can work in the presence of these different deadlines. For example, if the Agency initiates phase II proceedings but does not render any decision within 105 working days, will it be considered that unconditional approval is granted even though the Agency has 125 working days to render a conditional approval and 130 working days to prohibit concentration?

The Law prescribes fines ranging from EUR 4,000 to EUR 40,000 for a failure to notify the Agency of the concentration on time. Failure to suspend the concentration pending the Agency’s approval can be sanctioned with a fine ranging from 1 to 10% of the infringer’s annual turnover in the year preceding the infringement. However, the Montenegrin Competition Authority is not itself authorized to issue fines but may only initiate misdemeanor proceedings before the authorization competent for misdemeanors. Given that the misdemeanor authorities are not best equipped to understand competition law matters, it is likely that the fines will remain a paper tiger.

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Experts Review

The Turkish Competition Board’s New Approach to Horizontal Price-Fixing Arrangements

The Turkish Competition Board (the “Board”) has adopted price-fixing agreements among French high schools established in Istanbul, Turkey. The French Schools judgment, dated December 19, 2013, and numbered 13-71/950-407, was the outcome of a preliminary inquiry that the Turkish Competition Authority (“the Authority”) had launched against five French high schools on allegations that the institutions systematically exchanged information on future tuition fees and fixed their prices.

All five institutions examined by the Board were established in the Ottoman Era before the turn of the 20th century and their legal status is defined in the Treaty of Lausanne (1923), the peace treaty that provided for the independence of the Turkish Republic after the collapse of the Ottoman Empire. The allegations also included the claim that there existed a “gentlemen’s agreement” among the schools on restricting student transfers. As the Authority did not uncover any evidence in relation to the restriction of student transfers, the Board dismissed this claim.

Surprisingly, during the course of the preliminary inquiry, the French schools actually admitted gathering every year at the managerial level during the month of April in order to determine jointly their pricing strategies for the next school year. Despite this statement, which could have been considered an admission of infringement, the Board nonetheless proceeded to issue fines against the French schools’ long established “tradition” of acting in harmony essentially to ensure quality in the educational system. In its reasoning, the Board accepted the special legal status of the French schools in the Turkish educational system and highlighted that these schools are evaluated in a “different category” within the Ministry of Education.

The Board defined the relevant market as “educational services by private schools provided in a foreign language to high school students in Istanbul” and carried out its competitive assessment within this framework. In its assessment, the Board found that students who wished to study in a foreign language made their selection primarily on the basis of prestige and facilities rather than prices and that the significance of price competition in the relevant market analysis was decreased. Adding to this, it referred to a previous decision dated February 2, 1999, which contained the assertion that certain private schools – and in particular minority schools (such as French schools) – do not seek profits but rather value their educational excellence more than price competition. Consequently, the object of the agreements was described as the aim to maintain high quality in educational services by ensuring that the reputation of a school of high quality would be based on quality rather than prices.

With regard to the effects of these agreements, the Board found that since the consumers had numerous alternatives in the relevant market (currently, there are at least seventy private high schools in Istanbul that teach in a foreign language), these schools “could not possibly set the tuition on a monopolistic level” and thus in practice, no anti-competitive effects could be observed.

In the end, the Board did not find an infringement of Article 4 of the Act on the Protection of Competition ("Competition Act"), which prohibits agreements that have as their object or effect the restriction of competition and which is closely modelled on Article 101 of the Treaty on the Functioning of the EU. It nonetheless sent a warning to the examined schools, cautioning them not to engage in pricing practices that would restrict competition in other schools in the market started engaging in the same practice.

The judgment deviates from the Board’s established approach, which has been to judge horizontal price-fixing agreements, including the exchange of price-related information and exchange of discriminatory information, de novo, without resorting to the presumption of illegality, without discussing whether they restrict competition in reality. It also largely imposes severe fines for price-fixing among competitors: in Banks (dated March 8, 2013, numbered 13-15/198-10), the Board imposed fines against two banks that discussed competing for corporate customers, and in Car Parts (dated April 18, 2011, numbered 11-24/664-139), the Board fined twenty-three automotive companies approximately EUR 277 million (approximately EUR 83.4 million) for information exchange on pricing strategies.

On the other hand, the Board has refrained from imposing fines for horizontal price-fixing in some cases. For example, in the case of the Turkish Competition Board’s New Approach to Horizontal Price-Fixing Arrangements, the Board imposed fines directly labeling them as per se illegal. The Board did not find any infringement of Article 4 of the Act on the Protection of Competition (“Competition Act”), which prohibits agreements that have as their object or effect the restriction of competition and which is closely modelled on Article 101 of the Treaty on the Functioning of the EU.

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In the end, the Board did not find an infringement of Article 4 of the Act on the Protection of Competition (“Competition Act”), which prohibits agreements that have as their object or effect the restriction of competition and which is closely modelled on Article 101 of the Treaty on the Functioning of the EU. It nonetheless sent a warning to the examined schools, cautioning them not to engage in pricing practices that would restrict competition in other schools in the market started engaging in the same practice.

The judgment deviates from the Board’s established approach, which has been to judge horizontal price-fixing agreements, including the exchange of price-related information and exchange of discriminatory information, de novo, without resorting to the presumption of illegality, without discussing whether they restrict competition in reality. It also largely imposes severe fines for price-fixing among competitors: in Banks (dated March 8, 2013, numbered 13-15/198-10), the Board imposed fines against two banks that discussed competing for corporate customers, and in Car Parts (dated April 18, 2011, numbered 11-24/664-139), the Board fined twenty-three automotive companies approximately EUR 277 million (approximately EUR 83.4 million) for information exchange on pricing strategies.

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Expert Review

Extension of mandatory judicial authorization for dawn raids of public premises

Since February 1, 2014, companies visited by the RCC at their business premises must be presented with a judicial court order issued by the Bucharest Court of Appeal authorizing the dawn raid (in addition to the Order of the President of the Competition Council, which was already required). Although before the amendments a court order was already required, the new rule is expected to prove useful to half of the initial sanction if the information he or she provides is still relevant to the authorities and enables them to prosecute other participants. Finally, the imprisonment sanction for a criminal offense was increased from three years to a maximum of five years.

The authorization to perform a search of business premises is determined by the Bucharest Court of Appeal, upon request of the competition authority. The Court of Appeal must rule on the request for authorization within 48 hours from the time of the RCC’s application. The RCC’s request must contain all information justifying the inspection. Based on the information provided by the RCC, the judge reviewing the application must determine if the request is sufficiently justified to ground the dawn raid.

Thus, the new provisions open the door for judicial scrutiny and real time cancellation of overly broad and imprecise RCC inspection decisions, thus blocking potential “fishing expeditions” by the authority. Moreover, companies should benefit from more clarity as regards the performance of the dawn raid – though suspension can be requested if manifest error of law or irreparable damage is proved. The decision can be challenged by the raiding company, which in the eyes of companies and practitioners inevitably leads to less predictability and less substance.

The tenth anniversary of the Albanian Competition Authority (the “Authority”) in early 2014 coincided with the publication of an expected and at the same time highly controversial decision in relation to the abuse of dominant position by a company operating in the Albanian mobile telecommunications sector.

In 2012 the Albanian Electronic and Postal Communications Authority (the “EPCA”), ascertained an anti-competitive practice in the market. The Authority found that the difference between on-net and off-net tariffs applied by mobile operators, regardless of the fact that the cost for on-net and off-net calls is almost the same.

Following the EPCA’s conclusion, two mobile operators – Albanian Mobile Communications and PLUS Communication – claimed an abuse of dominant position by Vodafone Albania, and the Authority carried out an in-depth investigation.

The mobile telecommunications retail market share of Vodafone for 2011 and 2012 was 51.71% and 56.31%, respectively, and after examining the characteristics of the market and the financial power of the telecommunication operators, and potential competition, and taking into consideration the best European competition practices, the Authority ascertained that Vodafone had a dominant position in the mobile telecommunications retail market. By virtue of the Albanian Law on Competition, a dominant position per se is not prohibited; however, a dominant company should ensure that its anti-competitive actions do not distort competition. For this purpose, the Authority examined the practices implemented by Vodafone in two different on-net tariff plans, namely Vodafone Club and Vodafone Card, as they related to on-net vs. off-net tariffs.

The Authority noticed that the prices applied to Vodafone Card subscribers regarding on-net calls were fixed, while the prices applied to Vodafone Club subscribers depended on whether the calls were toward Vodafone’s rival or toward another operator. Furthermore, the Authority found that the prices applied to off-net calls were significantly lower than the prices applied to on-net calls. As a result, the Authority recognized the negative effects of differentiated tariff plans on competition, on the other hand it did not recognize any abuse of dominant position by Vodafone.

The decision of the Authority becomes even more controversial, considering that while the Albanian Competition legal framework is in line with the principles of the European Union, the decision of the Authority goes against the reasoning applied to a number of similar European cases; such as the decision of the French Competition Authority imposing fines on two telecom operators (Orange and SFR, for applying differentiated on-net/off-net tariffs).

Albania

Vodafone Albania: Non-Abuse of Dominant Position

Despite its conclusion that in the long term, the application of differentiated tariffs (on-net vs. off-net) could distort competition and have a negative effect on small operators, the Authority decided that Vodafone had not abused its dominant position in the present case.

This decision of the Authority has been fiercely criticized by operators and media as lacking coherence: on one hand the Authority recognized the negative effects of differentiated tariff plans on competition, on the other hand it did not recognize any abuse of dominant position by Vodafone.

The retail industry is a dynamic and high-growth industry in emerging markets. There is room for market entry and market growth using a variety of strategies (niche markets like discount stores or premium stores, large hypermarkets etc.). But if the dynamic aspect of the market is disregarded, the analysis is flawed.

Serbia

Retail Mergers in Serbia – Predictability vs. Sub-trust: The Case of Agrocrop/Mercator

Competition authorities are often faced with a dilemma – they can either aim to build a set of predictable legal rules, in which companies understand what they can and cannot do, or they can develop a set of principles – a framework for assessing issues on a case-by-case basis, using complex economic and legal methodology. In practice, the authors believe this is too time-consuming and therefore they aim all their money for a compromise, which in the eyes of companies and practitioners inevitably leads to less predictability and less substance.

The Serbian competition authority is, to some degree, an exception. In most cases it focuses on substance. It employs experienced case-handlers who have the ability to help companies by asking questions to the right people and even to help them ask the right questions to come to the best conclusions.

However, when it comes to mergers affecting low-income consumers – predominantly in the ‘food markets’ (fast-moving consumer goods and retail in general) – they tend to focus more on predictability and predictably prefer to proceed by allowing the merger in order to enjoy the benefits of the new market. But in this case, the policy plays an important part in the agenda of any competition watchdog. But inevitably this approach comes at a cost. It disregards the dynamic aspects of market analysis and ultimately leads to inefficiencies in the market, consumers and allowing a stable, modern trade channel for the suppliers.

The Serbian competition authority has recently cleared one of the major retail mergers in the region of South East Europe – the Agrocrop/Mercator deal. Agrocrop is one of the largest privately owned companies in the region, focusing on the production of wholesale and retail businesses. Mercator is a leading retailer in the region, based in Slovenia. Their retail businesses in the region overlap, which meant that an in-depth analysis was needed to decide whether the merger could be cleared and, if so, whether any divestments would be required.

Ultimately, the Serbian authority cleared the merger with remedies and made the clearance conditional upon Agrocrop’s obligation to divest or close a number of retail outlets. Using the dominance threshold set by the competition law at 40%, the authority decided that the companies should divest stores in those areas in which they combine to exceed 40% market share. It also insisted that the company divest stores in Serbia and Montenegro, which were mainly in Belgrade, and finalize the divestment process within 60 days of the clearance being granted.

The clearance process was initiated on August 11, 2014 by Delta, the Serbian arm of the Austrian retailing company Metro Group, which owns the Mercator chain. The Albanian Competition Authority (the “Authority”) imposed fines on two telecom operators (Orange and Vodafone) for applying differentiated tariff plans for on-net/off-net calls in 2011 and 2012.

The Authority ascertained that Vodafone had a dominant position in the mobile telecommunications retail market, effectively constituting a barrier for the entrance of new operators and thus distorting competition. The Authority recognized the negative effect of differentiated tariff plans on competition, on the other hand it did not recognize any abuse of dominant position by Vodafone.

Vodafone had not abused its dominant position; the Authority decided that Vodafone had not abused its dominant position in the present case. The Authority recommended that EPCA, inter alia, monitor the implementation of Vodafone commitments related to equalization of tariffs within Vodafone Club and outside the Vodafone network (toward other fixed and mobile operators) and, in particular, related to the reduction of the difference between on-net and off-net call prices.
In conclusion, there seem to be fewer and fewer traditional markets. Traditional tools have become obsolete and should be used with great caution. "New" markets may or may not come at the cost of distorting markets and slowing down innovation. Any merger-control reform therefore requires more of a "more economic approach" than it has before. The regulator should understand the markets better and decide to intervene only when necessary. Otherwise, the cost of intervention will outweigh the benefits to both the consumers and economic efficiencies in general.

Ukraine

Fair Business in Ukraine From a Competition Perspective?

While in many jurisdictions fair competition is safeguarded by consumer protection agencies, in Ukraine significant powers are allocated to the competition authority – the Antimonopoly Committee of Ukraine and its officials. This should help them to react promptly and flexibly in any situation; the authority will have stronger investigative powers and will be able to set its own priorities in competition policy.

Another key new provision of the Competition Act is the imposition of new requirements and thresholds for merger control tests and the requirement prior consent on concentration deals from the Competition Authority. At the moment only concentration deals involving more than 30% of market share, majority share deals of more than 35% market share (commonly more than 35% market share, but other more complex criteria can be applied) and actions treated as abuse of dominant position. At the time, the application of other criteria, an entity cannot be treated as dominant if its market share does not exceed 15%, except for natural monopoly issues. Persons who according to the definition of the Competition Act are members of a group are exempted from obtaining prior consent on concentration deals, and need only notify the Competition Authority.

In order to harmonize the regulation of competition within the common market of the EAEU, new terminology was adopted in the Competition Act. Such terms as "vertical agreements", "direct control", "indirect control", "economic concentration", and "group of persons" are de jure in the new Competition Act.

The Competition Act for the first time – in article 4 – directly provides its extraterritorial character, stating that its provisions apply also to all actions (or lack of action) of persons outside the territory of the Republic of Belarus, and that such activities can lead to prohibition, limitation, or elimination of competition in the Belarusian market. This governs activity of all personal and legal entities, both residents and non-residents of Belarus. It also applies to the residents of the Republic of Belarus, who participate in any deals outside Belarus which can influence competition, including actions with shares and other concentration activity.

The new Competition Act is a milestone in the history of Competition Law in Belarus. It should have a major impact on business in Belarus and, due to its extraterritorial provisions, also on foreigners doing business in Belarus. The Belarusian competition regime now incorporates many of the advanced elements of competition law that are familiar to the most advanced competition lawyers. This means that the Competition Act implies a high degree of certainty for businesses, which is one of the most attractive features of the type of competition law, and fraudulently influences the end choice of consumers to purchase a particular product.

For example, in 2013 the regulator prosecuted Nestle Ukraine LLC for failing to indicate the duration of a sales promotion on one of its product lines. The AMC also applied sanctions on several other global market players for indicating the dates of a promotion only on the internal side of the label and for having products available in stores after the promotion period had expired.

The maximum fine in the unfair competition area was imposed by the AMC on a local pharmaceutical company which indicated in its advertising campaign that 95% of 10 Ukrainian cheeses have no fat. No market studies could confirm the accurateness of this statement.

Last year, the AMC concentrated its efforts on the foods and consumer goods markets. These socially important markets will likely continue to be the AMC’s focus in 2014 and beyond.

In addition, a new trend in the prosecution of unfair-competition violations by the AMC has emerged: The AMC has started paying more attention to abusive copying, which includes using a name, trademark, advertising materials, product-packaging design, or any other unique identifier of another undertaking. Along with restrictive and discriminatory practices, parasitic copying allows an undertaking to gain unlawful advantage over competitors, resulting in significant losses for good-faith market players. In the modern world, intellectual property is one of the key assets that ensure success in a competitive market. Its protection requires coordinated efforts from both from consumer protection agencies and from competition authorities. Despite the fact that the AMC has limited experience in investigating parasitic copying, it has taken an effective first step to fight-off this abuse.

As far as the sanction list is concerned, the AMC is empowered to apply a broad spectrum of penalties for unfair business practices, including seizing infringing products or recalling them from the market. Yet, with respect to the sanction list, the AMC has added an important tool called the "AMC’s monetary fine".

In principle, they may reach up to 5% of the violator’s gross worldwideincome (sales) for the fiscal year preceding the year in which the fine is imposed. As a practical matter, the highest fine imposed by the AMC for unfair competition so far approached USD 1 million (it was imposed in 2012). Since then, the AMC has expressed its intention to increase the amount of fines for any competition-law violations. However, the monetary fine imposed for unfair competition in 2013 was only about USD 115,000.

In the context of the AMC’s declared intention to make its fines-politically uncertain, it is of key importance for businesses to understand the procedure of fine calculation, which has not been made public. This is because the main role in the business and legal communities is the AMC’s prior publication of the fine to the ATO. Following numerous requests and pleas, the AMC has prepared and internally adopted a methodology. The document is expected to shed some light on how the fines are being calculated and eliminate uncertainties within the business and legal community. As a result, the procedure more transparent. Due to some internal resistance, it is very difficult to predict when the AMC will publicly release this methodology.

In light of the current political situation in Ukraine, the leadership of the AMC is undergoing substantial changes. The majority of the commissioners of the AMC is being replaced, but it seems that the new appointees will continue the AMC’s efforts in combating unfair competition and will apply the best practices available from other jurisdictions.

Moldova

Turnover Calculation Under the New Competition Act


Notification Thresholds

The Competition Act provides for the mandatory notification to the Competition Council of Moldova of Operations where the combined turnover of the parties involved (the “seller”) exceeds M.D. 25 million (approximately EUR 1.5 million, or USD 1.9 million) world-wide, and each of at least two of the parties (including the seller) has revenues exceeding M.D. 10 million (approximately EUR 600,000 or USD 750,000) in Moldova. The combined turnover is the sum of the individual undertakings concerned in the Operation, in case of mergers, whereas in cases of acquisition of control, the turnover is the sum of the turnovors of the acquirer and the target undertakings.

Turnover Calculation

General: Under the general rule, the concept of total turnover refers to the amounts obtained by a concerned undertaking in the previous calendar year from the sale of goods as part of the undertaking’s normal business of any kind (sales, purchases, sales discounts, value-added tax, and other direct taxes. Any state aid granted by the public authorities to the undertaking is to be included within the total turnover, where the undertaking is the beneficiary of the state aid and the state aid is directly connected with the undertaking’s sale of goods.

Groups of Undertakings: The total turnover of the concerned group of undertakings does not include transactions concluded between the relevant undertaking and other undertakings in the same group. Only the amounts arising from concluded transactions between the concerned undertaking on one side, and the group on the other side, are to be taken into consideration for the purpose of the total turnover calculation. Consequently, where a concerned undertaking is
Experts Review

part of a group, the mere calculation of the total turnover of the undertaking concerns. An Operation may be not sufficient for notificiation purposes. In such cases, the total turnover is computed as a sum of the total turnover (1) of the undertaking; (2) of any undertakings in which the undertaking, directly or indirectly holds more than half of the share capital; or has the right to exercise more than half of the voting rights; has the right to manage more than half of the members of the council, executive board, or other bodies legally representing it; or has the right to manage its activities; (3) of any undertakings which hold the rights or competences indicated in (2) above in its; (4) of any undertakings in which the undertaking(s) indicated at (5) above hold the rights or competences indicated at (2) above; (5) of any undertakings in which two or more undertakings indicated at (1) - (4) above hold together the rights or competences indicated at (2) above.

Industry Specific Turnover Calculation Rules: Different and specific provisions on calculating turnover apply to mergers in the Banking, Financial (non-banking), and Insurance sectors.

The turnover of banks and other institutions granting loans consists of the amount of both earnings arising from interest and other earnings, less any state taxes paid on such earnings. When calculating the turnover of undertakings affecting financial leasing as the main source of activity, all leasing rates (as applied) are to be taken into consideration for the purpose of calculation.

The total turnover of insurance companies consists of the total amount of gross insurance premiums provided by insurance agreements concluded by or on behalf of the companies, including the premiums paid to reinsurers, less state taxes related to those premiums. The premiums that are to be taken into consideration refer to both the insurance agreements concluded in the respective year and the premiums arising out of the insurance agreements concluded in the previous years and that continue to be executed in the reference period.

The rules on turnover calculation under the Competition Act, including its secondary legislation, appear to be more transparent than under previous competition legislation. At this stage, however, it is not clear whether the implementation of these rules will succeed. Time will tell.

Until then, to avoid unnecessary risks, companies are advised to keep consultants close by their side. Inaccurate computation may incur fines up to 4% of turnover.

Vladimir Sutkovskiy, Managing Attorney, and Andrian Gubuzhi, Associate, Schoenhofen

Russia

Fair Business in Ukraine From a Competition Perspective?

The draft amendments to the Law on Protection of Competition and other regulations, including, inter alia, the Russian Code of Administrative Offenses and the Law on State Registration of Legal Entities (known as “the fourth antitrust package”), include a number of substantial changes. Overall, the relevant amendments aim at, among other things, increasing the powers of the Federal Antitrust Service (the FAS), clarifying a number of antitrust prohibitions, introducing new institutions within the Federal Antitrust Service, and clarifying a number of elements relating to offenses included in the Administrative Offenses Code.

Major changes include: (1) tightening FAS’ control over natural monopoly markets by promoting their transformation into competitive markets; (2) introducing additional requirements and control procedures in satisfying state and municipal preferences; (3) mandating prior approval by the Russian FAS for setting up state and municipal unitary enterprises (4) requiring prior approval of the Russian FAS for joint venture agreements; (5) changing the dominance criteria, clarifying abuse of dominance indicators, and substantially increasing the grounds for issuing warnings to cease actions that may violate antitrust laws.

Additionally, new opportunities are envisaged for challenging the decisions of local FAS offices, so not only by way of litigation but also - subject to certain conditions – in the FAS Presidium, a body to be created as part of the central FAS that will, among other things, assess decisions on the basis of their consistency with FAS practice and their compliance with general public interests. Further, a new leniency procedure has been introduced not only for the first individuals who voluntarily admit their participation in an anticompetitive agreement but also the second and the third whistleblowers, if they meet certain statutory criteria; subject to this procedure the fines could be reduced to a minimum.

It should be noted that compared to the “second” and “third” packages of important changes to the antitrust laws, the fourth antitrust package caused an unprecedented debate both in the legal and business communities as well as within government authorities. Many of the proposals, of course, were viewed positively and gave rise to no substantial objections. Some of the proposed amendments, however, attracted much criticism.

The most criticized provisions of the original fourth package included proposals to remove the natural monopoly status from regulated companies to draft and publish trade practices (i.e., rules binding on dominant entities with regard to their operations in the market); mandating prior approval by the Russian FAS of joint operation agreements (where the parties meet the asset and/or revenue tests); additional requirements imposed on entities selling state or municipal subsidies; and overlapping responsibilities of FAS and the Federal Tariff Service with regard to natural monopolies.

The hottest discussions were caused by the FAS’s proposal (now being debated) to expand the application of antitrust law to intellectual property, by the FAS’s intention to expand non-discriminatory access rules on goods and services currently existing only in certain natural monopoly markets to other markets, and by its intention to rename any express reference in the law to the exceptional status of an agency agreement.

The discussions about the draft amendments are still ongoing. The fourth antitrust package was initially scheduled to be considered at the last year’s autumn session of State Duma of the Russian Federation; however, the document is still being adjusted and its introduction is now scheduled for the spring session of 2014, so it is not possible at the moment to predict when and in what form the draft will be approved.

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EU Nears Finalization Of New Law To Promote Anti-trust Claims

The State Duma of the Russian Federation, in its last year’s autumn session of State Duma of the Russian Federation, adopted on the principle of a proposal of the Russian FAS to create an independent Commission to assess claims for damages for infringements of competition law.

Leniency and settlement documents are exempt from disclosure, as an order to ensure that incentives to cooperate with competition authorities (notably reduction in fines) are not prejudiced by information voluntarily disclosed being available to support civil litigation against a party who has cooperated with an authority.

Intriguing decisions of one national authority will constitute rebuttable evidence of related infringements elsewhere.

Rules on limitation periods are clarified. Broadly, actions must be brought within five years of the infringement causing harm, but Member States may opt for a longer period if they wish. This period is suspended for the duration of an investigation by an authority and for one year after its conclusion, and also during a maximum of two years during which the parties are pursuing settlement discussions.

Joint and several liability applies for cartel members, with some exceptions for SMEs, and whistle-blowers granted immunity.

No punitive or triple damages. Damages should be compensatory only.

A “Passing on” defence is available to allow defendants to argue that although a customer may have paid a higher price due to, for example, a price fixing ring, the customer in fact suffered no loss because the customer succeeded in passing on the whole overcharge to a buyer from the customer down the line.

Where it is difficult to quantify harm, the court may estimate it.

Edward Miller, Partner, Reed Smith

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EU Nears Finalization Of New Law To Promote Anti-trust Claims

The Member States’ ambassadors to the EU, sitting as the Committee of Permanent Representatives, have not endorsed the proposal of the Council Presidency and representatives of the European Parliament on a projected new EU Directive on rules governing actions for damages for infringements of competition law. This follows the submission in June 2013 of a proposal by the European Commission. The final text is expected to be voted through by the Parliament by mid-April and could be formally adopted by the end of the year.

The new law aims to facilitate claims by victims of violations of competition law. It applies both to breaches of the national laws of Member States and its scope is wide enough to cover both breaches of European and national competition laws. The law is also limited in two important respects:

As a Directive, the new law does not bring about rule changes which are immediately directly applicable. Unlike a European Regulation, which has immediate direct application and creates rights and obligations for individuals and corporations straight away, a Directive constitutes an instruction to each Member State to implement new national laws in order then to bring about the changes under the national laws of Member States and its scope is wide enough to cover both breaches of European and national competition laws. The law is also limited in two important respects:

Secondly, the new law does not contain any measures regarding penalties for SMEs, and whistle-blowers granted immunity.

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Experts Review
In Closing: TopSite Award

Believing that how one presents oneself to the world and making a good impression are key ingredients of success, CEE Legal Matters introduced the TopSite Award to encourage and reward those firms whose websites stand out in various ways. Websites are only one component of a firm’s reputation or brand, of course, but it is one that has grown increasingly important in recent years.

The web is a platform on which a firm can show its people, its history, its specialties, and the ways it is unique. Our awards focus not on what a firm’s website says as much as how it says it. Is the language of the English version of the site professional and polished? Does the site identify the firm’s legal staff, from partners through associates? Does it provide easy contact information for the firm itself and for its lawyers? Does it demonstrate leadership by sharing articles on practice areas and the important issues of the times? And, finally, to what degree does it stand out for ease of use, quality of content, level of detail, and a subjective je ne sais quoi factor of creativity, originality, and communicated substance?

Faithful readers will remember that we select our CEE Legal Matters TopSite spotlight on Romania and Serbia, and after studying many websites the editors found two outstanding sites in each of those markets that seemed to stand out, showing distinctive qualities that earned them spots as finalists for our award.

Romania

Our two finalists from Romania were Nestor Nestor Diculescu Kingston Petersen (www.nndkp.ro) and Tuca Zbarcea & Asociații (www.tuca.ro). Both websites manifested unique graphic design elements that were attention-getting while focusing that attention on the content they offered. Both employed scroll-text to convey a dynamic sense of their practice and successes. Tuca Zbarcea’s red-themed home-page graphic conveys a sense of movement and energy. NNDKP’s green-themed home-page graphic conveys a sense of professionalism, openness, performance, accessibility, friendliness. It was designed to provide interesting and well-structured information in a user-friendly and interactive manner. While we knew that aesthetics came second, we were well aware of the fact that it had a major role in conveying the values that needed to be enforced by the web tool. We also aimed at implementing a visual interface that would, first of all, provide intuitive access to all information and instruments available on the website.

Serbia

CEE Legal Matters’ two finalists from Serbia were Jankovic Popovic Mitic (www.jupiter.rs) and Prica & Partners (www.pricapartners.com). The Prica & Partners site employs an eye-catching graphic to anchor a home page that stresses its theme of combining tradition with the future.

In our judgment Jankovic Popovic Mitic edged into first place for Serbia, demonstrating that speaking quietly—in this case, employing a cool and understated graphic theme—can be an effective communications device. Nemanja Stepanovic, the firm’s Managing Director, stressed that because the web site is the first point of contact for most of its existing and prospective clients, it “has to reflect our goals and business concept and the way we would like to be perceived by our clients. Therefore, we created a neutral site with a clean and modern feel, fully capable of providing all the information within a logical layout.” The design principle was modularity, she said, allowing ease of addition and modification, speedy loading, and optimized content across browsers and devices.

Finalist Tuca Zbarcea’s site carries its quiet design principles from page to page as it presents its news, specialties, staff, and other links. Alina Plenica, the firm’s Chief Marketing and Communications Officer, said the site’s intention was to consolidate its brand identity and communications. “We wanted to create a user-friendly site that provides all the information within a logical layout.” The design principle was modularity, she said, allowing ease of addition and modification, speedy loading, and optimized content across browsers and devices.

The Serbian-finalist site of Prica & Partners emphasizes its theme of tradition and the future by tracing the roots of the firm back to 1900, across generations of lawyers and forms of government. The graphic principle established on the home page—animation within various color banners—is used to convey a modern, future orientation in all sections of the site.

Get the full picture! Visit www.ceelegalmatters.com for expanded stories and regular updates on the CEE legal market.
We are celebrating our 1,000,000th hit to ceelegalmatters.com. We thank you for your confidence and look forward to new heights!