

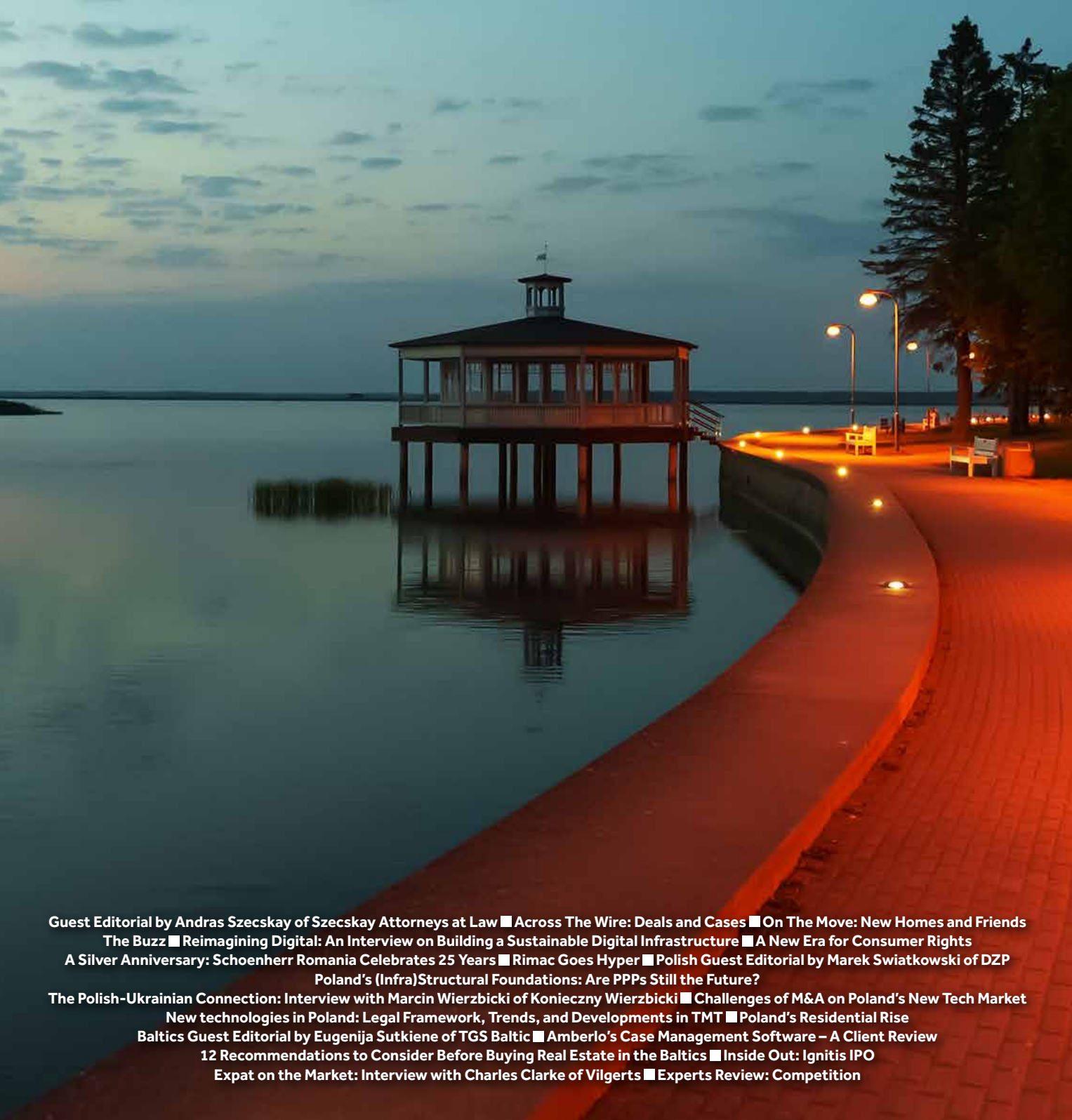


CEE

YEAR 8, ISSUE 9
OCTOBER 2021

LEGAL MATTERS

IN-DEPTH ANALYSIS OF THE NEWS AND NEWSMAKERS THAT SHAPE
EUROPE'S EMERGING LEGAL MARKETS



Guest Editorial by Andras Szecskay of Szecskay Attorneys at Law ■ Across The Wire: Deals and Cases ■ On The Move: New Homes and Friends
The Buzz ■ Reimagining Digital: An Interview on Building a Sustainable Digital Infrastructure ■ A New Era for Consumer Rights
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Poland's (Infra)Structural Foundations: Are PPPs Still the Future?
The Polish-Ukrainian Connection: Interview with Marcin Wierzbicki of Konieczny Wierzbicki ■ Challenges of M&A on Poland's New Tech Market
New technologies in Poland: Legal Framework, Trends, and Developments in TMT ■ Poland's Residential Rise
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12 Recommendations to Consider Before Buying Real Estate in the Baltics ■ Inside Out: Ignitis IPO
Expat on the Market: Interview with Charles Clarke of Vilgerts ■ Experts Review: Competition

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EDITORIAL: ALL BRIMMING WITH POSITIVITY

By Radu Cotarcea

The period between mid-September and mid-to-late-October is usually my favorite time of the year. The summer heat is slowly fading into memory and people are gradually waking up from the haze of their holiday seasons, rolling up their sleeves, and kicking things into high gear. There's always a sense of a buzz with everyone hitting the ground with refreshed energies. This is the sweet spot in my book – this particular vibe of “let's get things done,” not yet contaminated by the end of the year craze when everything goes into overdrive with all scrambling to set budgets, hit KPIs, close deals last-minute, and generally wrap up the year before all offices become a ghost town again.

And this year, this feeling is made all the sweeter by the general mood of everyone I talk to. While the pandemic is in no way, shape, or form, behind us, there is generally a sense of things slowly getting back to normal (or at least that we've all made peace with what this normal is and have found some form of a routine within its parameters). At the very least, there is a sense that the worst is behind us and that the storm was weathered in the legal world better than people had braced themselves for (boy, do I hope this editorial ages well!).

This tone is very much reflected in all of the guest editorials in this issue – which were designed specifically to help us get and share the pulse on the ground. From talking about how firms have adapted (and, arguably, have become better) to how they are busier than the pessimists had forecasted, the positive vibe is certainly in the air. And it's not just the people that have contributed to this issue that is telling, but also those who have not. We've had a good number of invites extended for this issue that were kindly declined, with apologies and a request to circle back in a couple of months, when things calm down. That made our lives a bit more difficult, sure, but busy times are good times in my book, and I look forward to continuing to face that particular challenge!

And our team has certainly been keeping busy as well. This editorial was initially titled “So. Many. New. Toys!” About a week after this issue is published, we'll be publishing the first of our transcripts and podcast resulting from a series of round tables covering the legal world in CEE – and we're excited to finally start planning for in-person round tables too! A couple of weeks later, the first in our exciting comparative guides series is due to go live, which will focus – like the Experts Reviews section of this issue – on competition.



And that's just the new projects under the CEELM umbrella. Beyond it, we just launched the beta version of our new CEELawyers.com platform and we're excited to see lawyers and firms from across the region claiming their profiles and populating them. If you have not done so already, head on over and claim yours! It's completely free and it'll act as an aggregator of every deal you've worked on and every article you've written or for which you've contributed on the CEE Legal Matters website and magazine – an excellent resource to share as a capabilities statement to anything from a client pitch to a ranking service submission. Did I mention it's free?!

Last but definitely not least, we just finalized our agreement with the venue (the gorgeous Kempinski Hotel in Budapest) for our first large event in, well, years. We're putting together our biggest CEE Legal Matters Winter Gala ever in Budapest, on December 2, 2021. No seminars, no lectures, no presentations, no panels. Just the best lawyers in Central and Eastern Europe gathering together for a long-overdue party, with all the networking and business development opportunities necessary to justify the travel. It's our first such gala since our five-year celebration (or the “CEElmELEBRATION” as we called it then – apologies, it genuinely seemed funny at the time), so we hope to see you all there! ■



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Letters to the Editors:

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

GUEST EDITORIAL: PRACTICAL TIPS FOR CEE LAW FIRMS ON ADAPTING TO THE PANDEMIC

By Andras Szecskay, Managing Partner, Szecskay Attorneys at Law



Georgetown University Law Center's *2021 Report on the State of the Legal Market* concluded that "2020 may in retrospect be seen as an important inflection point for the redesign of the delivery of legal services on a broader scale" and, despite the unprecedented disruptions caused by the COVID-19 pandemic, most firms were able to adjust and adapt to the challenges with notable success, which "is a tribute to the innovation and resiliency of law firms."

Despite the hopes of quickly returning to normal, the trend has continued during 2021. In bigger western law firms, largely due to their size, aggressive cost-cutting measures needed to be implemented, including widespread lawyer and office staff headcount and salary reductions, as well as cutting expenses related to office space with reduced use. Reports show that sharp cost-cutting resulted in large profitability in the western world.

Due to an adaptive firm structure, local independent law firms such as ourselves reacted differently. Without cost-cutting on account of our fee earners and office staff, or office space, we managed to maintain our usual steady growth rate. Colleagues have to know that there are not only good days, but they also have to know that we are one team – rain or shine. Our growth is due to un-interruption in a large number of areas, such as competition work and other compliance matters (primarily data protection and security), dispute resolution, M&A, and real estate project work. While we saw a short-term decline in finance, mainly due to payment moratoriums, there was also a sharp increase in labor law cases in relation to large-scale labor force restructuring and new forms of work. Due to the lack of traveling, we experienced saving opportunities. On the other hand, firms developed their IT infrastructure. We missed out on conferences as networking opportunities with colleagues but switched to digital means.

"It Is Not the Strongest of the Species that Survives But the Most Adaptable." Darwin's approach has helped us move forward. Those firms that successfully switched to safe and remote data access and work during the early stage of the pandemic were able to continue business almost uninterrupted. However, this was not what many law firms of smaller size – numerous in Hungary – experienced, particularly those who

reacted late. I assume that this is typical for our region – it is a question of mentality, adaptivity, and, last but not least, financing the necessary IT infrastructure.

The current situation presents an opportunity for law firms of all sizes to gain new experience, to develop skills and technologies – instituted during the pandemic and retained as a competitive advantage. We now see fully natural virtual communication with clients and colleagues, remote database access, independent access from the office, home, and anywhere in the world, to electronic communication with courts and administrative authorities. Lawyers have to have access to the same information and databases, communicate equally well from a desktop, laptop, smartphone, or any other device, regardless of where they are. This is now a must-have, expected by clients.

Despite the widespread belief that the home office is welcomed by many people, it is my belief that many young lawyers are still eager to work in an office, meet face-to-face, and be a part of a company's culture. Fortunate enough to have suitable office facilities and a high vaccination rate, we could afford to welcome these colleagues in the office at all times (approximately one-third of our staff). As we see developments on the office facility management front, big law and consulting firms now expect that office occupancy will be at 70 percent capacity. I expect the same trend for our firm and generally for law firms in Hungary.

The big question for most consulting businesses remains: How do you attract colleagues back to the office, with what schedule, and how do you create a new and adapted company culture? One thing is for sure: teambuilding activities and group outings are a preferred means to catch up on the "lost" year and a half. I myself have only just returned from an office cycling tour in Austria. We trust that good team spirit and the ability to rely on each other are big assets of our firm.

As to economic trends, we see large real estate, IT, and healthcare market cases on the horizon, as well as anything to do with the further digitalization of operations and the widespread use of smart technologies. For the public capital markets players and financial markets the new challenge, for clients and lawyers alike, is to understand and cope with ESG and sustainability policy challenges. I'm sure we'll manage. Law firms in our region will remain adaptive. ■

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ACROSS THE WIRE: DEALS AND CASES

Date Covered	Firms Involved	Deal/Litigation	Value	Country
16-Aug	Eisenberger & Herzog; Herbst Kinsky	Herbst Kinsky advised Austrian refurbished electrical product retailer Refurbed on its EUR 45.5 million Series B investment provided by Evli Growth Partners and Almaz Capital, as well as SevenVentures, Bonsai Partners, Speedinvest, and All Iron Ventures, among others. E+H advised SevenVentures on the deal.	EUR 45.5 million	Austria
19-Aug	PHH Rechtsanwälte	PHH advised Austrian Nuki Home Solutions and its existing shareholders on a EUR 20 million financing round that included existing investors Up to Eleven Digital Solutions, Venta, Fortuna, and new investor Cipio Partners.	EUR 20 million	Austria
27-Aug	Herbst Kinsky	Herbst Kinsky advised SoftBank Investment Advisers on a USD 120 million Series D investment round in Adverity, together with Sapphire Ventures.	USD 120 million	Austria
30-Aug	Schoenherr	Schoenherr advised Bitpanda on a EUR 224 million Series C investment round led by Valar Ventures that included LeadBlock Partners, Jump Capital, Alan Howard, and Redo Ventures.	EUR 224 million	Austria
8-Sep	Baker Mckenzie; Schoenherr	Schoenherr advised Austrian oral hygiene start-up Playbrush on its sale of a majority stake to Switzerland-based international healthcare company Sunstar Group. Baker McKenzie advised the buyer.	N/A	Austria
8-Sep	Cerha Hempel; Schoenherr	Cerha Hempel advised Vienna-based Value One on the sale of Krieau grandstand Tribune 3 to Red Bull Media House. Schoenherr advised the buyer.	N/A	Austria
14-Sep	Clifford Chance; Schoenherr	Schoenherr advised Vienna-based Wienerberger on its EUR 81.25 million treasury shares placement with institutional investors. Clifford Chance advised the joint bookrunners J.P. Morgan, Erste Group, and UniCredit.	EUR 81.25 million	Austria
19-Aug	Sorainen	Sorainen advised the Cajun Operating Company on franchising matters in Belarus.	N/A	Belarus

Date Covered	Firms Involved	Deal/Litigation	Value	Country
2-Sep	Revera	Revera advised US-based The Games Fund on its USD 1 million investment in the Vandrouka Games studio.	USD 1 million	Belarus
9-Sep	Ibrahimovic & Co	Ibrahimovic & Co advised Studen & Co Holding on an agreement with Brcko District's Government to build a free business zone in the district.	BAM 500 million	Bosnia and Herzegovina
17-Aug	Gugushev & Partners; Kinstellar	Kinstellar Sofia advised American online resale platform ThredUp on its USD 28.5 million acquisition of European fashion resale company Remix Global. Gugushev & Partners advised the sellers.	USD 28.5 million	Bulgaria
19-Aug	Schoenherr	Schoenherr advised MET Group on the acquisition of a 60-megawatt operational wind park in Suvorovo, Western Bulgaria, from Grupo Enhol.	N/A	Bulgaria
19-Aug	CMS	CMS successfully represented Global Biomet in proceedings against the Ministry of Finance of the Republic of Bulgaria in a dispute related to the country's feed-in tariff.	N/A	Bulgaria
23-Aug	Georgiev, Todorov & Co.	Georgiev, Todorov & Co successfully represented Uni Hospital in a claim against the National Health Insurance Fund for payment of over-the-limit medical activities.	BGN 2 million	Bulgaria
23-Aug	Kambourov & Partners	Kambourov & Partners successfully represented Sofia Municipality in a copyright dispute.	N/A	Bulgaria
23-Aug	Kinstellar	Kinstellar advised Netherlands-based industrial developer CTP on two real estate acquisitions in Bulgaria.	N/A	Bulgaria
10-Sep	Boyanov & Co; CMS; Kirkland & Ellis; White & Case	Boyanov & Co advised Agent J.P. Morgan and Security Agent Wilmington Trust on the accession of Alvogen's Bulgarian subsidiary Alvogen Pharma Trading Europe as an additional guarantor to two loan agreements totaling more than EUR 2 billion. CMS Bulgaria advised Alvogen and its subsidiary. White & Case reportedly advised the agent and security agent. Kirkland & Ellis reportedly advised the borrowers.	N/A	Bulgaria
14-Sep	CMS; Hristov Partners	CMS advised Cordeel Group N.V. on the sale of a mixed-use logistics and office development to CTP. Hristov & Partners advised the buyer on the deal.	N/A	Bulgaria
30-Aug	DLA Piper; Kambourov & Partners; Schoenherr	DLA Piper Romania advised Abris Capital Partners on the acquisition, through its subsidiary Denttotal, of Dentatechnica. Kambourov & Partners acted as Bulgarian counsel to the buyer and Schoenherr advised the seller.	N/A	Bulgaria; Romania
19-Aug	CMS	CMS advised the ING Bank N.V. on its provision of a USD 100 million three-year syndicated loan to Nibulon SA.	USD 100 million	Bulgaria; Ukraine
1-Sep	CMS	CMS advised the Export-Import Bank of Korea on a USD 36 million financing extension deal with Grain Terminal Holdings.	N/A	Bulgaria; Ukraine
23-Aug	Lovric Novokmet Smrcek; Mamic Peric Reberski Rimac; Marohnic Tomek & Gjoic; Praljak & Svic	Marohnic, Tomek and Gjoic advised Balkan Properties Limited on its sale of Poslovni Park Zagreb to Quattro Logistika. Praljak & Svic advised the buyer. Mamic Peric Reberski Rimac and Lovric Novokmet Smrcek reportedly also advised the buyer.	N/A	Croatia
14-Sep	Bogdanovic Dolicki & Partneri; Divjak Topic Bahtijarevic & Krka	DTB advised Dogus Croatia and Martimus B.V. on the sale of D-Resort Sibenik to Villa Dubrovnik and subsequent sale of a majority stake in Villa Dubrovnik to the Erste Pension Fund. Bogdanovic, Dolicki & Partners advised the buyer on the deal.	N/A	Croatia

Date Covered	Firms Involved	Deal/Litigation	Value	Country
15-Sep	Dentons; Karanovic & Partners (Ilej & Partners)	Ilej & Partners, in cooperation with Karanovic & Partners and working with Dentons, advised Singapore's Hotel Properties Limited on its acquisition of a 50% stake in Kupari resort developer Avenue Ulaganja.	N/A	Croatia
18-Aug	Bradvice Maric Wahl Cesarec; Clark Hill Law; Lalicic & Boskoski Law Office; LK Shields; Mannheimer Swartling; Porobija & Spoljaric; Tragardh	Porobija & Spoljaric and Lalicic & Boskoski have advised the founders of the City Connect Group on their sale of the company to Sweden's Transcom. LK Shields and Tragardh reportedly advised the sellers in Ireland and Sweden, respectively. Bradvice Maric Wahl Cesarec, Clark Hill Law, and Mannheimer Swartling reportedly advised the buyer in Croatia, Ireland, and Sweden, respectively.	N/A	Croatia; North Macedonia
26-Aug	Cuatrecasas; Deloitte Legal; Deloitte Legal (Krehic & Partners); Porobija & Porobija	Krehic & Partners, working alongside Deloitte Spain and Deloitte Legal Germany and Turkey, advised Cementos Molins on the Croatian legal aspects of its EUR 150 million acquisition of Calucem from Private Equity Fund Ambienta. Cuatrecasas also reportedly advised the buyer. Porobija & Porobija reportedly acted as Croatian legal advisor to the seller.	EUR 150 million	Croatia; Turkey
18-Aug	Glatzova & Co	Glatzova & Co advised the Pale Fire Capital SE investment group on the acquisition of VirtualTraining.	N/A	Czech Republic
19-Aug	Dostal & Sorokac; Havel & Partners	Havel & Partners advised Bohuslav Maska on the sale of M-Soft to Jawvivotek.cz. Dostal & Sorokac reportedly advised Jawvivotek.cz on the deal.	N/A	Czech Republic
19-Aug	Clifford Chance; Havel & Partners; Randa Havel	Havel & Partners advised Central European Supermarkets on the acquisition of Flosman Holding from the Flosman family. Clifford Chance advised Ceska Sportelna on financing the acquisition. Randa Havel Legal advised the Flosman family.	N/A	Czech Republic
23-Aug	Ceska, Cisar, and Smutny; VGD Legal	VGD Legal advised New York-based Steve Holl Architects on negotiations with the City of Ostrava for a design contract for the construction of a modern concert hall. Ceska, Cisar, and Smutny reportedly advised the city authorities.	N/A	Czech Republic
23-Aug	Havel & Partners; Linkers Legal; VGD Legal	VGD Legal advised Smarty Holdings on its acquisition of JRC Gamecentrum from Hamaga. Linkers Legal advised the seller and Havel & Partners advised Ceska Sportelna on financing the acquisition.	N/A	Czech Republic
23-Aug	Kirkland & Ellis; Macfarlanes; White & Case	White & Case advised Avast on its merger with NortonLifeLock, structured as the latter's takeover of the former. Macfarlanes and Kirkland & Ellis advised NortonLifeLock in the UK and the US, respectively.	N/A	Czech Republic
30-Aug	VGD Legal	VGD Legal advised the Jablotron Group on its approximately EUR 9.8 million acquisition of the Avicena project from Vavrincuv Vrch. Solo practitioner Michal Zibrid reportedly advised the seller.	EUR 9.8 million	Czech Republic
31-Aug	Kocian Solc Balastik	Kocian Solc Balastik advised the third fund of the Arete Group on its approximately EUR 10 million acquisition of a production facility complex near Beroun, Czech Republic.	EUR 10 million	Czech Republic
6-Sep	Kinstellar	Kinstellar successfully defended Kiwi.com before the Czech Constitutional Court against a preliminary injunction issued by the Regional Court in Brno.	N/A	Czech Republic

Date Covered	Firms Involved	Deal/Litigation	Value	Country
7-Sep	Dentons; Glatzova & Co	Dentons advised Stratus Data Systems company Gobii Europe on the establishment of a joint venture with the CSOB Group to bring the Igluu technology solution to the Czech real estate market. Glatzova & Co advised the CSOB Group.	N/A	Czech Republic
15-Sep	Allen & Overy; Clifford Chance	Allen & Overy advised Czech Gas Networks Investments on its EUR 500 million first-ever issuance and placement of green notes. Clifford Chance reportedly advised the joint bookrunners Citigroup Global Markets Limited, ING Bank, Societe Generale, and UniCredit Bank.	EUR 500 million	Czech Republic
15-Sep	Kocian Solc Balastik	Kocian Solc Balastik advised J&T Banka on entering into a strategic partnership with Amista.	N/A	Czech Republic
17-Aug	Ellex (Raidla); Procope & Hornborg; White & Case	White & Case and Ellex Raidla have advised Legrand on its acquisition of Ensto Building Systems from Finnish electrical solution provider Ensto. Procope & Hornborg advised the seller.	N/A	Czech Republic; Estonia; Poland
13-Sep	Dentons; Havel & Partners	Dentons advised Ciklum on its acquisition of Czech-based software developer CN Group from Genesis Capital. Havel & Partners advised Genesis Capital.	N/A	Czech Republic; Romania; Slovakia
16-Aug	Sorainen	Sorainen advised Bolt on raising EUR 600 million in funding from new investors Sequoia, Tekne, and Ghisallo, as well as existing investors G Squared, D1 Capital, and Naya.	EUR 600 million	Estonia
19-Aug	Ellex (Raidla); Sorainen	Sorainen advised Montonio on raising EUR 2.5 million from Tera Ventures, as well as ffVC, Superangel, Practica, 365.fintech, Startup Wise Guys, and a number of business angels. Ellex Raidla advised Tera Ventures.	EUR 2.5 million	Estonia
19-Aug	Fort; Walless	Fort advised Capitalica Asset Management on the acquisition of green concept logistics buildings near Tallinn from Ferroline Group's FW Force OU. Walless advised Force.	N/A	Estonia
19-Aug	Ellex (Raidla)	Ellex Raidla advised the Prime Label Group on its acquisition of Estonia-based sticker producer LabelPrint OU.	N/A	Estonia
19-Aug	Sorainen	Sorainen advised Estonia-based startup 99math on raising USD 1 million from Genesis Investments, Change Ventures, and five angel investors.	USD 1 million	Estonia
30-Aug	Ellex (Raidla)	Ellex Raidla advised construction management platform Remato on securing a EUR 1.4 million investment from Passion Capital, Kaamos Group, Superangel, Lemonade Stand, Spring Capital, and several angel investors.	EUR 1.4 million	Estonia
1-Sep	Sorainen	Sorainen advised Nordic food company HKScan on the development of their new pan-Baltic logistics center in Estonia.	N/A	Estonia
10-Sep	Ellex	Ellex advised Tallink Grupp on the public offering of new company shares in Estonia and Finland.	EUR 34.6 million	Estonia
14-Sep	Sorainen; TGS Baltic	TGS Baltic advised short-term property-backed loan marketplace EstateGuru on its EUR 5.8 million series A investment round. Sorainen advised Jersey-based VC TMT Investments as lead investor in the round.	EUR 5.8 million	Estonia
14-Sep	Linklaters; Sorainen	Sorainen and Linklaters have advised fintech company Wise on launching the OwnWise customer shareholder program in the EU and establishing its level 1 American depositary receipt program in the US.	N/A	Estonia

Date Covered	Firms Involved	Deal/Litigation	Value	Country
19-Aug	Allen & Overy; Ellex (Klavins); Ellex (Raidla); Ellex (Valiunas); Sorainen; White & Case	Sorainen advised Apollo Global Management on its acquisition of a majority stake in AS Graanul Invest. Ellex and White & Case advised the seller. Reportedly, Allen & Overy also advised the buyer.	N/A	Estonia; Latvia; Lithuania
2-Sep	Ellex (Valiunas); Sorainen	Sorainen, working alongside Norwegian firm Wikborg Rein, advised digital identity company Signicat on its acquisition of Baltic electronic signature solution provider Dokobit. Ellex Valiunas advised the seller.	N/A	Estonia; Latvia; Lithuania
9-Sep	Ellex; Hannes Snellman	Ellex advised the BTA Baltic Insurance Company on establishing a EUR 120 million Baltic rental housing co-investment vehicle together with Finnish developer YIT. Hannes Snellman advised YIT on the deal.	EUR 120 million	Estonia; Latvia; Lithuania
19-Aug	Koutalidis	Koutalidis advised Nexi on the signing of a memorandum of understanding with Alpha Bank in relation to establishing a strategic and long-term partnership in the payments acceptance space in Greece.	N/A	Greece
3-Sep	Koutalidis	Koutalidis advised the United Group on its acquisition of Greek mobile operator Wind Hellas.	N/A	Greece
6-Sep	Ballas, Pelecanos & Associates	Ballas, Pelecanos & Associates advised GEK Terna and the Motor Oil Hellas Group on obtaining the concentration approval from the Hellenic Competition Commission for their EUR 385 million joint acquisition of Thermoelectric Komotini.	N/A	Greece
15-Sep	KLC	KLC advised the Hellenic Republic Asset Development Fund on the privatization of the Egnatia Motorway.	N/A	Greece
14-Sep	Bernitsas; De Brauw Blackstone Westbroek; Dechert; Garrigues; Gide Loyrette Nouel; Gleiss Lutz; Herguner Bilgen Ozeke; Homburger; Kinstellar; Paksoy; Paul Weiss; Soltysinski Kawecki & Szlezak; Stibbe; Zepos & Yannopoulos	Paksoy, working with Paul Weiss, advised KPS Capital Partners on the acquisition of 80% of Crown Holdings' EMEA food, aerosol, and promotional packaging business for EUR 2.5 billion. Also advising KPS Capital were Stibbe in the Netherlands, Gide Loyrette Nouel in Morocco, Cautrecasas in Spain and Portugal, Gleiss Lutz in Germany, Chiomenti in Italy, and Zepos & Yannopoulos in Greece. Dechert advised Crown Holdings, with Bernitsas Law in Greece, Bennani & Associates in Morocco, De Brauw Blackstone Westbroek in the Netherlands, ENSafrica in Ghana, Garrigues in Spain and Portugal, Homburger in Switzerland, Lexel Juridique & Fiscal in Madagascar, Cellere Gangemi in Italy, Soltysinski, Kawecki & Szlezak in Poland, Kinstellar in Hungary, and Herguner Bilgen Ozeke in Turkey.	EUR 2.5 billion	Greece; Hungary; Poland; Turkey
13-Sep	Clifford Chance; EY Law; Volciuc Ionescu	Volciuc-Ionescu, working with EY Law, advised Mytilineos on the sale of two Romanian solar farms totaling 90 megawatts to Enel Group's Enel Green Power Romania. Clifford Chance advised the Enel Group.	N/A	Greece; Romania
10-Sep	Schoenherr	Schoenherr advised Paris-based MNK Partners on the acquisition of the Kodolanyi Janos University building in Hungary from Defactoring.	N/A	Hungary
26-Aug	Sorainen; TGS Baltic	Sorainen advised the Ignitis Group on the acquisition of three wind farm projects in Latvia. TGS Baltic advised the unidentified seller.	EUR 200 million	Latvia
10-Sep	Skrastins & Dzenis	Skrastins & Dzenis advised Moda Kapitals on the sale of its pawnshop portfolio of consumer credits to the DelfinGroup.	EUR 1 million	Latvia

Date Covered	Firms Involved	Deal/Litigation	Value	Country
13-Sep	Ellex	Ellex advised the Lithuanian real estate developer Hanner Group on its EUR 131 million sale of Riga office complex Jauna Teika to the Eften Real Estate Fund 4.	EUR 131 million	Latvia
14-Sep	Cobalt	Cobalt advised Latvian retail banks Swedbank, SEB, Luminor, and Citadele on a cooperation agreement to ensure accessibility of cash services throughout Latvia.	N/A	Latvia
19-Aug	Ellex (Klavins); TGS Baltic	TGS Baltic advised the Akropolis Group on the acquisition of a 154,000 square-meter shopping center in Riga from Norway's AMD Holding. Ellex Klavins advised the seller.	N/A	Latvia; Lithuania
16-Aug	Sorainen	Sorainen advised the Darnu Group on the acquisition of 8.3 hectares of land for the construction of residential buildings with commercial premises in Vilnius.	N/A	Lithuania
25-Aug	Ellex (Valiunas)	Ellex Valiunas helped Curve in extending and expanding its electronic money institution (EMI) license from the Bank of Lithuania.	N/A	Lithuania
25-Aug	Ellex (Valiunas)	Ellex Valiunas advised Norwegian real estate management company Baltic Sea Properties on two lease agreements with French parcel delivery group DPD in the cities of Siauliai and Telsiai.	N/A	Lithuania
13-Sep	Glimstedt; Motieka & Audzevicius	Motieka & Audzevicius advised Lithuanian educational start-up Turing College on its USD 1.05 million seed-round with investments from local and foreign venture capital funds and Silicon Valley business angels. Glimstedt advised Iron Wolf Capital on its investment into Turing College.	USD 1.05 million	Lithuania
15-Sep	Dentons; Freshfields; Sorainen; TGS Baltic	TGS Baltic and Dentons have advised the Ministry of Finance of the Republic of Lithuania on its EUR 750 million Eurobond issuance. Sorainen advised lead managers Goldman Sachs and J.P. Morgan. Freshfields Bruckhaus Deringer reportedly also advised the banks.	EUR 750 million	Lithuania
16-Aug	Gessel; Legal Kraft; Motieka & Audzevicius	Gessel advised the Avallon Fund on the sale of its majority stake in EBS to the Sevenways Group holding. Legal Kraft and Motieka & Audzevicius advised the buyer in Poland and Lithuania, respectively.	N/A	Lithuania; Poland
16-Aug	SSW Pragmatic Solutions	SSW Pragmatic Solutions advised Aion Bank on its entry into the Polish market.	N/A	Poland
16-Aug	Allen & Overy; Clifford Chance; Dentons; Filipiak Babicz; Linklaters; Stibbe	Clifford Chance advised private equity fund Cornerstone Investment Management on the establishment of a food-producing joint venture with Kartesia and Okechamp, through its acquisition of Greenyard Prepared Netherlands from Greenyard. Dentons and Linklaters also advised CIM on financing and antitrust aspects of the deal, respectively. Filipiak Babicz advised Okechamp and Stibbe advised Kartesia. Allen & Overy reportedly advised Greenyard.	N/A	Poland
16-Aug	CMS; DLA Piper	CMS advised Medicover on its acquisition of a majority stake in the MML Medical Center from CM MML. DLA Piper advised the seller.	N/A	Poland
17-Aug	DLA Piper; Linklaters	DLA Piper advised EDP Renewables Polska on the sale of a 149-megawatt wind portfolio in Poland to Natixis Investment Managers affiliate company Mirova for approximately EUR 303 million. Linklaters reportedly advised Mirova on the deal.	EUR 303 million	Poland
17-Aug	DWF; STSW Stoinski Swierczynski Zimnicka	DWF advised Zeitgeist Asset Management on the acquisition of a 157-room student residence in Krakow from NNS. STSW Stoinski Swierczynski Zimnicka reportedly advised the seller on the deal.	N/A	Poland

Date Covered	Firms Involved	Deal/Litigation	Value	Country
19-Aug	Allen & Overy; Baker Mckenzie; Dentons	Allen & Overy and Baker McKenzie have advised Echo Investment on its EUR 152.3 million sale of the Malthouse Offices to Deka Immobilien. Dentons reportedly advised the buyer.	EUR 152.3 million	Poland
19-Aug	Rymarz Zdort	Rymarz Zdort advised Accolade on a JV investment in an A-class warehouse facility in Wielenin-Kolonia in Central Poland.	EUR 26 million	Poland
19-Aug	Act Legal (BSWW)	Act BSWW advised Rank Progress on the sale of the Miejsce Piastowe retail park to MSRetail IV and the preliminary sale agreement for Pasaz Wislany retail park in Grudziadz with MSRetail V.	N/A	Poland
20-Aug	Greenberg Traurig	Greenberg Traurig advised Capital Park on the sale of a property to Marvipol Development in Warsaw.	EUR 20 million	Poland
20-Aug	White & Case	White & Case advised Mid Europa Partners on the increase of the current financing of the Mid Europa portfolio company J.S. Hamilton Group to the amount of PLN 282 million.	N/A	Poland
24-Aug	Allen & Overy	Allen & Overy advised Garbe Industrial Real Estate on the acquisition of Hubergroup's new production and warehouse facility located in Wroclaw, from Savills Poland.	N/A	Poland
30-Aug	Kondracki Celej; Moskwa Jarmul Haladyj i Wspolnicy	Kondracki Celej advised SumUp on its sale of Shoplo to Shoper. MJH Moskwa, Jarmul, Haladyj i Partnerzy advised the buyer.	N/A	Poland
30-Aug	SSW Pragmatic Solutions	SSW Pragmatic Solutions advised Modern Commerce on its PLN 80 million issuance of shares.	PLN 80 million	Poland
3-Sep	Kochanski & Partners; Most Partners	Kochanski & Partners advised VC fund Inovo Venture Partners on its investment in Jutro Medical. Most Partners reportedly advised Jutro Medical.	N/A	Poland
3-Sep	Kondracki Celej	Kondracki Celej advised Innovation Nest on participating in a USD 3.2 million investment round in Cardiomatics.	USD 3.2 million	Poland
6-Sep	Kochanski & Partners	Kochanski & Partners advised iTaxi on the acquisition of Miejskie Przedsiębiorstwo Taksowkowe assets from Miejskie Zaklady Autobusowe in Warsaw.	N/A	Poland
7-Sep	B2RLaw; Think Legal	B2RLaw advised the Village Network on financing received from Movens Capital. Think Legal advised Movens.	N/A	Poland
13-Sep	Gessel	Gessel advised R22 S.A. and H88 S.A. on their investment in Sellintegro.	N/A	Poland
14-Sep	Gianni & Origoni; Rymarz Zdort; Spinazzi Azzarita Troi Genito	Rymarz Zdort and Gianni & Origoni have advised Polish mobile game developer Ten Square Games on its acquisition of Italian mobile flight simulator developer Rortos from shareholders. Spinazzi Azzarita Troi Genito advised the sellers.	EUR 45 million	Poland
14-Sep	CMS	CMS advised a consortium of banks including facility and security agent Bank Pekao and mandated lead arrangers, bookrunners, and underwriters European Investment Bank, mBank, Bank Ochrony Srodowiska, Erste Group Bank, Standard Chartered Bank, and Kommunalkredit Austria on a waste-to-energy PPP project in Olsztyn, Poland.	N/A	Poland
14-Sep	Baker Mckenzie; BMH Brautigam; Gessel; Meyerlustenberger Lachenal; Shelowitz Law Group; Shoosmiths	Baker McKenzie advised the banks on financing for Dec Group's acquisition of the Extract Technology business from Wabash National. Gessel, working with lead counsel BMH Brautigam, advised the Dec Group on Polish law. Meyerlustenberger Lachenal, Shoosmiths, and the Shelowitz Law Group also advised the borrower on Swiss, English, and US law, respectively.	N/A	Poland

Date Covered	Firms Involved	Deal/Litigation	Value	Country
14-Sep	Davis Polk & Wardwell; Kochanski & Partners; Sullivan & Cromwell	Kochanski & Partners, alongside lead counsel Davis Polk & Wardwell, advised the State Street Corporation on its acquisition of the Investor Services business from Brown Brothers Harriman & Co. Sullivan & Cromwell advised BBH on the matter.	USD 3.5 billion	Poland
15-Sep	Balicki Czekanski Gryglewski Lewczuk	BCGL advised Mid Europa Partner portfolio company Symfonia on the acquisition of Reset2.	N/A	Poland
16-Aug	DWF; KPMG Legal; Wolf Theiss	Wolf Theiss advised the founders of AMC Ro Studio on the sale of their shares to Keywords Studios. KPMG Legal, alongside DWF's London office, advised Keywords Studios.	N/A	Romania
16-Aug	Dentons; Popovici Nitu Stoica & Asociatii	Dentons advised Payten on its acquisition of a majority stake in Romanian e-commerce software developer ContentSpeed. Popovici Nitu Stoica & Asociatii advised the seller.	N/A	Romania
18-Aug	PeliPartners; Schoenherr	PeliPartners advised Portland Trust on its sale of the Ratesti 153-megawatt photovoltaic development project to Econergy and Nofar Energy. Schoenherr advised Nofar Energy on the deal.	N/A	Romania
25-Aug	Filip & Company; Popovici Nitu Stoica & Asociatii	Popovici Nitu Stoica & Asociatii advised the owners of Via-Trend on the sale of the company to Swedish private equity fund Oresa. Filip & Company advised the buyer.	N/A	Romania
26-Aug	Berechet Rusu Hirit; Tuca Zbarcea & Asociatii	Tuca Zbarcea & Asociatii advised Electrica on its acquisition of a 207-megawatt wind and solar project portfolio from Monsson. Berechet Rusu Hirit advised the seller.	N/A	Romania
30-Aug	Bejenaru & Partners; LC Legalproof	LC LegalProof advised Zipper Studios on the sale of its business to Romanian software services provider Fortech. Bejenaru & Partners advised the buyer on the deal.	N/A	Romania
31-Aug	Deloitte Legal (Reff & Associates); Leroy si Asociatii	Leroy si Asociatii advised Vinci Energies on its acquisition of Frigotehnica from Roca Investments. Reff & Associates in cooperation with Deloitte Legal advised the seller.	N/A	Romania
1-Sep	Deloitte Legal (Reff & Associates); Tuca Zbarcea & Asociatii	Deloitte Legal's Reff & Associates advised Belgian developer Speedwell in refinancing the loan granted by BRD Groupe Societe Generale for the development of the Record Park Offices project in Cluj-Napoca. Tuca Zbarcea & Asociatii advised the bank.	N/A	Romania
2-Sep	Nestor Nestor Diculescu Kingston Petersen; RTPR	RTPR advised Rodbun Grup on a RON 278 million syndicated loan from Banca Comerciala Romana, CEC Bank, Raiffeisen Bank, Banca Transilvania, and Banca Romaneasca. Nestor Nestor Diculescu Kingston Petersen advised the bank syndicate.	RON 278 million	Romania
6-Sep	CEE Attorneys	CEE Attorneys / Boanta, Gidei si Asociatii advised Sparking Capital on a EUR 180.000 investment in Romania-based digital platform Bankata.ro.	EUR 180,000	Romania
6-Sep	Ijdelea Mihailescu	Ijdelea Mihailescu advised United Petfood on its acquisition of 150,000 square meters of land close to Bucharest from an undisclosed seller.	N/A	Romania
9-Sep	Ijdelea Mihailescu	Ijdelea Mihailescu successfully represented Velikov and Co on a community trademark and community design dispute before the European Union Intellectual Property Office.	N/A	Romania
14-Sep	BPV Grigorescu Stefanica; Schoenherr	BPV Grigorescu Stefanica advised Black Sea Fund I on the acquisition of a 70% stake in D-Toys. Schoenherr advised D-Toys founding shareholder Tibor Fustos as the seller.	N/A	Romania
16-Aug	Hogan Lovells	Hogan Lovells advised Russian private equity company Elbrus Capital on its co-investment with iTech Capital into Aviasales.	N/A	Russia

Date Covered	Firms Involved	Deal/Litigation	Value	Country
26-Aug	Kachkin & Partners	Kachkin & Partners advised the Krasnaya Strela Group on its acquisition of two buildings in St. Petersburg from the Okhta Group.	N/A	Russia
27-Aug	Rybalkin, Gortsunyan & Partners	Rybalkin, Gortsunyan and Partners advised Etalon on its acquisition of a 35% stake in QB Technology and its associated intellectual property.	N/A	Russia
30-Aug	BGP Litigation	BGP Litigation successfully represented UniCredit Bank as one of the creditors in bankruptcy proceedings against Russian shoe retailer Firma ANTA, operating under the brand of Carlo Pazolini. The case was brought before the Moscow Arbitration Court.	RUB 121.8 million	Russia
7-Sep	Egorov Puginsky Afanasiev & Partners	Egorov Puginsky Afanasiev & Partners successfully represented global pharmaceutical corporation Novartis before the FAS in an unfair competition dispute with a Nativa distributor.	N/A	Russia
8-Sep	Bryan Cave Leighton Paisner; DLA Piper	DLA Piper advised Borzo on its USD 35 million Series C investment round. Bryan Cave Leighton Paisner advised one of the investors in the round – Emirati investment company Mubadala.	USD 35 million	Russia
14-Sep	Rybalkin, Gortsunyan & Partners	Rybalkin, Gortsunyan & Partners advised Sistema JSFC subsidiary Segezha Group on the acquisition of a minority stake in Novoyeniseiskiy Wood-Chemical Complex's owner Tegli Holdings.	N/A	Russia
15-Sep	Cleary Gottlieb Steen & Hamilton; Dentons	Dentons advised UniCredit Bank AO Russia on a sustainability-linked CHF 585 million seven-year facility for Russian Railways. Cleary Gottlieb Steen & Hamilton reportedly advised Russian Railways.	CHF 585 million	Russia
16-Aug	NKO Partners	NKO Partners advised CTP on its acquisition of a 7-hectare plot on the outskirts of Belgrade from a group of unidentified sellers. Solo practitioner Jadranko Kecman reportedly advised the sellers.	N/A	Serbia
19-Aug	Cytowski & Partners; Zivkovic Samardzic	Zivkovic Samardzic and Cytowski & Partners have advised Credo Ventures on Serbian and US aspects, respectively, of its investment in Trickest. Solo practitioners Vladimir Boskovic and Dusan Delic advised the founder of Trickest.	N/A	Serbia
23-Aug	BDK Advokati	BDK Advokati advised MediGroup on its acquisition of biochemical laboratories TaliJaLab in Serbia.	N/A	Serbia
23-Aug	AP Legal; CMS; D'Ornano Partners; MMD	AP Legal, working with CMS' London office, advised Raiffeisen Bank International and its subsidiary Raiffeisen Bank Belgrade on the acquisition of Credit Agricole Bank Serbia Novi Sad and its subsidiary CA Leasing Serbia from Credit Agricole. D'Ornano Partners and Maric, Malisic & Dostanic acted as legal advisors to Credit Agricole.	N/A	Serbia
6-Sep	Sunjka Law	SunjkaLaw advised Novi Sad-based Pin Computers on the sale of the company to Switzerland's Also Holding.	N/A	Serbia
15-Sep	Vulic Law	Vulic Law advised Italian Serie B football club Lecce in a Falco case filed against Red Star Belgrade, which was resolved before FIFA's Football Tribunal.	N/A	Serbia
24-Aug	AP Legal; Schoenherr	AP Legal advised the founder and sole shareholder of YU PD Express Belgrade, Ljiljana Zivkovic Karaklajic, on the sale of the company to Slovenia Broadbank. Schoenherr reportedly advised Slovenia Broadbank.	N/A	Serbia; Slovenia
23-Aug	Bener Law Office; White & Case (GKC Partners)	GKC Partners advised Yemeksepeti on its acquisition of Turkish online shopping platform Marketyo Bilisim Teknoloji. Bener Law Office advised the shareholders of Marketyo.	N/A	Turkey

Date Covered	Firms Involved	Deal/Litigation	Value	Country
24-Aug	Akol Law Firm; Gen & Temizer Ozer; Herguner Bilgen Ozeke; Kinstellar; Lexist Law Firm; Paksoy; Simpson Thacher & Bartlett; Verdi Law Firm; White & Case; White & Case (GKC Partners)	Paksoy advised General Atlantic on co-leading a USD 1.5 billion funding round for Trendyol, alongside SoftBank Vision Fund 2, Princeville Capital, and sovereign wealth funds ADQ and the Qatar Investment Authority, with Alibaba and Omega Oryx Limited also investing. White & Case and GKC Partners advised Softbank Vision Fund 2, Kinstellar and Gen Temizer Ozer advised Princeville Capital, Herguner Bilgen Ozeke advised Alibaba, and Lexist advised Omega Oryx, while Akol Law Firm advised the Qatar Investment Authority. Reportedly, Simpson Thacher & Bartlett and Verdi advised Trendyol.	USD 1.5 billion	Turkey
7-Sep	BTS & Partners; Erdem & Erdem; Verdi Law Firm	Erdem & Erdem advised Akinon on securing a USD 20 million Series B investment from the Actera Group, Revo Capital, and Endeavor Catalyst. BTS & Partners advised Revo Capital and Endeavor Catalyst. Verdi reportedly advised the Actera Group.	USD 20 million	Turkey
8-Sep	BTS & Partners	BTS & Partners advised luxury food order and delivery platform Fuudy.co on its recent USD 1.1 million seed funding round.	USD 1.1 million	Turkey
14-Sep	Acar & Ergonen; Moral & Partners	Moral & Partners advised Turkish private equity fund Taxim Capital on its investment in Moltek A.S. through Luxembourg subsidiary LuxTheragnostics. Acar & Ergonen advised Moltek's shareholders.	N/A	Turkey
15-Sep	Tevetoglu; Turunc	Turunc advised Bogazici Ventures on its TRY 4 million investment in the online therapy platform Hiwell. Tevetoglu advised Hiwell.	TRY 4 million	Turkey
24-Aug	ILF	The ILF law firm represented Pavlo Schwartz – a candidate for the position of Bishop of the German Evangelical Lutheran Church of Ukraine – in a dispute over being registered as head of the church.	N/A	Ukraine
24-Aug	Golaw	Golaw successfully represented international cosmetics manufacturer Evyap Trading Ukraine in a tax dispute worth UAH 4 million.	UAH 4 million	Ukraine
30-Aug	Kinstellar	Kinstellar's Kyiv office advised Vienna-based Raiffeisen Bank International on matters of enforceability under Ukrainian law of netting derivative transactions with Vodafone Ukraine.	N/A	Ukraine
2-Sep	Avellum; Ilyashev & Partners	Ilyashev & Partners advised Ukraine's Zavalivskiy Graphite Group on its sale of a 70% stake to Australia's Volt Resources Limited. Avellum advised the buyer.	N/A	Ukraine
10-Sep	Asters; Dechert; Sayenko Kharenko	Sayenko Kharenko advised joint lead managers J.P. Morgan and Dragon Capital on a USD 300 million eurobond issuance by Ukrainian Railways. Asters, working with Dechert, advised the state-owned company.	USD 300 million	Ukraine



Table of Deals:

■ Full information available at:
www.ccelegalmatters.com
 ■ Period Covered:
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Did We Miss Something?

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ON THE MOVE: NEW HOMES AND FRIENDS

Slovakia: Go2Law's Hugh Owen Joins PwC as Of Counsel

By Radu Cotarcea

As of September 1, 2021, Hugh Owen joined PwC as Of Counsel, M&A.

Owen was previously a Partner with Allen & Overy, having joined the magic circle firm in 1994. He was the Head of the SEE Desk and, since early 2016, head of the Ukraine Desk. He set up A&O's Slovak office in 2000 and established A&O's associated office in Romania in 2008. At the end of 2018, Owen established his own consulting firm, called Go2Law.

"I will continue to be based in Bratislava and will have a role primarily for PwC in SEE and Slovakia, but also I will be available for PwC in the wider CEE region," Owen said. "I will work on English law M&A, as well as general M&A support. I will also assist in PwC client-facing training through the PwC Academy, as well as providing internal M&A training to PwC C&SEE M&A team members (Legal and Translations)."

"I am very excited indeed to embark on this new journey," Owen added. "I have many long-term friends and colleagues all over the region at PwC, and their warm welcome will ensure that the transition is smooth and successful. I look forward to working with PwC and indeed many of my LinkedIn friends on many transactions in the future."

Go2 Law Training will continue separately as before for non-PwC subscribers. ■

Bosnia and Herzegovina: Baros, Bicakcic & Partners Announces Exclusive Cooperation Agreement with UAE Firm

By Radu Cotarcea

BiH's Baros, Bicakcic & Partners announced an exclusive cooperation with the UAE-based firm BinSuwadian Advocates & Legal Consultants.

Baros, Bicakcic & Partners has offices in Banja Luka and Sarajevo. According to the BiH-based firm, BinSuwadian Advocates & Legal Consultants is a law firm founded in 1997 in the UAE, with offices in the UAE, Egypt, and Sudan.

"The cooperation established between these two law offices strengthens relations between the two countries," said a Baros, Bicakcic & Partners press release. ■

Poland: Rafal Zakrzewski and Team Join CMS

By Radu Cotarcea

Rafal Zakrzewski has joined CMS as a Partner in Poland, accompanied by a team of three lawyers. Senior Associate Przemyslaw Karolak and Lawyers Marcin Krzemien and Michal Horelik joined alongside Zakrzewski.

Zakrzewski joins from Baker McKenzie, where he was a Partner and headed the English law desk of Baker McKenzie in Warsaw. Before joining Baker in 2019, he was a Counsel with Clifford Chance, a firm he worked with for over 13 years.



According to CMS, Zakrzewski focuses on advising on transaction and project financings, acting for both financial institutions and investors with a particular focus on the energy, oil and gas, and real estate sectors.

“It has been extremely rewarding seeing our CEE team grow over the recent months,” commented Erika Papp, Head of the Finance CEE/ CIS Practice at CMS. “With the addition of Rafal, we now have five very experienced English law qualified finance partners in the CEE region, supported by a large team of international and local lawyers. This puts us in a strong position to continue servicing our clients on large international and cross-border financings.”

“Joining CMS allows me to strengthen our entire team, whose main objective is to ensure top-quality service to clients seeking legal support in respect of contracts governed by English law,” added Zakrzewski. “CMS’s strong position in the CEE region allows us to handle even more transactions for existing clients and to support new clients in their cross-border investments governed by English law. Brexit has not affected the main strengths of this legal system. Just as the English language dominates international business, English law remains globally applicable.” ■

Turkey: Norton Rose Fulbright Announces Alliance with Pekin Bayar Mizrahi

By Radu Cotarcea

Norton Rose Fulbright has announced it is forming a new alliance with Turkish firm Pekin Bayar Mizrahi. The international firm’s former affiliated law firm in Turkey will continue to be part of its enlarged team.

In 2019, CEE Legal Matters reported that Norton Rose Fulbright had ended its affiliation with attorney Haluk Bilgic in Turkey and renamed its affiliate office in Istanbul, from the Bilgic Avukatlik Ortakligi (Bilgic Attorney Partnership) to Inal Kama Avukatlik Ortakligi, reflecting its new management by Partners Ekin Inal and Olgu Kama. Since then, Olgu Kama left in 2020 and Utku Unver joined the firm’s associated Turkish law practice, on October 19, 2020, thus rebranding the firm to Inal Unver Attorney Partnership (as reported by CEE Legal Matters on October 21, 2020). Lastly, Inal recently moved to the IFC. According to a Norton Rose spokesperson, “Unver and our other Turkish law qualified lawyers will continue to be part of our enlarged team.” According to Norton Rose, Pekin Bayar Mizrahi is one of the oldest and largest law firms in Turkey. It was founded in 1946 and is led by Selin Bayar and Ergin Mizrahi.

“This alliance stems from a shared vision. Pekin Bayar Mizrahi’s philosophy of teamwork, integrity, and service mirrors Norton Rose Fulbright’s core business principles of quality, unity, and integrity,” commented Norton Rose Fulbright Global Chief Executive Gerry Pecht. “We believe that our offerings around the world and Pekin Bayar Mizrahi’s experience in Turkey will significantly benefit the clients of both firms.”

“With the formation of this alliance, the lawyers from Norton Rose Fulbright’s Istanbul office will be working closely with Pekin Bayar Mizrahi in an arrangement which will foster seamless integration between the firms,” added Pekin Bayar Mizrahi Managing Partner Selin Bayar. “There is demand for sophisticated cross-border legal services in Turkey, and we have put ourselves in an advantageous position by deepening our relationship with a truly global firm like Norton Rose Fulbright. We have great professional respect for one another, and we look forward to working even more closely together.” ■

Turkey: Bozkurt Bozkurt Opens New York Office

By Andrija Djonovic

Turkish litigation-focused law firm Bozkurt Bozkurt has opened an office in New York. The new office will be headed by the firm’s US resident Partner Gokhan Bozkurt. The firm’s Istanbul office will continue to be managed by Partner Mustafa Bozkurt.

According to the firm, “the New York office will serve as a gateway to Bozkurt Bozkurt for US clients and law firms throughout the United States, providing access to [the firm’s] distinguished Turkish law expertise in Turkey. Our New York office will assist US clients, including financial institutions, insurance companies, investors, private equity and venture capital funds, and companies across every industry with their Turkish law-related disputes and internal investigations in Turkey.”

Prior to this appointment, Gokhan Bozkurt has spent almost six years as a Partner with Bozkurt Bozkurt in Istanbul, and another six with Paksoy. He started his career with the Usta Law Office in 2001 and was a Litigation Associate with consumer goods company Hayat Holding, between 2002 and 2009. ■

Romania: Radu si Asociatii Becomes Bancila, Diaconu si Asociatii

By Radu Neag

EY Romania affiliated law firm Radu si Asociatii has become Bancila, Diaconu si Asociatii, with two Partners at the helm: Radu Diaconu and Emanuel Bancila.

In November 2020, Diaconu had taken over as Managing Partner of Radu si Asociatii from Dragos Radu, who had led the firm for the previous eight years (as reported by CEE Legal Matters on November 11, 2020).

According to the firm, Diaconu leads his team “in assisting both strategic and financial investors in a wide range of transactions on the Romanian market. The pillars of his team consist in practices such as corporate law / mergers and acquisitions, energy, labor law, regulatory, banking & fintech law.” Prior to joining Radu si Asociatii in 2013, Diaconu spent a year and a half with Linklaters and close to five with RTPR Allen & Overy.

According to the firm, Bancila has “25 years of experience in coordinating tax inspections and litigation projects.” He also joined EY Romania in 2013, where he became a Partner in 2016. Before that, he spent eight years as a Senior Manager with PwC and four years as a Legal Director with JTI.

“I would like to thank both our clients for their trust and the 25 lawyer colleagues who offer Business Law advisory services for their tenacious and consistent work in recent years,” Diaconu said. Their work “has given us the opportunity to carry out increasingly complex and interesting projects. In the upcoming year, along with the constant development of the team, my intention is to recognize the contribution of our fellow lawyers to the steady growth of our activity, by including some of them in the partnership of the law firm.”

“In 2014, we started building this tax policy and controversy practice from scratch. In seven years, we have reached over 20 lawyers,” Bancila said. “We are proud of the two favorable decisions obtained in the preliminary procedure in front of the Court of Justice of the European Union [...], as well as of the landmark court decisions in the field of transfer pricing, VAT, and corporate income tax. Innovation is what defines us.” ■

PARTNER APPOINTMENTS

Date	Name	Practice(s)	Firm	Country
23-Aug	Karolin Andreewitch	Labor	E+H	Austria
23-Aug	Philipp Schrader	Capital Markets	E+H	Austria
1-Sep	Karin Marosov	Real Estate	PwC Legal	Estonia
1-Sep	Indrek Ergma	Corporate/M&A; Labor	PwC Legal	Estonia
24-Aug	Yavuz Dayioglu	Corporate/M&A	GSG Hukuk	Turkey

PARTNER MOVES

Date	Name	Practice(s)	Moving From	Moving To	Country
16-Aug	Jonas Platelis	Litigation/Dispute Resolution	KPMG Law	Primus	Lithuania
25-Aug	Robert Senczuk	Corporate/M&A	Dubij Legal	Deloitte Legal	Poland
8-Sep	Rafal Zakrzewski	Banking/Finance; Energy/ Natural Resources	Baker McKenzie	CMS	Poland
10-Sep	Mihaela Nyerges	Corporate/M&A; Energy/ Natural Resources	MPR Partners	Vlasceanu, Ene & Partners	Romania
2-Sep	Hugh Owen	Corporate/M&A	Go2Law	PwC Legal	Slovakia
18-Aug	Andriy Nikiforov	Banking/Finance; TMT/IP	Kinstellar	Redcliffe Partners	Ukraine

IN-HOUSE MOVES AND APPOINTMENTS

Date	Name	Moving From	Company/Firm	Country
7-Sep	Edith Hlawati	Cerha Hempel	Oesterreichische Beteiligungs AG	Austria
23-Aug	Kirill Lezeiko	SupplierPlus	PwC Legal	Estonia
14-Sep	Krzysztof Mazurek	Bayer	Precision Medicine Group	Poland
8-Sep	Ece Sarica	Coca-Cola	Coca-Cola GB (Appointed to IP Counsel, Europe)	Turkey
14-Sep	Harun Gunduz	Competition Authority (Rekabet Kurumu)	ELIG Gurkaynak Attorneys-at-Law	Turkey



On The Move:

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THE BUZZ

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

Serbia:

Interview with Milan Petrovic of PR Legal

By Andrija Djonovic (September 20, 2021)



With an interesting legislative pipeline and a full deck of elections announced for next April, Serbia finds itself in a place of opportunity right now, according to PR Legal Partner Milan Petrovic.

“The biggest buzz right now are the changes to the constitution, which began in 2016 in slow motion, but are galloping recently,” Petrovic begins.

According to him, the constitutional changes are nothing new, but rather the result of a several-year-long process that got sped up only recently. “Chapter 23 of the accession process to the European Union – Judiciary and fundamental rights – is the key driver here,” he says. “Serbia has been struggling a fair bit with this chapter in the past, especially when it comes to undue pressure – the least of which is political – on judges and prosecutors.”

Petrovic says that for these reasons, and in cooperation with the Venice Commission, the Serbian government has decided to undertake a full stack of reforms. “These primarily include the way judges and prosecutors are chosen, with a newly proposed mechanism having them elected by the High Judicial Council and the State Prosecutorial Council, respectively,” he

says. On paper, it looks like a good approach but one concern for legal experts is whether half of the members of those Councils will still be appointed by Parliament, out of a pool of “prominent lawyers”. Other key amendments will tackle the Parliament’s jurisdiction and decision-making process.

“Only time will tell how successful these reforms will be,” Petrovic says. “The constitutional amendments themselves will not be enough to guarantee the independent work of judges and prosecutors.” He reports that the justice system itself is under far more duress than just the way judges and prosecutors are elected, with some 1.5 million unresolved court cases. “The amendments do not address the pressure for judges to settle cases quickly, which means that that specific pressure will not decrease as a consequence.”

Politically, however, Petrovic feels like little is likely to change – even with the country facing Presidential, Parliamentary, and local Belgrade elections, all in April of next year. “Other than the usual pre-election behavior of attempting to attract more investors and unveiling some projects around the country, I don’t think that we ought to expect anything major happening,” he says.

“When it comes to business too, things are quiet,” Petrovic continues. “Seeing as how Serbia has left the era of privatization, the majority of investors now focus on startups, greenfield, and brownfield investments.” He considers Serbia to be an interesting target for investment, given its geographical position and, especially, its “low operational costs, in terms of the price of labor and payroll tax incentives, custom free access to different world markets, and numerous free-trade agreements, including the one with Russian Federation.”

Finally, talking about the most active business sectors, Petrovic highlights the IT and food sectors. “These are the largest areas of opportunity for Serbia to showcase its full potential, without a doubt,” Petrovic concludes. ■

With the country experiencing one of its record-breaking tourism seasons and the business sector booming, there are a lot of reasons to see the sun shining brightly in Greece, even with summer at an end, according to AKL Managing Partner Helen Alexiou.

“The government is doing a good job and enjoys very favorable support, with some 35% of citizens and a good portion of the business community approving of their work,” Alexiou begins. “All businesses, both foreign and domestic, are pleased with the way things are going and with the governmental reforms that have digitized a lot of public services, eased the bureaucratic load, reformed the tax environment, and the like.”

Also, with the EU recovery fund mechanism in full gear, Alexiou reports that companies that have been impacted most by the pandemic will finally grow too. “In addition, tourism was also at a very high level this year, possibly as high as ever – which came as a little bit of a surprise, event to the hospitality sector itself!”

Alexiou believes that the government is making all the right moves – resulting in vast capital injections for over a year now. “Deals that were formerly frozen are now thawing and, overall, the past year – especially the last quarter – was quite good,” she says.

“Greenfield developments are taking off, and with that, there are two important legislative updates to share,” Alexiou says. “The first bill is in the public consultation stage and is expected to pass soon. It alters the thresholds for special licensing procedures, which will, in turn, increase investor security.” Alexiou reports that this will speed up the pace of commerce and is a very important tool for greenfield investments.

The second legislative update relates to real estate projects:

“One of the main issues in Greece is that you cannot construct a building unless it is connected to an officially recognized road – which is a problem if you live in a country where only a small part of the official road network has been properly characterized as such.” The update is set to facilitate and secure the procedure for acquiring a building permit by tackling this issue and, thus, impacting both the real estate and the construction sectors.

Finally, Alexiou reports on a major deal that just closed – the Elliniko investment project. “For almost a decade now, we’ve had the privilege to work on the largest project in Greece ever. The Greek state finally green-lit the commencement and it is expected that this will have a huge positive impact on the market and will create a vast array of new jobs,” she concludes. ■

Greece:

Interview with Helen Alexiou of AKL Law Firm

By Andrija Djonovic (September 20, 2021)



All businesses, both foreign and domestic, are pleased with the way things are going and with the governmental reforms that have digitized a lot of public services, eased the bureaucratic load, reformed the tax environment, and the like.

Bulgaria:

Interview with Damian Simeonov of Boyanov & Co

By Andrija Djonovic (September 21, 2021)



With the country still helmed by an interim government, it would appear that Bulgaria remains in a position to grow and prosper and is a fruitful target for investors, according to Boyanov & Co Partner Damian Simeonov.

“The current political situation is dynamic,” Simeonov says. “We are going to have another

early general election – scheduled for the middle of November – because the previous two were not able to produce a government, due to the fragmentation of Parliament and a lack of viable coalitions.” He also reports that the Bulgarian president has dismissed the Parliament and re-appointed practically the same caretaker government.

“There are but a few differences between this, new, caretaker government and the one that has been in place hitherto,” Simeonov reports. “Two of the ministers from the old one – that were the most active in their efforts to improve the ministries they headed and as a result attracted a lot of popularity – decided not to continue in the new government but instead to step up in the political spotlight and are intending to run in the upcoming elections.” He reports that these two political newcomers, who are not part of any political party, are polling “rather well” and stand to make a dent in the November election.

Seeing as how a caretaker government was in place, Simeonov says that there was not a lot of room for legislative innovations to take hold. “The Parliament did not do much (apart from amendments to the state budget to ensure the country can run until the end of the year and also increase pensions), but the caretaker government implemented some interesting changes,” he reports. “These include amendments to the way the Bulgarian Development Bank is allowed to finance legal entities.” The Bulgarian Development Bank has been, as he says, favoring large corporate entities so far, a focus the caretaker government sought to alter. “The interim government

has placed a cap on how big of a loan the bank can issue, which should curb some of the potential misuse of funds.”

Furthermore, Simeonov says that the caretaker government had overhauled the business climate in general. “Efforts towards easing bureaucratic burdens and improving electronic services were taken, and a huge anti-corruption push has been made,” he reports. According to Simeonov, “the recently reported macroeconomic data paints a good picture in 2021, with a 10% increase of GDP, a 20% increase of exports, and a 4% uptick in investments, all compared to the same period in 2020.”

Also, Simeonov reports that the Bulgarian Recovery and Resilience plan, itself a part of a wider EU program for the post-pandemic economic recovery of member states, is expected to boost the economy of the country in the coming years. “These programs, in addition to recharging the economy as a whole, also present a transformation target in the form of green energy,” he says. “Bulgarian economy is based, to a degree of some 40%, on coal-produced electricity – these producers would have to have some major incentives in order to decarbonize and switch to, say, hydrogen-based fuel. Not to mention the political layer to this – because this power production is home to many jobs,” he reports.

Therefore, in the coming years, he expects the country will attract a lot of investment in renewable energy production, projects to increase energy efficiency (both of business and residential units), as well as decarbonization investments in sustainable transport to reduce the sector’s carbon footprint. So, he adds, the EU Green Deal presents a significant opportunity for Bulgaria’s economy and he expects it to generate a lot of interesting legal work.

Finally, the Recovery and Resilience Plan targets other areas for transformation, such as transport and digital services, and Simeonov feels that these sectors will see an increase in investments as well. “In addition to that, the outsourcing services sector is strong too, representing 4-5% of GDP, with projections of increasing to 8-9% in 2022,” he says, adding that this follows an effort by the EU to “nearshore corporate opportunities” more so than in the past. In conclusion, Simeonov notes there is a growing number of “fintech, edutech, and other tech companies and startups, as well as equity and startup funds that are ready to invest in them. Also, the record-low interest rates of bank lending, as well as the practically negative interest rates on bank deposits, fuel the appetite for M&A deals and investment in real estate,” he says, ending on a positive note. ■

Montenegro:

Interview with Jelena Vujisic of Vujacic Law

By Andrija Djonovic (September 24, 2021)

Even with the political situation in the country being turbulent, Montenegro has a lot to look forward to, especially given the success of this year's tourism season, according to Vujacic Law Partner Jelena Vujisic.

"The turbulence of the times is to be expected, given that the recent political change of the ruling party has been the first of its kind in the past thirty years," Vujisic says. Milo Djukanovic's party lost the parliamentary majority in the last elections and has since been in the opposition. Still, irrespective of the political friction, Vujisic believes that the "people of Montenegro are done being yanked around by political clashes – they are more prone to focus on their own matters."

Speaking of the new government, Vujisic reports that there hadn't been much legislative action in the past few months. "Given that it was a time of summer recess of sorts, for the legislative bodies, there is nothing much new to report on," she says. "The main focus of the new government has been – as it has stated on many occasions – the path to EU accession. All of the negotiation chapters have been opened and a major push is expected to close them all soon, and become a part of the European family."

The one thing that is constantly being discussed is, as Vujisic reports, the amendment to the framework regulating the Council of Prosecutors. "Still, even with all of the talk surrounding the matter, no concrete movement has happened yet," she says.

"The tourism sector has been our shining star this year," Vujisic continues, reflecting on the Adriatic country's economy. "It has outperformed all of our expectations and has, in some ways, been even better than 2019!" With 2020 hitting Montenegro hard, Vujisic says that this year has, so far, been a "thread of good fortune. The atmosphere surrounding the economic projections is most positive."

Finally, Vujisic reports that all the other sectors of the economy have been business as usual, as of late. "All of the major projects that have been in motion are still ongoing and it would appear that some have even sped up," she says. "This, in spite of the still-ongoing pandemic, is a very good sign. We may even be looking at a complete bounce-back for next year!" Vujisic concludes on a positive note. ■



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Czech Republic:

Interview with Dagmar Dubecka of Kocian Solc Balastik

By Andrija Djonovic (September 24, 2021)



The Czech Republic is experiencing strong positive winds, irrespective of the severity with which the pandemic struck, and there are things aplenty to be happy about, according to Kocian Solc Balastik Partner Dagmar Dubecka.

“It’s really been exciting to be back in the office in full swing over the summer – there’s

been a very positive mood in the air in the Czech Republic, as both domestic and international investors have been keen to get back to restored business operations,” Dubecka begins. “We’ve seen pent-up demand and strong competition amongst buyers and strong growth trends – the Finance Ministry is now predicting GDP growth of 3.2% in 2021, driven by all components of domestic demand, mostly investment and household consumption.”

Dubecka reports that, while growth has been evident in a variety of business sectors, the clear exceptions are travel and hospitality. “Both were severely hit by COVID-19 restrictions and will take some time to recover, dependent on global travel trends,” she says.

On the other end of the spectrum lie IT/technology and real estate, according to Dubecka, as the most active sectors. “Our firm has seen a lot of action here, especially with advising the Arete Invest Group in one of the largest Czech-Slovak real estate transactions in 2020, the sale of a portfolio of 11 logistics and industrial parks in the Czech Republic and Slovakia to the Australian Cromwell fund,” she reports. As for IT/technology, she reports a swath of webhosting and domain registration acquisitions, cybersecurity acquisitions, as well as information system and CRM platform transactions.

“The pandemic accelerated digitalization in all sectors of the economy and the excellence of the Czech tech sector as well as the motivation of companies not to fall behind in adopting digital solutions makes it likely that the tech sector will continue to be a key driver of M&A activity,” Dubecka continues. A strong trend in the last couple of years, despite the Covid era she says, has been a “rising share of investments with high value-added, *i.e.* investments focused on technology and R&D in strategic sectors. CzechInvest notes that, in 2018, only 20% of investment projects it arranged fulfilled the high value-added criteria. In 2020, this jumped to two-thirds of investment projects,” Dubecka reports.

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We’ve seen pent-up demand and strong competition amongst buyers and strong growth trends – the Finance Ministry is now predicting GDP growth of 3.2% in 2021, driven by all components of domestic demand, mostly investment and household consumption.

Finally, tackling current regulatory issues, Dubecka mentions a “very new and untested area” of the new Foreign Direct Investment Act, which took effect in the country on May 1, 2021. “Lawyers and their clients will need to pay due attention from the point of view of M&A practice implications, to assess whether an investment under consideration requires prior consultation with the respective responsible authority of the Czech Republic, or whether other aspects of a client’s existing business operations in the Czech Republic may be subject to review,” Dubecka says, “even potentially such matters as a change in company directors. It will be interesting to see this evolve,” she concludes. ■

With political issues and economic sanctions being an everyday norm, Belarus finds itself in a bit of a pickle, according to Borovtsov & Salei Partner Vassili Salei.

“No major political developments to report,” Salei begins. “Since the last Presidential elections that took place in August of 2020, the Government has continued to press civil society and public institutions heavily,” he says, adding that the election itself is widely considered in Belarus to have been illegal and falsified. “And not just the people – the Western world has similar opinions – it just was not right.”

Salei reports that a number of “non-governmental organizations were liquidated by local authorities and courts” and that “more than 35,000 citizens passed through the courts and were sentenced to criminal or administrative punishment.” He adds that more than 600 individuals were recognized as “political prisoners as well, as the situation has started becoming more and more severe.”

As for legislative updates, Salei says that “all effective changes that were adopted or are under discussion have but one goal – to give the state more control over any business of note.” Also, he says the legislative efforts of the government aim to introduce tax increases and make businesses more and more dependent on the state. “Criminal and administrative legislation has also become more severe, penalties and fines have increased, and court practice is very strict – as a rule, the maximum punishment is passed almost all of the time,” Salei reports.

Belarus is currently still under sanctions – by the US, Canada, and the UK – and Salei reports that more are to be expected in the near future, perhaps almost as early as the “end of October. Our main trade partner, Russia, completely ignores these sanctions and continues to provide financial support as well, in the shape of loans and budget transfers,” Salei says. As for other major Belarus export goods, such as forestry products, tractors, or refined oil, Salei says that they are all “either under sanctions, or are expected to be, by the end of the year.”

Still, even with the grim status quo, the Belarus economy has grown in the first half of 2021 – by 3.3%. “The current predictions of the World Bank have us at minus 2.7% for the end of the year, with our government believing we will have a 1.8% growth, and some other financial institutions holding us at plus 1%.” It remains to be seen how the Eastern European country will fare by year’s end and into 2022. ■

Belarus:

Interview with Vassili Salei of Borovtsov & Salei

By Andrija Djonovic (September 28, 2021)



Criminal and administrative legislation has also become more severe, penalties and fines have increased, and court practice is very strict – as a rule, the maximum punishment is passed almost all of the time.



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Being the country with the highest growth rates in the EU, Romania is going strong despite the global pandemic conditions, according to MPR Partners Co-Founder and Co-Managing Partner Alina Popescu.

“There is some friction within the ruling coalition, but this is nothing new,” Popescu says. “For the time being, business keeps going and we can only hope that the political atmosphere in the country will not be adversely impacting the business climate in a significant way,” she reports.

As for the legislative updates, Popescu names a few. “Tech is one of the booming stars for legislative efforts these days,” Popescu says. She points to a recently passed law that regulates authorization procedures for 5G manufacturers, as an example. “This is an important piece of legislation that has seen a lot of debate, not the least of which because of the efforts of both the EU and the US to shape the 5G sector,” Popescu reports. The EU has issued a toolkit concerning 5G technology and Romania has signed a memorandum with the US regarding the conditions 5G manufacturers have to meet in order to operate.

“Furthermore, there have been movements in cybersecurity – with Bucharest becoming the designated seat for the EU’s Cybersecurity Competence Center,” Popescu continues. “This confirms Romania’s position as one of the European ‘silicon valleys.’” Also, Popescu reports developments within the framework regulating telemedicine. “This has previously been an unregulated field and now the basic foundation has been laid, with only some secondary legislation needed to make it all fully functional.”

As for other business sectors, Popescu reports that renewables are going strong, with a “lot of investor attention – this is a field that will be quite active over the next two years.” She says there are a number of deals happening and projects being developed, especially large renewable energy parks.

Additionally, the real estate market is booming, Popescu says, despite a small downturn of the office sector. “The positive trend of growth that permeates the entire Romanian economy is no stranger to the real estate sector – some major listings have hit the market and people are abuzz,” she reports. Finally, Popescu says that, somewhat expectedly, the retail sector has been doing quite well, especially online retail.

Tackling the overall economic condition of the country, Popescu is wary. “I tend to be conservative with projections, but there is a lot of talk from experts that Romania is on a good path,” she says. “Still, in order for this to be true, political stability is paramount.” Popescu feels that the Parliament and the Government must remain in a position to ensure predictability of policy enforcement, in order to keep things afloat. “Secondly, the effects of the pandemic must be met head-on. With low vaccination rates in the country, we must be careful not to allow this to spill over into negative economic effects,” Popescu concludes. ■

Romania:

Interview with Alina Popescu of MPR Partners

By Andrija Djonovic (September 27, 2021)



I tend to be conservative with projections, but there is a lot of talk from experts that Romania is on a good path. Still, in order for this to be true, political stability is paramount.

Poland:

Interview with Tomasz Kudelski of Penteris

By Andrija Djonovic (September 28, 2021)



Despite questions of political interference by the ruling party being raised in Poland, the Central European giant seems to be on a positive track, according to Penteris Partner Tomasz Kudelski.

“As with many states in the region, across Europe, and the world, Poland has become both politically and culturally polarised,” Kudelski begins.

“That is reflected in the veracity of the political dispute between the government and Poland’s fragmented opposition, whose ranks have recently been fortified by the return of former PM and President of the European Council Donald Tusk.” According to him, the government continues to retain its popularity in smaller towns and villages, amongst farmers and the older generation, while the opposition parties attract liberal voters from larger cities.

The three key political issues in the country over the recent months, Kudelski highlights, have been “the government’s disagreement with the European Commission on the rule of law, the refugee crisis on the border with Belarus, and, of course, COVID-19.”

In terms of legal issues, Kudelski says that the bones of contention for Poland’s lawyers are the current make-up of the Constitutional Tribunal, “whose members appear to have links with the government, as well as the status of the Disciplinary Chamber of the Supreme Court, raising eyebrows even in the Common Courts, which have openly questioned its position.”

Most recently, Kudelski reports, a legal dispute arose, with strong international overtones, surrounding the “lack of a decision by the National Broadcasting Council on the extension of TVN 24’s broadcasting license, finally granted after a lengthy wait on September 22. This fact, as well as the new and ongoing legislative process known as Lex TVN, appears to be directed against the US-backed TV network,” Kudelski

says. He reports that, until now, entities registered in EEA states have in practice been considered EU entities, regardless of the source of their capital. “The proposed change in this interpretation may have wide implications not only for the media market.”

Tackling other legislative changes, Kudelski reports that the tax framework stands to be altered. “The tax changes under the Polish New Deal, currently under discussion, could have a significant impact on business, particularly on sole traders, for whom the tax burden is likely to increase significantly,” he reports. “Unfortunately, Poland’s New Deal is not being afforded the consideration that other legislative plans might receive, largely because of the government’s machinations around the judiciary, which has dampened the appetite of society and business.”

Unfortunately, Poland’s New Deal is not being afforded the consideration that other legislative plans might receive, largely because of the government’s machinations around the judiciary, which has dampened the appetite of society and business.

However, as a sort of redeeming factor for the accusations of sluggishness and inefficiency in the judiciary, Kudelski points to pandemic-inspired digitalization efforts. “Covid has played a key role in accelerating the process of digitalization of Poland’s courts. Ironically, the virus may have a positive impact on the speed of justice in the following years,” he says.

Finally, talking about the Polish economy, Kudelski says that it appears to be “immune to all ongoing political disputes and continues to grow, regardless of all the climate and legislative changes taking place.” He reports that the financial support afforded to society during the pandemic and the associated low-interest rates are now generating exceptionally high domestic demand and that forecasts, for the time being, remain positive for Poland.

“One result of the current state of affairs has been phenomenal growth in the IT industry, online trading, as well as a boom in the real estate and construction market,” Kudelski says. “Doubt and uncertainty still remain, due to weak supply chains and soaring prices, but with major infrastructure investments on the horizon, geared to supporting economic growth, there is hope for the future,” he concludes. ■

Croatia:

Interview with Marina Mesic of Cipic-Bragadin Mesic & Associates

By Andrija Djonovic (September 29, 2021)

With political changes on a local level in the nation's capital and a booming tourism season, Croatia keeps defying the odds and making good progress despite an ongoing global pandemic, according to Cipic-Bragadin Mesic & Associates Partner Marina Mesic.

"As far as the political situation in the country is concerned, I think that the most interesting issue this year is the change of Zagreb's mayor," Mesic begins. Earlier this year, long-time Zagreb Mayor Milan Bandic passed away, three months before local elections were to take place. "Bandic has been tied to a great number of corruption affairs and machinations, for the past 20 years. The citizens of Zagreb, desiring change, elected Tomislav Tomasevic, a green, for the new mayor." According to Mesic, Tomasevic is promising a number of changes, including increasing transparency and battling corruption, nepotism, and the financial issues and existing debt of Croatia's capital.

Furthermore, Mesic reports that the Parliament has recently passed an amendment to the law that aims to regulate and shape the way in which Zagreb is to be repaired, following last year's earthquake. "The reconstruction works are yet to start and the law was amended twice, with the latest change directing the city and the country to bear the full cost of repairs," she says.

Most of the damage to the yet-to-be-repaired capital of Croatia is in the city center, which is dotted with old buildings that are, for the most part, Zagreb's cultural heritage. "Given that, as well as a number of high-end real estate, tourist attractions, and the like – reconstruction works have attracted the attention of a great number of potential investors," Mesic reports. "So far, the prices of real estate in Zagreb are holding level, regardless of the damage, even with some buildings being rendered uninhabitable," she continues. "What's more, some prices are actually surging!"

Finally, talking about the economy, Mesic reports good news. "The economy is doing well and our GDP has grown in the second quarter, showing a recovery trajectory for Croatia," she says. In large part, according to Mesic, this has to do with a record-breaking tourist season. "Even the more remote islands were extremely well-visited, like Lastovo and Vis. Also, with the Peljesac bridge finally being finished, it is to be expected that the Peljesac peninsula and the islands around Korcula and Mljet will keep developing, in the tourism sense," she says. "Additionally, the construction sector has been doing well until recently, especially following the reconstruction efforts to both Zagreb and other cities struck by last year's earthquakes. Now, with the increase in the prices of construction materials, activities have somewhat dropped, but I hope that this situation will not prove to be the new norm," Mesic concludes. ■



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North Macedonia:

Interview with Gjorgji Georgievski of ODI Law

By Radu Neag (October 01, 2021)



With COVID-19 restrictions to kick in only after the municipal elections scheduled for October 17, the country is in for a long winter, according to ODI Law Partner Gjorgji Georgievski, despite the business sector doing well.

He says the pandemic restrictions “were lifted in June, last year, and we had minor restrictions till April 2021. He reports that stricter measures will come into force after the local elections scheduled for October 17. “The Ministry of Health announced that come October there will be restrictions. I assume the timing is related to the end of the elections. The numbers are increasing, we have the worst death rate in Europe (or close to). It’s not a pleasant situation health-wise.”

Business, on the other hand, has been good. “It’s been great,” Georgievski says. “For the past 12 months, we’ve had a large number of M&A transactions, including this summer, and we’re also supporting clients on compliance with the new data protection regulations that came into force on August 24. We got an additional six-month extension until February 2022 – where the authority will not be imposing fines just yet – but there’s a lot of work to be done.”

Georgievski reports that energy, real estate, banking, and tech have seen a lot of activity. In the energy sector, “a number of projects are under development or will be developed shortly.” The real estate market has grown significantly compared to 2020: “real estate transactions saw a major increase – with the prices also going up, based on the price of materials and increased demand – for both commercial and residential properties.” The banks are doing well, as are insurance companies, Georgievski says, noting that Austrian GRAWE consolidated “with the acquisition of two smaller players with great positions on the market.” And investment funds are doing great, he says, “because of the low returns on bank deposits and

small interest rates.” Finally, he says the tech sector is buzzing. “It’s been very bubbly, with a number of companies branching out to Macedonia. The sector is developing at a good rate and successfully: we had some M&A transactions last year, and more are in the pipeline. IT growth is the main factor buoying the Macedonian economy – other sectors may be larger, but the growth rate in IT is something else.”

Other sectors have not fared as well. On infrastructure, despite the announced completion of construction of new motorways and a railway corridor linking Macedonia and Bulgaria, “it’s hard to know when these projects will start moving,” Georgievski says. And hospitality is suffering, he notes: “they had the period with the curfew, restricted business hours – but now, the large percentage of the public that is unvaccinated will be unable to visit these establishments. Hospitality has been suffering since March 2020, and they may have a harder time of it this year.”

On legal updates, Georgievski mentions the legislation on strategic investments: “the country’s strategy is to create a favorable environment for foreign investors. We’ve seen many companies applying and receiving state aid, but more importantly, they receive full administrative support – on land issues and project permits, among others. There is a multi-sector group in the Government, which speeds up the process significantly.”

He mentions other amendments in the pipeline, in particular to the law regulating cannabis, “allowing small Macedonian growers to sell their crop abroad. While medicinal use of cannabis is already legal, there is also talk of legalizing recreational use further down the line.” Another new law that should have a significant impact is the law on the liberalization of payment services, implementing EU directives on electronic money. “This should allow third-party players like alternative lending providers to consider the processing of payments and create competition for a section of the banking sector – with the banks themselves also investing in their own platforms and products.”

Finally, Georgievski says he’s personally looking forward to “the 5G frequency tender, already announced by the regulator. There will be a bidding war.” ■

Bosnia & Herzegovina:

Interview with Ezmana Turkovic of Maric & Co

By Andrija Djonovic (October 01, 2021)

Bosnia & Herzegovina is experiencing a boom in the tourism sector, feeding the steady recovery of the Balkan country, and which spells out good things to come, according to Maric & Co Partner Ezmana Turkovic.

“The political situation is as complicated and complex as it has been so far,” Turkovic begins. “However, what has been underlined as particularly important are the recent visits of Angela Merkel and Ursula von der Leyen to countries in the Western Balkans.” She reports that these visits have stirred up hopes of the Western Balkan countries joining the European Union at long last.

Given the complexity and weight of political issues in the country, Turkovic reports that “no legislative changes and updates of note occurred, other than those that seek to curb the spread of COVID-19.” She says that these updates also aim to alleviate the negative economic side-effects of the pandemic.

Speaking more about the economy itself, Turkovic reports that it is in recovery. “COVID-19 hit us hard, but the economy is picking up speed,” she says. “Tourism is our most intensive sector right now, and it is contributing to the overall economic recovery – a lot.” Turkovic says that the tourism boom was caused by the “relatively low levels of restrictive measures concerning the entry into Bosnia & Herzegovina. This year, during the summer months, we’ve had a 200% uptick in the number of tourists compared to last year.”

Finally, looking ahead, Turkovic gives us the outlook for Bosnia & Herzegovina: “I expect the biggest changes to take place in the energy sector, given that Bosnia & Herzegovina has undertaken a series of obligations to transfer to more renewable energy sources.” She also reports that investments are possible and necessary when it comes to constructing the assets required to produce renewable energy. “Of course, the appropriate accompanying infrastructure is sorely needed, but also – the software tools needed to manage them. Still, before anything can be done, a new legal framework regulating energy should be drafted and put into effect,” Turkovic concludes. ■



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I expect the biggest changes to take place in the energy sector, given that Bosnia & Herzegovina has undertaken a series of obligations to transfer to more renewable energy sources.

REIMAGINING DIGITAL: AN INTERVIEW ON BUILDING A SUSTAINABLE DIGITAL INFRASTRUCTURE

By Radu Cotarcea





Dora Petronyi,
CEE Managing Director,
CMS

The Pandemic's Role in Raising Awareness

“The pandemic has made everyone aware of the critical need to digitalize their business – irrespective of their industry,” explains CMS CEE Managing Director Dora Petronyi. “With the rise in digitalization, not just in business, but even in our daily lives, we also see an increased awareness of the importance, and impact, of the infrastructure that supports these digital trends.” And this increased awareness of the importance of the infrastructure being used is complemented by the pandemic drawing people’s attention to climate change as well, with Petronyi noting: “We all saw many maps of various regions of the world suddenly becoming cleaner and cleaner as the lockdowns were being implemented – it was only natural for it to emphasize the link between human activity and its impact on the environment.”

Petronyi notes that, “as TMT professionals, we’ve been talking about the importance of this infrastructure for the past 20 years, but now others are catching up as well.” This is why the firm dedicated itself to putting together the Digital Horizons report, which, according to CMS Co-head of CEE Technology, Media & Telecommunications Eva Talmacsi, “was one of the main CEE thought leadership publications last year and it explored our region’s digital future.” Talmacsi explains that the report “was based on a client survey and client interviews that we ran over the summer of 2020, and it covers a range of topics around digitalization, including businesses’ digital agenda, CEE’s digital readiness, investment plans, regulation,

and risk. The report also contained four mini-reports offering a deeper dive into AI, data & ethics, digital infrastructure, and smart industry – plus a quick stress test for clients on how future-ready their digital agenda is.” She adds: “We also ran a series of live events featuring fireside chats with various clients, after its release, around the different topics, as we wanted to engage with our clients and solicit their views on these future-facing issues.”

A critical takeaway of the report for Petronyi is that we are seeing an ever-increasing intensity of data transfer and a lot of effort is being put into enhancing the infrastructure to facilitate it. “Inevitably, when you talk about 5G infrastructures or large data centers, there is a considerable increase in electricity usage and electromagnetic output involved,” Petronyi explains. As a result, according to Talmacsi, “a future-proof digital infrastructure goes hand-in-hand with the energy transition,” with the “expansion of the digital economy already posing challenges for the environment, as the inefficient use of equipment is creating unnecessary waste and costs. According to some scientific data, eight out of ten servers are idling while still consuming energy. Therefore, aligning supply and demand is key to the future of the next generations.”

We all saw many maps of various regions of the world suddenly becoming cleaner and cleaner as the lockdowns were being implemented – it was only natural for it to emphasize the link between human activity and its impact on the environment.

Embracing Tools for a Sustainable Future

As Talmacsi puts it, “the COVID-19 pandemic has shown the central role that digital infrastructure and technologies play in our modern societies and economies, and we are very well aware that digital technology will shape the future in new ways and in various directions.” With such immense pressure to meet the demand for data transfer, is there room to think about sustainability? According to the two CMS Partners, yes there is, with Talmacsi pointing out that the futureproofing of digital infrastructure is currently a major theme of both regulators and the business world alike. Petronyi also points to “a very positive trend of both more and more infrastructure providers and also end-users, such as Netflix and the likes, embracing the need to think about zero-emissions and a sustainable future.”



Eva Talmacsi,
Co-head of CEE TMT,
CMS

The fascinating aspect here, according to Petronyi, is exactly that – it’s on all parties involved to make it work. “The infrastructure side of things seems obvious, but it does come down to the end-users to figure out how to minimize their footprint as well,” Petronyi states. As an example, she points to the mobility sector and explains that automated cars most definitely should be looking to use renewable energy and use 5G technology, with the hope of mobility corridors being set up in the EU. And media services that eat up a huge bandwidth should be looking at employing blockchain and having their data transmitted from the nearest available spot, rather than transmitting all their content from one location to everywhere across the world. Healthcare providers too should obviously minimize their footprint by switching to cloud-based solutions, as opposed to paper-based or physical hardware ones and, again, should make sure that their infrastructure uses renewable sources and blockchain to optimize their network.

How does blockchain work and how can it help? According to Talmacsi, “a foundational blockchain layer could be established, on top of which other blockchains, also leveraging other applications like IoT or AI, could be deployed for various purposes. Specific examples from the end consumer’s perspective include compliance monitoring (which is a major piece of any regulated industry landscape).” Talmacsi explains that “blockchain enables the tracking of compliance with technology standards. As data is recorded on the blockchain, automated, and even smart reporting and monitoring services

can be enabled, bringing together a cobweb of data sources such as satellite imagery, remote IoT sensors, engineering reports, and regulatory reports. It cuts out a number of other layers and improves efficiency.”

Where Do Lawyers Come into the Picture?

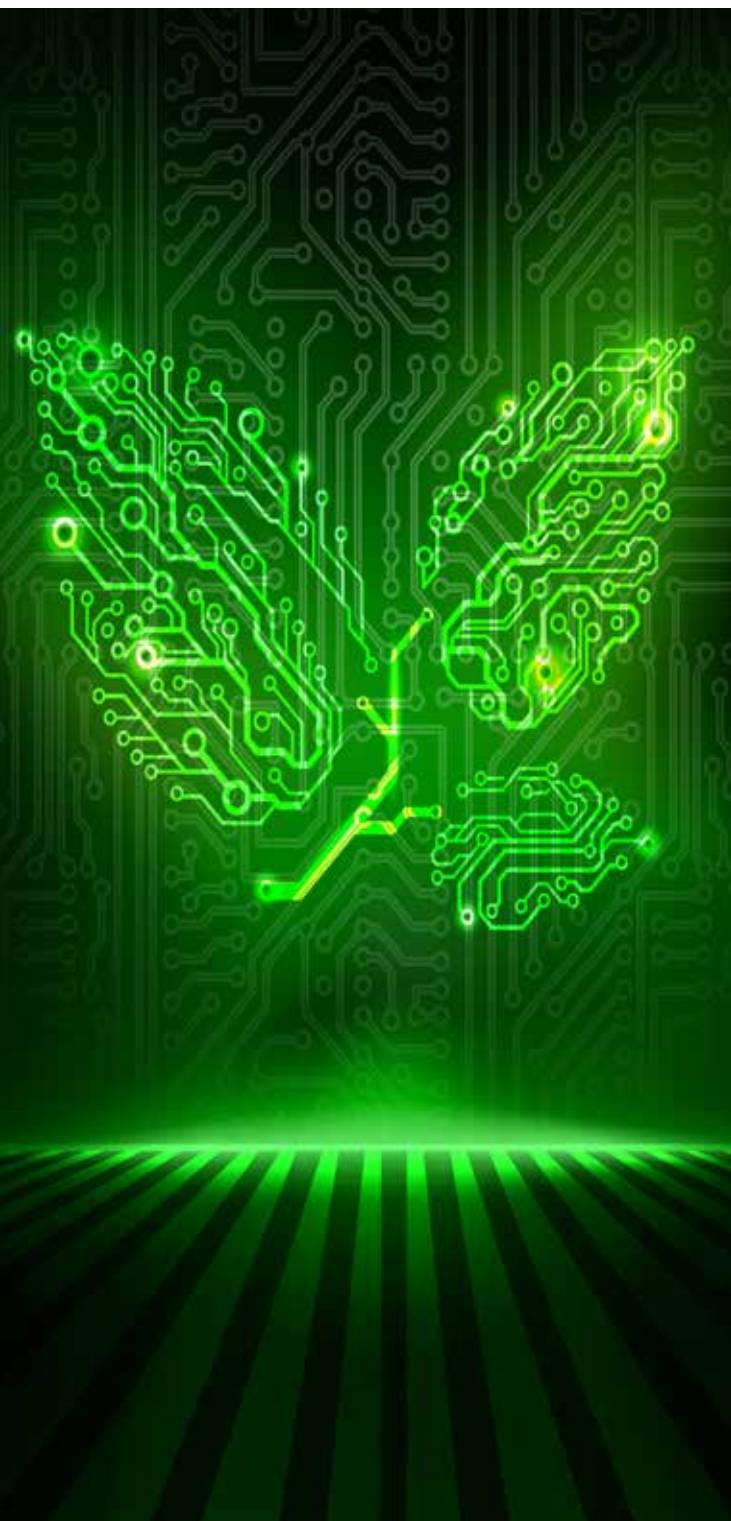
Lawyers have a lot of work ahead of them in terms of supporting this evolution, according to Petronyi. First, there are a lot of elements still to be worked out, in terms of all the network sharing questions, with use cases for 5G getting quite tricky at times. Second, “you need the spectrum for 5G and we still have those tenders ahead of us,” the CMS Partner adds. Third, there are questions about the interconnectivity between players and even the reliability of the data transfer that impact both businesses and consumers, with Petronyi giving the example of e-prescriptions being introduced at the outset of the pandemic: “This was a major step ahead, but it raised a lot of questions on how to use them, what are the regulatory impacts, and so on.”

”

Blockchain enables the tracking of compliance with technology standards. As data is recorded on the blockchain, automated, and even smart reporting and monitoring services can be enabled, bringing together a cobweb of data sources such as satellite imagery, remote IoT sensors, engineering reports, and regulatory reports. It cuts out a number of other layers and improves efficiency.

“A lot of these evolutions imply changes of processes and how work is done and, unsurprisingly, that always brings up questions,” Petronyi says. “It can be as simple as a labor law issue, it can have an impact on an acquisition, and increasingly, we’re seeing ESG questions come up even in financing talks – which I believe will give the concept of sustainability a whole new meaning on the long run.”

Talmacsi echoes the increase in ESG-related work: “The growing awareness of ESG factors in the M&A and corporate ecosystem, in my view, will give rise to an increased focus on ESG values and, over time, ‘an ESG due diligence’ will become a standard part of a target’s due diligence review by the investors and their advisory team.” According to her, as



shareholders and the whole business ecosystem expect especially publicly listed or larger private companies' management to focus on sustainability, to become more inclusive/diverse, and to act in a socially responsible way, in the context of a new transaction, these ESG elements will be seen to constitute financial and/or reputational risks. "Therefore, these aspects will be thoroughly examined before the signing of the transaction documents, to pre-empt any potential legal risks or lawsuits," Talmacsi predicts. What will such a due diligence process look like? "Well, we will primarily check the compliance of the target with national and international regulations and assess the environmental, social, and corporate governance fabric of the target company. That being said, each industry will also add its own spin on the general principles and areas of review."

Keeping Up with the Times

"I think future-facing lawyers should be keeping up with tech developments," says Petranyi. "We can't all be experts in everything of course, but within CMS we have focus groups that we can reach out to for specific expertise when a need comes up, and that is what I see with many of our competitors as well." How do you do that when you are talking about lawyers – not generally recognized as the most tech-savvy professionals? According to Petranyi, "it very much needs to be a cultural element for firms, while also looking at how we make our lives more effective by using better tech – I see that as a strength of CMS, both globally and in our region."

And Petranyi believes that committing to sustainability as a firm itself is also critical. "CMS is one of the first firms to sign up to a net-zero emissions by 2025 goal, and we are diligently measuring our progress on that front," the CMS Partner says. As part of that effort, the firm is "modernizing its infrastructure and introducing new solutions such as managing legal services or information gathering. It has even introduced AI technology to conduct an audit of its contracts across key sectors and areas of law, to identify trends and opportunities for refinement in clauses associated with climate change and ESG – all aimed towards a more sustainable model."

These steps will likely become the norm for firms everywhere, according to Talmacsi, with questions related to sustainability already coming up in procurement processes. "An ESG push is already very much a reality – and I believe it is here to stay." ■

A NEW ERA FOR CONSUMER RIGHTS

By Asta Macijauskiene, Partner, Ilaw Lextal

Directive 2019/2161 of the European Parliament aims to ensure better enforcement and the modernization of EU consumer protection rules. The Omnibus directive is also known as the consumer GDPR because it sets forth hefty fines for infringements of the regulatory framework on consumer rights protection. The Omnibus directive must be transposed into the national legislation by November 28, 2021.



Why Was It Necessary?

The national rules on sanctions for consumer law breaches have varied to a great extent across the EU member states. In some cases, they were miserable and ineffective. Such a situation has led to a “Wild West” in terms of consumer rights protection regulatory

frameworks. In the absence of sufficiently effective penalties, traders would often opt for maneuvering in the grey or even the black areas and would only adjust their behavior towards consumers when put on the spot by supervisory authorities. For instance, the maximum fine provided for in the *Law on Consumer Protection* of the Republic of Lithuania stood at merely EUR 5,000 at the time the directive was adopted.

Secondly, the existing regulatory framework did not cover certain aspects of consumer rights protection relating to digital content and online commerce. Third, there was a lack of transparency online. Fourth, price manipulation (e. g. crossed-out prices) was a big and prevalent problem in many EU member states. The Omnibus directive seeks to resolve all these issues.

It Will Affect SEO Rankings

Providers of online search functionality for products or services will be required to expressly disclose to consumers the cases where a payment has been made for a higher ranking in search results. Such a requirement was enshrined in the directive following the behavioral analysis of today’s average rushing consumer. When buying online, a consumer enters a

keyword into the search field and usually chooses the first or one of the first few options offered, without going into more detail or looking at other options.

This requirement applies to online marketplaces, such as those selling products by multiple manufacturers and where manufacturers are given the opportunity to place their product at the very top of search results subject to a certain sum being paid. Information on paid rankings must also be provided by search engines and comparison websites operators. The requirement does not apply to physical stores, although all in all they are subject to identical principles: suppliers or manufacturers pay the stores for their products to be placed in the most prominent places on the shelves at eye level.

In cases where products or services are offered by various traders, such as representatives from the accommodation sector, consumers will have to be presented with the information about the default main parameters determining the ranking of offers displayed, as a result of the search query and their relative importance. These include price, location, reviews, etc.

Personalized Price Offers

Traders have been placed under a new obligation to inform when the consumer has had the price of a particular product or service changed, on the basis of automated decision-making. For instance, it has often been observed that if flight fare prices are checked a number of times from the same user IP address, all of a sudden they start to change. This gives the consumer a fake impression that the fare prices are rising and that the purchase decision needs to be made now. If such price changes are made on an automated basis, as a result of the fact that the consumer has checked the price numerous times, they will have to be informed of that. It is also important to keep in mind that the Omnibus directive is without prejudice to the validity of the GDPR, including the right of an individual to object to certain automated decision-making.

This requirement to inform will not apply to techniques such as ‘dynamic’ or ‘real-time’ pricing, that involve changing the price in a highly flexible and quick manner in response to market demands, when those techniques do not involve personalization based on automated decision-making.

Stricter Requirements for Reviews

It has been observed that, with such a plentiful supply of products and services online, consumers increasingly rely on reviews and feedback online. They may have a significant impact on their decision to buy a product or service. The directive requires that when traders provide access to consumer reviews of products, they should inform consumers whether processes or procedures are in place to ensure that the published reviews originate from consumers who have actually used or purchased the products. These amendments aim to make the consumer buying online better informed, so as to prevent them from being misled and help them make a correct and informed decision.

Not only will traders be required to publish real reviews, but they will also be under the obligation to provide information on how they have ensured that consumers posted reviews on the products or services that they actually bought or consumed. The directive requires such checks to be reasonable and proportionate, but this concept has not been elaborated on. It has been observed on the market that certain traders have already implemented this requirement of the directive, and only allow consumers to leave a review in the online store for a specific product that they have purchased. From a technical point of view, this is ensured in the following manner: when the parcel is delivered, a link to the specific product purchased is sent to the consumer’s mailbox and the consumer is only able to leave a review if they activate this link.

This requirement of the directive is closely linked to data protection, as the GDPR requires data subjects to be informed of the processing of their personal data, including the basis, purpose, and length of such processing. Information about the processing of data will need to be presented by the trader in the privacy policy of the website or in any other document which the consumer will be made aware of at the time the data is obtained.

The directive also prohibits manipulations of reviews and endorsements, such as publishing only positive reviews and removing the negative ones.

Crossed-Out Price Manipulations

The Omnibus directive calls for a stricter and more transparent way of presenting prices to consumers. Price manipulations have been a major problem across the entire EU. The Omnibus directive requires that any announcement of a price reduction should indicate the prior price applied by the trader, for a determined period of time prior to the application of the price reduction. The general rule states that the ‘prior price’ must be the lowest price applied by the trader during a period of time no shorter than 30 days, prior to the application of the price reduction.

Threat of Hefty Penalties

An infringement of the provisions of the *Unfair Commercial Practices Directive*, the *Consumer Rights Directive*, or the *Unfair Terms in Consumer Contracts Directive*, when they are transposed into national law, may result in a fine, the maximum amount of which must be at least 4% of the trader’s annual turnover in the member state or member states concerned. This implies potential millions in fines for traders that state product characteristics that their products do not possess, or fail to provide information about the fact that the consumer has the right to withdraw from a contract concluded at a distance, *etc.*

Although the Omnibus directive is dubbed the new consumer GDPR, it sets forth fines that are narrower in scope than those in the existing GDPR. The maximum fine provided for by the latter piece of legislation is EUR 20 million or 4% of the total annual global turnover of the offender, whereas the Omnibus directive requires the fine to be calculated on the annual turnover in the member states concerned. Nonetheless, the fines under the Omnibus directive could still be considerable, not least because member states are free to introduce fines exceeding the limits set by the Omnibus directive.

In summary, the directive introduces quite a few new rules for traders that will need to be properly implemented, not only from a technical point of view, but also by amending the existing terms and conditions of sale and privacy policies, and, more generally, supplementing the information provided on online marketplaces. There is still time to do this, as the requirements transposed into national legislation will only apply from May 28, 2022. However, if we do not prepare to implement the new directive ahead of time, we may again find ourselves in the same panicking situation as shortly before the GDPR came into force. ■

A SILVER ANNIVERSARY: SCHOENHERR ROMANIA CELEBRATES 25 YEARS

By Radu Cotarcea



This year marks Schoenherr Romania's 25th anniversary. To mark the occasion, CEE Legal Matters spoke with Schoenherr's Romanian office Managing Partner Sebastian Gutiu (center) as well as with Michael Lagler (left), the firm's Managing Partner, and Partner Christoph Lindinger (right), who established the Romanian office and was the main driver behind Schoenherr's expansion into Central and Eastern Europe.

CEELM: Congratulations on marking your 25th anniversary. How are you planning to celebrate it?

Gutiu: This is indeed a major milestone, and we are proud of our achievements. Schoenherr's lawyers first came to Romania in the mid-1990s together with Austrian clients who were interested in doing business in this new market economy that was starting to take shape. Since then, our national history has been closely interlinked with the development of the country's business environment. And with the development of the business law sector, for that matter. When we entered the market Romania had just adopted its new legislation on the legal profession, the year prior. Concepts such as the possibility for lawyers to group into law firms were still new. We soon established ourselves into one of the largest law firms in Romania and we kept on growing. We are celebrating this year by doing each day what we do best: advising our clients. We

plan to turn 2021 into our best year ever. And as of right now the prospects for that look good.

CEELM: What does the 25th anniversary in Romania mean for Schoenherr at a group level?

Lagler: The beginning of our operations in Romania in 1996 was a key turning point in Schoenherr's history. It marked the start of our expansion into Southeast Europe, a region Schoenherr was one of the first international law firms to move into. For the past 25 years, our Romanian office has been successful and a story that we are very proud of. Since it was launched, we have kept growing and have become one of the leading firms in the CEE/SEE region. Each move into a new market has taught us how the Schoenherr spirit and philosophy can blend into local cultures and get stronger every day.

CEELM: How did the local Romanian office first come to be? Who were the initial partners on the ground and how large was the team, to begin with?

Lindinger: In the summer of 1995 a client called me and asked whether I could help him buy a manufacturing plant near Arad. Of course I could! The first difficulty for me then was to locate Arad on the map. The second was to find proper local counsel. The first I managed, the second I didn't. So I became my own local counsel. And since that was a success, I decided to institutionalize my local counsel capabilities and to open an office in Bucharest. Initially, the team consisted of two Romanian lawyers and myself.

CEELM: Looking back at your 25 years of operations, what would you identify as three of the ingredients that made the firm a success and when did they occur?

Gutiu: I believe one of the key elements that have shaped our success is our resilience. Our story is one of anticipating change and adapting to it. We promptly understood our clients' needs, both in times of economic growth and downturn. We always preferred to move lawyers from one practice to another, rather than to let them go during hard times.

Another key aspect of the firm's development was the decision to extend our partnership. Since 2008, we have had several rounds of promotions to local partner. They have each strengthened our team and our market position. And we have supported our partners in their international career path at Schoenherr. This includes promotions to contract and equity partners in the regional structure.

Not least, a unique blend of Romanian and international spirit runs through our veins. This feature has formed naturally and is the backbone of our activities. With our growth in Romania and the development of the Schoenherr network in Central and Eastern Europe, we quickly shifted from being the local office of an Austrian law firm into being a strong law firm in the domestic market, part of a regional powerhouse.

CEELM: Similarly, if you had to pick the deals you are most proud of your team having worked on, what would they be?

Gutiu: I simply couldn't choose. I take pride in all the projects we have worked on, and I am humbled whenever I think about how many there are. I get glimpses into what we have helped our clients achieve, whenever I drive through Bucharest or across Romania. Sometimes when I see a factory, a

store, a hotel, a hospital, a highway – you name it – I realize “hey, we worked on the acquisition of that company, the development or financing of that project, we cleared a dispute here” or whatnot. It is truly impressive and rewarding.

CEELM: What about the team? How has it evolved over the years and how do you imagine it will continue to do so?

Gutiu: Our team has grown over 25-fold in these 25 years. It started with an Austrian lawyer flying in whenever a client needed local advice, then we added two Romanian lawyers. This soon turned into a full-time on-site team. From this, we got to 23 lawyers in the first ten years and to 60 today. We have also developed a strong team of business professionals, including finance, human resources, marketing, IT, *etc.* Each person who is or has been part of our team makes up a valuable piece of our history and we are extremely grateful to all of them. We plan to keep our position in the ranking when it comes to team size. Continuing to invest in our people and our technology, I strongly believe that we are on the correct path to further strengthen our position as one of the leading law firms in the market, also in terms of profitability.

CEELM: What in the past 25 years do you look back at with the most fondness?

Gutiu: The people. And though I can't name everyone here as there is not enough room, I would be loath not to mention Markus Piuk and Matei Florea. The three of us met each other over 20 years ago and we have been working together closely ever since. I believe our combined synergies in these two decades have shaped Schoenherr Romania into what it is today.

CEELM: On the flip side, what is one thing you regret not yet having a chance to do?

Gutiu: I can't really think of anything. If forced to think of something, maybe not having opened local offices in other major Romanian cities.

CEELM: Where do you imagine the local office to be 25 years from now?

Gutiu: All I know is that I won't be around [laughs]. I expect we will see changes in the way law firms are organized and managed much sooner than that. Efficiency and profitability will become even more important drivers for a firm's success. At any rate, I am confident that Schoenherr and its people will be able to adapt to any new challenge. ■

RIMAC GOES HYPER

By Andrija Djonovic



Earlier this year, the start-up scene in Croatia picked up speed with the Rimac Automobili – Bugatti deal. The burgeoning Croatian manufacturer, which focuses on constructing electric hypercars, struck a deal with global automotive giant Bugatti, a subsidiary of Volkswagen, to form a joint venture for the production of next-generation supercars.

The newly formed Bugatti Rimac company will be focusing on the development of both Bugatti and Rimac next-generation vehicles by intertwining their expertise and resources. Over 400 direct employees will hit the ground running at the end of 2021. Some 300 of them will be working at the new Bugatti Rimac headquarters, located within the EUR 200 million Rimac Campus in Zagreb, and the rest at the Bugatti headquarters in Molsheim, France. The production of their respective brand cars will keep to their headquarters – Bugatti in France and Rimac in Croatia.

The deal itself was not a simple acquisition of Rimac by Bugatti. The Rimac Group, of which 37% is owned by Mate Rimac, the CEO and Founder of Rimac Automobili, 24% is owned by Porsche, with 12% owned by the Hyundai Motor Group and 27% by various other investors, is set to operate as the umbrella company for the endeavor's two important subsidiaries: the aforementioned newly established Bugatti Rimac, of which 55% is owned by the Rimac Group and 45% by Porsche; and Rimac Technology, a full subsidiary of the Rimac Group. This means that Rimac Technology will continue as an independent operation, working on EV powertrains, batteries, components, and the like.

We spoke with the law firms that worked with Rimac and Bugatti, covering the deal in Croatia as the focal point of the entire transaction.

CMS by Bugatti's Side



The French supercar maker Bugatti was represented on the deal by CMS, with Zagreb-based Partner Marija Zrno-Prosic advising on the ground.

CEELM: Congratulations on the deal! Tell us, how did it come to be, on your end? How did you get the mandate?

Zrno-Prosic: This mandate is a continuation of a long-term relationship between CMS and Porsche and Volkswagen. Locally, we have been advising Porsche in their M&A deals for several years now, including their investments in Rimac Automobili and establishing Porsche Digital Croatia, as a joint venture between Porsche's digital arm and the founders of the Croatian tech company Infinum. Both Porsche and Volkswagen are clients of CMS in various jurisdictions, including Germany as a central point of coordination for this transaction.

CEELM: How was Rimac Automobili chosen for this cooperation?

Zrno-Prosic: Porsche's investments in Rimac Automobili and the Bugatti-Rimac joint venture are two separate transactions. Positive results of the cooperation at the Porsche-Rimac Automobili level probably helped identify further cooperation possibilities at the Volkswagen-Rimac Automobili level as well.

CEELM: How was the deal structured? What's next for the newly established venture?

Zrno-Prosic: There are various aspects of this deal, which makes the transaction structure quite complex, but in essence, following the incorporation of a new company, the hypercar parts of Rimac's and Bugatti's businesses will be transferred to it. Considering the fast-moving character of this industry, it is expected that the synergy effects of this business combination will show rather soon.

CEELM: What were the challenges that you faced while working on this transaction?

Zrno-Prosic: Considering that this transaction concerns

several jurisdictions such as Croatia, Germany, France, and Luxembourg, combining the particularities of each legal system into one deal was quite challenging. However, all of this was successfully handled in the end thanks to the continuous support and efforts of all parties involved.

CEELM: What does Bugatti mean for the Croatian economy? How will its presence impact the overall economy of the country, especially in the technology and automotive sectors?

Zrno-Prosic: This transaction means a lot for our economy, not only as an important new investment in general but also because we are talking about an investment in the technology and automotive sectors. This places Croatia, a small country not usually considered as a target for such investments, on the radar of other potential investors – which is also encouraging for other sectors.

Considering the fast-moving character of this industry, it is expected that the synergy effects of this business combination will show rather soon.

The same applies to the start-up scene in the country. After the great success of the first Croatian unicorn (Infobip), this venture is considered the second biggest success story. There are others as well, such as the aforementioned joint venture of Porsche and Infinum, the Swedish gaming giant acquisition of Nanobit, the continuing investments of various investors into Gideon Brothers, and the like. All of these tell of foreign investors' increasing interest in Croatian start-ups, but also show that there is a growing number of businesses in Croatia that have the potential to go global and become much more than just a national success story.

CEELM: You seem to be a big believer in a snowball effect when it comes to investments.

Zrno-Prosic: Yes, I find it interesting how some local investments lead to other success stories. A good example is the Porsche Digital Croatia joint venture. The founders of Infinum themselves have often said that it was the original cooperation between Rimac Automobili and Porsche that led to their introduction to and business cooperation with Porsche. This shows how one success story can broaden the interest in a local market, in general, and create new business opportunities and, ultimately, new success stories.

Rimac Automobili Advised by Kunstek, Halle & Simac



Zagreb-based Kunstek, Halle & Simac Managing Partner Gordon Kunstek led the team advising Rimac Automobili on the deal.

CEELM: Congratulations on the deal to you as well! It must have been quite challenging. How did your firm come to work on it?

Kunstek: Kunstek, Halle & Simac has been the legal advisor to Rimac Automobili almost since its very inception so, naturally, our law firm has been representing Rimac Automobili in all of their deals, including those with the Camel Group, Porsche, Hyundai Motor Company, Kia Corporation, and Neurone. Seeing as how we have been advising Rimac Automobili for a very long time and that we as a firm have grown with them, it was logical for us to work with them on this historical deal. It is also worth saying that working with us through the entire transaction, given its complexity, were international law firms with which we had an amazing cooperation and that we continue to work with and encounter in other transactions, both in Croatia and abroad.

We are very glad and are very proud to have been given an opportunity to follow Rimac Automobili through all their development stages – all the way up, from a start-up. Their journey has been, without any false modesty, comparable to those of globally leading companies in the all-electric vehicles sector.

CEELM: What were some of the challenges you faced while working on the transaction itself?

Kunstek: As you can imagine the transaction was, from a legal, tax, financial, and operational aspect an extremely layered, complex, and challenging one. Thanks to the dedication, quality, knowledge, and faith in the deal of all of those involved, all challenges were successfully overcome. This is, for sure, the most complex, challenging, and time-consuming transaction that we have been engaged in. It seemed, countless times, that there is no end in sight and that we would be unable to honor the set deadlines. Honestly, I believe that we were not the only ones who thought, on multiple occasions, that the



Rimac Automobili Founder Mate Rimac

battle with time will be lost. Precisely for that reason, it was a huge challenge to synchronize and drive the advisors, from different sectors and different countries, that were necessary for this transaction to succeed.

The result is a clear benefit for both parties involved but reaching said result required the harmonization of a whole string of different business models and accounting practices, which was very demanding work requiring quality support on multiple fronts. Just to make it even more complicated, at the same time, a Porsche investment was ongoing that we too were advising on. This presented a challenge in and of itself and has definitely reduced the number of times we have had a full night's sleep.

CEELM: How did the two parties cooperate? Was it smooth all the way?

Kunstek: The parties had a very professional and high-quality cooperation, at all times, and major efforts have been made for it to be that way – from all sides of the transaction. There were hurdles, of course. There were instances where it seemed we would be overwhelmed, while new matters kept popping up. We persevered.

CEELM: From your perspective, what does Bugatti mean for the Croatian economy?

Kunstek: This transaction means a lot for the Croatian start-up scene, Croatian economy, but also for the perception of Croatia in general. The transaction tears down a lot of prejudices about Croatia, as a country with a poor investment climate and a country that young people are fleeing from. What Mate Rimac wanted to show, and what I think he thoroughly managed to, was that Croatian talent is fully capable of creating a first-rate product – remarkable enough to attract foreign talent and reliable enough to attract foreign capital – on its own merits and in its own country. To be clear, we could have easily structured this transaction in many other countries. But we did not.

Internationally recognized investors considered that their investment was optimally structured in precisely this way, in Croatia. This is good news for the current and future generations of Rimac Automobili employees – they will push the company into its next developmental stage, via the synergy of domestic and foreign talent. This also serves as an open call for other foreign investors to confidently invest in local talent, locally. These deals prove that we are going in the right direction. Croatia can be a talent hub!



Open-ended Outlook – With Positive Notes

Given the size and the scope of this deal, it is without question that – whatever the future holds for Rimac Automobili – there is great promise, and not that far off. Creating over 300 new tech jobs in the heart of hitherto tourism-sector-first Croatia, Rimac Automobili could open doors to vast new opportunities and potential directions for growth.

“This is a truly exciting moment in the short, yet rapidly expanding history of Rimac Automobili,” Mate Rimac said in a press statement. “We have gone through so much in such a short span of time, but this new venture takes things to a completely new level. Rimac and Bugatti are a perfect match in terms of what we each bring to the table.”

However, the 33-year-old Rimac Automobili CEO thinks further ahead. “We are thinking longer term and Bugatti has a lot of diversity in its heritage that can be used to make products that are not only hypercars,” he says. “Therefore, there is the opportunity to make exciting, different cars that are both strongly electrified and fully electric.”

At least one thing is certain: with Rimac's ten years of market experience and Bugatti's 110, the automotive industry in Croatia is set to pick up speed. ■

MARKET SPOTLIGHT: POLAND



GUEST EDITORIAL: POLISH LAWYERS KEEPING BUSY DESPITE PAST WORRIES

By Marek Swiatkowski, Partner, Domanski Zakrzewski Palinka



2021 turned out to be a surprise and many 2020 predictions concerning the legal market have not come true (luckily!). Despite predictions, legal advisors continue to be extremely busy. This is especially the case in M&A, real estate, and restructuring.

Let's go back to 2020 when the COVID-19 pandemic was spreading throughout Europe. Poland, like other European countries, experienced lockdowns that impacted the country's economy, in particular in the case of leisure-related industries.

At that time there were voices saying that the legal market would be heavily hit by the pandemic's consequences. And clear signs were visible in the second and third quarter of 2020 that those voices might be right. Many M&A and real estate deals were put on hold or slowed down, and, in some cases, the buyers decided to walk away (notably from transactions involving office buildings or those in the leisure industry). In preparation for difficult times, some law firms in Poland downsized or decreased salaries.

There were hopes that the decrease in transactional workload would be balanced with an increase of restructuring/public aid assignments and distressed assets deals. Indeed, law firms were able to generate more fees from these projects, but it did not compensate for the reduced income from other advisory areas.

Finally, some believed that the pandemic would result

in great opportunities for buyers – a healthy business willing to sell at a discount or businesses turning into distressed assets and being put up for sale.

These predictions, while being a logical consequence of the signs seen in the middle of 2020, did not materialize. Poland, like the rest of Europe, is showing a significant increase in deal flow and other projects in 2021, thus keeping lawyers extremely busy.

In my view, wages came back to pre-pandemic levels and law firms are desperately seeking talented juniors and associates. The increase in M&A work is not due to the price of businesses being discounted or to some companies getting into financial turbulence and being put up for sale as a bargain.

On the contrary, sellers of healthy businesses have been requesting higher valuation multiples, and few distressed opportunities appeared on the market, while in the leisure-related industries, where the number of insolvencies grew significantly, buyers are still reluctant to pursue those deals.

So why are law firms in Poland as busy nowadays as they were before the pandemic? There is one basic reason. Continued low interest rates and availability of helicopter money are driving activity worldwide, including in Poland. Clients are taking advantage of cheap money and funds injected by central banks to grow both organically and through acquisitions. This, in turn, generates substantial amounts of work for law firms.

In summary, 2021 will be a good year for law firms in Poland and these trends should also continue in 2022. Concerns persist that inflation could spike in 2022, triggering a hike in interest rates and an end to the increased business activity of law firms' clients, but, for now, we are all keeping busy. ■

POLAND'S (INFRA)STRUCTURAL FOUNDATIONS: ARE PPPS STILL THE FUTURE?

By Djordje Vesic and Andrija Djonovic

Even though situated at the outskirts of the EU, Poland undoubtedly serves as one of the main pathways into the Union's affluent west. The importance of its infrastructure is reflected in its prioritized investment position. Looking at investments made by the European Investment Bank alone, one could see that out of the EUR 79.8 billion invested in the country since 1990, about 47% went to infrastructure.

In the past few years, those investment practices, while not changing dramatically, seem to benefit infrastructure to a decreasing extent. In 2018, the EIB and the European Investment Fund invested EUR 3.74 and EUR 1.05 billion, respectively, in Poland. The largest portion of that sum, EUR 1.74 billion, went into the country's infrastructure. In 2019, EUR 1.68 billion out of a total of EUR 5.4 billion was invested in infrastructure projects and, in 2020, another EUR 1.37 billion out of EUR 5.2 billion.

The heavy reliance on EU structural funds has, in a way, shaped and molded the Polish infrastructure development and the wider market itself. Still, with the market evolving at a steady and promising pace, Poland seems to be turning to look more into how private financing avenues and streams can support growth. Diversification of funding streams and methods can only lead to more projects – varying in size and scope – being completed, ultimately benefiting a wide segment of the population.

Looking across European markets, this goal seems to be most readily and consistently achieved via a public-private partnership approach to projects. Securing private funding while maintaining state control over the intended end goal of projects, PPPs have proven efficient in aligning public goals with private interest, and Poland is no exception here. This, of course, most often proves to be the case in those sectors routinely described as 'key' or 'critical' by governmental officials, usually due to their sensitive nature or ability to

engender strong public opinion regarding the course of their development.

Still, even with the potential for increased governmental control and intervention in the development of projects, it remains an open question as to how much the Polish government can, and indeed wishes to, interfere in the infrastructure sector as such. This is particularly the case with local government, where projects are smaller in size and scope and, thus, less lucrative for major foreign investors.

To better understand the evolution of the infrastructure landscape in the country we reached out to several leading legal experts on the Polish market, to get their perspective on the sector that seems to be driving investment for one of the largest CEE countries.

Major Projects and Developments

Even though the Polish government has developed many infrastructure projects on its own, a number of them have been undertaken through public-private partnerships. According to Tomasz Darowski, Partner at Domanski Zakrzewski Palinka, PPP projects have been most numerous in transportation infrastructure, energy efficiency, sports and tourism infrastructure, and water and sewage management. According to Darowski, a total of 90 projects have been developed in those sectors over the last 12 years. He lists the following five projects as the largest ones done in Poland: (1) the PLN 885 million construction of the CHP plant in Olsztyn; (2) Poznan's PLN 782 million waste management system; (3) the PLN 659 million construction of Krakow's fast tram line; (4) the Tricity Metropolitan Area's PLN 625 million waste management system; and (5) the PLN 490 million development of the northern tip of Gdansk's Granary Island.

Despite the apparently burgeoning infrastructure sector, there



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is a noticeable downward curve to the EIB's investments in Poland. The EIB allocated around 40% of its EUR 5.5 billion to Poland's transportation and telecommunications in 2015, while only around 26% of the funding went to the infrastructure sector in 2020. Notably, according to the EIB's statistics, from 2015 to 2018 infrastructure was the top priority sector for investments, with most of the funding allocated to its development.

Yet in 2019 and 2020 the largest portion of EIB's funding went to small and medium-sized enterprises, leaving the infrastructure sector in second place. Despite these figures, Dentons Managing Counsel Tomasz Korczyński says that there is no slowdown to the infrastructure projects in Poland. "Quite the contrary, the market is more mature and developed now than it was two or three years ago, and our pipeline is full," he says. According to him, a few years ago most of the projects were still in the planning stage, whereas nowadays they began to materialize and come to full fruition.

Also, according to Korczyński, there is no shortage of public-private partnerships. He points to the construction of Port of Gdynia's outer port, as well as to the planned Ornontowice Polnoc sewage treatment plant, to Długoleka Municipality's wastewater treatment plant, to the construction of roads in Marki, and to other projects as good examples of this growing trend. He explains that some of these projects are in their early stages, some in the procedural phase, and some are being implemented. "By next year, most of the procedures will be completed and most of the private partners will be selected, after which construction will commence," he says.

Darowski agrees that 2020 was not a lean year, in terms of the number of projects. "The statistics of the Ministry of Funds and Regional Policy show that a total of 13 PPP agreements were signed in 2020, with a total value of approximately PLN 884 million, which is not a significant deviation from the previous number of PPP agreements concluded annually in Poland," he explains. "Compared to 2019 there was a 44% increase, as only nine agreements, with a total value of approximately PLN 1.3 billion, were concluded that year," he says and adds that 2020 also saw an increase in the number of initiated proceedings – 31, as opposed to 22 in 2019.

Governmental (Non)Interference

Looking further back, Darowski says that in 2015, out of 61 PPP projects, 23 ended in an agreement. However, only 11

out of 36 and 16 out of 47 ended the same way in 2017 and 2018, respectively. “Based on the above data, it is possible to hold that, despite the increasing awareness of public entities in the field of PPP proceedings, the interest for this form of implementing projects showed a slight downward trend in recent years, with the possible exception of 2018,” he says.

Furthermore, Darowski highlights the change in the situation of PPP projects, for the first two quarters of 2021. “The economic uncertainty caused a significant reduction in the level of investment in the private sector and affected the declined interest in public investment.” For the first two quarters, “only four PPP agreements were concluded and only two PPP proceedings were initiated,” he says.

The obvious question remains: what is the main reason behind the downward trend? “I would say that in those sectors driven by the state there are many ongoing projects, for example in electricity, rail, road, and other sectors,” comments Penteris Partner Agnieszka Koniewicz. “Unfortunately, the state does not use the PPP model for some of its largest and most prestigious projects but is rather developing them directly, and only outsourcing work to the private sector on a contract basis.”

Koniewicz underlines a few reasons for this. “The PPP model requires mutual trust and an understanding of the business conditions, which is often quite difficult to achieve, as the public partners very often want to allocate the majority of the risks and costs to the private partner, without ensuring the appropriate duration and distribution of future profits,” she explains. For certain strategic sectors, she says that the relatively low number of PPP projects stems from the political approach that “key sectors should be operated by the state.” Thus, according to Koniewicz, the government aims to control strategic infrastructure such as roads, railways, electricity and gas transmission infrastructures, and, as of late, even telecommunications.

The government’s effort to retake control over certain strategic projects is confirmed by Darowski. “The government planned the construction of four motorways on a PPP basis,” he says. “The total investment value was estimated to be in the billions of euros and important foreign investors were preparing for those procedures to be launched, since they had been officially announced by the government,” he continues. “Unfortunately, during the presidential election campaign in 2020, the plans were suddenly changed, and it was decided

that these motorways would be constructed on a standard public procurement basis,” he says. “This sudden change of plans has greatly discouraged some foreign investors, which have withdrawn from our market for this very reason,” he says.

Local Governments – Local Problems

On the other side, local governments seem to be particularly reluctant to resort to the PPP model, according to Darowski. Local authorities reach out to private partners less often due to, according to him, their lack of familiarity with the PPP model, on one hand, and the abundance of EU funds on the other. Still, the government is trying to alleviate the problem, according to Darowski, so “the Ministry of Funds and Regional Policy holds training events for local governments to promote PPP and to show how it works in practice.” He commends the work that has already been done but acknowledges that a lot more of it is still needed.

It is not just the lack of experience that is holding back local governments, according to Korczynski. “Poland adopted a complex amendment of the PPP act in 2018, which greatly facilitated the whole process and the ministry stepped in to educate local governments,” he says. Despite that, it is occasionally the attitude of local authorities that bogs the process down, as they sometimes “want to have the Ferrari, but can only afford the Fiat,” Korczynski says with a chuckle.

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Looking Ahead

It is difficult to say what the future might hold for the PPP model in Poland, yet some factors might provide an indication as to where it might be heading. “It is expected that due

to the decreasing amount of EU funds granted to Poland in the coming years, the importance of PPP will increase, especially after the COVID-19 pandemic which had a very negative impact on local government finances,” comments Darowski and adds that the PPP model would make it possible to finance more projects.

Still, he is optimistic about the development of the infrastructure investment market in Poland. “A significant portion of the EU funds allocated to Poland under the post-Covid economic recovery plan, around EUR 170 billion, will be earmarked for investments in infrastructure, such as roads, railways, offshore wind farms, telecommunications, and ports,” he says.

In a similar vein, Koniewicz assesses that the future of PPP projects in Poland is contingent on, among a number of other things, two factors: the country’s future access to EU funds and prices in the construction sector. “Last year, there were many ongoing projects, so the cost of labor and construction materials (like steel) has increased,” she says. As a result, she

explains, many general contractors ran into difficulties.

With all of this in mind, it would appear that the infrastructure market in Poland will continue developing along an upwards trajectory. The trends set over the course of recent years are likely to hold, with more investment opportunities and capital flowing into one of Central Europe’s biggest countries. What remains to be seen is if the government decides more interference is necessary and needed, or if a more *laissez-faire* approach is the proper course of action. With Europe and most parts of the globe expressing strong hopes of entering a post-pandemic world sooner rather than later – which would only spur strong transactional and investment activity, especially from the private sector and non-official bodies – Poland finds itself in a prime position to seize the moment. ■

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THE POLISH-UKRAINIAN CONNECTION: INTERVIEW WITH MARCIN WIERZBICKI OF KONIECZNY WIERZBICKI

By Andrija Djonovic

Poland and Ukraine – a distinct pairing some would say. The two European countries are close to one another – both geographically and historically – yet, while they share a lot of similarities, they remain quite distinct. Given the sheer size of these countries and economies, their relationship, and a growing amount of investor interest – going both ways – we took a deeper dive to explore what makes their relations tick. And what better way is there to understand the countries' entangled relationship than to talk to someone with **Marcin Wierzbicki's** profile? Born and raised in Poland, the **Konieczny Wierzbicki** Managing Partner has had the opportunity to spend quite some time in Ukraine and, as such, has a unique perspective on both countries and their respective markets.

CEELM: Marcin, how did you decide to get into law?

Wierzbicki: It was while I was back in high school. As the time for deciding on the college to enroll in came closer, being good in history and logical reasoning, I decided on law. It made sense to me. A very good friend of mine made the same career call, which only bolstered my confidence in that decision. I went to the Jagiellonian University, one of the best law schools in Poland.

During my university days, I tried to take up as many international scholarships as possible. I first went to Sydney for a year, on an exchange to a business school, then to Tilburg in the Netherlands for a semester.

Eventually, I took a semester in Ukraine, and I liked it so much that I decided to do my master's thesis at the Kyiv-Mohyla Academy, with a focus on differences between limited liability companies in Poland and Ukraine.

I ended up going back to Ukraine for another six months, for a couple of internships and my master's.

CEELM: You did two internships during your time in Ukraine – what was the country like, back then?

Wierzbicki: Yes, I did an internship with the commercial

department of the Polish embassy in Kyiv first, and then one with Asters.

Back then, at the turn of the previous decade, the entire country was brimming with positive ideas and notions of joining the EU. That stood to reason, with a lot of international businesses – including Polish ones – coming in strong.

My time at Asters – which is a major law firm in its own right – was very exciting and a great experience for me. I still have friends that I've met there, staying in touch both socially and business-wise. Not to mention all the fine people I met at the academy, with whom I did my studies. I make it a point to stay in contact with them, even with most of them having left the country since, especially following the political turmoil a few years ago.

CEELM: How did you fare, as a foreign student enrolled in a Ukrainian university?

Wierzbicki: Even though Ukrainian is similar to Polish, I did not understand a word of it when I went there. The committee that decided on my master's scholarship used to insist that applicants be fluent in either Ukrainian or Russian, but I managed to persuade them that my international experience and exposure up to that point, as well as my time in Ukraine, were enough.



Marcin Wierzbicki,
Managing Partner,
Konieczny Wierzbicki

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I think that the cooperation between our countries will be good, and I hope that Ukraine will be more focused on the EU and working with the West. This could help businesses in both countries and, ultimately, both of our nations to prosper and grow.

For the first few weeks at the academy, I had some struggles because the administration there spoke no English. Thus, all the paperwork, student enrollment procedures, signing up for lectures – it was all a challenge. Still, within three or four months, I could sense that I was taking control of the language – I was able to study in Ukrainian, even pass exams in it, it just came to me naturally.

CEELM: Did those language skills come in handy after university? How often do you go back to Ukraine?

Wierzbicki: I do try to visit whenever I can, almost every year. Of course, last year was a bit difficult due to the pandemic, but other than that, I keep strong ties with Ukraine still.

Whenever I do go around, I visit new law firms just so that I can meet new people, have a chat with them, and keep the beat on the legal market of the country. Getting to know how businesses continue to develop, as well as the legal market, is very important to our law firm as well.

CEELM: Given the close proximity of the two, how would you characterize the economic links between Poland and Ukraine?

Wierzbicki: It is important to note that Poland has an estimated 1.3 million Ukrainian nationals that have emigrated in the past ten years. Given the language similarities and geographical proximity – including good train and airline connections – it made sense that Poland was their destination. Also, a number of Ukrainian companies have moved to Poland – which is a natural move as well, seeing that Poland offers them wider EU access for doing business.

Ukraine, on the other hand, has a very good trend of IT and tech sector development – which is attractive for Polish companies. In case, for example, a Polish company has an urgent need for a team of IT experts and computer engineers, Ukraine is the place to go, be it for outsourcing or outright acquisitions.

And, personally, due to my previous experience and understanding of the mentality of the people in Ukraine, I find it really, really easy and pleasurable to do business there.

CEELM: How would you compare working in these two legal markets?

Wierzbicki: Well, to be honest, the legal system in Ukraine is

not on the same level as those in the EU. Legal frameworks for certain areas such as tax or the judicial system are subject to frequent changes, which only hampers the predictability of doing business in the country.

Not to say that Poland is a shining example of legal safety, predictability, and certainty, but here things do not change as the wind blows. This is something that companies ought to take into account when planning their business involvement in Ukraine, taking note of more than just written law and also paying attention to key local players, whether arbitration is possible, and the like.

And, of course, this is only more evident in the case of smaller-scale investments, into smaller projects. Having to go to court over, for example, an agricultural property dispute could sometimes prove to be prohibitively long, costly, and complicated.

Still, working in the big cities in Ukraine, like the three-million-people city of Kyiv, is very similar to working in any major EU capital. Polish businesses are keen to operate there. I think they find it appealing, due to the five-century long common history of our two countries. The similarities in doing business and mentality are inviting.

CEELM: As a lawyer that was, and in a sense still is, exposed to both markets, what types of deals have you seen?

Wierzbicki: Speaking of international M&A transactions, the framework under which business is done in Ukraine is very similar, or almost the same, to that in Poland and the rest of the EU. Drafting international contracts, taking into account things such as warranties, agreements, indemnities, and arbitration clauses... there is a common tongue to these things that transcends jurisdictional borders.

However, in terms of procedures such as registering shares, capital, and legalizing documentation, Ukraine is much stricter. Of course, not as strict as it once was, say some ten years ago, but formality is still ever-so-present in the country. Most corporate documents require a rubber stamp, for example, which slows the business down. This is not something that is present in Poland and could seem strange to Polish and western businesses coming in. These formalities are a burden on doing business, far more than it is the case in Poland.

CEELM: What trends do the markets exhibit? In which direc-

tion are business sectors developing in these two countries?

Wierzbicki: Ukraine is showing a lot of strength in the IT sector, and technology overall, agriculture, and aviation and aerospace as well. Highly qualified professionals are something that companies in Poland are in sore need of.

I already mentioned that Polish companies tend to outsource, or even acquire, Ukrainian IT businesses for their experience and expertise. This is also the case in aviation and aerospace – Poland has a very good environment for developing this sector but lacks professionals to bear the brunt of this development.

On the other hand, of all the Ukrainians that have come to Poland, many have started their own businesses and are taking part in acceleration programs, developing their own enterprises. When you have some two million people, with highly developed sets of skills, booms are bound to occur. It takes a lot of motivation, work ethic, dedication, and bravery to change one's country, home, and life – I have nothing but the utmost respect for them.

For Poland, the construction sector is currently booming, but not a lot of Ukrainian investors are getting in on the action. The market is very competitive and it could be that they just don't make the cut.

CEELM: What can we expect in the future in terms of bilateral relationships between the two countries?

Wierzbicki: Because of the history of the two countries and the close geographical proximity, Poland will be the first stop for Ukrainian people and companies seeking to go further afield into the EU. I hope to see more Ukrainian companies investing in Poland and through Poland.

I see many individuals coming to Poland but not a lot of corporations just yet. I'd be pleased to see more companies investing, because there is a lot to be gained from operating in Poland, especially from Ukraine.

I think that the cooperation between our countries will be good, and I hope that Ukraine will be more focused on the EU and working with the West. This could help businesses in both countries and, ultimately, both of our nations to prosper and grow. ■

MARKET SNAPSHOT: POLAND

CHALLENGES OF M&A ON POLAND'S NEW TECH MARKET

By Agnieszka Pytlas, Managing Partner, and Jeremiasz Kusmierz, Senior Associate, Penteris



Innovative technologies, software development, and gaming are becoming an increasingly important part of not only Poland's M&A market but of the whole region. The greater presence of global tech investors seeking potential acquisitions in Poland is putting pressure on local developers to keep up with international standards and the fast pace of the acquisition process.

New Perspectives

Tech newcomers and start-ups often build their market presence from scratch. At the early stage of an organization's growth, it is natural that founders commit to the development of an idea rather than consider potential exit strategies and cashing-out scenarios. A potential acquisition completely shifts this perspective and adds gravity to issues that may have been neglected during the organization's infancy. These issues usually become the center of our focus in all new tech M&A.

Whether the parties are planning a share or asset deal, the value of new tech targets usually stems from their intangible assets. This entails certain risks that the buyer needs to address in the acquisition process. For this reason, the need to utilize more complex M&A agreements even in smaller new tech transactions is a must. Based on our experience, it seems that there are several challenges that require tailored solutions in deals within this sector.

New Challenges

Most important is liability. Under Polish law, for example, statutory warranty for defects of sold goods does not necessarily cover malfunctions or defects of purchased software, mobile apps, or the like. As a result, liability for a defective computer program may be sought based on general principles of contractual liability or, in some cases, intellectual property law. In either case, establishing a valid claim against the seller can prove to be a legal nightmare. Therefore, it is particularly important to properly draft a seller's representations and warranties relating to the crucial asset. While some could argue that this is always the case with M&A deals, in practice drafting an effective R&W is particularly difficult when it comes to securing an intangible asset.



Effective R&W clauses require thorough technical due diligence and, as such, are a part of the process that both parties must be ready to handle. It is mostly up to the buyer to verify if the assets presented by the seller are, in fact, everything the buyer will need to operate the software post-acquisition (especially considering the usual process of integrating the acquired software and business with the buyer's enterprise). In many cases, sellers are reluctant to show all aspects of their software before the deal is made, which sets the bar even higher for the buyer in terms of establishing proper protection measures.

Another issue that is important for M&A in the new tech/software sector is securing the chain of title to intangible assets. It makes things much easier for the buyer if the software was developed by the seller's employees since, as a result of the *work for hire* principle, the full title to intellectual property on the seller's side is secured by virtue of law. In practice, however, the IT business is dominated by B2B arrangements and even if developers are engaged under employment contracts, it is not uncommon for employees to opt-out from the *work for hire* principle as that can be more beneficial to creators from a tax perspective. In all such cases, Polish law provides for a set of copyright-related rights that must be expressly transferred to the new holder. Especially in start-ups, initial agreements with software developers who personally started and grew the business often lack important provisions, which leaves the buyer at risk of defective title to the acquired intangible assets. Supplementing the original agreement days before the acquisition is an inconvenience, which in some cases cannot be avoided.

New Horizons

Negotiating complex M&A deals in an engineer-driven sector is always a challenge, however, awareness of the above-mentioned issues, which are sensitive from the perspective of new tech/IT law, is rapidly increasing. This allows legal practitioners to shape better, tailor-made standards when drafting agreements. The value of the new tech sector will continue to grow, which will most likely translate directly into larger and more demanding transactions on the M&A market in the coming years, both in Poland and across CEE. ■

NEW TECHNOLOGIES IN POLAND: LEGAL FRAMEWORK, TRENDS, AND DEVELOPMENTS IN TMT

By Michal Konieczny, Managing Partner, and Lukasz Wieczorek, Partner, Konieczny Wierzbicki



Over the past couple of years, Poland has become a leading player in the European IT market. According to Eurostat, there are approximately 554,000 IT specialists living in Poland. Although this is less than 5% of the total IT workforce in the EU, the number is constantly growing. It is also widely recognized that Polish IT specialists are well trained. If you also consider the convenient geographical location between West and East and the stable economic situation, it is no surprise that many foreign companies have found Poland to be a promising place to develop software and carry out related research and development activities.

As new software houses enter the market, tech start-ups emerge, game development studios deploy, and SSCs expand (e.g. in Krakow), the demand for IT specialists is extremely high. To address the specific needs of the Polish IT market, but also to spur innovation, Poland has passed tax reliefs dedicated to business entities engaged in producing software and R&D activity (the so-called *IP Box and R&D* tax relief). Moreover, in response to the unstable political situation in Belarus, at the end of 2020, Poland launched the *Poland Business Harbor* program aimed at helping Belarusian IT specialists to relocate to Poland. In July 2021, the program was extended to, *inter alia*, Russia, Ukraine, and Georgia to welcome even more IT professionals.

Cloud Regulations

The potential of the Polish IT market has been recently recognized by Google. In April 2021, the Polish Google Cloud Region in Warsaw was launched. It is the first Google Cloud Region in CEE and the seventh in Europe. The Google Cloud location is a cloud data processing center whose infrastructure is located in Poland, thus making Poland a regional leader in digital transformation.

Cloud solutions are becoming more and more popular in Poland. Scalability and cost-efficiencies resulting from moving to the cloud have been spotted by many businesses, as well as public administration. Cloud-based financial and banking activities are of particular interest to the FinTech industry. In regard to the FinTech market, in March 2020, the Polish Financial Supervisory Authority (PFSA) published its communication on information

processing by supervised entities using public or hybrid cloud computing services. In December 2020, the PFSA provided additional guidance, in an attempt to reduce the legal uncertainty arising from the use of the cloud by financial institutions.



Blockchain, AI, and Other Issues

There are many software houses in Poland successful in developing blockchain-based solutions, virtual and augmented reality applications, software solutions for the gambling market, and software engines powered by artificial intelligence algorithms. Poland is also a leading market player in the field of video games. The sharing economy is also on the rise, particularly with respect to scooters and cars.

Apart from regulating the status and use of electric scooters in public spaces (new provisions entered into force in May 2021), there are no specific provisions concerning such issues as blockchain, Big Data, or AI.

Legal Trends and Perspectives

The Polish legal framework in the field of new technologies is strongly affected by EU legislation. Currently, IT market stakeholders are closely monitoring the proposed e-Privacy Regulation (*Regulation on Privacy and Electronic Communications* or the *EPR*). The *EPR*, sometimes also referred to as *GDPR II*, is expected to change the playing rules for sales and marketing activities. The proposed regulation might also have a significant impact on the collection of metadata invaluable for the development of the Internet of Things (information on geographical localization of the user, user's hardware, operating system, date and length of connections, etc.).

Furthermore, the draft of the *EU Artificial Intelligence Act* (*AIA*) has drawn the attention of various business industries. The proposed regulation is a pioneering legal act, whose business magnitude may be similar to that of the *GDPR*. At the same time, the *AIA* raises concerns around maintaining the competitiveness of EU businesses engaged in manufacturing and offering AI-based products and services. The legal burdens to be set by the *AIA* may generate additional operational costs, e.g. for the FinTech and LendTech markets that are lively *inter alia* in Poland. ■

POLAND'S RESIDENTIAL RISE

By Przemyslaw Kastyak, Partner, and Sebastian Janicki, Senior Associate, Penteris



Recent post-Covid months have shown some interesting positive trends on the Polish real estate market with a few surpassing expectations.

During the peak of the third wave, many expected a market slowdown and a drop in prices on the residential market. Indeed in 2020, many consumers put purchases on hold (although prices actually rose in the last quarter in Warsaw by 0.8 percent). However, right after the third wave, Poland's residential market began to grow in value at an unprecedented rate. In fact, as of the second quarter of 2021, the primary markets of Gdansk, Gdynia, Krakow, Lodz, Poznan, and Wroclaw have increased by 11.3 percent, year on year. Warsaw's increased by 13 percent.

Riding the Wave

Demand is also high. During the first half of 2021, a record 19,500 apartments were sold in Poland's six largest cities (which is more than in 2019). There are many reasons for this high demand and these high prices. They include: (1) the protection of capital – as of August 2021, inflation stood at a record 5.5 percent and 34 percent of buyers on the secondary market maintained they were purchasing property as an investment; (2) speculation – a high number of flippers wanting to make a quick buck; and (3) the interest of investors in the private (institutional) rental sector.

The number of mortgages also remains high, with a monthly average of EUR 1.63 billion in mortgages in the second quarter of 2021, demonstrating that both consumers and banks see the labor situation as generally stable. Poland's figure of 3.4 percent is one of the lowest unemployment rates in the EU. A solid labor market and no hint at a rise in interest rates from Poland's National Bank in the next few months mean that the prices and demand on the residential market will maintain momentum. However, sooner or later, an increase in interest rates can be expected, which might slow things down somewhat. What is more, the market could be slowed down by Poland's new tax reform in the guise of *Polski Lad* (Polish Deal), which is set to raise taxes for the middle class and introduce certain mechanisms that could temper the residential rental market.

Building the Future

On the other hand, this is countered by growing consumer demand, especially in Warsaw, where there is a shortfall in the supply of new apartments which will mean growing prices. This is further compounded by the oft complicated and lengthy process of obtaining building permits. In 2021, 31 percent fewer building permits were granted in Warsaw than from 2015 to 2020. One of the conditions for obtaining building permits is getting a so-called “zoning decision”, which demands both time and expertise in areas where there are no local master plans. To put this into context, only 40 percent of Warsaw is covered by local master plans – and 50 percent of Poznan. Happily, there are new legal instruments to avoid these obstacles and we are working furiously to confirm the effectiveness of this new initiative.

Other reasons for the rocketing prices are a deficit of new land in Warsaw, Gdansk, and Wroclaw as well as the rising costs of construction – by 8.9 percent in 2021 – which are predicted to continue increasing.

Changing the Cityscape

In this dynamically changing environment, another interesting trend is the transformation of dedicated retail or office areas into mixed-use projects. One of the largest Polish developers purchased 45,000 square meters of land in Warsaw from Tesco, with the intention of demolishing a hypermarket and developing a mixed-use residential/service/gastronomy complex. The same developer has just been given the green light for the development of around 1,500 apartments, converting them from current office buildings, with approximately 30,000 square meters of green areas and a school for 450 children. Another owner of three shopping centers in Warsaw plans to redevelop these centers for retail/office/residential/hotel mixed-use. The trend is also visible in other cities, with interesting plans for a change of use of a shopping mall in Poznan, a 70,000-square-meter project.

Nature abhors a vacuum, and this seems to be true for the business world, with new perspectives for developments emerging on Poland's real estate market. The prospects remain exciting and the knock-on effect for the whole region could well be positive. ■



MARKET SPOTLIGHT: THE BALTICS

An aerial night photograph of a city, likely in the Baltics, featuring several prominent modern glass skyscrapers. The buildings are illuminated from within, and their glass facades reflect the city lights. In the foreground, a multi-lane road shows light trails from moving vehicles, indicating a busy urban environment. The background shows a dense urban landscape with various residential and commercial buildings under a dark blue night sky.

GUEST EDITORIAL: TURNING CRISIS INTO OPPORTUNITY

By Eugenija Sutkiene, Founder and Senior Partner, TGS Baltic

In my career, I have lived through four crises. In 1991, when I started a legal business, there was a total economic collapse, with a shortage of the most basic essential goods – no furniture or computers, or even proper light bulbs for the office. Then there was the ‘Russian’ crisis of 2000, a crisis of foreign currency and the ruble. The one of 2008-2010 followed. And now we have the COVID-19 pandemic – perhaps not so much an economic crisis as one arising from a climate of uncertainty.

It is important, however, to realize that a crisis is an opportunity if we can adapt to it quickly. With more than 30 years of experience, I can say that if you do not give in to panic, manage to mobilize yourself, and take the right course of action, you can learn a lot from every crisis and even profit from it.

The Pandemic as a Catalyst for Change

Looking back at the last two years, I see many significant changes that were long-overdue in the legal services industry and which, thanks to the pandemic, have finally taken place. I would say that most of the Baltic law firms had managed to react and adapt quickly, employed various IT products to work and reach out to their clients and teams, as well as hold cross-border seminars and conferences. As the Baltic IT sector is very advanced, we quickly managed to keep providing quality services while optimizing our time. Most of us made a big leap in improving IT skills, with lawyers becoming as proficient in IT as other professions (the prevailing common perception was that being tech-savvy was not as important for lawyers).

We also found extra time to dedicate to our clients – to improve or even re-establish lawyer-client relationships. Clients are our assets. We work for them and on their behalf, and, in this context of uncertainty and stoppage of sorts, we have learned to listen to them more attentively and be even closer to them. We kept our clients informed about the latest regulatory changes, took more interest in how they were doing, and answered the most varied of questions from them, at almost any time of the day (or night). Sometimes we simply showed personal support, as they also very much needed that as well. The interaction became much more individualized and personal. There was no time left for formalities – matters needed attention here and now. This has been a time of true, sincere loyalty. Our efforts to stay close to clients generated more work and a steady increase in revenues for most Baltic firms.

The third good thing was an increase in cost efficiency. Unable to attend global conferences, regularly go on roadshows, or spend a lot of money on expensive marketing and business development events, we found new ways to reach out and stay in touch with our global clients, partners, and colleagues. With the help of technologies, physical distance essentially lost its significance, which saved a lot of money.



Finally, we realized how little value there is in the traditional trappings of the law profession, like spacious and shiny offices. As a result, more and more law firms are forgoing large offices and considering letting lawyers work remotely, switching to open spaces, or letting lawyers work from the office on a rotating basis. Many law firms are reconsidering their office rental policy, from a work flexibility and financial perspective.

Organizational Culture – a Critical Factor in Times of Uncertainty

Nonetheless, remote work has brought some challenges to maintaining the cohesiveness of an organization. Thus, most firms have naturally given this issue special attention. We have seen examples of moving to activities of a different format: distance events, trainings and seminars, special summer outings between the quarantines, *etc.* Managers have also arranged more regular follow-up calls, both at a team and an individual level. They had to find a sensible way to divide their attention between clients and employees because both are equally important in this business.

Partners also became closer, due to the need to communicate more intensively. I think that, during the pandemic, internal communication within firms has improved dramatically. This was very much needed – *it glued teams together.*

I can proudly say that Baltic law firms have become stronger because of this crisis as they adapted quickly, found ways to adhere to the needs of their clients and teams, and embraced new technologies. Finally, during the pandemic, most of the region’s law firms were actively helping groups in their community in real need, either through providing funds or *pro bono* services, which reaffirms the maturity and responsibility of players in our industry. ■

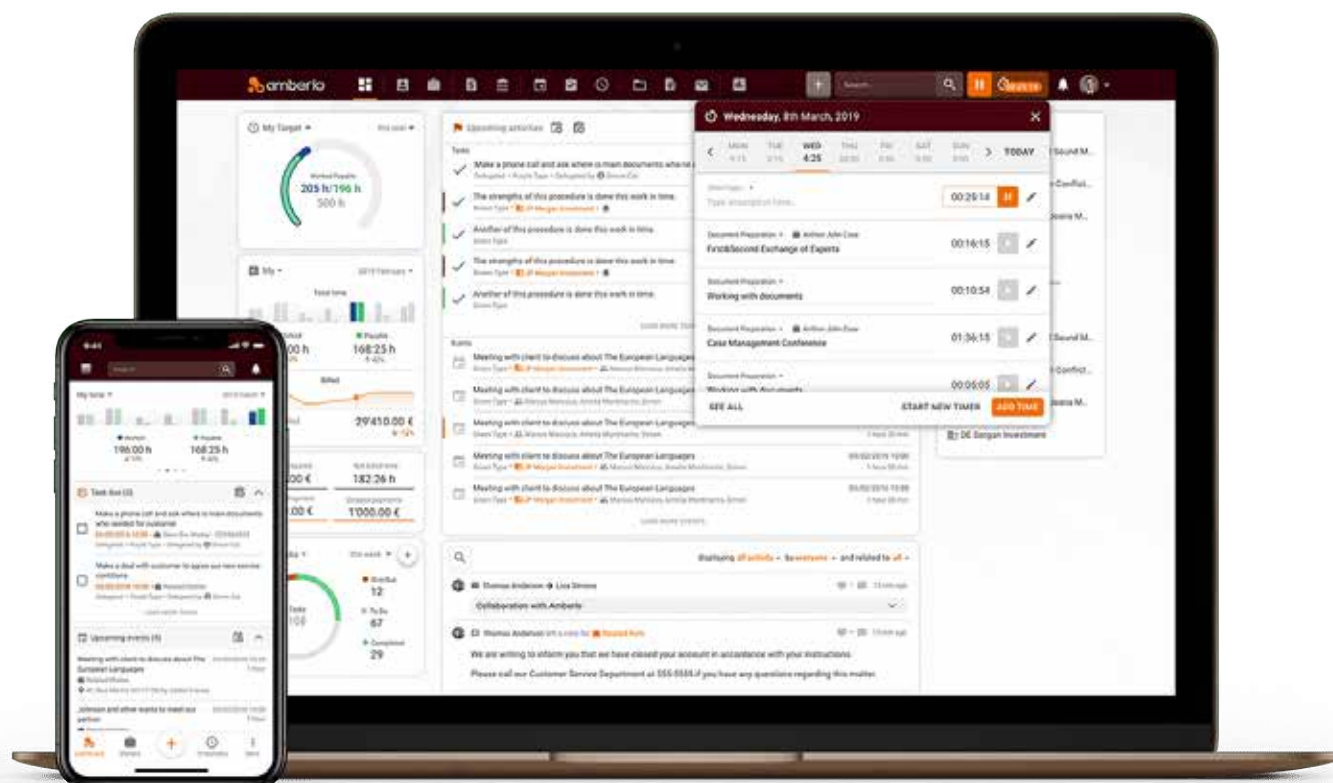
AMBERLO'S CASE MANAGEMENT SOFTWARE – A CLIENT REVIEW

By Radu Cotarcea

In issue 8.3 of the CEE Legal Matters magazine, we spoke with **Amberlo** Co-Founder and CEO Aidas Kavaliauskas to learn more about the company's cloud-based case management software built for legal professionals. With this issue's focus on the Baltics and with the company being, at its roots, a Baltic one, we spoke with several law firms in the region that were early adopters of the solution, to learn about their experience using the platform and what advice they have in terms of selecting such a tool for a law firm.

Interviewees:

- Andrius Iskauskas, Partner, Wint Law Firm
- Frank Heeman, Managing Partner, BNT Attorneys
- Giedre Domkute, Managing Partner, AAA Law Firm
- Loreta Andziulyte, Partner, Ecovis Proventus Law
- Ott Lepmets, Partner, Lepmets & Notes Advokaadiburo



CEELM: When did you start using Amberlo and how did you first come across the solution?



Heeman: We've been using Amberlo for three years now. Our international law firm BNT Attorneys in CEE has offices in 11 countries and provides legal advice for clients in many languages. Since its establishment in 2003, our local and international client base had been rapidly growing, and, at a certain moment, the client management software we formerly used in the Baltic States and Belarus was not meeting the required standards anymore. As the responsible partner in this region, I looked for a new solution to replace the old system. It was an unexpected coincidence that I had met the Amberlo team at the German Chamber of Commerce, and we had exchanged our opinions about legal and tech back then. Later, when we started to look for new solutions, approximately four years ago, I also received a good recommendation from a lawyer who had joined our team from another firm that was using Amberlo. Our primary focus was on what Amberlo will provide to our practice, how our team will benefit from it, and its value to our growing business in the long term. So we evaluated Amberlo very carefully – the quality, the features, and the support quality – those were important details that ultimately led us to the decision to go with Amberlo.

Domkute: We have been using Amberlo for five years now. Our firm had been using a different time-keeping software, which wasn't specialized for law firms and wasn't user-friendly, which complicated billing, timekeeping, and project management. As our firm grew, including the amount of legal work increasing the complexity of projects, it was important for us to find a legal software that is user-friendly, reliable, and gets rid of all hassle: have all our client's information in one place, calendar, time-tracking, invoicing, documents, and emails. When searching for a solution, we spoke with a variety of legal software providers in order to determine the best one to use and we were drawn to Amberlo because of its user-friendly, straightforward, and localized platform, which is very important when working with local clients.

Lepmets: In simplest terms, we were looking for software to provide an overview of the time spent, in order to improve our work efficiency. We employ a young team of lawyers who expect to be able to work flexible hours and from different locations, in addition to the office. As strong supporters of innovation, we aspire to provide that opportunity. However,

it makes keeping an accurate account of time spent by each lawyer more challenging. I found Amberlo on Google search. I researched multiple software vendors in order to find the best and most suited to our needs, as a small but innovative law firm that provides services internationally.

Andziulyte: We have been using Amberlo for several years now. It is designed and tailored for the administration of legal services, it is easy to use, and it has effective client support.

Iskauskas: We've been using Amberlo for four years now. Our firm had used a case management system before Amberlo, but it wasn't updated or maintained, it had no support, not to mention its security issues. We also had a mixture of spreadsheets, email, calendars, file folders, and documents. Amberlo helped us bring all of that together in one secure location that we can access from anywhere, anytime. It is worth mentioning that it's totally localized to legal market needs. So the fact that we could get all of this and more from one platform puts Amberlo head and shoulders above its competitors.

CEELM: What was the initial selling point that got you hooked?

Iskauskas: The Amberlo team has been nothing but totally supportive – it saved us so much time. It took us far too long to find the law practice management software that fits our needs and, now that we have it, we cannot imagine even a day without Amberlo.



Domkute: When meeting Amberlo for the first time, we were offered a free trial of the software for some time, without any restrictions. This was really helpful since we could assess whether Amberlo was the right application for our law firm – was it easy to use, what kind of features they offered, evaluate the workflow, were there any unnecessary features for legal practice, and so on, so we wouldn't be overwhelmed by it in the future. The decision was also heavily influenced by their pricing – transparent and no hidden costs at all. It was difficult to find a similar application on the market that would meet our needs at the price offered by Amberlo. So Amberlo turned out to be the best legal software for us – it has all features that we needed, with an intuitive interface, it's easy to use, it includes free updates and free support, and the cost is no more than a lunch for two!



Lepmets: The main focus for us was on general functions, user interface, and user experience. I also suggest getting in touch with the developers or customer support behind any platform of interest – it really helps one understand the support and product one is going to get. Amberlo has been in everyday use in our law firm for approximately two years now.

Heeman: It was clear at the very early stage that Amberlo was much more sophisticated than our previous solution. We liked the fact that Amberlo worked as a SaaS solution, so there was no need to buy and renew licenses, handle implementation, have additional costs, *etc.* – it was a simple matter of “just pay as you go”. Third, we were in close contact, so we could meet and discuss what was possible and what was not, and also plan the features that were necessary for our firm.

Andziulyte: With the rapid growth of our client base in Fintech, TMT, employment law, data protection, and other areas, as well as the expansion of our range of services, we needed a customer relationship management solution that could efficiently and conveniently help us in implementing technological changes, in order to simplify and streamline our processes, administrate our client base, and manage billable time.

CEELM: Were your expectations met? What unexpected elements have you discovered over time that enhanced your ROI?



Iskauskas: Productivity from day one. With everything in a single software product, our staff knows where to look for matter-related information without having to contact a coworker to send the file over. They know that if they navigate to the matter, they will be able to find the information they’re looking for.

We also save time and effort when bringing new staff into our firm. Everyone knows that one of the hardest parts of onboarding new staff is training. So an added benefit of Amberlo is that our new employees can quickly adapt to our workflows, with minimal training needed.

Moreover, Amberlo is always introducing new features and willing to take suggestions, it’s something that puts them

above other case management systems we’ve tried.

Lepmets: Amberlo works exceptionally well. We were hoping that Amberlo would help increase our work efficiency and it definitely has. Since the introduction of Amberlo in our law firm, all lawyers fill timesheets as soon as possible and it really adds up. Having an accurate overview of time spent helps to direct workflow between different projects and has resulted in greater work efficiency. Furthermore, Amberlo has noticeably decreased the volume of administrative work – sending invoices has never been easier and a list of representative costs in a case is always ready to be presented to the court if needed.

Andziulyte: The convenience and ease of use of Amberlo allow us to carry out our daily activities smoothly, focus on our direct work without confusing administrative burdens, and monitor our own performance.

Heeman: Compared to what we had been using for the previous ten+ years it worked very well. After we tested the product, we came with a lengthy wish list. And it was very impressive for us that, based on this list, the Amberlo team made a timeline of when it would be done, with no complaints that this or that would be too complicated – and it was delivered. And they still keep updating Amberlo, which we value very much since it was a huge problem with our former solution. In a few words, comparing Amberlo to other solutions we have come across, it is very easy to reach out to them and they are keen to cooperate with you by listening to your needs, ultimately making sure they are implemented accordingly. They understand the legal business, they are responsive and willing to cooperate.

What particularly surprised and astonished me was that Amberlo managed to migrate all our data from the old system while maintaining the highest quality of the data! From the very beginning, Amberlo was more than we expected, since even some of the custom ideas we had on reporting were implemented as well.

Domkute: With clients across the country, we’re always looking for ways to improve how we deliver our services. A pleasant surprise was that it is possible to enter individual rates for each project, so every time I need to fill in timesheets there is no reason to think whether I have applied the rates that were agreed with a client. And if one attorney at our firm charges a different fee, or if certain tasks carry a different fee, Amberlo can be adjusted to automatically reflect the different rates

when bills are generated. In short, it helps us bill accurately and reduces time spent on administrative tasks. We are also pleased that the software is constantly being improved with new functions, having a knowledge base and a great support team. It's important for us to have a system that helps our law firm operate seamlessly, without compromising our clients' interests and improving the way we do business.

CEELM: *Lawyers are not traditionally recognized as a particularly tech-savvy bunch. How difficult was it to get your lawyers to use the new platform and what best practices have you developed that you'd suggest to anyone thinking of switching (either to this or another platform)?*



Andziulyte: At our law firm the opposite is true, as most of our clients are from the Fintech, IT, and Telecommunications sectors. Our team of lawyers is well-versed in technology, actively and willingly testing and even proposing various new technological solutions for process optimization in their daily work. We have recently tested an AI platform

to streamline the drafting of legal documents, due diligence for all types of contracts, GDPR audits, *etc.* The whole team received training before we started using Amberlo, which helped us integrate the system into our daily activities in a quite clear and simple way.

Domkute: It was not difficult for our team to use Amberlo at all – it was more difficult to use it on a regular basis! However, we perfectly understood that if no one has time to develop the right habits to use the tool, it would be a wasted investment, because I think that people's practices make software useful, not the other way around. My only advice for those considering investing in legal software is that, before investing in new software, it's important to know what your strategic goals are and what pain points you intend to address. And if it's possible to get a free trial, take it! Then test it out to ensure it meets your expectations and it will achieve the goals you laid out for your business. That's exactly what our firm did, and it paid off enormously.

Lepmets: Using Amberlo is straightforward and simple. Developing the habit of Amberlo is the tricky part. Indeed, lawyers will need some time to get used to the platform. It goes without saying however that consistent use of it is the prerequisite for the best results. A couple of months of constant reminders worked wonders for our law firm.

Heeman: Not difficult at all, in fact, it was very easy. Maybe it's because we were using legal software before and Amberlo was much more user-friendly and intuitive.

In terms of my advice to others, first, get an understanding of what law firm management software is – what functions it provides and how easy it is to use. Assess your own needs – what do I want to address and what expected efficiencies you stand to gain from using it. Then look into what is offered on the market, ask for recommendations from other lawyers who have already gone through the process, test different options, and finally make your decision.

There is also a balance to be struck. I do not need a company to have 100 years of experience. On the other hand, going for a completely new startup would be very risky and, in my view, irresponsible in our line of business. Speaking about Amberlo, I do not regard them as a typical startup with three bright students, no customers, and no practical experience. Rather Amberlo offered, even four years ago when we first started looking into this product, a solid solution as well as a credible track record, including a number of satisfied law firms already working with them. Since then, it has proved to be a fast-growing business in which we found a mature product, with continuing solid feedback from other players.

Iskauskas: Our firm's migration to Amberlo was painless and quick. Of course, there were questions, but the staff of Amberlo was excellent at providing all the necessary consulting and training to bring everyone up to speed quickly. And its web-based nature means that new features are added regularly, so there's plenty of scope to accommodate the business as it grows. However, the biggest challenge was trying to change our working habits and begin working in a way that would be systematic and repeatable. But once you accomplish that, you finally get ahead of your work and find yourself in a far better place, at the beginning of each new legal matter.

What advice would I give to other lawyers when choosing a solution? Ask if the system is customizable enough to meet your needs. Look at security. The way data is collected, secured, stored, and shared is a crucial part of any software. Determine the expertise of the legal software vendor. Ask what's the future of this product and vendor? Consider how easy it is to migrate to. Look at the support system – how fast is the support service? Is it free? Ask how often the software is updated. Last but not least, the software's intuitiveness is very important because people don't use complex systems. ■

12 RECOMMENDATIONS TO CONSIDER BEFORE BUYING REAL ESTATE IN THE BALTICS

By Marge Manniko, Managing Partner and Head of Real Estate and Construction, Lextal Estonia, Jolanta Liukaitye-Stoniene, Partner and Head of Real Estate and Construction, llaw Lextal Lithuania, and Janis Esenvalds, Managing Partner and Head of Real Estate and Construction, RER Lextal

The real estate market in all three Baltic States is closely related and, although the legal systems vary a bit, buyers face the same or similar issues. Although important details concerning the purchase of real estate are brought forth in the sale contract drawn up by a notary (in Estonia and Lithuania) or attorney at law (in Latvia), in practice various nuances still tend to be left unattended.

The quality of real estate sale contracts depends directly on the knowledge of the buyer and the buyer's ability to ask the right questions, and where necessary, fixing these questions in the agreements. Often, the parties agree on the content of some clauses of the contract at the time of concluding the transaction, but vague wording can lead to disputes in the future. It is, therefore, advisable to entrust the negotiations of the terms of the purchase contract to an experienced and professional lawyer.

Recommendations for real estate buyers vary depending on the targeted property. For example, if you buy a land plot with the intention of erecting a building, it is very important to investigate construction possibilities. If you want to buy a newly built apartment or house, construction quality, building, and registration completion are important. Different nuances should also be taken into account if you buy a property for your individual needs, as opposed to commercial purposes.

Nonetheless, in this article we aim to name the 12 most important aspects for buyers that need to be taken into consideration before executing a real estate purchase contract:

- 1) First of all, investigate public registers to find out all possible information on real estate encumbrances, mortgages, servitude rights, agreements on usage order of the property, co-owners (*i.e.*, anything that may apply to you as a new owner);
- 2) It is always necessary to look into the territory plans of the

property and its surroundings, such as municipality general plans, detail plans, and others. There you can find information on the possible usage of the property, new construction possibilities, building intensity, whether it is possible to split the land plot, how tall can the building or surrounding buildings be built, *etc.* Territory planning documents also give information on new roads, other infrastructure, or demolition plans in the neighborhood for the next few years. If, for example, it's expected that certain nearby land will be acquired for public needs, it's likely that certain public services will be provided in that area;

- 3) Take a look at the envisaged or existing transport and infrastructure schemes to find out about possible problems in reaching the plot or building, and pay attention to the availability of electricity, water, sewerage, gas, and other necessary infrastructure;

- 4) If you buy a land plot, you should always check the state registers concerning ecological and other buffer zones (e.g. water, forest, infrastructure protection zones, biological reserves, *etc.*), and thoroughly analyze their content and influence on the property itself. For example, an ecological reserve can prohibit setting up a local sewage treatment system, and, therefore, the water supply can be restricted in some places. In most cases, these restrictions may include the prohibition to build or excavate, logging prohibitions, *etc.* One should also be cautious about protected birds and animals who might inhabit the area of the property (*i.e.* forest land), and make sure to analyze the concrete restrictions concerning their breeding;

- 5) Investigate what the intended use of the nearby property is, as this can have a direct influence on the price of real estate. For example, for someone who is in search of a peaceful environment, a restaurant, nightclub, or a pub in a neighboring building can be a major problem. A new factory construction next to the village can be an unpleasant surprise



Marge Manniko



Jolanta Liukaitye-Stoniene



Janis Esenvalds

for newcomers. At the same time, establishing a new mall, parking house, or a commercial building can, conversely, raise the value of certain existing property;

6) If a property is bought for commercial use, it is important to find out about the neighbors' plans and how likely is it to have a competitor next door;

7) In case of purchase of a building or other built property, use the opportunity to invite construction experts to determine its technical condition. Buyers pay more and more attention to heating, conditioning, recuperation systems, as well as on sustainability, eco-friendly solutions, comfort level, *etc.* All these technical conditions of the property can be examined by experts. If it is not possible to investigate certain parts or qualities of the property, such as laid infrastructure lines, or fully checking heating systems in summer, always ask the seller to state in the contract that everything is built following all legal requirements and is suitable for use;

8) There are many examples when a property is built in former manufacturing areas, therefore, it is important to investigate if all dangerous substances have been cleaned from the area and to include provisions on the seller's liability in case it turns out that some dangerous substances are left, and the property needs cleaning;

9) When buying a property with a sea or forest view, it is important to confirm how many other registered land plots there are between the sea or forest and the property to be purchased, and what is permitted to be built on them;

10) Although utility expenses might seem irrelevant to consider at first, in reality, the conditions and prices of utilities differ significantly in different municipalities and for different properties;

11) In Latvia, as a result of privatization processes, there are properties where the buildings are built on land owned by another person. Most often in such cases, there is a 'forced lease relationship' between the owners of the land and those of the building. This can lead to disputes regarding the terms of the lease and other aspects. Therefore, it is advised to clarify the ownership of the land before purchasing the building. Take into account that in some situations where land is separated from the building the owner of the building can lose their rights to the real estate in favor of the land plot owner;

12) In Latvia and Lithuania, never underestimate the importance of the preliminary agreement. Many make the mistake of thinking that everything can be renegotiated when signing the main agreement in the notary office. The seller can legally argue that what was agreed in the preliminary agreement should go into the main contract. This is not as relevant in Estonia, where even preliminary agreements have to be notarized.

It is useful to take the time to examine all the above-mentioned nuances or include experts who will do it for you. This will save you time and any expenses incurred from possible future disputes.

Finally, to find out what construction is being planned or performed nearby, check the website www.citify.eu, which provides information on real estate projects under development in Riga, Tallinn, Vilnius, Kaunas, and Klaipeda. ■

INSIDE OUT: IGNITIS IPO

By Radu Cotarcea

On September 28, 2020, CEE Legal Matters reported on state-owned Ignitis Group's initial public offering and admission to the Vilnius and London stock exchanges. We spoke with Walless Partner Joana Baublyte-Kulviete to learn more about the offering.

CEELM: Let's start with the very beginning. How did the firm first get involved in this deal? At what stage were you brought in and what was your mandate?

Baublyte-Kulviete: We acted for the syndicate of international banks (joint global coordinators and joint bookrunners), comprising the Bank of America, JP Morgan, Morgan Stanley, Swedbank, and UBS. We acted on the banks' side so, naturally, we came into play a bit later in the process than the issuer's counsels, who had helped the company to prepare for the IPO.

CEELM: And how did you win the mandate? What do you believe it was about your firm that stood out over the competition?

Baublyte-Kulviete: We got the mandate because of our experience in capital markets – there are only a few firms in the Baltics that match it. Also, we had acted on the previous bond issuances of the company.

CEELM: Please give our readers a bit of context. What do you believe were the main driving forces for the IPO?

Baublyte-Kulviete: The strategy of going public was in the issuer's mind for some time and it had been preparing for it by conducting three issuances of Eurobonds for a combined value of approximately EUR 1 billion. At the same time, there had been an ongoing debate for a while on whether the state should consider listing state-owned enterprises, to give an impetus to the development of local capital markets. These two factors complemented each other.

CEELM: What aspect, in particular, did you find to be most challenging in this IPO?

Baublyte-Kulviete: The deal itself was very challenging and there were many aspects that have contributed to this. To mention just a few, from the legal perspective:

First, the Ignitis Group was a leading utility and renewable energy company owned by the state, of strategic importance to national security – as such it was subject to a set of special laws and regulations that we had to consider in the IPO process.

Second, the transaction structure combined global depositary receipts, institutional, and retail offerings with listings in Vilnius and London, and thus required a complex clearing and settlement structure with the chain of settlement agents involved. There had not been GDR issuances in Lithuania for more than 20 years and, clearly, there were no precedents that we could rely on.

Third, Lithuanian company law posed additional challenges. The IPO process had to deal with the notarization and registration requirements of a capital increase, as well as with the inflexible regulations of authorized capital, the requirements for necessary reserves amassed by the issuer, and other regulations that invoked extensive discussions around the post-listing stabilization mechanics, to make it feasible.

Fourth, prior to the IPO, the company squeezed-out and delisted two of its important subsidiaries, which caused complaints from investors followed by lawsuits. During the IPO the company achieved a settlement with the former minority shareholders of the subsidiaries, by offering them a preferential allocation of the IPO shares. Naturally, this added another layer of complexity to the deal.

CEELM: On the flip side, what went rather smoothly relative to expectations?

Baublyte-Kulviete: In what was at the time an already established COVID-19 environment, the deal was carried out completely remotely. Someone said afterward that it is surprising that you can do an IPO 'out of your kitchen' these days. In fact, remote working conditions ended up helping us be more efficient – we have saved the time normally used by traveling and meetings.

THE BALTICS

CEELM: If you had to point to one, what would you say was the most important factor contributing to the success of the listing?

Baublyte-Kulviete: I would say it must be the enthusiasm of all those involved, especially the issuer and the local teams of the banks and advisors – we all felt like we were doing something more than just this deal. In fact, this was the largest ever IPO from the Baltics and the first GDR offering from the Baltics after many years. Given the above-mentioned challenges, the advisors' teams on both sides definitely played an important role, and I believe this enthusiasm added courage and motivation to search for solutions and go the extra mile.

CEELM: You mentioned there had not been a GDR offering in years. Do you believe, after this deal, we can expect more? Why/why not?

Baublyte-Kulviete: I would expect more IPOs by Baltic companies, but it is difficult to say whether they will be in the form of GDR offerings. There are few potential issuers of equal caliber and GDRs are not the only alternative.

CEELM: In your view, what is the significance of this deal for the Lithuanian market?

Baublyte-Kulviete: The deal's successful completion marked the achievement of the strategic aims set by the Republic of Lithuania (then the sole shareholder of the issuer), to provide the Ignitis Group with the funds to invest in strategically important power networks and expand green generation capacity within the wider region.

Speaking about its significance for the capital markets, after this deal, the size and depth of Lithuania's capital markets have increased. The deal size was EUR 450 million and the valuation of the company was EUR 1.7 billion. There may have been different views on the financial success of this IPO, especially immediately afterward, nevertheless, I think this deal was significant because of its retail offering, giving many retail investors the opportunity to invest.

CEELM: What about the Baltic region as a whole?

Baublyte-Kulviete: What was said about the significance for the Lithuanian market is relevant for the Baltics as well – it was a historic IPO on the Baltic scale. ■



Joana Baublyte-Kulviete,
Partner,
Wallis

EXPAT ON THE MARKET: INTERVIEW WITH CHARLES CLARKE OF VILGERTS

By Radu Cotarcea

CEELM: Run us through your background, and how you ended up in Latvia.

Clarke: Shortly after completing my LLM in Competition at King's College London, back in 2014, I was afforded the opportunity to kick-start my legal career in Big Law at Gibson Dunn & Crutcher's Brussels office, practicing EU competition law. After a couple of years, I moved on to Arnold & Porter Kaye Scholer's Brussels office, as an Associate in competition law, and a couple of years later to Willkie Farr & Gallagher's office in London. During these periods of my ca-

reer, I was afforded the unique opportunity to learn and work with some of the industry's most renowned and experienced competition lawyers. The valuable experience and knowledge acquired have guided me throughout my career to date and gifted me with life-long friendships.

Towards the end of 2019, I decided to set up a base in Latvia, as my wife is based in Riga and I saw an opportunity to bring my practice, as well as international experience to the table. While I was commuting back and forth from London to Riga for a period, it did not appear sustainable in the long run. I



Charles Clarke,
Expert Counsel,
Vilgerts

was very sad to leave the Willkie competition team in London (and they know that!), but I decided to give this phase in life a go, as being with family is just as important as progressing with your career. Upon my permanent arrival to Latvia, I began searching for a position in a Riga-based law firm that had an international sphere and was likely to be able to cater to my specialty and skill-set. Given my previous interactions with the leading pan-Baltic firms, these were natural choices of where I might be able to fit in, however, I landed no apparent success. This is likely to have been due to the start of the global pandemic – very unfortunate timing. After a couple of months scouting the marketplace, I was introduced to Gints Vilgerts and his top-tier competition team at the Vilgerts law firm, who invited me to join the team as Counsel and I accepted. The strength, reputation, and depth of experience of the Vilgerts’ competition team provided for a very solid and welcoming entry into the Latvian legal marketplace. After a year, I have had the opportunity to practice my area of specialty in Latvia and have worked on some very interesting international and local competition law matters.

CEELM: Was it always your goal to work abroad?

Clarke: Although it was never my ultimate goal, opportunities presented themselves and I decided to take hold of them.

CEELM: How would clients describe your working style? What about management style? How do you think it varies from the “common” Latvian one, if at all?

Clarke: One of the most valuable lessons I learned was being able to adapt to different working styles, sought after by both colleagues and clients. If you are robotic in your approach it is difficult to adapt. Although not my place to say, clients attach value to my understanding of the underlying issues and more importantly, providing a concise and direct response. The latter is imperative – if there is no trust in a relationship then there is nothing. Efficient and complete research abilities, as well as keeping up to date with legal developments, something which I have developed over the years, also carry a value of importance for clients. Final work product quality is also essential – if there is a single typo, clients will pick up on it and I can tell you, there is no worse feeling. I would say I have carried over the Big Law gene into the firm, which is providing a very valuable asset to both colleagues and clients (except for the late-night emails!). Management is always difficult, and more so when you come from a completely different working culture. This is something you have to work with and

mold into.

CEELM: Are there any significant differences between the judicial systems and legal markets in your home country and Latvia? Which stand out the most?

Clarke: Primarily, the civil vs. common law system.

The legal market here is very small, competitive, and relatively stable at the top end. Most of the international workstreams are funneled through the larger pan-Baltic firms, making it very difficult for other local firms to access and gain visibility. Conflicts here can also be an issue given the size of the marketplace, which presents its own set of challenges. Fixed budget caps appear to be much more common than hourly fees. There is also certainly not the same movement of lawyers between firms as in the UK – it appears to be virtually non-existent.

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

Clarke: In Latvia, there is a very clear work-life balance that is heavily respected at all levels. While not a large city, Riga is very multi-cultural and very welcoming to all foreigners. Ligo is by far and large one of the most fascinating cultural differences – it is like having another Christmas in the summer!

CEELM: Do you have any plans to move back?

Clarke: At this particular stage in life, you should always keep your options open. We never know what is around the corner and when opportunities may present themselves.

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

Clarke: No particular preference, they equally have left wonderful memories.

CEELM: What’s your favorite place to take visitors to in Riga?

Clarke: Riga Central Market is a must and so is the Old Town. Riga Central Market is one of a kind and a great experience all around.

The Old Town has some wonderful restaurants and there is even a Belgian beer bar, which cannot be missed! ■

EXPERTS REVIEW: COMPETITION

The theme of Experts Review this time around is **Competition**, and the articles are presented ranked by the new businesses registered in each country according to the World Bank’s Entrepreneurship Survey in 2018. Russia is ranked first with over 300,000 new businesses registered, while Bosnia and Herzegovina falls last with almost 2,500.

Country	New Businesses	Page
■ Russia	317,468	Page 70
■ Romania	94,244	Page 71
■ Turkey	85,798	Page 72
■ Ukraine*	51,349	Page 73
■ Bulgaria	45,683	Page 74
■ Czech Republic	30,336	Page 75
■ Hungary	24,252	Page 76
■ Slovakia	19,720	Page 77
■ Croatia	15,585	Page 78
■ Serbia	8,671	Page 80
■ North Macedonia	5,282	Page 81
■ Slovenia	4,182	Page 82
■ Albania	2,990	Page 83
■ Bosnia and Herzegovina	2,493	Page 84

* 2017 data available only.





RUSSIA: ANTITRUST PRACTICE IN RUSSIA STRIVES TO FIND A BALANCE

By Alexey Nikitin, Specialist Partner, and Alexander Poychenko, Associate, Borenus Russia



Antitrust practice in Russia is currently striving to strike the right balance, with less regulation of business in general and increased scrutiny in certain key areas.

Russian law does not set sufficient antitrust barriers for small and medium businesses. For example, it allows companies to enter into ‘vertical’ agreements if each company’s share of the product market for the respective goods does not exceed 20%. There are also discussions about raising the thresholds for merger control filings, which would eliminate merger control for a number of acquisitions that have no real impact on competition.

At the same time, large market players are facing more attention from the Federal Antimonopoly Service (FAS). The FAS is currently implementing an enhanced anti-cartel policy and actively monitors economic markets which are “strategically important” for Russia and potentially most susceptible to monopolization. A notable example is a recent investigation initiated by the FAS against the largest metallurgical companies in Russia which were suspected of artificially increasing their prices. Other examples are the food and medical markets (pharma, medical devices), which were scrutinized by the FAS during the COVID-19 pandemic.

To effectively combat violations in these areas, the Russian government is entitled to set maximum retail prices for certain medicines and medical devices for up to 90 days during the pandemic.

The FAS is also closely monitoring the e-commerce and sharing economy. Discussions continue on the introduction of antimonopoly restrictions for digital giants, including online retailers and carsharing services, and potentially social networks, search engines, and the like, while also increasing their potential liability.

In particular, the definition of a dominant position may be modified by adding a reference to the concept of ‘network effect,’ defined as receipt of economic benefits from a number of users through data collection and processing. At the same time, antitrust restrictions will not apply to start-ups with annual revenue of less than RUB 400 mil-

lion, since they cannot significantly affect the market.

Another legislative innovation is related to the opportunity to implement an internal antitrust compliance system. Companies are encouraged to implement such a system, which consists of internal policies governing the evaluation, monitoring, and mitigation of antitrust risks. It is voluntary, but, if an antitrust investigation is launched, having an antitrust compliance system may serve as a good argument that the company is acting in good faith.

In recent years, the FAS and the Supreme Court have adopted a number of key resolutions and clarifications on widely debated antitrust issues. For example, in 2021, the FAS expressly allowed non-compete clauses in agreements for the sale-purchase of a business, provided that all the following conditions are met: (1) the non-compete clause is consistent with the purpose of the agreement; (2) the non-compete clause does not apply to a product market and adjacent markets where parties and/or an acquired entity do not operate; (3) the duration of the non-compete clause does not exceed the time necessary to ensure return on investment; and (4) the non-compete clause does not provide for an exchange of information, which may facilitate anti-competitive arrangements.

In addition, in 2021, the Supreme Court issued other important clarifications on highly debated issues, including the allocation of the burden of proof in cases relating to abuse of dominance, the need to take into account the legitimate economic interests of a dominant entity, and a list of significant procedural violations leading to the cancellation of a decision in antimonopoly cases, among others.

All of these are signs that extensive work has been done to make antitrust policy in Russia more transparent and predictable. ■



ROMANIA: DISTRIBUTION AGREEMENTS TO BECOME LEANER FROM ANTITRUST PERSPECTIVE – FOUR KEY TOPICS FOR SUPPLIERS

By Georgiana Badescu, Partner, and Cristiana Manea, Attorney at Law, Schoenherr



Distribution agreements, also termed vertical agreements, are currently subject to a block exemption regime (the VBER) from the general antitrust prohibition. The VBER is due to expire on May 31, 2022. In this context, the European Commission has engaged

in extensive public consultations and has already published a proposed new regime, the revised VBER and Vertical Guidelines, scheduled to enter into force on June 1, 2022. These are, in our view, the four key topics that suppliers should be aware of when preparing for the revised regime:

Dual Distribution

In the context of a surge in online sales, with an understandable peak during the pandemic, many producers and suppliers might end up competing with their own distribution network, at the retail level, by merely opening an e-shop for example. This business practice would qualify as “dual distribution”, with the supplier/producer selling not only through an independent distribution network, but also directly at retail level, where it becomes a direct competitor to its distributors.

While dual distribution is acknowledged under the current regime, the revised VBER comes with some important changes. The most important one is that, in addition to suppliers and producers, the safe harbor is extended to also cover wholesalers and importers, provided however that the parties’ aggregate market share for retail does not exceed 10%.

Additionally, dual distribution is in principle exempted, save for information exchanges, which still need to be assessed on a case-by-case basis. The so-called “by object” restrictions are not exempted either, such as the exchanges of future pricing information.

Non-compete Obligations

Typically, in order to be safe harbored, non-compete obligations should not exceed five years. The revised VBER again sets out a much more flexible framework, as tacitly renewable non-compete ob-

ligations (exceeding the five-year term) are also covered, if the buyer can effectively renegotiate or terminate the agreement with a reasonable notice period and at a reasonable cost.

Shared Exclusivity. Passing On Active Sales Restrictions

The current regime sets out very limited instances when active sales restrictions would be allowed, which usually results in challenges to tailoring distribution systems fit for business needs.

The revised VBER now includes a definition of active sales, aimed at assisting companies with interpreting the scope of such restrictions; additionally, it fosters the possibility for suppliers to appoint one or more exclusive distributors, in proportion to the exclusively allocated customer group or territory (the so-called “shared exclusivity”). Through this change, competition among distributors sharing exclusivity is likely to be increased, while also allowing a fair promotion of the investment incentives typically associated with exclusive distribution systems. The shared exclusivity is also likely to prevent the shielding of an entire member state (where one exclusive distributor had been appointed) from sales by other distributors, from other member states.

Under the current regime, the supplier cannot ask the buyer (distributor) to pass on active sales restrictions. This will change under the revised VBER, as the pass-on will become possible, provided however that the party to whom the restriction is passed on has concluded a distribution contract with the supplier or the distributor.

Online Intermediation

There are a number of changes addressing online intermediation and sales. We will only flag one extremely important change for online intermediation service providers: they are classified by the revised VBER as “suppliers”, irrespective of whether they are party to the transactions they facilitate. On this basis, special care should be paid to avoiding hard-core restrictions, such as price fixing (imposing fixed or minimum sale prices). ■



TURKEY: NO-POACHING AND WAGE-FIXING AGREEMENTS ON TURKISH COMPETITION AUTHORITY'S RADAR

By Hakan Ozgokcen, Partner and Head of Competition, Esin Attorney Partnership



In recent years, the growing concern that employers' market power in labor markets has led to reduced or suppressed wages and working conditions has heated up the discussions on the competition authorities' potential interference over competition violations within labor markets. These discussions have not remained theoretical and

the competition authorities have started to launch investigations into labor markets. The Turkish Competition Authority (TCA) has kept pace with this global trend. On April 20, 2021, the TCA announced on its official website that it has *ex officio* launched a full-fledged investigation against 32 companies, mainly active in digital markets, to determine whether they violated the *Law on the Protection of Competition* through gentlemen's agreements in labor markets in Turkey.

In the announcement, the TCA emphasized that employers that compete for labor may prevent the transfer of employees among themselves through direct/indirect agreements – depriving employees of job opportunities that offer higher wages and better conditions. It underlined that such agreements might distort the competitive structure in labor markets due to the decrease in the mobility of labor between undertakings and/or the artificial inability to find the real value of the wages in return for the labor. In this respect, the TCA took practices in labor markets into its agenda by considering the benefits of addressing the concerns in labor markets with competition law enforcement to protect the competitive structure of these markets. This approach was supported by the subsequent statements of the President of the Authority on May 5, 2021, where the President provided insights on the competitive concerns in labor markets to state-run news agency Anadolu Agency. The President explicitly noted the TCA's future enforcement strategy over labor markets by also signaling the issuance of guidelines to reduce the legal uncertainties that employers may face.

The investigation is very thorough and is the first example of labor markets being the sole focus of the TCA. Indeed, in October 2020, it launched an investigation against eight private hospitals based upon allegations regarding the prevention of personnel transfers among themselves through a gentlemen's agreement, along with the

allegation that they have collectively determined the operating room service fees they demand from freelance doctors. Previously, the TCA had closed cases at the preliminary stage, without finding any violations, or rejected the allegations by concluding that the labor market is outside the scope of competition law.

To exemplify from recent cases, in 2019, the TCA examined an 'atypical' no-poaching provision in a franchise agreement in the *BFTT Decision*. The provision envisages that the franchisees require the franchisor's (BFTT, a gym chain) written consent before employing personnel who are or were working for the franchisor/a franchisee/a competitor. The TCA found this provision within the scope of competition law. It also concluded that the provision does not benefit from individual exemption based on its potential effect of restricting competition in the labor market based on two reasons: (1) the prohibition covers one or two years post-agreement, without any reasonable grounds; and (2) the scope of the franchisor's consent is unclear. However, the TCA did not find it necessary to launch a full-fledged investigation after considering BFTT's low market share, the limited potential effects of the violation, and the lack of effects of the provision, while imposing obligations to amend the relevant provision.

In 2020, the *Izmir Container Transporters Decision* again fired up the discussions on the applicability of the competition law in labor markets. In the decision, the TCA explained that no-poaching or wage-fixing agreements are, in their essence, buying cartels and may violate the competition law by effect or by object. The TCA analyzed the effects of the wage-fixing agreement between the transporters, which contained no-poaching arrangements, and found no anti-competitive effects. Without launching a full-fledged investigation, it decided to send an opinion to the parties to terminate the potential anti-competitive agreements.

The above decisions are in contrast to the TCA's earlier stance on the issue, such as in the *TMMOB Decision* in 2013, in which the Board had concluded that the labor market does not fall within the scope of competition law, based on similar wording in the preamble of the law.

All in all, the recent decisional practice and announcements of the TCA show that no-poaching and wage-fixing agreements are on its radar. The result of the investigation and the prospective guidelines are expected to further shed light on the TCA's stance on labor markets. ■

UKRAINE: UKRAINIAN COMPETITION AUTHORITY PUTS CORPORATE INVESTMENT FUNDS UNDER SPOTLIGHT

By Mykyta Nota, Counsel, Co-Head of Competition Practice, and Anton Arkhyrov, Senior Associate, Avellum



Over the past year, the Antimonopoly Committee of Ukraine has been closely scrutinizing business structures involving corporate investment funds during the review of merger control notifications. In particular, the regulator is interested in relations of control among asset management companies, corporate investment funds, and their shareholders. Depending on the regulator's position, the list of parties to a concentration can be significantly wider than one may probably realize.

Under the Law of Ukraine *On Mutual Investment Funds*, a corporate investment fund has two governing bodies that define and implement the fund's investment strategy – the general meeting of shareholders and the supervisory board. Among other powers, the shareholders may choose and change an asset management company of the fund. At the same time, the supervisory board approves agreements entered into by the asset management company in relation to the fund's assets. In its turn, an asset management company is an independent entity that participates in managing the fund's assets (for example, shares, stocks, *etc.*) on behalf of the fund, under an asset management agreement.

So the powers of the asset management company stem from the agreement between the asset manager and the fund. Moreover, asset management companies usually provide nominal professional services and act upon instructions of the fund rather than make independent business decisions while running the business.

But even if the asset management company controls the fund, it does not automatically follow that such a fund is connected to other funds under the management of the asset manager. At the same time, according to the regulator's conservative stance, various funds managed by the same asset management company are related entities constituting a single economic unit, due to the powers the asset management company usually has under the asset management agreement. This, however, does not reflect the Ukrainian business reality and often

creates far-reaching and undesirable consequences for parties to concertation.



The asset manager usually manages multiple funds, which might be completely independent and belong to different business groups. In addition, as mentioned above, the asset manager often performs a mere nominal function and has no real influence over the fund. However, following the regulator's flawed logic, shareholders of those funds, the funds themselves, and their assets are considered to be a single economic unit. The regulator concludes so by establishing that all these elements have one thing in common – the asset manager.

In practice, it means that when making a merger control filing business group A must also provide to the regulator corporate and market information on business group B. In the regulator's opinion, the lack of such information would not allow it to conduct the substantive appraisal of concertation. As a result, the regulator will not review the merger control notification until it receives all necessary information on group B. However, providing such information is impossible in most cases, since there is no economic nexus between group A and group B (after all, they are not affiliates, and group B's information is confidential). Moreover, group A would be required to account for business group B's financial and market performance, even though there is no way group A can influence such performance. This may lead to the wrong allocation of market power. For example, group A can be viewed as a dominant entity in a given market because of the market position of group B.

To avoid such undesirable results, one should always closely analyze statutory documents of the fund and asset management agreement or even consider amending them in some cases. Depending on the wording of the relevant document, it might be possible to carve out the asset management company and third-party assets from the fund in question – for example, by limiting the rights of an asset management company. ■

BULGARIA: LATEST AMENDMENTS TO ANTI-TRUST LEGISLATION IN BULGARIA

By Svetlin Adrianov, EY Law Leader for Bulgaria, Albania, and North Macedonia



In February 2021, the Bulgarian Parliament adopted a major amendment to the *Law on Protection of Competition* (LPC). More than a hundred provisions were amended or newly introduced, making this change arguably the largest since the initial

adoption of this law in 2008.

The main drivers of the change were the need to implement the ECN+ Directive and the efforts of the government to address the tensions between the big retail chains and local suppliers. Along with that, some finetuning of the merger control rules was implemented, including the introduction of the SIEC test for evaluating concentrations, and a good number of procedural and country-specific adjustments.

In fact, the existing Bulgarian legislation was already meeting, to a very large extent, most of the requirements of the ECN+ Directive, such as the independence requirements, the powers of the National Competition Authority (NCA) to inspect business premises, requests for information, finding and termination of infringements, interim measures, the power of the NCA to impose fines, the availability of a leniency program, etc. Some of the newly introduced rules, however, were perceived as real game-changers, especially in anti-trust-related risk analysis and management.

One such was the introduction of *parental liability*. Pecuniary sanctions for cartels, prohibited agreements, and abuses of a dominant position may be imposed not only on the infringing entity, but also on the person that exercises control over it, or the person that has acquired its assets, as a result of a transformation in which the infringing entity has ceased to exist, or on the economic successor of the activity through which the violation has been committed.

Another one was the structure and mechanism of collection of pecuniary sanctions imposed on associations for violations of Article 101 TFEU (Treaty on the Functioning of the European Union) and the respective Article 15 of the LPC related to the activities of their members. On one hand, the monetary risk was increased incomparably in such situations, by determining the basis for calculation as the

cumulative amount of the turnovers of all members of the association operating on the affected market. On the other hand, in case the association fails to pay, which would quite certainly be the case every time, the members of the association should fund this liability and, if they do not, the NCA would be entitled to collect the amount from any undertaking which had a representative sitting on the management or controlling bodies of the association. If there is still an outstanding amount, the authority can collect it from any one of the other members of the association operating on the affected market.

These rules represented a disturbing development as they could be seen as departing from basic principles of Bulgarian national law regarding administrative liability. The situation, however, was exacerbated by the scope of applicability of these new rules. Despite the rule of Article 2(2) of the ECN+ Directive that the directive would cover the application of the national competition law only where it was applied in parallel to Articles 101 and 102 TFEU in the same case (with the explicit exception of the situations of Article 31(3) and (4) only concerning access to investigation files), the new amendment can apply to cases of application of national law only, which goes well beyond the purposes and applicability of the directive.

In the field of consumer goods supply, the government's analysis showed that the concept of "abuse of stronger bargaining position," introduced as a separate chapter in the LPC in 2015, did not work as expected, as in about 80 percent of the cases these rules were invoked in situations which had nothing to do with the initial purpose of the regulation. This finding came as no surprise because the specific regulation was very broadly formulated and easily applicable to any disbalanced commercial relation. Still pursuing the initial purpose of addressing the mismatch of the market power of retail chains and their smaller suppliers, the new amendment replaced the chapter on abuse of bargaining position with an entirely new one – *Unfair Trading Practices in The Chain of Supply of Agricultural and Food Products*, implementing *Directive (EU) 2019/633* of the European Parliament and of the Council.

It remains to be seen how this new regulation will work in practice, but it is already obvious that, even if the proposed bill claimed that this amendment was seeking a better tool to pursue the initial legislative purpose, it already falls short because of its narrower scope, *i.e.* the supply chain of foods and agricultural products only. ■

CZECH REPUBLIC: NEW COMPETITION POLICY IN THE CZECH REPUBLIC?

By Robert Neruda, Partner, and Vladislav Bernard, Associate, Havel & Partners



At the end of 2020, the Chairman of the Czech Competition Authority (CCA) was replaced. Petr Rafaj, who had been in the position for more than 11 years and who had been linked to several controversial cases, resigned.

The government, through a tender procedure, selected his successor: Petr Mlsna. The aim of the 42-year-old lawyer, who has extensive experience working in senior government positions, is to return the good reputation of the CCA. Mlsna emphasizes strengthening the importance of competition law as part of the CCA's competencies.

This is a welcome step. In recent years, the CCA's main visible priority has been the supervision of public procurement. There has also been a change in the Vice-Chairman of the CCA responsible for competition policy. Instead of Hynek Brom, who had been in this position since 2015, Kamil Nejezchleb, a lawyer, economist, and long-time employee of the CCA, has been appointed.

We can already assess the practical consequences of these personnel changes. How are competition law enforcement and competition policy changing under the CCA, which celebrates its 30th anniversary in 2021?

From the very beginning of Mlsna's tenure, the CCA carries more interventions, is more visible in the mass media, and its top management attends professional conferences and seminars. Also, the CCA publishes more press releases, informs more about first instance decisions, and makes it easier for third parties to access these decisions. This is particularly important for entities considering bringing an action for damages.

Private enforcement of competition law is still undeveloped in the Czech Republic. So far, there are only isolated cases. There are probably several reasons for this situation, which range from the unestablished litigation tradition in this area, through the inexperience of the courts, to the high financial costs of conducting such litigations.

Under Rafaj's lead, the CCA was rather skeptical about supporting private enforcement of competition law. This was probably out of fear of jeopardizing public enforcement and reducing the efficiency

of the leniency program or the settlement institute. Therefore, the new management's activity in this field has caught our attention. Mlsna has launched an initiative to alert contracting authorities that they are obliged to enforce damages caused by anti-competitive conduct. Moreover, if the CCA issues a final decision on a cartel, it will approach an aggrieved company to draw its attention to the possibility, or obligation, to bring an action for damages. It remains to be seen whether this initiative will lead to greater development of the private enforcement of competition law.



After several years, the CCA has returned to conducting sector inquiries. This spring, the CCA launched one focused on the distribution of pharmaceuticals – on the grounds that it had received many complaints in this area, which raise concerns about the proper functioning of the market. However, it is difficult to predict at this stage whether the CCA will subsequently start investigating individual manufacturers and/or distributors of medicinal products.

The CCA is also toughening up on the sanctions it imposes. For the first time in the history of the CCA, the chairman confirmed a fine amounting to the statutory limit of 10 percent of the undertaking's turnover (for resale price maintenance). Also, the CCA imposed a sanction consisting of a ban on the performance of public contracts (so-called blacklisting) for the first time, in a bid-rigging case. Speaking of bid-rigging, although the CCA normally calculates fines from the value of the public contract in question, in some cases it does not hesitate to impose a fine from the whole turnover of the undertaking. Mlsna has declared that cartels are criminal and, as such, must be punished severely.

It is therefore apparent that the changes in the CCA's management have led to a strengthening of the importance of competition policy and changes in its priorities. Only time will tell whether these changes will lead to more efficient enforcement of competition law, whether we will see more cartels or abuses of dominance uncovered, whether anti-competitive conduct will be severely punished, or whether private enforcement of competition law will be used more. Our guess is that we will see these changes under Mlsna's lead. ■

HUNGARY: HIGHLIGHTS IN COMPETITION LAW AND ITS ENFORCEMENT – HOW TO ENSURE EFFECTIVE CLAIM ENFORCEMENT IN HUNGARY TODAY?

By Orsolya Kovacs, Partner, and Lucia Detvay, Associate, Nagy es Trocsanyi



Assessing the damages resulting from competition law infringement is one of the main focal points of private antitrust litigation. However, in almost all cases, the assessment of damages and causation requires an expert with specialized expertise. Below, we review the methods available

in the Hungarian legal system for providing expert evidence. In particular, we will show that the law only provides limited options in cases requiring special expertise. Moreover, this limitation may be even more pronounced due to the seemingly obscure nature of case law interpretations related to private expert evidence – interpretations that are currently being formulated.

The new Hungarian civil code provides two options for expert evidence to the party on whom the burden of proof lies. Such a party may prove a disputed fact with (1) an expert appointed by the court or (2) a private expert engaged by the party itself.

According to the Hungarian act on experts, two types of experts may act as an expert: As a general rule, (1) forensic experts listed in the Hungarian register of forensic experts may be invited to act in the field indicated by them in the register. However, (2) if there is no registered forensic expert in the given field, or if the registered forensic expert is unable to act due to temporary absence or professional reason, or if the given field is not included in the list of fields that can be indicated in the register of forensic experts, a so-called *ad hoc* expert may act. The *ad hoc* expert is an expert who has expertise appropriate to the given topic and is able to provide forensic expertise, but who is not a registered forensic expert listed in the register.

In private antitrust litigation, the assessment of damages and causation is often a special question for which there is no registered forensic expert or there are only a few who are unable to act due to different reasons, and thus it becomes necessary to invite an *ad hoc* expert in such cases.

Litigators generally prefer private expert evidence since a party has already been able to ascertain the suitability of a private expert engaged by them, in contrast to a forensic expert who they do not know. It is no different in the case of private antitrust litigation. Since in most private antitrust litigation cases only an *ad hoc* expert can act due to the specialty of the relevant professional issue, evidence usually can only be (or needs to be) collected through the framework of private expert evidence from an *ad hoc* private expert.



However, a legal position has arisen which states that only registered forensic experts shall act as private experts and *ad hoc* experts shall not. This view, however, is more than questionable. First of all, this approach may even make private expert evidence impossible, by not allowing *ad hoc* experts with the appropriate expertise for a given question to act – if there is no registered forensic expert for the given question, or if there are only a few registered forensic experts for the given question who are unable to act due to different reasons. This obviously could not have been the intention of the legislator.

Secondly, by allowing the use of *ad hoc* experts only in the event of appointments by courts, the balance between the evidence taking by experts appointed by the court and the evidence taking by private experts engaged by parties is broken. No such distinction can be deduced from the relevant legislation. Finally, since the above idea does not allow the invitation to unlisted experts to act as a private expert – hence it favors the party choosing the evidence taking by experts appointed by the court over the party opting for the evidence taking by private experts they engaged themselves – the above idea may also impede the application of the equality of arms principle.

It is still an open question how this legal issue will be handled in Hungarian practice in the future. However, it seems necessary to review the above current legal position on private experts and to introduce a more sophisticated approach to interpret the current legislation. ■

SLOVAKIA: THE DOUBLE JEOPARDY (NE BIS IN IDEM) SAGA OF SLOVAK TELEKOM IS FINALLY RESOLVED

By Petra Corba Stark, Partner, and Zuzana Nikodemova, Senior Associate, CMS



On June 9, 2021, the Slovak Supreme Court finally ended its long-running proceedings against Slovak Telekom (ST). The case involved a more than EUR 17 million fine against ST for the abuse of a dominant position and resulted in an important decision regarding the application of the *ne bis in idem* principle in

Slovak law.

Two key issues regarding the *ne bis in idem* principle, also known as the prohibition of double jeopardy, concerned whether the powers of the Slovak competition authority (NCA) and the Slovak telecommunications regulator (TR) overlapped, and the parallel proceedings by the NCA and the European Commission (EC).

Background

In 2005, the NCA began proceedings against ST for the abuse of a dominant position (margin squeezing) on the Slovak telecommunications market for telephone and low-speed internet access services. This was followed by a first-instance decision against ST, in 2007, and by a second-instance decision, in 2009. The NCA's decision was then challenged in court in two instances, with the *ne bis in idem* principle being especially relevant.

In parallel, in 2008, the EC became involved and in January 2009 carried out a dawn raid on ST's Bratislava premises. Three months later, the EC officially initiated proceedings against ST and in 2015 ruled that ST had abused its dominant position. The EC's decision was unsuccessfully challenged.

The First Ne Bis in Idem Issue: Which Authority Takes Precedent?

In the first test regarding *ne bis in idem*, the Slovak Supreme Court concluded that the abuse of a dominant position was regulated by the Slovak competition act. Ultimately, this court decided that only the NCA was authorized to proceed in competition matters and that this power could not be taken from it. As a specialized regulator, the TR could not have precedence in this area of law. Furthermore, it was also irrelevant if the TR agreed on price regulation with ST, as the practice of margin squeezing was not part of this.

The Second Ne Bis in Idem Issue: Were There Parallel Proceedings?

On the second *ne bis in idem* issue, the Court of Justice of the European Union (CJEU) was asked to review the preliminary ruling. It concluded that all national competition authorities were relieved of their power to apply Articles 101 and 102 of the TFEU if the proceedings initiated by the EC related to alleged competition infringements identical to those in proceedings brought by the national authority, *i.e.* the same practices, product, geographical markets, and period of time. Furthermore, the *ne bis in idem* principle also applied to infringements of competition law. However, it did not apply if proceedings were brought against (or sanctions were imposed on) an undertaking separately and independently by a national authority and the EC for infringements of Article 102 of the TFEU relating to separate product markets or separate geographical markets.

In the light of the CJEU ruling, the Slovak Supreme Court ruled that the EC's decision concerned margin squeezes in wholesale access to unbundled local loops and other broadband access services and their corresponding retail services in Slovakia, whereas the proceedings brought by the NCA concerned abuses of a dominant position on the wholesale and retail markets for telephone services and low-speed internet access services, which are different product markets. Therefore, the *ne bis in idem* principle did not apply because the sub-condition of *idem*, *i.e.* the identity of facts, was not satisfied, and therefore the NCA had not been relieved of its power to apply Article 102 of the TFEU.

Final Observations

The decision, together with the CJEU ruling, clarifies the correct application of the *ne bis in idem* principle in parallel competition proceedings and the division of power between national regulators. This case shows that the NCA has precedence over sector-specific regulators and that cases concerning different markets cannot be considered similar. Therefore, national authorities retain their power to apply EU competition rules even if the EC starts its own proceedings.

This aspect underlines the importance of the definition of the (product) market to establish whether a national authority is relieved of its competencies to apply Article 101 or Article 102 of the TFEU. ■



CROATIA: WHATSAPP CORRESPONDENCE CONSTITUTES CREDIBLE EVIDENCE OF ANTI-COMPETITIVE AGREEMENTS

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



On July 21, 2021, the Croatian High Administrative Court confirmed the Croatian Competition Agency's (CCA) cartel decision adopted against 14 Croatian driving schools. In its infringement decision dated December 30, 2019, the CCA established the existence of a price-fixing cartel between 14 Croatian driving schools and imposed fines in the total amount of HRK 415,000 (approximately EUR 55,500). During

this cartel investigation the CCA conducted several dawn raids and established the existence of a price-fixing cartel based on, *inter alia*, WhatsApp correspondence exchanged between representatives and employees of cartel members. Based on CCA's infringement decision, the content of exchanged WhatsApp correspondence between cartel members referred to the coordinated price increases for driving lessons starting from the beginning of 2018.

Upon challenge of CCA's infringement decision by several cartel members, the court dealt with the admissibility and probative value of the evidence, which recently seems to be one of the successful winning arguments used by claimants disputing the CCA's decisions in cartel cases. The claimants argued without success that WhatsApp correspondence between cartel members' representatives and employees constituted inadmissible evidence and that such correspondence was not sufficient to establish the relevant facts proving the existence of a cartel, due to its 'benign' content and the way the correspondence was exchanged between driving schools' representatives and employees. Although the court did not analyze in detail the facts established on the basis of cartel members' WhatsApp correspondence, in its statement of reasons it briefly explained that electronic communications exchanged via WhatsApp constitute business documentation validly obtained within the dawn raid procedure which the CCA conducted during its investigation. The above court's reasoning is in line with the *Croatian Competition Act*, which expressly allows CCA's officials conducting the dawn raid to review business and other documents that relate to the undertaking's operations, irrespective of the media on which such documents are stored (for example, computers, servers, mobile devices). Furthermore, the court's decision to treat WhatsApp correspondence as admissible and credible evidence is in line with Croatian general administrative laws, which are also rel-

evant and applicable in proceedings before the CCA. Specifically, under the *Croatian General Administrative Act*, an electronic document has the same probative value as a written document.

Unlike in the Croatian Constitutional Court's 2018 ruling, in a separate case, where the court annulled the CCA's cartel decision – because it held that a newspaper article writing about a cartel and the failure of alleged cartel members to dispute the newspaper article were not sufficient to establish the infringement – here the court was satisfied that the CCA established with a sufficient degree of certainty the existence of the driving schools' cartel. Based on the text of the CCA's infringement decision, electronic documents (in this case, WhatsApp correspondence) obtained during the dawn raids seem to be in close connection with the investigated events, which should qualify them as reliable evidence of clandestine agreements.

Contrary to the argument raised by claimants during this judicial review procedure, the way in which the documents are written should not deprive them of probative value. Even though the court's thought process on the examination of evidence was not covered in detail in the judgment, and the court did not address the claimants' arguments related to the tone of WhatsApp communication, the wording of the judgment implies that the court qualified WhatsApp messages as evidence having high probative value, irrespective of their tone or how they were written (contrary to what claimants had argued). The court established that, because the electronic correspondence in question constituted legally obtained business documentation within the meaning of the *Croatian Competition Act*, the CCA was correct to adopt its infringement decision based on such electronic documents.

In this regard, the court's evaluation of evidence seems to be in line with the principles laid down in Croatian competition and administrative laws governing probative value of evidentiary means, even though the court fails to provide clear guidance on the credibility of different types of evidence in cases dealing with anti-competitive agreements. ■





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SERBIA: SERBIAN ANTITRUST AND COMPETITION IN 2020 AND 2021

By Nikola Poznanovic, Partner, and Bojana Javoric, Senior Associate, JPM Jankovic Popovic Mitic



In 2020 and 2021 there were no developments towards the adoption of the new law and bylaws regarding competition/antitrust (a process that started in 2017), probably due to the coronavirus pandemic. Certain changes in respect to the enforcement of competition rules

were introduced during 2020, due to COVID-19, such as a new manner of communicating with the Serbian Competition Commission, a prolongation of the deadlines during the state of emergency in Serbia, *etc.* However, all subject changes have been put out of force and are being restored to the state prior to COVID-19.

Pursuant to publicly available data on the commission's official website (since the commission's annual report has not been published), during 2020 the commission was very active in competition rules enforcement since it initiated nine new investigations, with a special emphasis on resale price maintenance, as it initiated six new resale price maintenance investigations. The trend of initiating investigations after conducted sector inquiries and analysis of specific conditions on the relevant markets has continued in 2020. The commission also initiated one investigation for gun-jumping, *i.e.* the implementation of a concentration without the clearance of the commission. It also rendered decisions and imposed fines in four restrictive agreements proceedings, as well as one fine for abuse of dominant position.

In 2020, the commission rendered 106 merger clearance decisions, whereas 103 were cleared by the commission in summary proceedings, one merger was cleared after investigation proceedings, whilst for three mergers the commission initiated investigation proceedings.

From the beginning of 2021 until now, the commission has issued 63 merger clearance decisions, while it did not initiate procedures or render decisions regarding the existence of restrictive agreements or abuse of dominant position. The commission has continued the trend of conducting sector inquiries and released the following two reports: (1) *Report on the Sector Inquiry into Competitive Conditions on the Tour Operators Market for 2017-2019* and (2) *Report on Sugar Beet Production and Buy Out, Sugar Production and Wholesale Trade for 2017-2019*.

The commission has also suspended proceedings against a seller whose standard form agreements were potentially considered restrictive agreements, due to resale price maintenance, pursuant to a submitted proposal for undertaking voluntary commitments to remove potential infringements of competition law, which were accepted by the commission. In the same investigation, the commission terminated the proceedings against small retailers with the rationale that they did not have the bargaining power to amend the contractual provisions due to their size, market, and financial strength, taking a step forward towards alignment of its practice with EU case law.



We could notice that during 2021 the commission focused on gun-jumping investigations and independent monitoring of media and public registries. It initiated two procedures for gun-jumping and imposed one fine, in relation to the proceedings initiated in 2019. As for the latter, the commission imposed a fine in the amount of approximately EUR 75,000, which is only the second decision imposing a fine for gun-jumping (the first was imposed in 2017 in the amount of approximately EUR 56,000). It remains to be seen what the fining practice for gun-jumping will be in the future (since the two imposed fines were low compared to the potential fine of 10% of Serbian turnover in the preceding year) and whether the commission shall enact any decisions imposing measures of 'deconcentration' by ordering undertakings to divide a company, dispose of stakes or shares, terminate a contract, or perform other actions in order to re-establish the conditions prior to the concentration.

We could also notice that, during the last year and a half, the number of notified concentrations dropped significantly due to a general decline in economic activity caused by the COVID-19 pandemic. It remains to be seen what long-term impact the pandemic will have on competition in Serbia, especially in respect of its enforcement by the commission. ■

NORTH MACEDONIA: TRANSPARENCY AND CONFIDENTIALITY IN COMPETITION PROCEEDINGS

By Srdjan Jankovic, Head of Competition and TMC, Petrikic & Partneri AOD in cooperation with CMS Reich-Rohrwig Hainz, and Zlatko Kujundjiski, Attorney-at-Law, CMS Skopje



North Macedonia introduced its first competition law in 1999, however, the law that is now applicable was adopted in 2010. With this law, North Macedonia brought its harmonization of competition rules with the EU *acquis* closer.

The merger review process in North Macedonia is characterized by a high degree of publicity. Transparency of the procedure exists at the earliest stages of the review process, unlike many other jurisdictions where the competition authorities usually publish only the results of their review.

Publicity at the Early Stage of the Merger Review Process

The Macedonian Commission for the Protection of Competition (MNCA) publishes a notice on its website for each notification of concentration delivered, on which third parties are able to submit their comments within ten days.

The MNCA notice usually contains 1) information on the applicant(s); 2) the type of business activities carried out by the applicant(s); 3) general information on the applicant's/applicants' revenue in North Macedonia; 4) the relevant markets; and 5) a preliminary statement about whether the concentration falls under the scope of the *Macedonian Law on Protection of Competition*. Each MNCA decision is published on its website and in the Official Gazette of North Macedonia.

Confidentiality Only Upon Request

Previously applicable laws (the first from 1999, the second from 2005) did not regulate the issue of confidentiality/protection of trade secrets in relevant proceedings.

The *Macedonian Law on Protection of Competition* treats information as a business secret – *i.e.*, keeps it confidential – only at the applicant's request. For this reason, parties claiming confidentiality need to flag the relevant data as a business secret. Additionally, they should substantiate the legal ground for such confidentiality. The MNCA, on the other hand, is entitled to decide whether such a confidentiality request is to be accepted.

That said, the law gives some general guidelines urging the MNCA not to approach the matter in too extensive or too strict a manner.

Specifically, the law stipulates that if the data has economic or market value, and its disclosure or use could lead to other companies gaining an economic advantage, such data should be treated as a business secret. The following should therefore be considered: the extent to which such data is publicly available, the extent of data protection in the company, and the value of said data to the company and its competitors.



The MNCA needs to ensure that all business secrets are kept confidential. Therefore, a business secret is considered to be data that is stipulated as such, according to the law or other relevant regulation, as well as data that is 1) marked as a business secret by a relevant party in a proceeding, and 2) accepted as such by the MNCA. The relevant law, however, advises that publicly available data, data older than five years, revenues contained in annual financial or statistical reports, and data and documentation crucial for the MNCA to reach its decisions cannot be treated as business secrets.

The MNCA's practice runs along the same lines. For a public version of the decision to be prepared, the applicants should submit a proposal of the public version of the decision, with clear justification. If left unaddressed, it is assumed that the decision does not contain a business secret, and is, therefore, to be published in full. Hence, companies should deliver one copy of the document with secret business data included (a confidential version) and one copy without the secret business data (a non-confidential version).

On a separate note, in misdemeanor proceedings before the MNCA's Misdemeanor Commission, if only a confidential version is delivered, the MNCA's Misdemeanor Commission would request delivery of a non-confidential version within three days. If no action is taken, the data is deemed not to be confidential.

Conclusion

The MNCA's practice in competition proceedings runs, on one hand, along the lines of the transparency principle and, on the other, along the lines of active involvement of the parties, by only practicing confidentiality upon their request. In this manner, the *Macedonian Law on Protection of Competition* balances these two opposing principles. ■

SLOVENIA: LIBERALIZATION OF THE FUEL MARKET IN SLOVENIA – EVALUATION OF THE IMPACT OF PRICE TRANSPARENCY

By Ales Lunder, Partner, and Robert Kordic, Associate, CMS



When in September 2020 the Slovenian government decided that price control measures in the fuel products market were no longer necessary and fully liberalized the market, one of the expected benefits was a positive impact on the price competition.

What Used to Be Transparent, No Longer Is

Fuel vendors immediately reacted by announcing that liberalization would lead to a rise in fuel prices due to an increase in margins. Although no in-depth analysis on the price movements of fuels on the Slovenian market is yet available, consumers observed a surprising decrease in price transparency. What used to be transparent and easily identifiable, with prices displayed on signs right next to the petrol stations, can now only be found on online price information sources.

Slovenian Competition Protection Agency Not the Right Address

The public outrage and press coverage even triggered a statement of the notoriously silent Slovenian Competition Protection Agency. I fully agree with the Agency's statement that they are not a "security mechanism" for transparent pricing. In such a dynamic market, which is highly dependent on international fuel industry trends, price fluctuations on the Slovenian market do not in themselves directly generate competition law concerns. As long as the price of motor fuels is freely determined on the market and does not result from any restrictions, distortions, or hindrance to competition, there should be no reason for any raised eyebrows. However, the obvious question of whether this non-transparency fosters or hinders price competition remains open.

In general, the world of perfect competition is one in which the consumer has all the information necessary to make a decision. No doubt, consumers can use the internet to compare prices and other factors and make informed decisions based on them. But, in concentrated markets, information exchange and increased price transparency can also bring about anticompetitive effects. Information exchange can constitute a concerted practice if it reduces strategic uncertainty in the market and hence facilitates collusion – assuming the data exchanged is strategic. Competitors are better able to understand the

dealings and tactics of rivals and adapt to each other's behavior. Therefore, when assessing the competition risks of information exchanges, two points have to be considered: a) the information itself or rather the benefits of such information to the enterprise, the competitor, and consumers; and b) the likelihood that disseminating information facilitates tacit collusion.



Why Would Publishing Prices on Signs Next to Slovenian Gas Stations Ensure Fair Competition?

The legal theory view that open access to information promotes efficiency in the marketplace and is unlikely to facilitate tacit collusion promotes the notion that the public dissemination is pro-competitive. However, such a scenario is only possible in a market filled with competitors, low entry barriers, and other aspects that make tacit collusions unlikely – in other words, not the Slovenian fuel market. There is an inherent risk that in tight markets with fewer competitors the risk of common understanding and coordination between competitors is high and might easily result in simpler monitoring of deviations. That is, the increased transparency and exchange of information is more likely to cause restrictive effects on competition than in looser markets.

It is fair to say that publishing prices and thereby sharing and keeping information transparent is generally valuable to customers, but, while it may promote marketplace efficiencies, it may also facilitate tacit collusion.

The dissemination of information entails both pro- and anti-competitive elements. Keeping in mind that in the past the agency raised concerns about market activities, it is likely there will be future inquiries. However, what the benefit for the consumer will be is yet to be seen.

Regardless of what the theoretical prevailing opinion is, the fact that the agency was forced to react to the call of consumers should make the fuel vendors think about their next steps. Companies active in the field should take measures to ensure their internal procedures are in line with competition law and that their upcoming price decisions are based on competitiveness alone. ■

ALBANIA: ALBANIA'S ANTITRUST FRAMEWORK ON THE WAY TO EU ACCESSION

By Svetlin Adrianov, EY Law Leader for Bulgaria, Albania, and North Macedonia



As one of the next wave candidates for membership in the European Union, Albania went a long distance in the harmonization of its legal framework with the *acquis communautaire* in recent years. The most recent country progress

report of the European Commission, issued as part of the 2020 Enlargement Package for the Western Balkans, recognized the legislative efforts of the country to align its legal framework to EU requirements and to enhance the country's ability to assume the obligations of membership.

Albania first ventured into the legal regulation of antitrust in 1995 by introducing a law On Competition, which dealt with antitrust, as well as with unfair competition and consumer protection matters. As a first attempt, it raised a lot of questions, but it also opened the topic of competition law in the country and served as a starting point in developing the relevant legal framework.

The now effective *Law on Protection of Competition (LPC)* was adopted in 2003, already with a clear direction at harmonization with EU antitrust rules. It was revisited in 2010 to follow up on this trend, whereas the more notable amendments included the introduction of a possibility of exemption of potentially restrictive agreements, application of the *de minimis* rule, further aligning the prohibition of abuse of dominant position, amendment of the merger control notification criteria and the merger control test, development of some procedural rules, *etc.*

The current legal framework includes, besides the LPC, a stack of secondary legislation – regulations and guidelines, dealing with block exemptions, treatment of agreement of minor importance, investigative and merger review procedures, leniency program, *etc.* What we see in this body of rules is familiar to the EU-trained lawyer in terms of regulation of prohibited agreements, abuse of dominant position, and merger control, along with a detailed procedural framework. The rules are overall in line with Articles 101 and 102 TFEU and the EU merger regulation, although along with the literal repetition of certain EU texts, some specifics show up occasionally both in the way

of structuring of the law and in the essence of interpretation. As a matter of example: the LPC prohibits explicitly agreements which have as their object or effect the prevention, restriction, or distortion of competition, but makes no mention of concerted practices and decisions by associations of undertakings – these, however, are submitted as elements of a definition of “agreement.” Also, different agreements which do not fall within the categories of block exemption are required to be notified to the competition authority and the definition of “undertaking” is limited to legal and natural persons leaving out non-personified entities.

Worth noting is the vast power of the competition authority in dawn raids. Investigators can enter and search business premises and vehicles of the investigated undertaking, but also the domicile of administrators, managers, directors, and other staff members, as well as at the domicile and business premises of individuals and legal persons, whether external or internal, in charge of commercial, accounting, administrative, tax, and financial management. They can also access other premises, “equivalent to domicile,” if there are reasons to believe, given the facts and concrete circumstances of the case, that in such premises there are books or other professional documents to be found which are deemed necessary to prove a serious infringement. The dawn raid of the business premises and vehicles of the investigated undertaking does not need court permission as a pre-requisite.

A point of focus is also competition advocacy. As part of the efforts of the European Bank of Reconstruction and Development to promote competitive economies in the countries it invests in, and, in particular, in the Balkans, a project for capacity building for the Albanian Competition Authority funded by the bank has been ongoing for the last couple of years.

It resulted in developing a *Competition Advocacy and Communication Strategy*, which was recently published on the authority's website. The document lays out a five-year plan to strengthen future advocacy efforts to be carried out by the authority and to improve the effectiveness of its communication strategy in this direction.

With this at hand, the European Commission assessed the country as being “moderately prepared” in competition policy. “Serious concerns” were raised in the State Aid area, but antitrust framework and enforcement seem to be on the right track in the accession process. ■

BOSNIA & HERZEGOVINA: INDIVIDUAL EXEMPTION OF DISTRIBUTION AGREEMENTS IN BOSNIA AND HERZEGOVINA

By Dzana Smailagic-Hromic and Ezmana Turkovic, Partners and Co-Heads of Competition, Maric & Co



Distribution agreements are a necessary legal basis for any distribution chain across industries, and are very important both for the cooperation of companies within individual countries, and for the cooperation of distribution chain companies coming from different countries. In an attempt to retain or conquer the market, certain companies (manufacturers or main distributors) may try to restrict local

distributors or wholesalers to selling only their products or to selling at certain prices, by imposing specific distribution conditions on them in (exclusive) distribution agreements. Most of those companies are not aware that such imposed distribution conditions are prohibited by law and that very high penalties are prescribed for such actions in Bosnia and Herzegovina.

The Competition Act of Bosnia and Herzegovina, Official Gazette no. 48/05, 76/07, and 80/09 (the Law), prohibits some competition practices, including distribution agreements, that aim and have the effect of preventing or restricting market competition by, inter alia, directly or indirectly determining or imposing purchase and selling prices and other conditions; restricting production, markets, and others; market sharing; by applying different conditions to identical transactions with other entities; by conditioning the other contracting party to accept additional obligations that are not related to the subject of the contract; and others.

All such practices and agreements are considered null and void by the Law. However, it takes a special procedure initiated before the local antitrust authority for determination of such agreements as prohibited, which always leads to the imposition of significant fines, mostly to the contractual parties that imposed such prohibited distribution clauses within the same agreements.

What needs to be emphasized, however, especially for manufacturers and main distributors trying to protect their products and market share on the local market of Bosnia and Herzegovina through such prohibited distribution conditions, is that there is a solution for some of these distribution agreements.

The Law regulates the possibility for contractual parties to such distribution agreements – that contain certain restrictions for distribu-

tors – to apply to the antitrust authority of Bosnia and Herzegovina for an individual exemption from the prohibition. If obtained, such an exemption would be valid for the market of Bosnia and Herzegovina only.



In order to secure the exemption, the distribution agreement (as well as any other agreement) should contribute to the improvement of production or distribution of goods and/or services within Bosnia and Herzegovina, or to the promotion of technical and economic progress, while allowing consumers a fair share of the resulting benefit. The agreement: a) shall impose only those restrictions necessary to achieve these objectives; and b) shall not enable the exclusion of competition in the substantial part of the products or services.

The parties to such agreements can apply for individual exemption by filing a request to the local antitrust authority, the Competition Council of Bosnia and Herzegovina, with the distribution agreement attached, before entering such a distribution agreement or before it comes into force. Individual exemptions cannot be given for an unlimited period of time. The period of validity is limited to five years maximum, which can be extended for another five years, provided that the agreement still meets the statutory requirements related to the limitation of restrictions which needed to be met when the first request for exemption was filed.

When granted by the antitrust authority, an individual exemption usually contains certain conditions and prohibitions determined by the authority in order to ensure the protection of end customers and the market availability of all products. However, even limited in scope, the individual exemption still enables the contractual parties to protect their interests.

It is important to emphasize that a fine of up to 10% of the total annual income of the company – for the year preceding the one in which the violation of the Law took place – shall be imposed on the company if it concludes a prohibited agreement or otherwise participates in an agreement which violates, restricts, or prevents market competition. An additional fine between EUR 7,500 and EUR 25,000 may be imposed on the company's CEO, as well. ■

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