Year I, Issue 2
April, 2014

# CEE Legal Matters

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

■ Across the Wire: Summary of Deals and Cases in CEE ■ Market Spotlight: Romania ■ Experts Review: Competition ■ Crimea Desk in Unsettled Times ■ The Glass CEEling ■ Czech Law Firms Survive the Crisis ■ Why Not Russia ■ Unclear Romanian Bar Regulations ■

CEE
LEGAL MATTERS

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


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

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# Editorial: The Long Run

*The current world record for completing a marathon run is held by Wilson Kipsang (2:03:23). Chuck Engle won the most marathons in history, coming in first in 171 races.*

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

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

While we don't yet have a million subscribers to the CEE Legal Matters magazine, we're equally proud of its growth. And this issue justifies that pride. Readers will find an expanded Frame section, providing longer articles and analysis from even more jurisdictions, thus offering our readers greater insight into the trends and events that shape the legal industry in their markets. Featured articles in this issue include an in-depth look at why Austrian law firms have offices in all major CEE markets – but not in the biggest market of all; a review of the Czech legal market after the financial crisis; a consideration of the surprising gender imbalance among associates in Bulgarian law firms; and a conversation with Vladimir Sayenko, the Managing Partner of one of the largest law firms in Ukraine, on the ramifications of the ongoing geo-political crisis on his firm's Crimean practice.

There's more. Every spring, in the period leading up to International Woman's Day, it is fashionable for law firms to announce various gender equality initiatives or awards. Taking that annual tradition as inspiration, we decided to prepare a thorough report of the proportion of women at the associate and partner levels in ranked firms across CEE to see if any national, regional, or other trends can be observed. This issue contains the first part of that report, focusing on the numbers – with analysis and comments to be including in part two in the next issue.

At the same time, our Market Spotlight, which focuses on Romania, includes a report on the impact of and reactions to the controversial new advertising regulations imposed by the Romanian bar association. The President of the Romanian Union of Bar Associations, Gheorghe Florea, was kind enough to comment on the changes and the rationale behind them, which, we hope, will offer our readers some understanding of why so many of the leading Romanian law firms are reporting being in "stand-by" mode with regards to their marketing efforts.

Of course, our regular sections are packed with information as well. The TopSites feature focuses on the websites of market-leading Romanian and Serbian law firms, the Experts Review section provides analysis on Competition Law matters from 24 separate jurisdictions across CEE, and our Inside Insight feature includes a Q&A with Ece Gursoy, the Chief Legal Officer of Lightsource Renewable Energy in the United Kingdom.

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

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

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

*Radu Cotarcea, Managing Editor*

# Guest Editorial: On CEE, Russia, and St. Petersburg

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

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

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

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

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

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

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

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

The transfer of Russia's high courts to St. Petersburg that is scheduled for the next two years is also highly significant for lawyers in this market. Obviously, as the Supreme Court follows the Constitutional Court to St. Petersburg, this will provide a new impetus for the growth of the St. Petersburg legal market as a whole. The Firm is also closely watching the St. Petersburg International Legal Forum, an independent professional platform for legal professionals from across the world to engage in an open discussion of the most pressing and urgent issues of the day.

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

*Ivan Smirnov,*
*Managing Partner of the St. Petersburg office,*
*Egorov Puginsky Afanasiev and Partners*





**Samba in CEE**

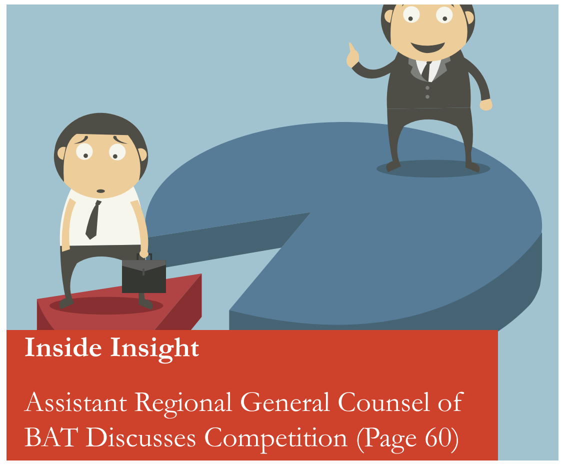
Brandi Partners Opens Office in Moscow (Page 12 and 28)

**The Reality Today**

Sayenko Kharenko's Crimea Desk in Unsettled Times (Page 22)

**The Risk Of Revelation**

Unclear Romanian Bar Regulations Put Law Firm Marketing On Hold (Page 44)



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Assistant Regional General Counsel of BAT Discusses Competition (Page 60)


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# Letters To The Editors

### RE: "Looking Through The Crystal Ball"

March 27, 2014

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

As the world economy continues to show positive signs, we expect many Ukrainian businesses to try to use an opportunity to attract funding on foreign capital markets or through private deals. These efforts should be supported by the reforms, which the government committed to implement in order to enhance the investment attractiveness of Ukraine. All of this should result in new M&A deals (particularly, distressed assets sales), debt restructurings, banking deals and, probably closer to the autumn of 2014 (or, more pessimistically, in spring of 2015), IPOs and Eurobonds. We expect the following industry sectors to lead the activity growth: real estate, FMCG, financial services, pharmaceuticals and agriculture.

In the meantime, the life once again proves that the Chinese were right saying: "When the wind of change blows, some build walls, others build windmills". With the latest events in Crimea a number of unprecedented legal issues arose, providing law firms with an opportunity to launch a new practice of "law of occupied territories". Owners of the Ukrainian businesses also try to use the current pause to better shape their businesses and, to that end, carry out corporate restructurings.

*Mykola Stetsenko , Kiev, Ukraine*

### RE: "Looking Through The Crystal Ball"

March 31, 2014

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

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

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

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

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

*Jaroslawa Z. Johnson, Kiev, Ukraine*

# Legal Ticker: Summary of Deals and Cases

| Date covered | Firms Involved | Deal/Litigation | Deal Value | Country |
|---|---|---|---|---|
| February 12, 2014 | CHSH Cerha Hempel Spiegel Hlawati | CHSH Cerha Hempel Spiegel Hlawati advised Raiffeisen Bank International on matters related to a recent capital increase | EUR 2.78 billion | Austria |
| February 20, 2014 | Luther | Luther advised Immofinanz Group on legal and tax aspects of acquisition of 18,000 residential units and the residential real estate service business from Prelios Deutschland | N/A | Austria |
| March 31, 2014 | Hohne, In der Maur & Partner, Manak Schallabock & Partner | Hohne, In der Maur & Partner and Manak Schallabock & Partner law firms represent UPC Telekabel Wien, Film Verleihm Wega Filmproduktionsgesellschaft before the European Union Court of Justice in significant copyright dispute | N/A | Austria |
| March 31, 2014 | Fellner, Wratzfeld & Partner | Fellner Wratzfeld & Partner represented BAWAG in connection with Austrian participation capital repayment | EUR 350 million | Austria |
| March 31, 2014 | Allen & Overy, CHSH | Allen & Overy and CHSH advised Old Mutual on Skandia Germany and Skandia Austria to Cinven and Hannover Re acquisition vehicle | EUR 220 million | Austria |
| April 2, 2014 | CHSH | Cerha Hempel Spiegelfeld Hlawati advises German Bosch Group and French Groupe SEB on acquisition of stakes in RobArt | N/A | Austria |
| April 10, 2014 | Dvorak Hager & Partners | Dvorak Hager & Partners provided legal support on the transformation of the JDK limited liability company to a family holding company. | N/A | Austria |
| April 11, 2014 | Schoenherr, Fenech & Fenech Advocates | Schoenherr advised Osterreichische Volksbanken on the sale of its fully-owned subsidiary Volksbank Malta to Malta-based Mediterranean Bank. | N/A | Austria, Malta |
| March 31, 2014 | Allen & Overy | Allen & Overy advised lending syndicates on new loan facilities for Sberbank Europe and Credit Bank of Moscow. | N/A | Austria, Russia |
| March 4, 2014 | Boyanov & Co. | Boyanov & Co. advised Sofica Group AD in relation to acquisition by TeleTech Holdings | N/A | Bulgaria |
| February 12, 2014 | Allen & Overy | Allen & Overy advised OTP Bank on purchase by Croatian subsidiary OTP Banka Hrvatska of 98.4% of Italy-based Banco Popolare's branches in Croatia | HRK 107 million | Croatia, Hungary |
| February 14, 2014 | Clifford Chance, White & Case | White & Case advised Falcon Group and Clifford Chance advised Deutsche Telekom on conclusion of binding agreement for sale of Falcon Group's stake in T-Mobile Czech Republic to Deutsche Telekom | EUR 828 million | Czech Republic |
| March 5, 2014 | McDermott, Will & Emery, Ashurst | McDermott, Will & Emery, and Ashurst, successfully represented Camfil Holding in acquisition of Handte Group | N/A | Czech Republic |
| March 19, 2014 | PRK Partners | PRK Partners advised Best Hotel Properties on purchase of InterContinental Hotel in Prague and related companies | N/A | Czech Republic |
| March 19, 2014 | PRK Partners | PRK Partners represented Holcim before Czech antitrust authorities regarding divestment of Czech operations to Cemex | N/A | Czech Republic |
| March 24, 2014 | Binder Grosswang | Binder Grosswang advised Koninklijke Ahold on acquisition of Interspar hypermarkets and SPAR supermarkets | EUR 192 million | Czech Republic |
| March 12, 2014 | Borenius | Borenius advised Kauppalehti and Alma Media Corporation on the sale of all shares of Baltic News Service to KOHA Capital | N/A | Estonia |
| March 12, 2014 | Borenius | Borenius advised the Eastern Europe Real Estate Fund on sale of Telliskivi Loomelinnak to Butembo OU | EUR 4.8 million | Estonia |
| April 4, 2014 | Tark Grunte Sutkiene | Tark Grunte Sutkiene advised Enterprise Investors on its acquisition of 32.4% stake in Tahe Outdoors | N/A | Estonia |
| April 9, 2014 | Castren & Snellmann | Castren & Snellmann acted as legal adviser for the DT Group in the company's acquisition of Puukeskus | N/A | Estonia |
| April 9, 2014 | Tark Grunte Sutkiene | Tark Grunte Sutkiene advised Estonian investors Indrek Prants, Sven Mansberg and Armin Koomagi in their purchase of the Rocca al Mare Sports Centre from the Askembla Growth Fund. | N/A | Estonia |
| April 7, 2014 | TRINITI | TRINITI advised Levira on the sale of the company's broadcast, media and IT infrastructure services in the Baltic States and Nordic Countries. | N/A | Estonia, Latvia, Lithuania |
| April 7, 2014 | Raidla Lejins & Norcous | Raidla Lejins & Norcous advised UAB LTk Capital and UAB G Capital on their sale of 100% interest in UAB Kruzas Nordic Cosmetics Distribution to Berner | N/A | Estonia, Latvia, Lithuania |
| February 18, 2014 | Watson, Farley & Williams | Watson, Farley & Williams advised HSH Nordbank on transfer of 10 distressed vessels to the Navios Group | USD 303.8 million | Greece |





| Date covered | Firms Involved | Deal/Litigation | Deal Value | Country |
|---|---|---|---|---|
| March 19, 2014 | Drakopoulos | Drakopoulos advised major Saudi conglomerate on multi-million euro real estate acquisition in southern suburbs of Athens | N/A | Greece |
| March 21, 2014 | Papapolitis & Papapolitis | Papapolitis & Papapolitis advised BlackRock Solutions in assessment of Greek bank loan portfolios engagement by the Bank of Greece | N/A | Greece |
| February 15, 2014 | Squire Sanders | Squire Sanders counseled CBRE Global Investors and its Hungarian subsidiaries in connection with a refinancing of a number of its shopping centres and office buildings in Hungary provided by Westdeutsche Immobilienbank AG | EUR 10 million | Hungary |
| March 20, 2014 | King & Wood Mallesons SJ Berwin, VJT & Partners, Baker Hostetler | Multi-firm team advised TransDigm Group on acquisition by Technical Airborne Components of all shares in EME Holding | USD 47.4 million | Hungary |
| March 28, 2014 | Gide Loyrette Nouel | Gide Loyrette Nouel advised LEGO on construction of Hungarian plant | EUR 354 million | Hungary |
| April 7, 2014 | LAWIN | LAWIN advised the Finnish Lassila & Tikanoja company in its sale of shares to SIA Bioinvest | N/A | Latvia |
| February 28, 2014 | Hogan Lovells | Hogan Lovells won asylum for lesbian Macedonian woman claiming she would be persecuted if forced to return to her native country | Pro Bono | Macedonia |
| February 17, 2014 | GESSEL | GESSEL advised Highlander Partners, working through its AKOMEX portfolio company, on the purchase of DRUK-PAK. | N/A | Poland |
| February 19, 2014 | Dentons | Dentons counseled syndicate of Polish banks on multipurpose financing to Inter Cars | PLN 495 million | Poland |
| March 4, 2014 | Gide Loyrette Nouel | Gide Loyrette Nouel advised Unibail-Rodamco on refinancing of Galeria Mokotow Shopping Centre in Warsaw | EUR 200 million | Poland |
| March 4, 2014 | Eversheds | Wierzbowski Eversheds entered into three-year agreement to provide legal services to EDF Polska | N/A | Poland |
| March 5, 2014 | White & Case | White & Case advised Zlomrex International Finance on restructuring of outstanding senior secured high yield notes due 2014 | USD 118 million | Poland |
| March 14, 2014 | GESSEL | GESSEL advised Comperia.pl on initial public offering and transfer of existing shares from the NewConnect market to the main floor of the Warsaw Securities Exchange | N/A | Poland |
| March 19, 2014 | Wierzbowski Eversheds | Wierzbowski Eversheds advised Polish Insurance Guarantee Fund on multilateral agreement in Polish insurance industry, and represented UFG in negotiations with dozens of insurance companies. | N/A | Poland |
| March 31, 2014 | Allen & Overy | Allen & Overy's advised on financing of upgrades to power units and refinancing of Zespol Elektrowni Patnow-Adamow-Konin indebtedness. | PLN 1200 million | Poland |
| April 4, 2014 | Dentons | Dentons advised Goodman on construction of central warehouse and office facility in Poland for Mousquetaires Group | N/A | Poland |
| April 8, 2014 | Dentons | Dentons advised BlackRock's Real Estate division on the sale of the Rondo 1 office building in Warsaw to Deutsche Asset & Wealth Management | N/A | Poland |
| April 9, 2014 | K&L Gates | K&L Gates advised Marathon Asset Management on its acquisition of a EUR 280 million continental European commercial property loan portfolio from Lloyds Banking Group. | EUR 280 million | Poland |
| February 25, 2014 | Allen & Overy | RTPR Allen & Overy advised the European Bank for Reconstruction and Development, Erste Group Bank, Banca Comerciala Romana and Eksport Kredit Fonden in connection with a project financing extended to Crucea Wind Farm | EUR 125 million | Romania |
| February 28, 2014 | Allen & Overy, TSAA | RTPR Allen & Overy advised Resource Partners on the acquisition of 71% in World Class Romania | N/A | Romania |
| March 13, 2014 | Drakopoulos, Reed Smith | Drakopoulos and Reed Smith advised Secure Property Development and Investment on acquisition of Innovations Logistics Park in Bucharest | EUR 12.5 million | Romania |
| March 19, 2014 | Tuca Zbarcea & Asociatii | Tuca Zbarcea & Asociatii advised on public procurement contract between Horia Hulubei National Institute of Physics and Nuclear Engineering (IFIN HH) and consortium led by Italian Instituto Nazionale di Fisica Nucleare in Italy | EUR 66.8 million | Romania |
| March 26, 2014 | Allen & Overy | RTPR Allen & Overy advised the European Bank for Reconstruction and Development and Black Sea Trade and Development Bank in connection with a project financing extended to six Romanian subsidiaries of EDP Renovaveis, to finance the construction and operation of six solar photovoltaic (PV) parks totalling 50 MW in the southern Romanian region of Oltenia | EUR 30 million | Romania |
| February 21, 2014 | Gide Loyrette Nouel, Herbert Smith Freehills, Linklaters | Gide Loyrette Nouel advised Meridiam and CNP Assurances consortium on call for tenders initiated by VINCI group for sale of VINCI PARK | N/A | Russia |

| Date covered | Firms Involved | Deal/Litigation | Deal Value | Country |
|---|---|---|---|---|
| February 25, 2014 | Dechert | Dechert advised PepsiCo, via its subsidiary Wimm-Bill-Dann Foods, on the sale of five dairy farms | N/A | Russia |
| March 7, 2014 | BBH | BBH Law Firm represented PPF on a lease to the Systemica Group in the Comcity office park in southwestern Moscow | N/A | Russia |
| March 12, 2014 | Squire Sanders | Squire Sanders advised shareholder of Lenta on sale of shares as part of Lenta's IPO and GDR listing on the Main Market of the London Stock Exchange and the Moscow Exchange | USD 4.3 billion | Russia |
| March 12, 2014 | Lidings | Lidings supported China Development Bank in granting special purpose loan to Vnesheconom-bank for financing of construction of large Moscow complex | N/A | Russia |
| March 13, 2014 | Lidings | Lidings advised BILLA retail chain in Moscow expansion | N/A/ | Russia |
| March 24, 2014 | Baker & McKenzie | Baker & McKenzie announced completion as both transaction and tax counsel of bank securitiza-tions raising more than RUB 70 billion in investor funding | RUB 70 billion | Russia |
| March 27, 2014 | Morgan Lewis | Morgan Lewis advised Sberbank Europe on signing of debut syndicated term loan facility | EUR 350 million | Russia |
| March 28, 2014 | Egorov Puginsky Afanasiev & Partners, Macfarlanes | Egorov Puginsky Afanasiev & Partners assists Macfarlanes in representation of Rusal claim against London Metal Exchange at the English High Court of Justice | N/A | Russia |
| April 7, 2014 | CHSH | Cerha Hempel Spiegelfeld Hlawati advised the Knightsbridge Group in connection with the foun-dation of a joint venture with Inalca | N/A | Russia |
| April 9, 2014 | Cleary Gottlieb, Homberger, Fresh-fields, Linklaters | Cleary Gottlieb, Freshfields, Linklaters, and Homberger advised Lafarge and Holcim on EUR 40 billion merger | EUR 40 billion | Russia |
| February 13, 2014 | King & Wood Mallesons SJ Berwin | King & Wood Mallesons SJ Berwin advised Euroventures III on sale of IND Group | N/A | Russia, Romania, Poland, Slovakia, Hungary |
| February 21, 2014 | Jankovic Popovic & Mitic | JPM advised MetLife on transfer of life insurance portfolio to Wiener Stadtische osiguranje | N/A | Serbia |
| March 18, 2014 | Zivkovic Samardzic | Zivkovic Samardzic representing Oiltanking in the company's entrance into Serbia via joint ven-ture with Serbian Public Enterprise Transnafta Pancevo | EUR 50 million | Serbia |
| March 24, 2014 | Jankovic Popovic Mitic | Jankovic Popovic Mitic advised SEE Offices on acquisition of new Belgrade location | N/A | Serbia |
| February 14, 2014 | Squire Sanders, Cleary Gottlieb | Squire Sanders and Cleary Gottlieb successfully gain affirmation of summary judgment against Serbian entity in US Court of Appeals on behalf of Republics of Croatia and Slovenia | | Serbia, Croatia, Slovenia |
| February 28, 2014 | Allen & Overy, Cechova & Partners, BMH BRAUTIGAM | Allen & Overy advises the shareholders of Moneta S on the sale of its flexible packaging business to Schur Flexibles | N/A | Slovakia |
| March 10, 2014 | Allen & Overy, Den-tons | Allen & Overy advises HB Reavis on the sale of three buildings of the office project City Business Center III, IV and V in Bratislava to Real Estate FundTB managed by Tatra Asset Management | N/A | Slovakia |
| March 20, 2014 | Squire Sanders | Squire Sanders represented Tesco Stores in several aspects of opening three new large retail stores in several parts of Slovakia | N/A | Slovakia |
| March 13, 2014 | Wolf Theiss | Wolf Theiss advised Pramerica Real Estate Investors on sale by a fund it manages of part of retail portfolio in Slovenia | N/A | Slovenia |
| March 10, 2014 | Edwards Wildman | Edwards Wildman advised the Turkish Privatization Administration on privatization of Salipazari Port | USD 702 million | Turkey |
| March 17, 2014 | Mayer Brown | Mayer Brown advised Celebi Havacilik Holding on acquisition of German air cargo handling and warehousing business from Aviapartner | N/A | Turkey |
| March 25, 2014 | Baker & McKenzie | Baker & McKenzie advised ING Group on dual tranche dual-currency term loan agreement | USD 134.4 million, EUR 263.4 million | Turkey |
| February 13, 2014 | Sayenko Kharenko | Sayenko Kharenko counseled Russian JSC VTB Bank on export loan facility to the National Nu-clear Energy Generating Company of Ukraine | USD 40 million | Ukraine |
| February 14, 2014 | Integrites | Integrites successfully defended Philip Morris Ukraine in a dispute against the Specialized State Tax Inspectorate | N/A | Ukraine |
| February 17, 2014 | Ilyashev & Partners | Ilyashev & Partners successfully defended Vitmark-Ukraine in Ukrainian Higher Administrative Court against charges of illegal decrease of negative profit tax by tax authorities | N/A | Ukraine |





| Date covered | Firms Involved | Deal/Litigation | Deal Value | Country |
|---|---|---|---|---|
| February 19, 2014 | Ilyashev & Partners | Ilyashev & Partners successfully represented NetCracker in the Ukrainian Appellate Courts on labor disputes | UAH 5 million | Ukraine |
| February 27, 2014 | Asters | Asters counseled VTG Aktiengesellschaft on formation of European rail logistics joint venture with Kuhne + Nagel | N/A | Ukraine |
| February 28, 2014 | Integrites | Integrites successfully represented Galika AG in litigation against Ukrainian state authorities on tax matters | N/A | Ukraine |
| March 7, 2014 | Asters | Asters provided legal advice to the Publicis Groupe and Omnicom Group advertising agencies on Ukrainian merger control law issues | USD 35 billion | Ukraine |
| March 14, 2014 | Integrites | Integrites advised Next Group regarding execution and performance of advertising agreements | N/A | Ukraine |
| March 17, 2014 | Dentons | Dentons counseled EBRD on loan to Ukraine's PJSC Raiffeisen Bank Aval | USD 75 million | Ukraine |
| March 21, 2014 | Vasil Kisil & Partners | Vasil Kisil & Partners advised UBG Corporation is sale of shares to Concorde Capital and Oleg Kalashnikov | N/A | Ukraine |
| March 21, 2014 | Sayeknko Kharenko | Sayenko Kharenko counseled Deutsche Bank, Raiffeisen Centrobank, and UBS on capital increase of Raiffeisen Bank International | EUR 2.78 billion | Ukraine |
| March 27, 2014 | Vasil Kisil & Partners | Vasil Kisil & Partners advised Amtel Properties minority stake sale to EBRD | EUR 50 million | Ukraine |
| April 4, 2014 | Vasil Kisil & Partners | Vasil Kisil & Partners advised the Marubeni Corporation on Ukrainian trade finance matters | N/A | Ukraine |

Full information available at: www.ceelegalmatters.com

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

# On the Move: Firm and Partner Moves

## Firm Moves

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

On February 13, 2014, four law firms in CEE joined 11 other firms around the world in launching a new global alliance of firms with specialty practices in employee benefits, executive compensation, tax, employment, and labor law.

Karanovic & Nikolic (with offices in Bosnia, Croatia, Serbia, Macedonia, and Montenegro), PRK Partners (Czech Republic), LAWIN (Latvia), and Wardynski & Partners (Poland) join 11 other firms in the new "BECTELLA" alliance.

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

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

### Brandi Partners Opens Moscow Office

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

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

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

### CLS Becomes First Russian Firm in Helsinki

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

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

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

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

### Bostina si Asociatii Gives Up Industrial Property and Insolvency Arms

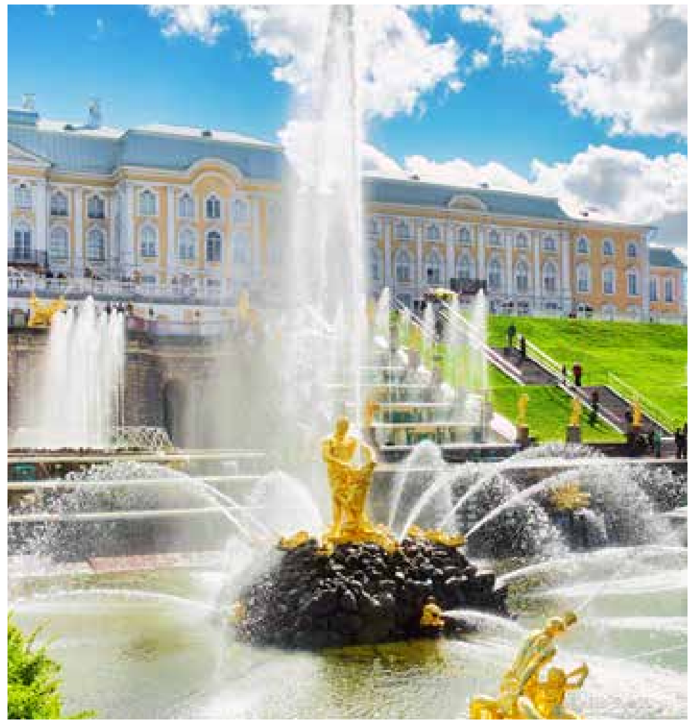
On April 2, Romanian Bostina si Asociatii announced that it will close its Bostina si Asociatii Insolvency and Bostina si Asociatii Industrial Property arms and withdaw from those markets.

The decision to close the two ventures resulted from recent changes in Romanian regulations, which now forbid law firms from using the same brand name on connected consultancy firms, such as Tax, IP, Insolvency, etc. (see page 36 for expanded coverage of changes in Romanian bar regulations). Bostina si Asociatii Industrial Property was established in 2006, while Bostina si Asociatii Insolvency was established in 2009.

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

### Magnusson Opens Office in St. Petersburg

Magnusson announced that it has opened an office in St Petersburg together with the Russian Kachkin & Partners law firm. The office's official opening was on April 4, 2014.



Magnusson has been present in Russia since 2005 with an office in Moscow. Kachkin & Partners was established in St. Petersburg in 2001. Its team consists of 22 lawyers, including 3 partners, and its main practice areas are real estate, construction, corporate, M&A, PPP, IP/IT, dispute resolution and arbitration.

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

### New Baltic FORT Firm Adds Team

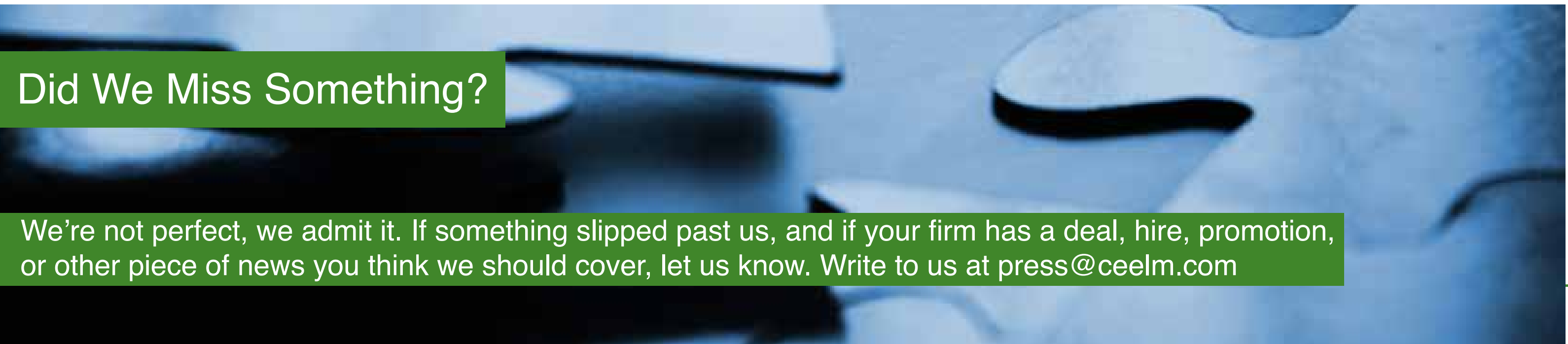
The Riga office of the Krodere & Judinsky law firm has joined the Baltic FORT law firm, formed at the end of 2013 by merger of the Estonian NORDEUS and Latvian ADVERSUS law firms, along with a team from the Lithuanian Pavlov & Mamontovas law firm (see page 17).

The addition of the team from Krodere & Judinska (the entire office except Ineta Krodere–Imsa, who did not join the team in moving) gives FORT a total of 18 lawyers in the Latvian capital. Ieva Judinska-Bandeniece, Brigita Terauda, Ramona Tiltina, Uldis Judinskis, and Legal Assistant Inga Grauzina bring expertise in intellectual property issues (including copyrights and trademarks), banking and finance law, mergers and acquisitions, and general corporate and commercial law.

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

## Summary Of New Partner Appointments

| Date Covered | Name | Practice(s) | Firm | Country |
|---|---|---|---|---|
| February 12, 2014 | Roman Zaitsev | Corporate/M&A, Dispute Resolution, Insolvency/Restructuring | Dentons | Russia |
| February 13, 2014 | Pavel Nemecek | Corporate/M&A, Insolvency/Restructuring, Banking/Finance | Havel, Holasek & Partners | Slovakia |
| March 4, 2014 | Svitlana Chepurna | Corporate/M&A, Dispute Resolution | Asters | Ukraine |
| March 4, 2014 | Yevgen Kravtsov | Corporate/M&A, Insolvency/Restructuring, Banking/Finance, Capital Markets, Labor | Asters | Ukraine |
| March 4, 2014 | Yevgen Porada | Corporate/M&A, Banking/Finance, Capital Markets | Asters | Ukraine |
| March 4, 2014 | Andriy Pozhidayev | Corporate/M&A, Dispute Resolution, Insolvency/Restructuring, White Collar Crime | Asters | Ukraine |
| March 10, 2014 | Sergey Patrakeev | Corporate/M&A | Lidings | Russia |
| March 17, 2014 | Tijana Lalic | Competition, Banking/Finance, Dispute Resolution | Prica & Partners | Serbia |
| March 17, 2014 | Milos Vulic | Real Estate, Energy | Prica & Partners | Serbia |
| March 25, 2014 | Pawel Lipski | IP/TMT | Eversheds | Poland |
| March 26, 2014 | Matvey Kaploukhiy | Corporate/M&A, Insolvency/Restructuring, Private Equity | Berwin Leighton Paisner | Russia |
| April 4, 2014 | Ilieana Glodeanu | Corporate/M&A, Energy, IP/TMT, Life Sciences | Wolf Theiss | Romania |
| April 4, 2014 | Laura Struc | Corporate/M&A, Insolvency/Restructuring, Banking/Finance | Wolf Theiss | Slovenia |
| April 4, 2014 | Katerina Kraeva | Corporate/M&A, Banking/Finance | Wolf Theiss | Bulgaria |
| April 4, 2014 | Radoslav Mikov | Energy | Wolf Theiss | Bulgaria |
| April 4, 2014 | Sebastian Oberzaucher | Infrastructure/PPP | Wolf Theiss | Austria |
| April 8, 2014 | Jasel Chauhan | Corporate/M&A, Insolvency/Restructuring, Transportation/Shipping | Holman Fenwick Willan | Greece |
| April 8, 2014 | Madalina Berechet | Dispute Resolution | Musat & Asociatii | Romania |
| April 8, 2014 | Madalin Enache | Penal Law | Musat & Asociatii | Romania |
| April 8, 2014 | Iulian Iosif | Insolvency/Restructuring | Musat & Asociatii | Romania |
| April 8, 2014 | Razvan Graure | Tax | Musat & Asociatii | Romania |
| April 9, 2014 | Igor Augustinic | Banking/Finance, Real Estate, Competition | bpv Braun Partners | Slovakia |
| April 15, 2014 | Szabolcs Mestyan | Banking/Finance | Lakatos, Koves & Partners | Hungary |



## Did We Miss Something?

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

Across The Wire

## Summary Of Partner Lateral Moves

| Date covered | Name | Practice(s) | Firm | Moving From | Country |
|---|---|---|---|---|---|
| April 10, 2014 | Stefan Kuehteubl | Labor | Schoenherr | Engelbrecht und Partner | Austria |
| March 4, 2014 | Vytautas Mizaras | IP/TMT | LAWIN | Vilnius University | Lithuania |
| April 3, 2014 | Michal Siwek | Real Estate | Magnusson | SM Siwek & Partners | Poland |
| March 10, 2014 | Peggy Suica-Neagu | Dispute Resolution | Nestor Nestor Diculescu Kingston Petersen | White & Case | Romania |
| March 21, 2014 | Mihaela Bondoc | Corporate/M&A, Real Estate | Bondoc & Asociatii | KPMG | Romania |
| April 15, 2014 | Raul Mihu | Competition, Life Sciences | Dentons | Voicu & Filipescu | Romania |
| March 14, 2014 | Dmitriy Glazounov | Banking/Finance, Capital Markets | Egorov Puginsky Afanasiev & Partners | Liniya Prava | Russia |
| April 3, 2014 | Philipp Windemuth | Corporate/M&A, Real Estate | Dentons | Orrick | Russia |
| April 8, 2014 | Dominic Pellew | Dispute Resolution | Dentons | Baker Botts | Russia |
| March 12, 2014 | Dragan Demirovic | Tax | BDK | Deloitte | Serbia |
| April 1, 2014 | Erdal Ekinci | Tax | Baker & McKenzie | Erdikler Tax Consultancy | Turkey |
| March 14, 2014 | Oleksandr Padalka | IP/TMT | Sayenko Kharenko | Asters | Ukraine |
| April 9, 2014 | Victoria Papenkova | Real Estate | Legal Counsel | CMS Cameron McKenna | Ukraine |
| March 16, 2014 | Philip Abbott | Banking/Finance | Field Fisher Waterhouse | Simmons & Simmons | United Kingdom |

## Other Appointments

| Date Covered | Name | Firm | Appointed to | Country |
|---|---|---|---|---|
| March 13, 2014 | Natasha Andreeva | Boyanov & Co. | Bulgarian Council of the Institute of Professional Representatives before the European Patent Office | Bulgaria |
| April 7, 2014 | Ivars Slokenbergs | LAWIN | Board of Directors of the Foreign Investors' Council | Latvia |
| April 8, 2014 | Matiss Davis Kukainis | Spigulis & Kukainis | Chairman of the Board and President of the American Chamber of Commerce | Latvia |
| March 12, 2014 | Jaroslaw Grzwinski | FKA | State Examination Committee for conducting the Polish bar examination in 2014 | Poland |
| March 14, 2014 | Adam Kraszewski | GESSEL | Vice President of the Polish Union of Consulting Sector Employers of the Lewiatan Confederation | Poland |
| February 18, 2014 | Ilya Nikiforov | Egorov, Puginsky, Afanasiev & Partners | Vice-Chair of the ICC Commission on Arbitration and Alternative Dispute Resolution | Russia |
| March 13, 2014 | Sergey Trakhtenberg | Dentons | Head of the Russian Real Estate/Construction Practice | Russia |
| April 8, 2014 | Ivan Smirnov | Egorov Puginsky Afanasiev & Partners | Managing Partner of the firm's St. Petersburg office | Russia |
| February 28, 2014 | Svitlana Musienko | DLA Piper | Board of the International Fiscal Association | Ukraine |

Full information available at: www.ceelegalmatters.com

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

# Legal Matters: The Frame

## Glikman Alvin & Partners Pays Highest Estonian Law Firm Salaries Again

The Glikman Alvin & Partners team which enjoys the highest salaries amongst law firms in Estonia

For the second year in a row, Glikman Alvin & Partners has been identified by Salary TOP – a special edition of the Äripaev financial newspaper – as paying the highest salaries of any law firm in Estonia. The firm paid its 27 lawyers and other employees an average of EUR 2,632 a month in 2012 – the year on which the rankings are based – ranking the firm 84th out of all 2,000 companies surveyed. The average pay in 2012 in Estonia, according to Salary TOP, was EUR 879.

The firm is pleased for the recognition. According to GAP Attorney Siim Magi, "We actually do take pride in it, because we desire to have the best people in our team. There are different elements in the reasons why people join one law firm or another, but let's face it, salary is an important element, and we do believe that we have to pay well to get specialists."

He emphasizes that the firm hasn't set being the best payer as a specific goal, of course – Magi laughs that the award "also creates questions that maybe we're paying too much," but he's confident. "As long as we're happy with our profitability – and we are – then we think it's all right."

Salary TOP factored lawyers and non-lawyers alike into its calculation. Last year Glikman Alvin & Partners was ranked 25th among all Estonian companies, with an average salary of EUR 3,049 a month.

*David Stuckey*

## Moldova Contributor to Global Merger Control Review Report Pleased With Country's Ranking

The Center for European Law & Economics has published its fifth annual Global Merger Control Index Report. The study, meant to evaluate and compare merger review systems in various jurisdictions worldwide, collected data from leading merger control experts in each market. The processed data resulted in a weighed score for each country ranging from 7 (good) to 1 (poor) on 16 criteria: precise, concise, statically efficient, dynamically complete, predictable, timely, technically advanced, flexible, independent, unbiased, reliable, confidential, inclusive, resourced, transparent, and improving.

According to Ana Galus, Associate with Turcan Cazac, the firm that contributed to the research on Moldova, "the country's score in the merger control index this year is of 4.38 out of 7, which is a fairly strong result. During the past years, the Moldovan merger control system underwent a significant reform – new legal provisions that intend to transpose the EU competition law relevant provisions were adopted. However, the Moldovan competition authority (the Competition Council) still has a long road ahead of it in order to establish best practices pursuant to the new legal framework. Overall, Moldova's high merger control index reflects the high expectations invested by competition experts, including corporate/M&A counsels, in this merger review system that is at its beginnings."

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

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

According to the results, the three countries in CEE with the most efficient overall review system were, in order: Hungary (5.47), Macedonia (5.44), and Turkey (5.13). These three scored higher than the EU average of 5.09. The countries that lagged behind were Poland (4.34), Ukraine (3.94), and Russia (3.84).

*Radu Cotarcea*





## A FORT in the Baltics

Sandis Bertaitis and Ieva Judinska-Bandeniece

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

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

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

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

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

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

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

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

With the new team in Latvia, is FORT's initial growth period finished? "You never know!", Bertaitis laughs.

*David Stuckey*

General Counsel in CEE Speak About the Particular Challenges They Face

# Inside Insight



# Interview: Ece Gursoy

## Chief Legal Officer at Lightsource

**Ece Gursoy is the Chief Legal Officer of Lightsource Renewable Energy Limited, a leading renewable energy developer in the UK. Prior to Lightsource, Gursoy practiced with Dentons in London and White & Case in Istanbul, specializing in Project Finance, Infrastructure, Energy and Privatization. Gursoy is admitted to the Law Society of England and Wales and the Istanbul Bar Association. She holds a LL.M. degree in Corporate and Commercial law from the University of London and a Ph.D. in European Competition Law and Economics from King's College London.**

**CEELM: You have a team of 18 lawyers working under you at Lightsource – including 3 Turkish lawyers. And you yourself are Turkish. Why so many Turkish lawyers? Do you have any other non-English lawyers working under you?**

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

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

E.G.: It is a cliché but it is really important for a law firm to understand the needs of their client's business, particularly if the assignment is not a one-off big project, but a series of projects in a given sector – as it usually is in Lightsource's case. In my opinion, if a law firm wants to appear more attractive to its existing or prospective clients it is very important for them to offer centralized external legal support with sufficient resources.

of advice by assessing the full picture of a given project in order to provide the most efficient legal support to the client.

Another point that law firms should pay attention to is the internal management

> "In our business model, our projects are comprised of energy, regulatory, property, planning, construction, mergers and acquisition, and other specific finance structure aspects and we have an average pipeline of 40-65 projects in a given year. In order to achieve such ambitious targets on an ongoing basis, we need centralized external legal support as opposed to shopping around to each and every department of a law firm to complete a project."


Ece Gursoy, CLO, Lightsource Renewable

In our business model, our projects are comprised of energy, regulatory, property, planning, construction, mergers and acquisition, and other specific finance structure aspects and we have an average pipeline of 40-65 projects in a given year. In order to achieve such ambitious targets on an ongoing basis, we need centralized external legal support as opposed to shopping around to each and every department of a law firm to complete a project. Strict specialization in various areas of law in a law firm usually causes disrupted communication between departments and affects the end result of the project itself, particularly in matters involving more than one aspect of law. Such miscommunication between departments also increases the hours that external lawyers charge in a given deal.

Law firms should also avoid putting their clients in the position of having to act as a middleman between separate departments of the same law firm specializing in different areas of law. One may argue that smaller boutique firms would have such capability due their size. However, the size of the law firm should not be an excuse – particularly for those clients in the energy and infrastructure sectors, as they seek fully-functional law firms with sufficient capacity. As such, one point of contact should be able to put together pieces and allocation of proper resources (both in quantity and appointing the right level of expertise). These are as important as providing quality advice. The client should not be involved in or affected by the internal management of the external legal team.

I believe as long as law firms are able to provide a seamless service by creating efficient project teams with sufficient resources and with one client contact to run high-volume and deadline-sensitive projects, they will appear attractive to clients like Lightsource.

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

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

Delegation is key and I have therefore established a fully functional legal team comprised of property, construction, corporate, and finance departments, all capable of working on various aspects of these projects. However, as the team leader I still need to steer the group in the right direction and supervise the projects day-to-day by considering the big picture and the Company's global targets.

Lightsource may be a special case, however, private practitioners considering jumping ship to become in-house lawyers should bear in mind that in-house positions also demand constant long hours and heavy project volume. Being part of the business and involved in first-hand commercial decisions and seeing the results of their legal advice are also other appealing features of an in-house counsel role. However, not all lawyers really want to expose themselves to a first-hand decision making process and be directly liable for their decisions , without the overarching umbrella protection of a law firm or the supervisory protection of a partner.

**CEELM: You come from a Project Finance background, but in your current role you work on everything from Real Estate to Regulatory to Share Purchasing Agreements to Operation and Maintenance Contracts, and much more. Do you find yourself enjoying some of these kinds of work more than others? Why is that?**

E.G.: It is true that I am working in my current role in various aspects of law rather than focusing on PFI and renewables construction work that I was brought up with in private practice. Lightsource offers a lot of challenging structures due to its unique business model.

The job itself is intellectually challenging and all of the projects are different, so there is always room for surprise. Due to the particularities of the funding structures and the changing nature of the regulatory environment, you need to come up with new legal

> *"Lightsource may be a special case, however, private practitioners considering jumping ship to become in-house lawyers should bear in mind that in-house positions also demand constant long hours and heavy project volume."*

structures to meet the needs of the business and keep achieving your targets, which requires involvement in various aspects of law – from property law to corporate law and from construction law to finance law.

I personally find this mixture very appealing and I must say even though I still like working on construction finance and acquisition of sites through various acquisition structures and negotiating EPC contracts, I also enjoy working with my property colleagues on finding out the right route to point of connection for easements and wayleaves. In private practice, I never would have imagined that I would enjoy property work this much; it is like completing a jigsaw puzzle.

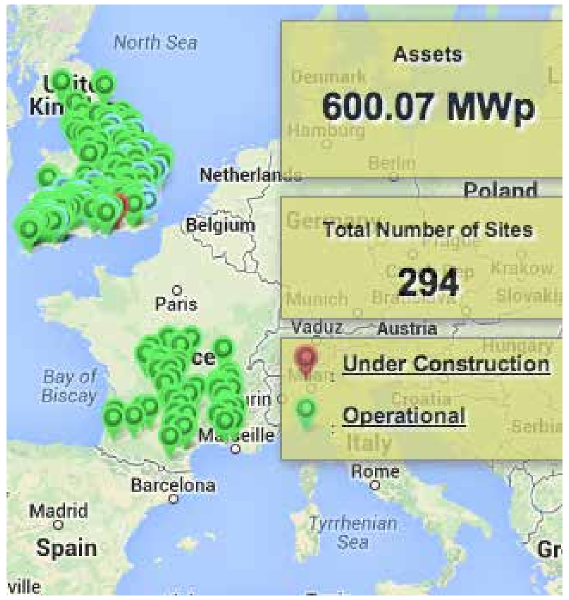
**CEELM: Do you get any personal satisfaction from working in a "green" company, or do you focus more on the day-to-day work and questions of profitability than on the bigger picture?**

E.G.: Working in the renewables sector with the aim of achieving the renewable energy targets and structuring the "green" business in line with the changing energy policies of the government for sure gives a particular professional fulfillment. But I believe that in order to achieve the global targets of the renewable sector one should first focus on the targets of each sector player, and therefore I focus on the day-to-day business and profitability of the company.

If the sector players do not achieve their own goals they cannot contribute to the greater good.

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

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




All Lightsource Renewable Energy Installations
*Source: lightsource-re.co.uk*

While establishing various departments in the legal team I personally give significant importance on team-building activities. I have given and continue to give various presentations and case study workshops on the general principles of contract law, and especially on the EPC contracts (one the core areas of our business), to both our in-house legal team and our commercial teams to make them more aware of the needs and expectations of our business.

In addition, every year we review the lessons learned the previous year and where necessary revise our template documents. I have also given and continue to give periodic presentations to non-lawyer members of the Lightsource team, especially to the development and delivery team of the Company who attend with the lawyers the negotiations of various contracts from commercial aspects, to make them more risk aware on basic principles of law.

**CEELM: Finally, do you see yourself moving back to Turkey sometime, or are you in London for the long-term?**

E.G.: For the moment there is still a lot to do at Lightsource, but no one knows what the future holds for us.

*David Stuckey*

# The Reality Today: Sayenko Kharenko's Crimea Desk in Unsettled Times

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

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

**Mr. Sayenko's comments were made to CEE Legal Matters on April 9, 2014.**

**CEELM: I know your firm has rather unusual experience and expertise in Crimea. Can you describe it?**

V.S.: Indeed, historically Crimea has been a priority region for us due to the background of our team. About three years ago we merged with the largest law firm in Crimea. The core team from that firm, including the founding partner, Mr. Sergey Pogrebnoy, moved to Kiev and joined our office here. Some lawyers who wanted to stay in Crimea continued to operate independently and dealing with local matters in that region. Larger international projects were handled by our firm, but whenever a local presence was required, we had a reliable team on the ground that was effectively integrated into whatever we did in Crimea.

**CEELM: And how does Sayenko Kharenko operate in Crimea today?**

V.S.: Today we continue to operate under the same model, but responding to client demand we increased our capacity. We have a strong Crimean Desk within our firm – a group of five lawyers who moved from Crimea and became the core of our litigation practice, plus lawyers from our trade, corporate and banking teams. The lawyers who moved from Crimea have always been doing various things, even if it's not litigation ... if there was anything related to Crimea they would jump on it, because it's their home region, they have the feel for where the problems may be, for example, when doing a due diligence of a real estate piece. And now with current political crises on a personal level they are very involved. Their families and friends are there, they follow all the developments closely, they know the background of all the key officials in Crimea and have a much better understanding of what's going on there. We could not miss this opportunity to offer clients unique insights and local knowledge that make our legal advice and our solutions a lot more viable. In addition, we have started working a lot more with the lawyers in Crimea who used to be part of the same firm with our Crimean team, but are now independent for a number of years. And we still want them to be fully independent, because of the law currently under consideration in the Ukrainian parliament, which may restrict our ability, as a Ukrainian law firm from Kiev, to provide services to clients in Crimea. Hopefully, these restrictions won't be implemented. But even in the worst case scenario, we won't suffer because legally our colleagues in Crimea are completely independent and unaffiliated, yet fully reliable on a personal level. We work essentially as an integrated team, irrespective of the formal boundaries.

**CEELM: What about business and your clients?**

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

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

V.S.: Things are a mess at the moment, if I may say bluntly, without trying to be politically correct. We are facing a reality where, for a legal standpoint, Ukraine continues to treat Crimea as part of its territory, while at the same time Russia is doing the same thing – they view Crimea as part of their territory – and they physically control it. Russia has a clear advantage there now, despite the lack of international recognition of the accession. Businesses have to adapt to that somehow. These are Ukrainian businesses – all of the businesses that are in Crimea, they used to be Ukrainian companies, incorporated and operating within the framework of Ukrainian law. Many of them are branches of companies that are incorporated elsewhere in Ukraine. So for them to restructure their operations is a very difficult task. And at the moment it is still not entirely clear what the best solution will be in each particular case. So for a trading company, for instance, it is easier to transfer the assets to some Russian affiliate and operate as a Russian company in Crimea, than to continue the current operations. For someone else this may be impossible.

Those are the type of issues we are facing, and for which we are trying to come up with solutions, but for many problems the solutions are not there yet. Since Ukraine sees Crimea as part of its territory, there is no customs border, so you can not clear goods through customs. But then the Russians view it as Russian territory, so if you do not clear goods through customs you are not supposed to enter the country. Yet, today trucks can still go through the border and goods reach Crimea without any customs. That's the reality today, but this may change tomorrow, as the situation evolves rapidly. As you can see, the reality is very different from the legal position, and we also have to take that into account, be practical on the one hand, but anticipate the legal risk on the other hand.

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

V.S.: The most common issue is that many people want to sell their assets in Crimea, and if you're talking about real estate, it's impossible to do that. Because the register of the property is in Ukraine. However, Ukrainian notaries in Crimea are not able to work, they cannot access the register, for example. You can not really transfer property in Crimea at the moment without a register. Still there are some solutions. You can go to the Kherson region in Southern Ukraine and try to do this transaction ... but the technical documents are in Crimea, and you cannot take them out to a Ukrainian notary in a different region. So what do you do, is a big question. Now we have developed some proposals and we are waiting for some solutions, and we think the local authorities in Crimea will allow access to the technical documentation, and this will allow transactions to take place. But it hasn't happened yet. So when developing legal solutions we have to be practical and we have to take into account laws of two jurisdictions with local peculiarities of Crimea.

**CEELM: What was the name of the firm you merged with in Crimea?**

V.S.: "Business Law Audit". We merged only with the legal branch of that firm.

**CEELM: Would you say of the Ukrainian firms you have the largest Crimean practice?**

V.S.: Well, I would say that we are the only large firm that has any systematic large-scale operations in Crimea. The big firms have never seen Crimea as an interesting market. That was exactly the reason we didn't keep an office there. We kept the people – we incorporated them into our team in Kiev – but we said we don't need the office in Crimea because commercially it is not attractive, it's of no use to us. Well, it was of no use to us at the time, but who could have predicted what would happen! Now that Russia has established its jurisdiction over Crimea, we need to deal with client demands, so we are reestablishing the links to those people.

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

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

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

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

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

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

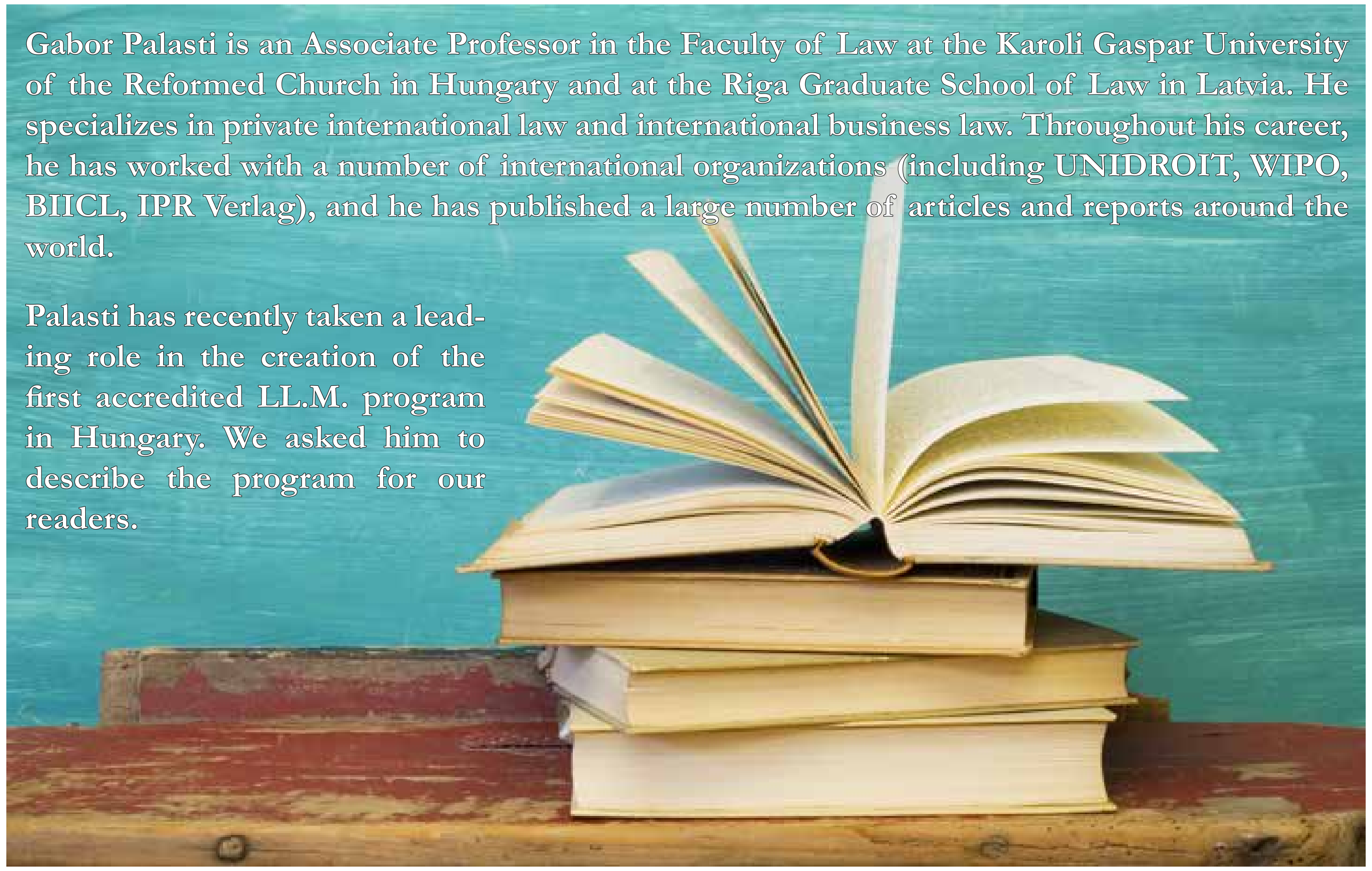
**CEELM: My last question for you is a personal one. Do you have strong feelings about what's going on in Crimea?**

V.S.: Well, I think most Ukrainians do. Speaking in layman's language, it's not a very pleasant situation when a country that has always told us that we are brothers almost, suddenly stabs you in the back and occupies part of your territory. It's like having your good old buddy living in a very big house next door suddenly moving into one of the rooms in your house at the time when you were ill and could not get out of bed. I guess most people would take it personally. But as a lawyer I am also concerned with the issues of international security and rule of law. It looks like the good old Latin saying Pacta sunt servanda ("agreements must be kept") is no longer relevant and international treaties can no longer be relied upon. It is very worrying to live in the age when on the international arena the one with the strongest army can do whatever he wants.

*Note: The "Kiev" spelling of the Ukrainian capital is used in this article, and across all CEE Legal Matters publications, instead of the "Kyiv" spelling. Mr. Sayenko was kind enough to accept that our editorial policy for the "Kiev" spelling simply reflects a commitment to consistency in such matters, and does not reflect any personal or political preference.*

David Stuckey

# Mastering Law in Magyarorszag: The LL.M. in European and International Business Law Program in Hungary



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

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

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

The most comprehensive Internet site on this matter (www.llm-guide.com) currently lists 261 such programs in continental Europe, 112 in the UK and Ireland, 159 in the USA, 106 in Asia, and more around the world. While in common law countries – and to some extent in those European countries following the Bologna system – LL.M. programs continue to be a means for further specialization in national law, most programs in Europe focus on international law in a variety of fields and invite applicants from all over the world. Since these programs usually involve the payment of tuition, they significantly contribute to the income of universities even amidst recession, when state funding is decreasing. And when in 2009-2010 the LL.M. program in European and International Business Law was introduced in Hungary, a comparative study showed that tuition for one-year LL.M. programs in Europe without state subsidies typically varied between EUR 6,000 - 12,000, but more specialized programs (e.g. in Intellectual Property Law, Real Estate Law, Corporate and Finance Law, etc.) could easily cost between EUR 16,000 - 30,000. The most expensive LL.M. program that year was EUR 45,000.

Since legal higher education in Hungary remained an undivided five-year undergraduate master of laws program, the introduction of accredited LL.M. programs in Hungary was not inevitable. Before 2010, LL.M. programs in Hungary were either accredited as Master-level programs abroad but not in Hungary (Central European University, for instance, offered a number of LL.M. programs in Budapest that were accredited as Master-level programs in New York, but only as a specialized legal certificate programs in Hungary), or were offered in cooperation with other universities in the EU (Szeged University offered an LL.M. in Comparative and International Business Law, for instance, in cooperation with the University Jean Moulin Lyon III from France, with French accreditation), or were not accredited at all (the LL.M. Vergleichende Staats-und-Rechtswissenschaften program of Andrassy Gyula Deutschsprachige Universitat, Budapest, was accredited only as a specialized legal training certificate program).





In 2009 I approached Dean Prof. Miklos Kiraly of the ELTE University Faculty of Law in Budapest to propose that the concept of LL.M. programs be introduced into the traditional system of legal higher education and a program be created in European and International Business Law. Hungarian law faculties simply can not miss out the opportunities of an expanding market of post-graduate legal higher education worldwide. Professor Kiraly welcomed the idea, and after about two years of preparation, in October 2011 the Hungarian Accreditation Committee passed a resolution incorporating an LL.M. in European and International Business Law program with nationally unified features (including the subjects to be taught, the number of semesters, credit numbers, teaching hours, entry requirements, level of degree, etc.) into the list of Master-level programs available for Hungarian universities to offer. Hungarian law faculties may now apply to register this program, if they can demonstrate that their institution satisfied a number of strict requirements relating to teaching staff, infrastructure, language competence, etc. To date, law faculties of four institutions have successfully completed the registration process, including ELTE, the University of Pecs, the University of Debrecen, and the Karoli Gaspar University of the Reformed Church in Hungary.

The introduction of the LL.M. in European and International Business Law program in the list of Master-level programs was not an easy task, as among other challenges, it required a number of changes in the law itself, starting with the Act on Higher Education. As degrees in law in Hungary are offered only on a Master level, the Act is incompatible with the Bologna model in which Master programs are based upon a degree on the Bachelor level. In the Bologna model, Master programs are recognized as entry requirements for PhD-level training, not for another master-level program. Thus, it was necessary for legislators to be persuaded to accept the concept of master-based programs in law.

Dr. Gábor Palásti
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Today the LL.M. in European and International Business Law program in Hungary is a two-semester English language program for applicants already holding a degree in law, requiring 60 credits at the minimum, focusing on internationally-unified European and business law. Between 3-6 credits are allocated to courses in the preliminary module, covering the bases of European economic integration (both from institutional and substantive perspectives), the bases of European legal harmonization, and an introduction into international business law.

Another 25-30 credits are allocated to compulsory courses on the four freedoms of EU law, European competition law, international sale of goods, the international basis of state intervention in cross-border trade (from WTO-administered treaties to ICSID arbitration), European and international intellectual property law, international commercial arbitration, and the harmonization of contract law.

Another 16-20 credits are to be collected from optional courses on a variety of matters, such as European company law, European consumer law, social rights in the EU, mergers and acquisition in the EU, the case-law of the ECJ, specific forms of the settlement of disputes in international business; taxation in international trade; drafting legal documents used in international commerce in English, international commerce and telecommunications law, and many others. The remaining credits can be collected from the LL.M. thesis and optional courses and extra-curricular activities such as moot-courts.

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

In the three years since it has been introduced, the LL.M. program has proved to be successful and valuable, and it has in that short time become a critical component of Hungarian legal education.

Gabor Palasti

# SAMBA IN CEE: Brandi Partners Expands Across Europe

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

Charles-Henri Roy, Partner, Brandi Partners

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

## History and Background

In 2010 French lawyer Guillaume Dolidon found his plans to fully serve his Latin American clients stymied by a controversial Brazilian Bar Association rule forbidding foreign firms from tying up with Brazilian counterparts. Reversing his field, Dolidon suggested to friend and Brazilian lawyer Arthur Brandi that the French bar imposed no such prohibition on foreign lawyers, and proposed that instead of Dolidon bringing his brand to Brazil, Brandi should bring his to Paris. Brandi Partners' office in the City of Lights opened in September, 2012.

Seeing no reason to stop, within months Brandi Partners had opened offices in Dubai, Milan, and Istanbul as well.

Despite its size and reach, Partners at Brandi Partners all reject the suggestion that they are a "traditional law firm," and they refer to themselves as an "association", an "alliance", or a "network" – and the firm's marketing material describes Brandi Partners as an "international organization." They happily point out that there are no global partners or shared profits across offices – and that same marketing material claims that "there is no governance, no hierarchy and we are free of nationality."

Thus, as Dolidon and his counterparts around the world see it, they can share best practices and information and a productive client referral network, while allowing their members to stay wholly independent and avoid the administrative costs and challenges inherent in full integration.

The model has attracted firms and lawyers in a number of markets eager to take advantage of the international referral network and international brand while retaining full independence. And the firm is looking, more and more, towards CEE.





Guillaume Dolidon, Founding Partner, Brandi Partners

## Expanding in CEE

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

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

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

The initial results, in Russia, have been encouraging. Roy concedes that "it's still very early …. but from the feedback I have from the clients it's something interesting. I see that I have already

Belgin Ozdilmen and Stephane Gurhan

clients from the network that are interested in Russia …. It's a market that still has plenty of interest from new brands, from producers, from industry, there are many people still interested in Russia."

Roy says that in growing the Moscow office – he expects to expand the Moscow office's litigation capabilities soon, and hopes to grow to 20 overall – he focuses primarily on finding lawyers "with a clear focus on values shared by our lawyers individually in order to team up for our clients."

The firm's successful and rapid growth encourages the partners to think about other markets. Dolidon says he expects to see a number of offices join the firm in coming years, and expresses particular interest in adding an office in Poland and northern Africa. Roy also mentions Poland, the Czech Republic, and Kazakhstan as potential steps in the plan "to create a Brandi network in CEE and CIS."

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

The firm's – sorry, the "international organization's" – rapid growth in recent years, then, can be seen as a reflection of Dolidon's conviction that clients are far less concerned with internal organization and particular structures of the law firms advising them than they are with obtaining effective, timely, and appropriately-priced service. Whether Brandi Partners will be able to provide that kind of service over the years and across all markets may not have been definitively answered yet. But in swimming against the tide of firms moving from Europe into South America, they've already shown initiative and determination. Woody Allen once said that "80 percent of success in life is showing up." Brandi Partners, it is clear, has shown up. The rest is up to them.

*David Stuckey*

# Avoiding the Void: Czech Law Firms Survive the Crisis

### In This Article


Helen Rodwell, Managing Partner, CMS Cameron McKenna


Radan Kubr, Partner, PRK Partners


Jiri Hornik, Partner, Kocian Solc Balastik


Alexandr Cesar, Partner, Baker & McKenzie


Radek Janecek, Managing Partner, Squire Sanders

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

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

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

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

Alexandr Cesar, the Managing Partner of Baker & McKenzie, says that "everyone in the local market has a different experience regarding the crisis." But on the whole, partners at most leading firms in the Czech Republic are sanguine. Jiri Hornik, Partner at Czech KSB, says that the crisis was simply not as pronounced in the Czech Republic – no Czech banks went into bankruptcy, for instance – as it was in some neighboring countries. He says that in fact 2010 was KSB's "most successful year ever", and Hornik says his firm didn't start feeling the crisis until 2011. And although it did let a few lawyers go as a result of the crisis, "the only real change was that we stopped growing so aggressively."

But Hornik says that business is simply not as easy to get as it was pre-crisis, and keeping his firm's lawyers busy and profitable requires much more aggressive marketing efforts than ever before. In addition to various marketing initiatives, fee caps or blended fees are much more common than before, he says, and KSB, for one, places a greater emphasis when hiring or promoting lawyers on those who can market and generate business than it did before.

Alexandr Cesar at Baker & McKenzie also claims that the crisis had a delayed impact. Then, "in 2010 it really hit, and transactions stopped." Eventually, last year, he was forced to let 2-3 mid-level and senior lawyers go – and chose not to replace several others who left to go in-house or start their own offices. (Though he notes that the firm did add 5-6 junior lawyers at the same time).

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

Nonetheless, he notes with pride that the most recent fiscal year for the firm, which ended in July of 2013, was their "most successful ever" – and was in fact 40% better than 2007. But the cycles, he says, seem to be shortening – this fiscal year has been not nearly as profitable as last – and he's now seeing noticeable changes in profitability and utilization every 2-3 months.

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

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

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

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

Radan Kubr says his firm, PRK Partners, didn't lay off any lawyers, though it initially reduced its administrative staff and secretarial team somewhat. The firm also chose not to replace some of the lawyers who left during the crisis who might have been replaced before, "so in terms of size we might be a little bit smaller than we were before, but it's not going to be a big difference – we're still the 3rd largest law firm in the Czech Republic, with over 75 lawyers."

PRK Partners also reviewed other potential sources of savings: "Everything from trying to get better terms for our lease, for our telecom services, looking at our costs to see if they're reasonable and if there was any possibility to reduce them." Kubr emphasizes that this review was done as a prophylactic measure, not as a result of actual pain. "We never had to ask for a bank loan, for instance."

And like everyone else, PRK Partners has also recognized the increased competition for business and the increased importance of marketing. Kubr says, "the growth has slowed down, and the difference is that you have to fight more to get the work, and you always have to be on your top if you really want to keep your reputation and manage to attract new work. It's definitely not getting easier to get the work and retain the top clients. It's getting increasingly difficult, but it's the world we live in." As a result, he says, the firm has "definitely expanded our marketing efforts."

The increased demand for lower fees has created real incentive for those firms willing to race to the bottom, Kubr believes, and "many firms in the Czech Republic practice really very

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


Radan Kubr, Partner, PRK Partners

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

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

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

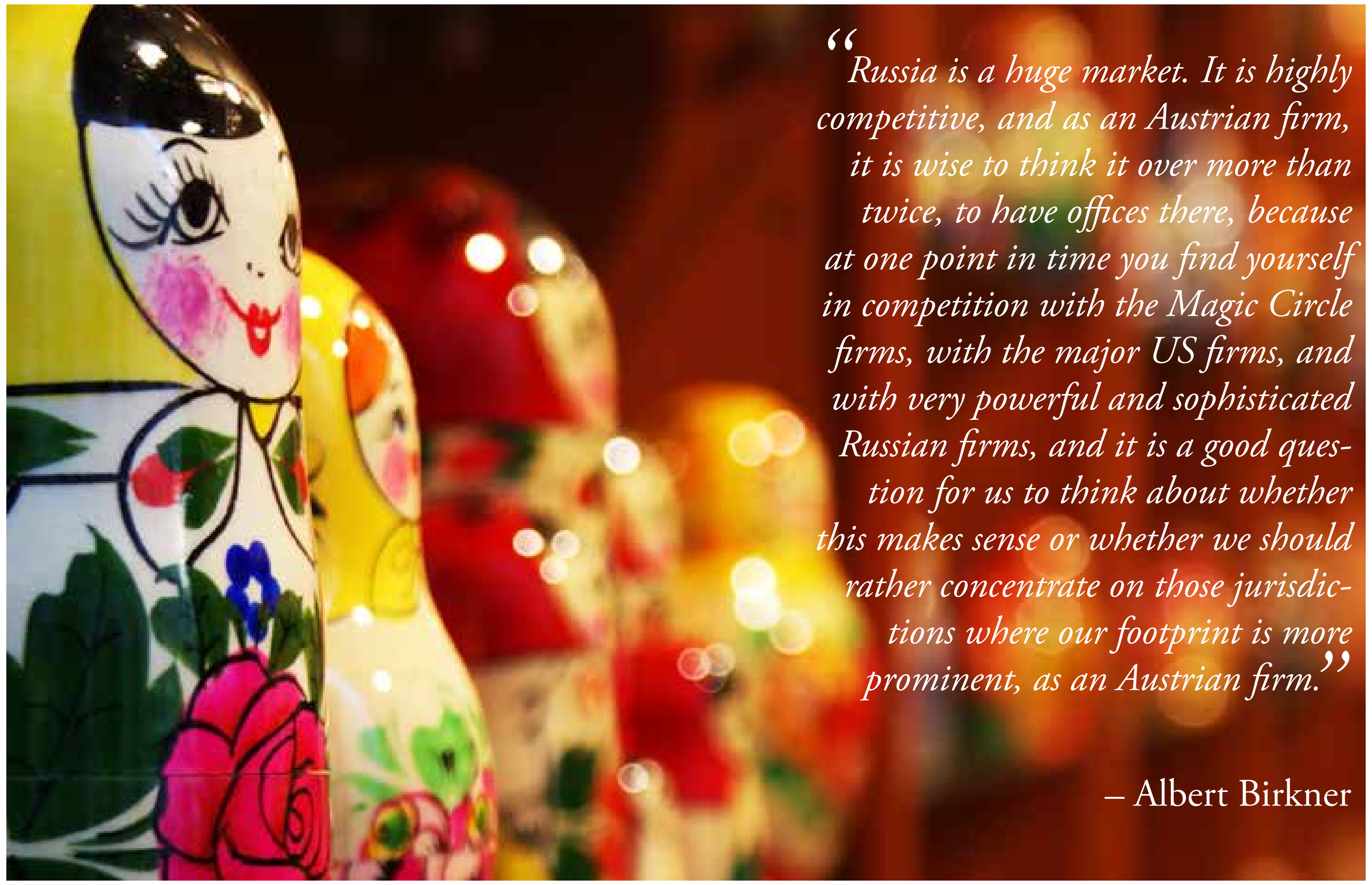
Still, the firm saw about a 5% growth in revenue in 2013, Janacek reports, and he expects about the same this year. But he doesn't expect a much bigger jump, as continued economic stagnation and the increased competition in the market – particularly in the form of new offices split off from the more established players – makes that increasingly difficult. Still, he says with a laugh, he's "realistically optimistic."

Janacek's not the only one. Kubr says that a "small upturn in the Czech Republic ... was already felt last year with a surge in acquisition work, so we're reasonably optimistic that 2013-2014 will be a good year." Rodwell at CMS Cameron McKenna also points to "a big increase in M&A since last summer", and says that as a result she is "much more optimistic" than before.

Still, the champagne corks aren't flying just yet. Cesar concludes with a note of caution, pointing out that "half the articles in the paper are still about the crisis. People are still not hiring. So in the heads of all of us the crisis is not over yet."

David Stuckey

## Why Not Russia? Austrian Firms Explain Their Avoidance of CEE's Largest Market





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Albert Birkner, Managing Partner, CHSH


Raimund Cancola, Managing Partner, Taylor Wessing ENWC

The leading Austrian law firms have, in the past decade, taken advantage of their country's significant history in Central and Eastern Europe to develop unparalleled reach throughout the region. The Schoenherr and Wolf Theiss law firms have particularly large footprints, with offices in 14 and 13 different countries, respectively. Others aren't far behind. CMS Reich-Rohrwig Hainz is in 9 countries (not counting the many offices belonging to other firms in the CMS network). Cerha Hempel Spiegelfeld Hlawati (CHSH) is in 7 countries, and Taylor Wessing ENWC (the CEE/SEE "competence center" for Taylor Wessing international) is in 6.

Combined, these firms cover almost every CEE/SEE market, including Belarus (CHSH) and Turkey (Schoenherr). Add in the Austrian Lansky, Ganzger + Partner's four offices, and the list includes CIS members Kazakhstan and Azerbaijan.

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

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

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

*"You are aware that Eastern Europe is not Eastern Europe. You have to differentiate among the various markets and various jurisdictions. For example you can not compare Hungary to Romania, only because it's all Eastern block – it doesn't mean they have anything in common."*
- Albert Birkner

"Different" or not, most of the Austrian firms seem comfortable with remaining CEE/SEE-focused. Indeed, Alexander Popp, Partner at Schoenherr – the firm with the largest number of offices outside Vienna of any Austrian firm (including one in Brussels) – is up-front about his firm's focus. "The geographical footprint that makes sense for us as a strategy is Central and Eastern Europe," Popp says, and "we believe that we have figured out what is Central and Eastern Europe. It's the area which we are currently covering."

Circular reasoning aside, Popp dismisses even the possibility of his firm entering Russia. "It won't happen. Because it does not fit into our strategy, and even if we would decide to go there, it would require such a large amount of management capacity, money, getting people on board … nobody is waiting there for us. Excellent firms have been there since the 90s, they have excellent people there."

Of course, Popp concedes that "you have to have a solution for covering

| Country | CHSH | CMS Reich-Rohrwig Hainz | Schoenherr | Taylor Wessing ENWC | Wolf Theiss |
|---|---|---|---|---|---|
| Albania | | | | | ✓ |
| Belarus | ✓ | | | | |
| Bosnia & Herzegovina | | ✓ | | | ✓ |
| Bulgaria | ✓ | ✓ | ✓ | | ✓ |
| Croatia | | ✓ | ✓ | | ✓ |
| Czech Republic | ✓ | | ✓ | ✓ | ✓ |
| Hungary | ✓ | | ✓ | ✓ | ✓ |
| Moldova | | | ✓ | | |
| Montenegro | | ✓ | | | |
| Poland | | | | ✓ | ✓ |
| Romania | ✓ | | ✓ | | |
| Serbia | | ✓ | ✓ | | ✓ |
| Slovakia | ✓ | ✓ | ✓ | ✓ | ✓ |
| Slovenia | | ✓ | ✓ | | ✓ |
| Turkey | | | ✓ | | |
| Ukraine | | ✓ | ✓ | ✓ | ✓ |

*CEE Offices of Austrian Law Firms*




Legal Matters

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

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

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

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

Raimund Cancola, Managing Partner, Taylor Wessing ENWC

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

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

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

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

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

*David Stuckey*

# Women In Law:
## A Survey on Gender Equality in CEE Law Firms

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

# The Glass CEEling

## Introduction to Report

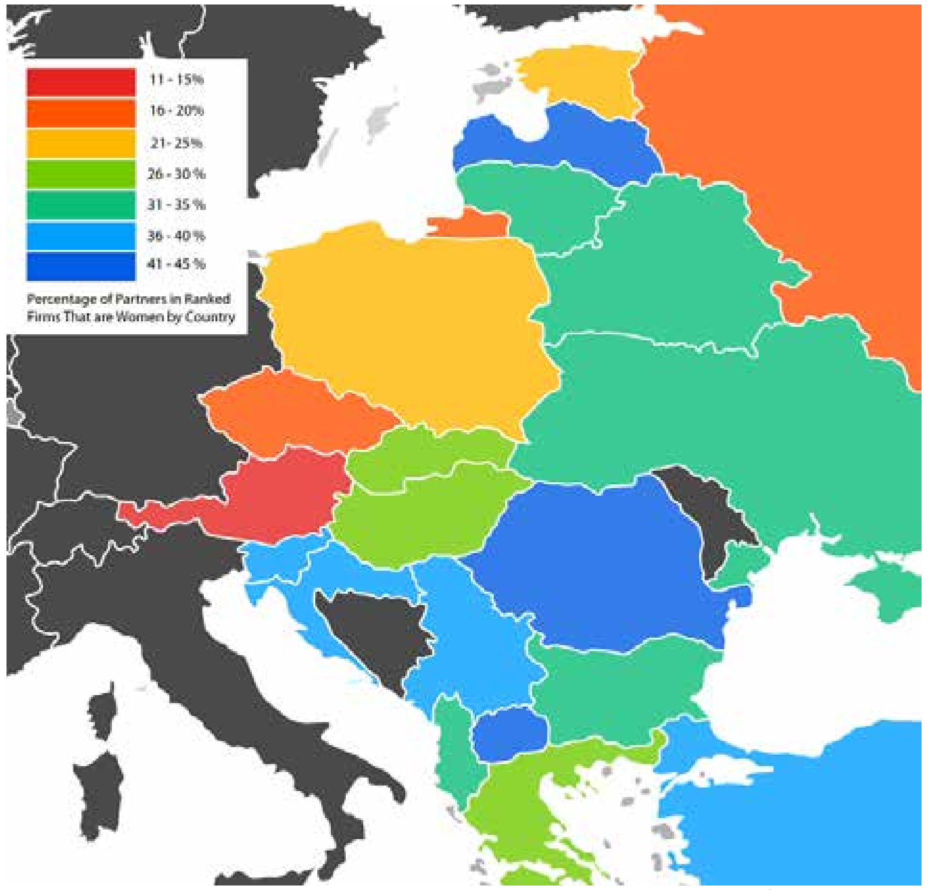
What is "gender equality" in a workplace? Is it equality in terms of gender proportionality? Or perhaps a simple refusal to make decisions when hiring or promoting based on pre-formed expectations about gender? If gender equality is assumed to be a desirable goal, is it best achieved through affirmative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

The dialogue on gender roles is a heated one. With thousands of studies – often contradictory – conducted on the subject, opinions often fly ahead of the facts. Does gender equality exist, or can it – or should it? Are societies moving towards it in productive and observable ways? How often does a call for increased gender equality in the work place reflect an actual commitment to the goal of increasing opportunities for an under-represented group, rather than an insincere assertion of views thought to be politically correct?

Regardless, the facts are key. With this issue CEE Legal Matters introduces a two-part report on gender equality at law firms in and across Central and Eastern Europe. This month's focus will be on the numbers. In the next issue, mid-June, the focus will turn to the explanations, justifications, reasons, and underlying causes. The debate will presumably never end – nor, perhaps, should it – but a greater understanding of the facts and insightful analysis should at the very least provide the basis for a more enlightened and informed conversation.

## The Methodology

| Basic Statistics | |
|---|---|
| Number of offices looked at | 488 |
| Firms/offices that do not list associates | 60 |
| Firms/offices with at least 5 Partners | 239 |
| Firms/offices with at least 10 Partners | 89 |
| Number of offices of US or UK firms in CEE analyzed | 115 |




*Female Partners in CEE*

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

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

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

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

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

## The Data

Discriminatory hiring practices against female associates appear not to be present in Belarus, at least, as women in that country account for 77% of all associates. Macedonia is another outlier, with women taking 70% of all associate positions in law firms in the country. Women in Hungary, by contrast, make up the lowest percentage of associates in law firms in the region, accounting for only 44% of the roles. Austria and the Czech Republic (both 45% women), and Poland (46%) show very similar results to Hungary's, while female associates in other CEE markets make up between 48% and 66% of the total in those countries.

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

Of course, while the ratio of men to women partners in a given law firm may be similar or even identical to the ratio in the country as a whole, in many law firms the proportions are very different. The top five firms in terms of the percentage of women in partnership are: Red Attorneys at Law (Latvia) – 100% (5 of 5), Vlasova, Mikhel & Partners (Belarus) – 86% (out of 7), NNDKP (Romania) – 84% (out of 19), Akol Avukatlik Burosu (Turkey) – 80% (out of 5), and Vernon David (Romania) – 80% (out of 5). Of the 89 offices with at least 10 partners in CEE, only three have more female partners than male – and all are in Romania: NNDKP (84%), the Bucharest office of Schoenherr (64%), and Musat & Asociatti (56%). The fourth position is shared by four firms, all with 50% female partners: Herguner Bilgen Ozek and Mehmet Gun & Partners in Turkey, Cerha Hempel Spiegelfeld Hlawati in Hungary, and Tark Grunte Sutkiene in Ukraine. In the other 82 of the 89 offices, men make up a majority of the partnership.

| Country averages | Total Number of Partners | Total Number of Associates | Total Number of Female Partners | Total Number of Female Associates | % Of Female Partners | % of Female Associates | % Point Difference Between Associate and Partner Level |
|---|---|---|---|---|---|---|---|
| Albania | 26 | 62 | 9 | 37 | 34.62% | 59.68% | 25.06 |
| Austria | 389 | 754 | 57 | 340 | 14.65% | 45.09% | 30.44 |
| Belarus | 35 | 75 | 11 | 58 | 31.43% | 77.33% | 45.90 |
| Bulgaria | 114 | 288 | 38 | 164 | 33.33% | 56.94% | 23.61 |
| Croatia | 37 | 77 | 14 | 45 | 37.84% | 58.44% | 20.60 |
| Czech Republic | 252 | 621 | 49 | 282 | 19.44% | 45.41% | 25.97 |
| Estonia | 116 | 301 | 27 | 169 | 23.28% | 56.15% | 32.87 |
| Greece | 182 | 448 | 52 | 289 | 28.57% | 64.51% | 35.94 |
| Hungary | 155 | 302 | 43 | 134 | 27.74% | 44.37% | 16.63 |
| Latvia | 71 | 197 | 30 | 109 | 42.25% | 55.33% | 13.08 |
| Lithuania | 122 | 364 | 41 | 187 | 33.61% | 51.37% | 17.77 |
| Macedonia | 23 | 94 | 10 | 66 | 43.48% | 70.21% | 26.73 |
| Poland | 387 | 1166 | 81 | 539 | 20.93% | 46.23% | 25.30 |
| Romania | 181 | 654 | 81 | 432 | 44.75% | 66.06% | 21.30 |
| Russia | 415 | 735 | 81 | 378 | 19.52% | 51.43% | 31.91 |
| Serbia | 94 | 217 | 34 | 106 | 36.17% | 48.85% | 12.68 |
| Slovakia | 80 | 204 | 22 | 107 | 27.50% | 52.45% | 24.95 |
| Slovenia | 59 | 119 | 21 | 81 | 35.59% | 68.07% | 32.47 |
| Turkey | 132 | 261 | 47 | 178 | 35.61% | 68.20% | 32.59 |
| Ukraine | 136 | 196 | 43 | 107 | 31.62% | 54.59% | 22.97 |
| **Total/**Average | **3,006** | **7,135** | **791** | **3,808** | **26.31%** | **53.37%** | **27.06** |

*Average Statistics of Female Associates and Partners by Country*

| Law Firm | Country | Total Number of Partners | Total Number of Female Partners | % Of Female Partners |
|---|---|---|---|---|
| NNDKP | Romania | 19 | 16 | 84.21% |
| Schoenherr | Romania | 11 | 7 | 63.64% |
| Musat & Asociatii | Romania | 16 | 9 | 56.25% |
| Herguner Bilgen Ozeke | Turkey | 12 | 6 | 50.00% |
| CHSH | Hungary | 10 | 5 | 50.00% |
| Mehmet Gun & Partners | Turkey | 10 | 5 | 50.00% |
| Konnov & Sozanovsky | Ukraine | 10 | 5 | 50.00% |
| Tark Grunte Sutkiene | Lithuania | 13 | 6 | 46.15% |
| Wardynski & Partners | Poland | 22 | 10 | 45.45% |
| Szecskay | Hungary | 16 | 7 | 43.75% |
| White & Case | Russia | 17 | 7 | 41.18% |
| Djingov, Gouginski, Kyutchukov & Velichkov | Bulgaria | 15 | 6 | 40.00% |
| Karanovic & Nikolic | Serbia | 15 | 6 | 40.00% |
| Calavros & Partners | Greece | 10 | 4 | 40.00% |
| Stoica & Asociatii | Romania | 10 | 4 | 40.00% |
| Glikman Alvin & Partners | Lithuania | 10 | 4 | 40.00% |
| Pokorny, Wagner & Partneri | Czech Republic | 26 | 10 | 38.46% |
| LAWIN | Lithuania | 24 | 9 | 37.50% |
| KG Law Firm | Greece | 22 | 8 | 36.36% |
| VARUL | Lithuania | 11 | 4 | 36.36% |

*Law Firms/Offices With At Least 10 Partners With the Highest Female Partner Percentage*

| Country averages | Total Number of Partners | Total Number of Associates | Total Number of Female Partners | Total Number of Female Associates | % Of Female Partners | % of Female Associates | % Point Difference Between Associate and Partner Level |
|---|---|---|---|---|---|---|---|
| US/UK Firm | 791 | 1,906 | 173 | 948 | 21.87% | 49.74% | 27.87 |
| CEE Firm | 2,238 | 5,265 | 625 | 2,881 | 27.93% | 54.72% | 26.79 |

*CEE Average Statistics of Female Associates and Partners by US/UK Firms or CEE Firms*

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

### Conclusion and Invitation for Comment

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

Radu Cotarcea

| Law Firm | Country | Total Number of Partners | Total Number of Female Partners | % Of Female Partners |
|---|---|---|---|---|
| Binder Grosswang | Austria | 19 | 0 | 0.00% |
| PRK Partners | Czech Republic | 13 | 0 | 0.00% |
| Freshfields | Austria | 13 | 0 | 0.00% |
| Greenberg Traurig | Poland | 12 | 0 | 0.00% |
| BBH | Czech Republic | 10 | 0 | 0.00% |
| Dorda Brugger Jordis | Austria | 21 | 1 | 4.76% |
| Havel, Holasek & Partners | Czech Republic | 21 | 1 | 4.76% |
| Studnicki Pleszka Cwiakalski Gorski | Poland | 15 | 1 | 6.67% |
| Baker Mckenzie | Russia | 28 | 2 | 7.14% |
| Linklaters | Russia | 14 | 1 | 7.14% |
| Soltysinski Kawecki & Szlezak | Poland | 27 | 2 | 7.41% |
| Fiebinger, Polak, Leon & Partners | Austria | 12 | 1 | 8.33% |
| Schoenherr | Austria | 35 | 3 | 8.57% |
| Brauneis Klauser Prandl | Austria | 11 | 1 | 9.09% |
| Reznik, Gagarin, Abushakhmin & Partners | Russia | 11 | 1 | 9.09% |
| K&L Gates | Poland | 11 | 1 | 9.09% |
| Weil, Gotshal & Manges | Czech Republic | 11 | 1 | 9.09% |
| Egorov Puginsky Afanasiev & Partners | Russia | 21 | 2 | 9.52% |
| KIAP | Russia | 10 | 1 | 10.00% |
| Goltsblat (Berwin Leighton Paisner) | Russia | 19 | 2 | 10.53% |

*Law Firms/Offices With At Least 10 Partners With the Lowest Female Partner Percentage*


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

**As always, we welcome your feedback and comments at press@ceelm.com.**

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


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

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

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

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

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

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

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

| Tier | Associates (M) | % | Associates (F) | % | Partners (M) | % | Partners (F) | % |
|---|---|---|---|---|---|---|---|---|
| 1 | 32 | 48% | 34 | 52% | 23 | 68% | 11 | 32% |
| 2 | 38 | 50% | 38 | 50% | 14 | 78% | 4 | 22% |
| 3 | 17 | 32% | 36 | 68% | 9 | 69% | 4 | 31% |
| 4 | 12 | 22% | 42 | 78% | 17 | 50% | 17 | 50% |

*Chart 1: Associates and Partners at Bulgarian firms by tier (as ranked by Chambers & Partners) and by gender. Information was obtained from law firm websites, and has not been independently verified.*

Many possible explanations for this phenomenon have been proposed.

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

Others believe that Bulgarian women are more willing to accept a long career track at firms, or even to accept positions where partnership is not likely, than men are. This would explain why a number of firms have reported losing male associates dissatisfied with what they felt was a slow career progression to eventual partnership.

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

John O'Donnell

# Market Spotlight Romania

## Guest Editorial: Springtime in Romania

What is the word that best describes the Romanian legal market this spring? Some may say “apathy”, and others may say “business as usual”. Very few people – if any – will say “excitement”. After all, the renewable energy boom is pretty much over (with the corresponding legal work that kept many firms going through the crisis drying up), banks are still recovering from the crisis malaise (translation: banks are still lending very little), the skyline is not yet punctured by construction cranes everywhere you look, the public sector is as slow as it has ever been, and last time I checked, Romania had not yet become a hotbed of M&A activity. Add to this a couple of high-profile withdrawals of international firms from the Romanian legal market and the picture appears rather discouraging: the market is not going very well, it seems. Coming back to the one word description of the current status, perhaps the best such word would be “fatigue”, as that felt by people coming out of a long, long winter.

But the analogy is appropriate in more than one way. Even the longest winter is followed by spring. And spring is coming to Romania, not only in terms of the sunny and warm weather, Easter holidays and so on, but also in terms of the economy. At the beginning of this year, Romania was able to place a reasonably priced 30-year bond in the international markets. One billion dollars worth, in fact. Some obviously believe that Romania has a long-term future. One of the fund managers I spoke to recently was very bullish on Romania: the boom is around the corner, he said. He was talking about the economy in general, not the legal market in particular. However, the legal market does form an integral part of the economy and is likely to experience similar trends, albeit with the usual volatility dampers: inertia in terms of pricing, capacity constraints, etc. If the fund manager is right about the economy in general, we should also see in the legal market a surge in client demand, improved pricing, and a scramble for resources (meaning good lawyers to put on cases).

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

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

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

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

*Marian Dinu, Country Managing Partner, DLA Piper*

*"Publicity, publicity, publicity is the greatest moral factor and force in our public life."*

- Joseph Pulitzer

# The Risk Of Revelation

## Unclear Romanian Bar Regulations Put Law Firm Marketing Efforts On Hold

**Bar associations are responsible for the regulation of the legal profession as well as professional organizations dedicated to serving their members. In Romania, the Activity Report for 2013 of the Romanian National Union of Bar Associations (UNBR) states that the UNBR Congress' mission is to "constantly support the development of the training level of lawyers, enhance relationships between the different Bar Associations in the country and, where needed, make decisions with regards to the deontological regulations of the profession."**

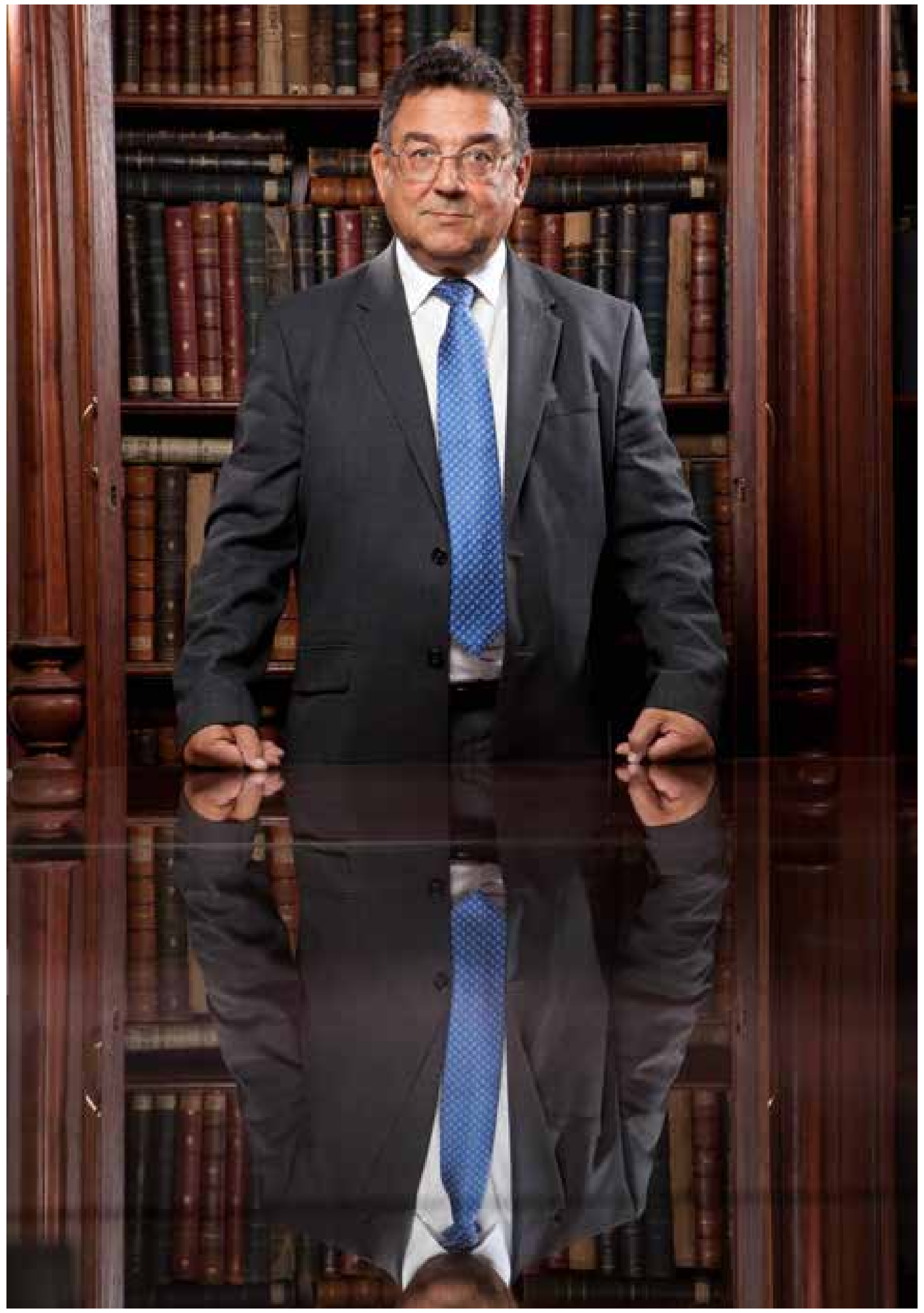
Market Spotlight

The UNBR also highlights on its website what it calls "several current and future preoccupations" with regards to the legal profession. Among other things, the UNBR stresses the fact that, in the 21st Century, the legal profession is strongly shaped by the economy: "The cultural identity of the lawyer is influenced to an increasing degree a socio-cultural path [it is unclear what path it's referring to] and increasingly marked by the economic component of the profession, a situation which is leading to a considerable change in the content and equilibrium of the system of values at the core of the profession." As a result of this analysis, the UNBR states: "…a re-evaluation of the institutional position of the lawyer is warranted, both relative to the judicial branch and relative to the business world and civil society."

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

### What, if Anything Has Changed in the Market?

On December 14, 2013, the UNBR Council issued Decision No. 852. which, in Articles 243 and 265, contains several changes to the Statute of the Legal Profession regarding ways lawyers can inform the general public about the nature and quality of their work. A number of communications professionals in the industry complain that the wording of the inserted regulations is vague, and many have expressed reluctance to set up any new communication campaigns until these aspects are clarified.

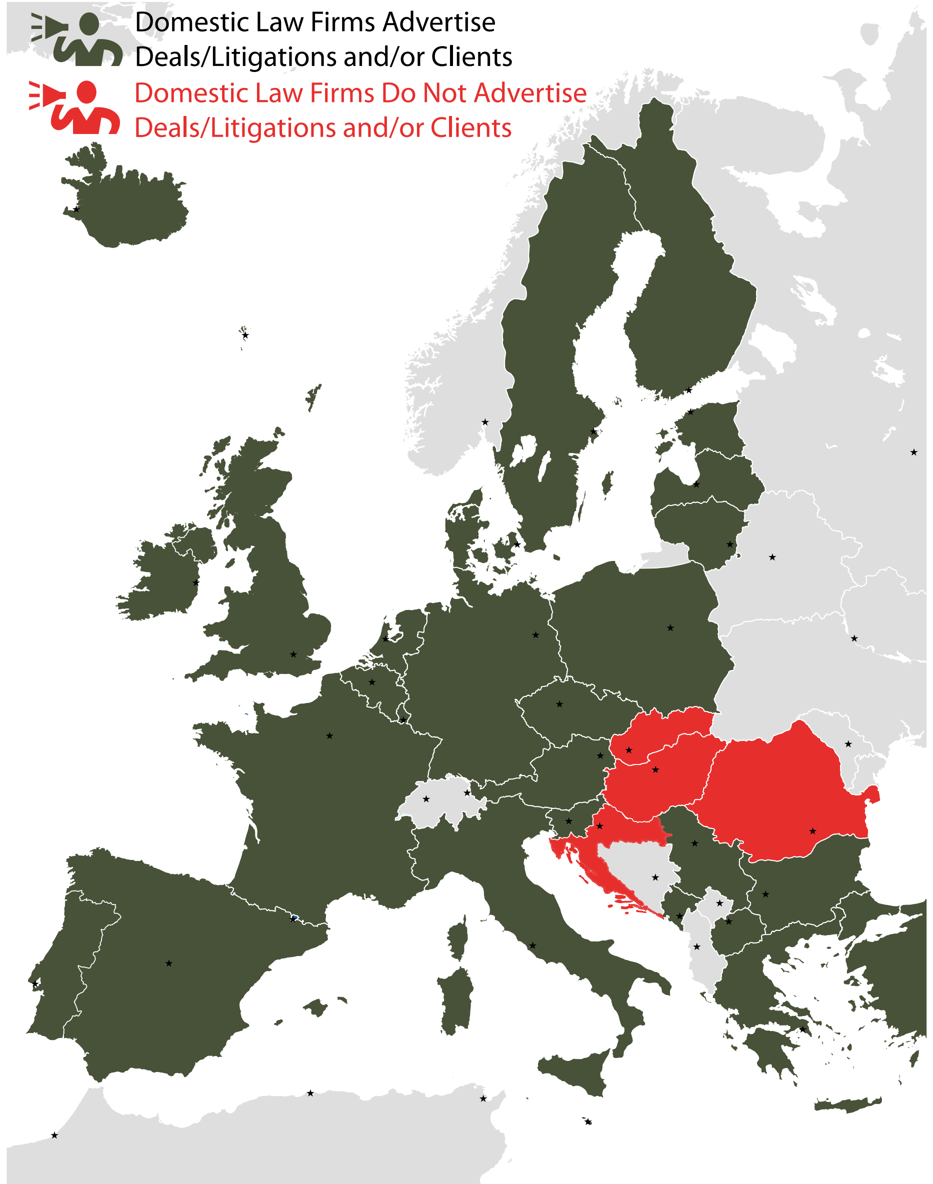


Gheorghe Florea, President, Romanian National Union of Bar Associations

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

And indeed, many of the existing restrictions on the legal professions with regards to commercial communications extend beyond the principles set forth in the legislation quoted by Florea. For example, the Statute of the Legal Profession in 2011 already specifies in Article 247 that a "general presentation brochure" is not allowed to identify names of clients. However, the original article contains an exception allowing firms to identify their clients when those clients have given permission. In the new Statute, Art 249-1 was inserted, which states simply that, "irrespective of the channel used it is forbidden ... to nominate clients in the portfolio or indicate litigations worked on." The exception allowing firms to identify clients with their consent is no longer included (although Article 247 has not been amended, and thus remains in its original form).

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




*EU Member and Candidate Countries Where Domestic Law Firms Do/Do not Advertise Deals and Clients on Their Websites*

### Uncertainty in the Market

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

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

The result of the ambiguity, uncertainty, and impracticality regarding the new rules has been extreme caution. Nestor Nestor Diculescu Kingston Petersen has taken specific pieces of news about recent deals down from its website, while Peli Filip's website now features no news of any kind. The Cluj-based Bejenaru & Partners firm has taken down its entire website and replaced it with simple contact details and a note that it is being updated to adhere to the new regulations in the Statute of the Legal Profession.

When asked about the situation in the market, Florea is unmoved: “If any ambiguities exist our institution has every intention to facilitate open and good-will discussion in order to offer clarifications. For example, we issued a statement whereby we invite lawyers to submit queries to the Department for Studies, Judicial Research and International Cooperation at the National Institute for Training and Development of Lawyers (“INPPA”). These can be either requests for clarifications as well as input towards the development of a best-practice handbook with regards to commercial communication.”

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

The letters have yet to be answered.

> *“Nothing prevents lawyers from presenting a track record of former deals – the regulated aspects are related to them reporting on them for publicity purposes.”*
>
> \- Gheorghe Florea

### Informed Decisions and Competition

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

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

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

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

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

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

*Radu Cotarcea*





# Interview: Daniele Iacona

## Head of Italian Desk at Schoenherr

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

**Practice Areas**
Corporate / M&A, Energy

**Education**
Unindustria of Padova, Padova/Italy
*(Master's degree in International Relations 2006)*

University of New South Wales, Faculty of Law, Sydney/Australia
*(Post-graduate degree 2004)*

Alma Mater Studiorum - Universita degli Studi di Bologna, Bologna/Italy
*(Graduated 2003)*

Universidad Complutense de Madrid, Madrid/Spain
*(Scholarship 2002)*

**Languages**
Romanian, English, Italian, Spanish

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

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

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

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

**CEELM: Where are you active?**

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

> *“Eastern European law firms were used to obtaining mandates based only on marketing activities, but recent years have increased the importance of Business Development. Better commercial awareness of clients’ business and more value-added services are probably the key best practices.”*

**CEELM: What are some of the key deals you have been involved with over the past year?**

D.I.: Italians are mainly focused on energy projects in the Balkan countries. We have also been very active advising several Italian companies on corporate restructuring issues. Some of our other projects involve NTT Data Group, a Japanese-listed company which acquired an IT company in Romania, and Energreen Investment, a Luxemburg-fund focused on energy projects in CEE.

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

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

**CEELM: Your role entails a lot of Business Development. What do you think were the key best practices in building up your practice?**

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

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

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

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

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

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

D.I.: Like other foreign investors, Italians are more prudent in this period. Romania's financial instability, caused mainly by the imminent elections, has resulted in a slow-down. This has led us to turn our attention to other countries, such as Turkey, Poland and Slovenia. However, according to international economic forecasts, a few strategic sectors (e.g. agriculture, IT, Retail, etc.) should register a return of a stable level of investments to Romania, and Romania should again be one of the main destinations of foreign investments in the region, including Italian.

**CEELM: What are your future plans for the Italian desk?**

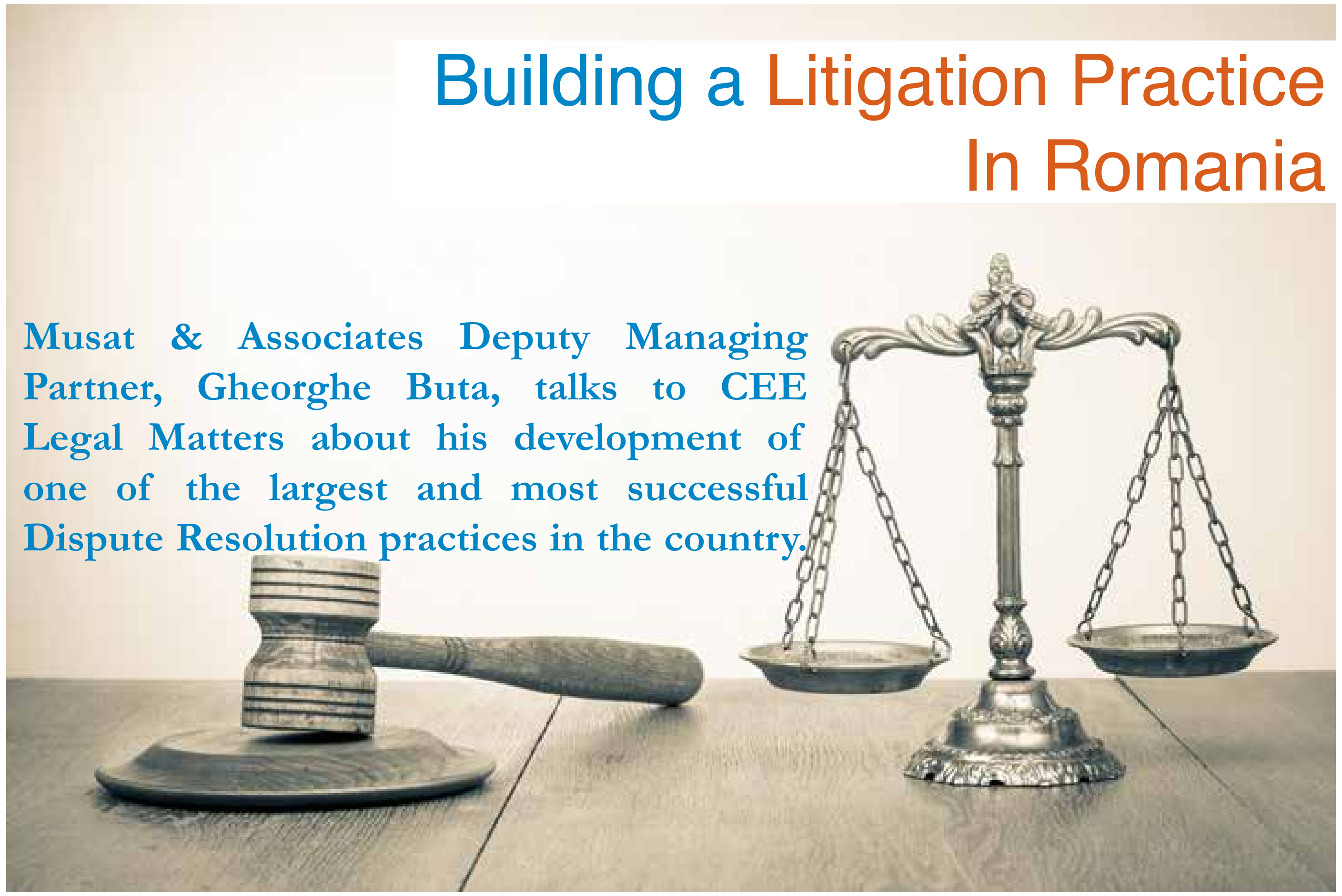
D.I.: I will keep working hard around CEE. Our ultimate goal is to become a landmark for Italian businesses and the firm of choice for Italian investors active throughout CEE.

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

Radu Cotarcea







# Building a Litigation Practice In Romania

**Musat & Associates Deputy Managing Partner, Gheorghe Buta, talks to CEE Legal Matters about his development of one of the largest and most successful Dispute Resolution practices in the country.**

### A Judicial Career of Over 30 Years in 30 Seconds

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

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

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

### Returning to The World of Lawyers

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

### 4 Years Later

According to Buta, when he first joined the team there was a small number of lawyers in the dispute resolution practice. Having "poached" 5 members from other practices at Musat & Asociatii, he says he basically started off

*“What we did notice was that, by far, those that left the team tended to be those who had been hired laterally. From the pool of practitioners that ‘grew’ within the firm after joining fresh from university benches I think I ‘lost’ two, but even those simply moved to a different practice area within our own firm.”*

with a team of 8. Expanding the practice to its current 40+ lawyers happened incrementally. “Initially, we had to grow much faster to cover the existing portfolio of work. As such, we did carry out several lateral hires. Past that initial burst, we focused on growing organically, primarily by recruiting at a fresh-graduate/Junior Associate level and offering them a career path within the firm. Many of them are Managing or Senior Associates by now,” says Buta.

Naturally, there were also departures from the team: “It is impossible to avoid this completely. What we did notice was that, by far, those that left the team tended to be those who had been hired laterally. From the pool of practitioners that ‘grew’ within the firm after joining fresh from university benches I think I ‘lost’ two, but even those simply moved to a different practice area within our own firm.” With regards to plans for the future, Buta says that: “Going forward, my main focus is to consolidate the current team and improve team dynamics to enhance our work product. Likely, if the team is to grow, we will continue the organic approach of hiring young lawyers and developing them within the firm but we do not exclude making a few lateral hires on specific niche litigation specializations such as on Criminal Law or PPP litigations.” He explains that, “we will try to implement the same approach towards specialization within litigation with the existing team as well, as part of our consolidation plans, so as to be able to offer our clients an even ‘sharper’ service.”

### The ADR Team

The firm’s arbitration team focuses primarily on International Arbitration, according to the Deputy Managing Partner. There is a dedicated/separate team of arbitrators within the firm consisting of one partner and several associates. Based on the specific requirements of a case, the team is often joined by other litigators, especially in the case of local arbitration. Buta set up this matrix model fairly recently within the firm and says it is working quite well so far.

Buta is making efforts to build up the firm’s ADR practice, and his team encourages clients to consider alternative dispute resolution solutions where possible, but Buta reports that client interest in local arbitration has dropped in recent years. “Up until 5-6 years ago, the way it worked was that each party would select an arbiter, who, in turn, would select a chief arbiter for the case. Unfortunately, that was changed so that the Nomination Authority, who also happens to be the President of the Chamber of Commerce and Industry, selects both the arbiters and the chief arbiter. That, combined with a perceived preferential selection of several arbiters, has lowered the trust that both companies and lawyers have towards the institution.” With recent events such as the arrest of the President of the Chamber of Commerce and Industry on corruption charges, the institution is working on a returning to the old system and regaining the trust of the marketplace. Buta believes that has a good chance of happening.





### Building The Team: Step 1 – Making the Right Hires

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

What does he look for in new hires? Buta talks about three aspects: (1) “I need my team members to be highly driven and motivated. I tend to look for people who are then very ambitious – but that presents the problem of having to find a balance, because you do not want to hire someone who will walk over corpses to achieve his goals and not be a team player because he/she wants to stand out as an individual;” (2) “They need to have a certain level of humility, in that they need to be the type who understands that there is always something left to learn and have an openness towards continuous development;” and (3) “English is an absolute must in my team – in fact, all (except me, who sometimes struggle – he laughs), are excellent English speakers. While, indeed, you would imagine the role of a litigator is primarily to represent a client in court in Romanian, most of our clients are international and you need to be able to communicate with them effectively. I even had situations where I was meeting a French client and was excited about showing off my French skills and found that the discussions soon switched to English.”

*“Especially in a large firm such as ours, you can rely on the consultancy practices within the firm to offer support in documentation for a case. What truly matters for a litigator is how persuasive they are in court. As a result, many of the candidates that we end up considering are ones that we identified and were impressed by in actual trials.”*

### Building The Team: Step 2 – Developing the Needed Skills

Buta believes that the difference between good and great litigators rests in their ability to build an argument and deliver it effectively in a court. As such, investing a lot of time in constantly developing these skills within his practice is a critical aspect of his role.

In terms of actual tools used to develop his team’s skill set, Buta comments: “We do try to set up several processes. Firstly, we ensure that on any file, we have at least two lawyers working together: one senior and one junior (or even a freshly-appointed senior at times). Aside from the obvious shadowing benefits, they also work separately most of the time on the documentation and case building to be able to later compare notes. Secondly, we try to make sure that we have the same shadowing system implemented in courts. Furthermore, at the end of each project, we try to make sure we create a learning loop with team members reflecting and receiving feedback on their work in the project.” The process is a serious one. “Even the project team round tables that we run as preparations end up being rather intense since we always assign one or two to act as opposing counsel,” he adds. “This turns the meeting into a borderline mock-trial which further lets our team members exercise their skills.”

### On Clients: Handling Work From Existing Ones and Business Development

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

“I do try to delegate a great deal of this to other partners in the team and managing associates but there is only so much of that that you can do. I will say, spending time with a young lawyer to review his work for a client is, in my mind, time well spent because I add value directly to that client as well as help develop a team member. If you ask me to get involved in marketing efforts or trips or invoices … now that is time I feel I waste.”

Gheorghe Buta, Deputy Managing Partner, Musat & Asociatii in marketing efforts or trips or invoices … now that is time I feel I waste," Buta says.

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

| Law Firm | Number of Partners | Number of Associates | Total |
|---|---|---|---|
| Musat & Asociatii | 10 | 37 | 47 |
| Nestor Nestor Diculescu Kingston Petersen | 7 | 34 | 41 |
| Tuca Zbarcea & Asociatii | 8 | 31 | 39 |
| Dragne & Asociatii | 6 | 19 | 25 |
| Peli Filip | 4 | 18 | 22 |
| Stoica & Asociatii | 7 | 14 | 21 |
| Popvici Nitu & Asociatii | 2 | 19 | 21 |
| Zamfirescu Racoti & Partners | 4 | 8 | 12 |
| Dentons | 2 | 7 | 9 |
| CMS Cameron McKenna | 1 | Associates not listed | N/A |

*Number of Partners, Associates, and Total Lawyers Reported on Firm Websites as Specializing in Dispute Resolution in Firms Ranked in Romania for the Practice (Chambers & Partners and Legal500)*

### The Litigation Market in Romania

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

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

*Radu Cotarcea*

# The Expat On the Ground

## Interview: Perry Zizzi

**CEELM: To start, how and where did your legal career begin – and how did you end up in Romania?**

P.Z.: My career began in 1995, with a top international law firm in New York. It was a great starting point, in the frenzy of a global financial hub with infinite perspectives for a young corporate lawyer. In the 1990s, I did a lot of work in Latin America, mostly finance and M&A.

In 2000, I moved to Europe, first to London and later to Paris.

Without realizing it, my profession was taking me east, at a time when former communist emerging markets were becoming hotspots for foreign investors.

Advising on projects in Moldova and Montenegro, as well as my eastern European studies at university, led me to accept an offer to be based in Bucharest and cover the region. This seemed an intriguing proposition at the time, as Romania was reaching a turning point in terms of economic and business development.

Between 2004 and 2006, I split my time between Prague and Bucharest, and since I moved to Europe, I have advised on matters throughout Central and Eastern Europe (including Poland, Czech Republic, Slovakia, Hungary, Romania, Bulgaria, Moldova, Russia, Ukraine, Turkey, Montenegro, Serbia, and Croatia).

Somehow, my next move seemed a natural development for my career, as I joined the Romanian office of the largest law firm in the world – Clifford Chance Badea – as Partner, in 2007.

**CEELM: What is your role, exactly, in Clifford Chance Badea? Does being an expat in the Bucharest office involve different responsibilities than the Romanian partners?**

P.Z.: I see my role as a balance between my legal expertise (being hands-on on projects I coordinate) and managerial responsibilities.

Being an expat gives me a perspective that has been valuable to foreign investors from Western Europe and North America in particular. I mostly advise large multinationals active in the region. Most recently, I have spent a lot of time in our Kiev office, supporting a shale gas project.

**CEELM: What were the main challenges you faced when starting to work in Romania, and are those the same challenges you face today?**

P.Z.: Definitely, the legal profession in Romania has significantly evolved over the past 11 years. Our own attorneys are educated at top schools and undergo continuous training within Clifford Chance to be able to keep up with a rapidly changing international legal environment. We encourage our attorneys to do secondments in other Clifford Chance offices and we have welcomed attorneys on secondment from London and other offices.

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

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

> "Practicing in this region is certainly more challenging. I always say that if you get 5 Romanian lawyers in a room, you can get 10 different opinions. The law tends to be unclear, with large gaps and inconsistencies that are difficult to reconcile."

**CEELM: How do you think your career was influenced by the decision to move outside of the US?**

P.Z.: Practicing in this region is certainly more challenging. I always say that if you get 5 Romanian lawyers in a room, you can get 10 different opinions. The law tends to be unclear, with large gaps and inconsistencies that are difficult to reconcile.

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

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

**CEELM: What have you identified, over the years, as the unique cultural aspects to keep in mind as an expat working in Romania?**

P.Z.: Romania is split between two extremes. On one hand, there is an old mindset, the legacy of the former regime. It is the mindset of "No, it cannot be done." On the other, it's the new generation of dynamic, open-minded and customer-oriented people who represent – I hope – the future of Ro-

Market Spotlight

mania.

However, there is often even among those with this forward-looking mindset an instinct to mistrust foreign investors. The paradigm is that of the business person who believes that if a counter-party is happy with the outcome of negotiations, then he himself must have gotten a raw deal and missed something.

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

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

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

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

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

*Radu Cotarcea*

# Next Issue's Market Spotlight

# Russia

Top Ranked Practitioners in Each CEE Jurisdiction Discuss and Review Competition

# Experts Review: Competition

## In This Section:

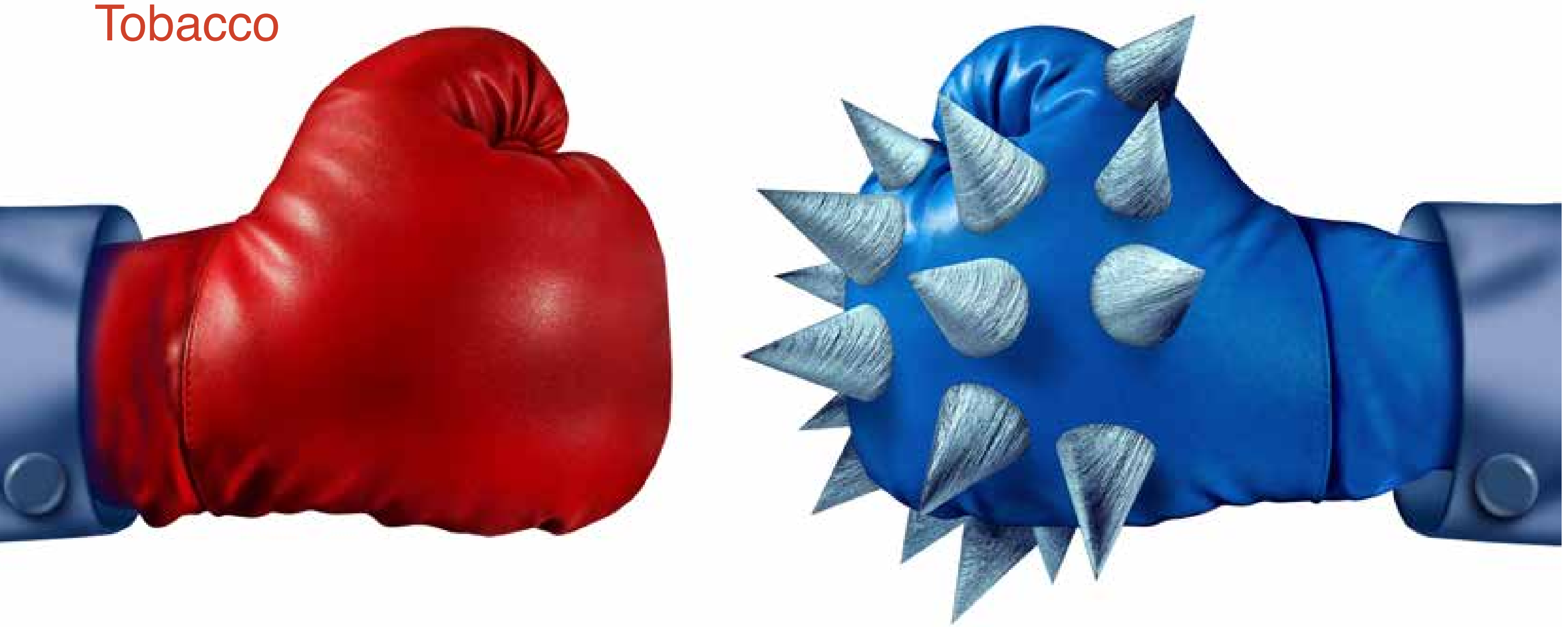

Interview: Andras Mohacsi Assistant Regional General Counsel at British American Tobacco

Experts Review Competition Matters In 23 CEE Jurisdictions

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

# Interview: Andras Mohacsi

## Assistant Regional General Counsel at British American Tobacco



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

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

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

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

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

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

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

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

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

A.M.: Before I specialized in competition law, I was a generalist business lawyer counseling different business functions at various levels. My number one objective was, together with all other executive team members, to enable the company to win in the market place.

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

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

Andras Mohacsi, Assistant Regional GC British American Tobacco

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

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

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

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

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

The third pillar is "The How." We have developed and rolled out within the legal function a set of Guidelines on how to counsel the other business functions on antitrust matters. This field of law

*"We have identified one global law firm with a very broad footprint as our regional strategic firm in competition law matters. This approach gives us better knowledge management, and a lot of other synergies."*

requires a special counseling approach because of unique procedural issues (such as legal privilege, leniency, etc.), the high level of fines, and the critical role of documents. Neutralization of potential competition concerns requires special skills and we had to make sure we build them within our team.

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

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

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

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

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

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

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

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

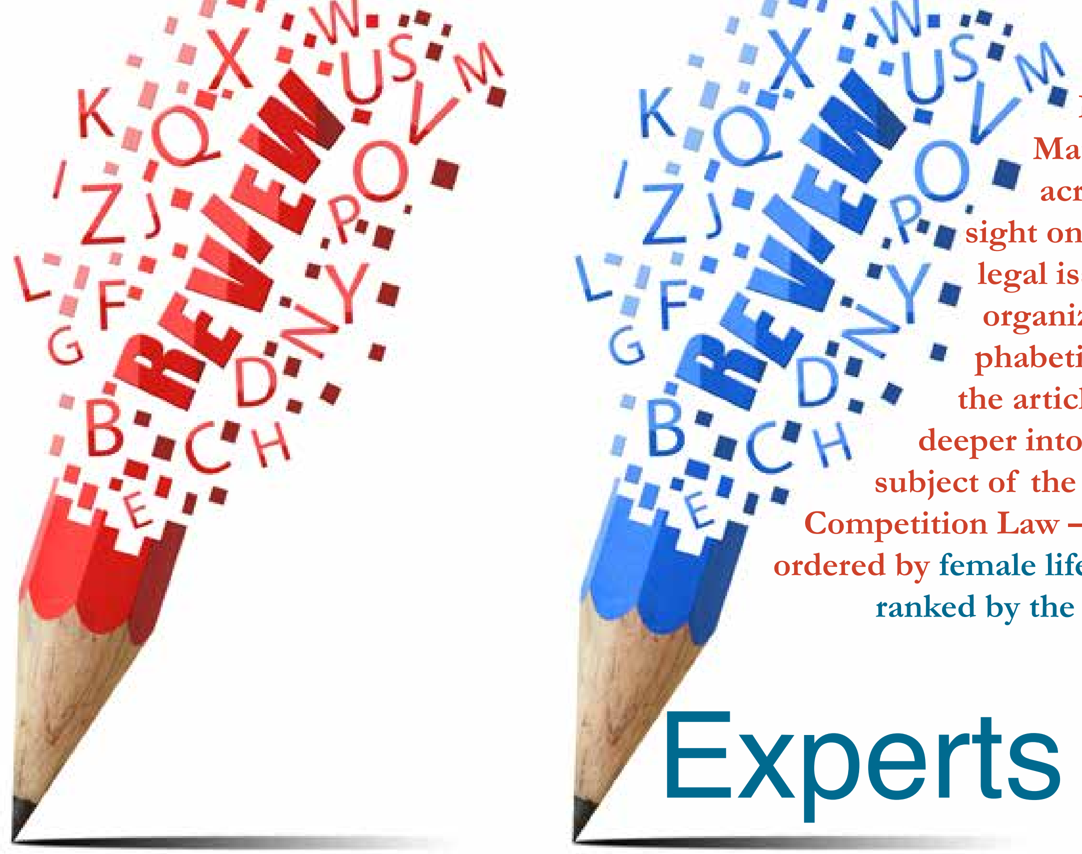
A.M.: I think that the key challenge for CEE is economic growth. We still do not seem to be out from the negative consequences of the financial crisis. There is a lot of frustration in societies and governments around the EU with protectionism in certain places seeming to win votes. I am a big fan of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

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

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

*Radu Cotarcea*






**In every issue of CEE Legal Matters we reach out to experts across the region to provide insight on a particular practice area or legal issue. And, rather than simply organizing the resulting articles alphabetically, we see the ordering of the articles as an opportunity to look deeper into the region we live in. So the subject of the Experts Review this issue is Competition Law – and the country articles are ordered by female life expectancy across CEE, as ranked by the World Health Organization.**

# Experts Review

## Austria

### Cartel Damage Claims in Austria – A Boost From the legislator?

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

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

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

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

Damage claim proceedings based on competition law infringements can be suspended by civil courts for the duration of competition proceedings regarding the alleged infringement (section 37a para 2).

Civil courts shall be explicitly bound by the decisions of the Cartel Court, the European Commission, or other national EU competition authorities finding a competition law infringement (section 37a para 3).

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

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

There is no case law yet on the substantive rules summarised above (given their applicability only to competition law infringements as of March 2013). However, there have been some other important decisions in 2013. In a judgment of December 16, 2013 (Case no. 6Ob186/12i), the Austrian Supreme Court confirmed that a claim was not time-barred because the trigger date for the statute of limitations for such damage claims was only the date of publication of the final and binding decision in the cartel proceedings, rather than media reports on the cartel or the announcement of such claims by the plaintiff.

In another case of significant importance for cartel damage claims, the ECJ ruled on June 6, 2013 (case no. C-536/1), that an Austrian statutory provision in the Cartel Act which makes access by prospective damage claimants to the Cartel Court's case file conditional upon consent by both the authority and the members of the cartels was contrary to Art.101 TFEU, as it violated the so-called "effectiveness principle" of EU competition law. Any refusal of access should therefore be considered document by document. Disclosure should be withheld only for overriding reasons, and in particular when it might undermine the effectiveness of leniency programmes by deterring prospective applicants from coming forward. The Cartel Court will have to rule on the request for access to the file on the basis of the ECJ decision, disregarding the Austrian statutory provision.

*Axel Reidlinger, Partner, Freshfields Bruckhaus Deringer*

## Greece

### An Overview of Merger-Control Activity in Greece in 2013

**Introduction**

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

The prevailing general feeling has been fear and clear pessimism as to how the Greek economy will manage to cope with all its structural problems.

Because of these factors, the surrounding financial environment has heavily affected M&A activity, and there have been only a few recent deals, mainly in the category of 'rescue mergers' (i.e., to ensure the viability of the involved enterprises).

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

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

**Banking sector**

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

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

a) NBG acquired Probank (Hellenic Competition Commission decision no. 576/VII/2013) and FBB Bank (HCC 568/VII/2013),

b) Alpha Bank acquired Emporiki Bank from Credit Agricole (HCC 556/VII/2012),

c) Piraeus Bank acquired state-owned Agricultural Bank of Greece (its "healthy" part), Geniki Bank (a member of Societe General Group), Millenium Bank and Cyprus Popular Bank (the Greek business). All the above acquisitions by Piraeus Bank have been already cleared by the HCC (decisions no. 549/VII/2012, 553/VII/2012, 566/VII/2013 and 574/VII/2013 accordingly).

d) Eurobank acquired New Proton Bank (HCC 578/VII/2013) and New Hellenic Postbank (HCC 584/VII/2013).

**Aviation sector**

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

The significance of this deal was again the intended formation of one consolidated Greek air carrier, following the international tendency for consolidation in the aviation industry. The deal had a different structure, i.e., it led to acquisition of sole control by Aegean Airlines over Olympic Air, while previously there was to have been joint control of three groups of shareholders over the merged entity. Therefore, there was no European dimension this time and, as far as the EU is concerned, the transaction was only to be notified in Greece and Cyprus. However, the European Commission requested upwards referral, and the case was examined in depth by the competent Directorate General (DG Comp). In October 2013, the European Commission finally cleared the deal on a failing-firm basis and, therefore, without remedies. Interestingly, this seems to be the first case to be unconditionally cleared by the Commission following a previous blocking decision.

**Energy sector**

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

Other than that, the Hellenic Competition Commission recently cleared (HCC 587/VII/2014) a joint venture in the energy sector (PPC Solar Solutions), established between Public Power Company (incumbent in the Greek electricity market) and Copelouzos Group (a major private investor), which is expected to offer integrated solutions for household photovoltaic installations and energy saving products in Greece.

*Cleomenis Yannikas, Partner, Dryllerakis & Associates*





## Slovenia

### Competition Law in Slovenia: Review of Underlying Law

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

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

Unfair competition consists of actions on the market which are contrary to good business practices and which cause or may cause damage to other market participants (e.g. false advertising, error concealment, unauthorized use of trade names or trademarks). The second form of Competition Law prohibits certain practices that prevent, hinder, or distort competition on the market. Thus, ZPOmK-1 prohibits the restricting of competition through agreements, decisions by associations of undertakings and concerted practices, abuse of dominant position, and the concentration of undertakings. It should be mentioned that due to Slovenia`s EU membership, its Competition Law is also subject to EU Competition Law. Therefore, the regulations of ZPOmK-1 are with minimal differences the same as the EU counterparts.

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

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

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

Civil claims for damages due to violations of competition rules in Slovenia are very rare, primarily because of the length of the procedures, the costs of litigation, difficulties in collecting evidence, and the inexperience of judges in the field. This last phenomenon derives from the fact that in the few cases that have been heard in court (especially in conjunction with Telekom d.d., which allegedly was a main offender of the provisions of Competition Law, particularly regarding the abuse of dominant position) the judges avoided trials. For example, in the T-2 vs. Telekom case that was initiated in the year 2007 and ended in January 2013, three judges were replaced. The same happened in the ABM vs. Telekom case. And – with regard to the long duration of civil proceedings – it should be noted that the ABM vs. Telekom case lasted for 10 and half years. ABM filed the lawsuit for damages in 2002 and the final decision was adopted in 2013 when the Higher Court in Ljubljana awarded damages to ABM in the amount of EUR 62,000 – a substantial decrease from the EUR 2.3 million award made by the District Court in Ljubljana. Therefore it is not surprising that in this area the jurisprudence is very sparse.

Restriction of competition is defined in Slovenian Law as a criminal offence. The Criminal Code (KZ-1) determines a penalty for imprisonment from six months to five years for whoever, in pursuing an economic activity contrary to regulations governing the protection of competition, violates the prohibition of restricting agreements between companies, abuses the dominant position of one or more companies, or creates a forbidden concentration of companies, and thus prevents or significantly impedes or distorts competition in Slovenia or the EU, or significantly influences trade between Member States, which results in a large property benefit for such a company or companies, or significant damage to another company.

*Andrej Kirm, Managing Partner, and Sana Koudila, Associate KIRM PERPAR*

## Czech Republic

### Is Prior Judicial Consent Required for a Dawn Raid? Czech Legal Battle Now Pending Before European Court of Human Rights

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

It all started with a dawn raid carried out by the Office at Delta Pekarny's business premises on November 19, 2003. Without informing the company of any particular reasons for the inspection or presenting any evidence to justify the raid, the Office's inspectors entered the premises based only on a notice of administrative proceedings. In

the notice, the Office only pointed to Delta's "possible violation" of Section 3 (1) of the Czech Competition Act (an equivalent of Article 101 (1) of the Treaty on the Functioning of the EU), represented by alleged "conduct of the participants to the proceedings in mutual concert in determining the sales prices of bakery goods".

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

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

Following the inspection, Delta Pekarny actively sought redress against the Office's conduct. Eventually, the case was dealt with by Czech courts, including the Czech Supreme Administrative Court and the Czech Constitutional Court. During the proceedings, Delta claimed its rights had been violated, in particular, by referring to a previous decision of the European Court from April 12, 2002, Société Colas Est and Others v. France, in which the European Court concluded that prior judicial consent for the dawn raid on that company was necessary.

Delta Pekarny failed to gain the support of the Czech courts, which denied its claim for protection of privacy as guaranteed by Article 8 of the Convention and refused to apply the Societe Colas judgment to the case. Delta Pekarny is now seeking redress before the European Court, maintaining that the Office had no right to enter Delta Pekarny's premises and to demand, with the threat of a penalty, to inspect all its documents and correspondence without any justification and without prior review by an independent court that would have acted as an effective guarantee of Delta Pekarny's rights as prescribed by the Convention.

It is now up to the European Court to decide whether the Office's inspection, which did not have prior approval of an independent court but was formally carried out in compliance with Czech national laws, can be considered proper from the perspective of internationally protected human rights and thus necessary in a democratic society within the meaning of Article 8 (2) of the Convention.

The European Court's final decision in this matter might thus be of considerable importance to all business competitors from states that signed the Convention and whose national law does not require prior judicial consent for an inspection by the national competition authority, since victory for Delta Pekarny could be a significant precedent they can refer to if they happen to find themselves in a similar situation in the future.

*Pavel Dejl, Partner, and Martin Krcmar, Associate, Kocian Solc Balastik*

## Poland

### Competition Law Enforcement Versus Compliance

The Polish Competition Authority has prepared an ambitious legislative initiative that may significantly change the regulatory landscape in the area of competition law in Poland. But while the draft legislation was regarded as the magnum opus of the ex-president of the PCA, Malgorzata Krasnodebska-Tomkiel, it is too soon to judge whether the new head of the authority, Adam Jasser, will endorse the initiative in its proposed form.

The debate in Poland surrounding the new law is concentrates mainly on one provision: The PCA's right to impose fines on individuals for their involvement in anticompetitive agreements. Currently, such violations of competition law lead to fines on companies. Businesses under an umbrella of associations of companies and various interest groups, together with the community of legal counsel, have taken desperate actions to convince the PCA that the proposed instrument providing for fines on individuals lacks procedural safeguards and that its application jeopardizes the system of protecting individuals' rights in administrative proceedings.

While the topic of fines for individuals has – not surprisingly – dominated public debate, the new law will also bring other important enforcement instruments to better equip the PCA to defend against violations of competition law.

First of all, individuals (including ex-employees) will be able to apply for leniency. Currently, that right is available to undertakings only. In addition, under the new law, companies will have the option to engage in settlement procedures with the PCA which may lead to a 10% reduction in fines. This provision is well-known to businesses which have had competition law-related troubles with the European Commission. It will be interesting to see whether participants in proceedings carried out by the Polish enforcement agency will consider a 10% reduction to be a satisfactory concession. In addition, among the most significantly anticipated changes under the new regime is the "leniency plus" proposal that will incentivise leniency applicants to confess violations of competition law involving products other than those already investigated in a given proceeding.

On the merger law front, the new regime will, among others, introduce a two-phase review, where non-problematic transactions will be cleared within one month and those raising competition law concerns will undergo an in-depth review within an additional four months. It should be clarified, however, that the one and four month review periods are to some extent illusionary, as under both phases each information request letter will stop the clock. Interestingly, in the second phase, the PCA felt that there is a need to issue a formal position to a notifying undertaking informing it about identified concerns. This is the first time that the regulator has indirectly agreed to a certain level of transparency in its dealings with notifying undertakings. Therefore, the proposed provision should itself increase predictability in the PCA's decision-making process.

While the proposed changes vary in merits and will have a different impact on different companies, they will inevitably lead to market participants giving more thought to competition law compliance. Interestingly, that increased awareness is not only due to the risk of fines, but to the substantive complexity of the new rules. Despite the fact that the authority is considering issuing a set of guidelines that will clarify novel mechanisms and concepts, there is a concern that in the transition period all interested parties – including the PCA, undertakings, and their counsels – will find themselves in uncharted territory. There is also universal awareness that the test will then pass to courts.





For these reasons, a visible trend has been established of businesses taking internally preventive measures and modifying their dealings to the extent possible, training key individuals, and refreshing and testing procedures that are needed in the event of the PCA's intervention. In practice it means a rush to implement rigid compliance programmes covering a wide range of internal initiatives. Mock-dawn raids are a very good example. They enable companies to test how their employees, from the reception desk to management board members, act upon unannounced inspections carried out by mock officials from … a law firm. The exercise is highly appreciated by heads of legal departments of undertakings, as it illustrates a company's level of preparedness in advance of real situations when officials enter business premises "at dawn."

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

*Marta Sendrowicz, Partner, Allen & Overy, Poland*

## Croatia

### Croatian High Administrative Court Officially Lays 2003 Competition Act to Rest

Croatian Competition Law is based on the third version of the Croatian Competition Act (the "Act"). The current statute was adopted in 2009 and entered into force on October 1, 2010, superseding the long-standing (at least by Croatian standards) 2003 version of the Act. While the 2009 Act is certainly not perfect and contains a number of suspicious legislative solutions, it was praised almost universally for one important feature: It finally provided weapons to the Competition Agency (the "Agency").

The first 14 years of antitrust enforcement in Croatia (1997-2011) were characterized, more often than not, by the Agency's fruitless endeavors to steer market behavior of non-compliant undertakings in the right direction. One of the main reasons for the relative ineffectiveness of Croatian antitrust enforcement during that period was the Agency's inability to levy fines for antitrust violations. While the 2003 Act provided that violations should be sanctioned with monetary fines of up to 10% of the undertaking's annual turnover, and while the Agency successfully established violations of Croatian Competition Law in particular cases, determining the actual punishment remained in the hands of the misdemeanor courts, which were forced to analyze and consider complex antitrust issues in-between multiple hearings involving allegations of speeding or other common forms of public misbehavior. Obviously, the system was ill-equipped to support effective enforcement of the competition laws, and it was thus no surprise that only occasionally would cases end with actual monetary fines – and even fewer with fines of more than nominal significance (the highest reported fine being in the range of about EUR 240,000).

Unfortunately, although the 2009 Act and its provisions for fines for antitrust violations (generally modelled on EU solutions) have been welcomed by the interested public hoping for new vigour in the Agency's enforcement activities, problems have arisen as well. The vigour indeed came, but to great surprise, it was inter alia directed towards undertakings found to be in breach of the Competition Law rules under the previous regime. Apparently, after several decisions of the misdemeanor courts concluding that the 2009 Act had revoked their authority to deal with Competition Law and remanding the cases under the 2003 Act back to the Agency, the Agency decided to exercise its newly-granted authority by imposing fines in these "old" cases.

Besides legal and factual concerns related to the simple passage of time (some of the reopened cases refer to the Agency's decisions dating back to 2006 and relate to events as far back as 2003), reopening of these proceedings posed serious challenges to the core principles of the Croatian legal system. Even conceding that legislators may have done a less-than-perfect job in "forgetting" to address issues of the cases pending before the misdemeanor courts under the 2003 Act, and appreciating the Agency's reluctance to let violators go unscathed, the Agency's decision to independently fill in the statutory gap by reopening cases closed under the "old" law necessitated all sorts of daring (to say the least) legal constructions. And in addition to struggling with substantive and procedural technicalities (e.g. by "creating" procedural steps for initiation of these special proceedings or by claiming that the relevant legal provisions in the 2009 Act read the same as in the 2003 Act so that the new fines could be applied equally), the Agency also disregarded fundamental legal principles such as double jeopardy and the prohibition of retroactive application of punitive measures.

Fortunately, the Agency's approach was not endorsed by the controlling court. In its recent judgment, the Croatian High Administrative Court expressly confirmed that the Agency had overstepped its boundaries and annulled its decisions imposing fines for violations that had happened during the validity of the 2003 Act. The High Administrative Court's succinct and straightforward statement of reasons not only expressly confirmed that the Agency "overstretched" on several basic legal principles, but also serves to highlight the blatant nature of the Agency's error. Simply put, even an obvious legislative omission cannot be easily filled in by a competent public authority (such as the Competition Agency).

This judicial intervention comes too late to prevent major costs both on the public (the Agency had to commit significant resources and time to purse these old cases) and on the entities directly involved in the reopened cases (including unrecoverable procedural costs and related fees, management time, etc.). However, we may hope that the judgment of the High Administrative Court will finally retire the 2003 Act and allow the Agency and the Agency's new management to pursue more effective enforcement under the new competition law regime.

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## Slovakia

### Envisaged Substantial Changes to Slovak Competition Law

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

The most significant of the Amendments are aimed at providing higher efficiency and speed for merger filing procedures. Following on the 2-phase procedure implemented in 2012, the new Amendments introduce a simplified form of merger notification in cases involving: (i) the acquisition of sole control instead of joint control by the acquirer; (ii) no horizontal/vertical overlap in the activities of the parties to the concentration; or (iii) overlap in activities not exceeding 15% (horizontal overlap) or 30% (vertical overlap) of the respective market. This approach has been long desired by practitioners. Parties would retain the existing right to apply for permission to submit a reduced amount of the otherwise statutorily-required documentation in support of the notification where, for example, a full and formal submission is unnecessary and compliance would be onerous or impossible.

In addition, while the current waiting period for an AMO decision does not begin until the AMO confirms that it has received complete notification, under the Amendments the waiting period for the AMO's decision would start running from the first submission of merger notification – thus making the duration of merger control proceedings more predictable. However, when the AMO believes that a filing is incomplete, a request that the parties complete the notification would stop the clock until all required documents/information have been submitted.

The deadline for an AMO decision regarding exemptions from the requirement that parties delay implementation of a merger pending AMO clearance would be shortened to 20 business days. As before, exemptions from this obligation could be granted only in exceptional cases and for particularly urgent actions (e.g. the conclusion of a seasonal agreement).

As regards cartels, the Amendments are aimed at bringing the Slovak Competition Act closer to EU Competition law. The leniency and settlement provisions (introduced in law for the first time although already applied in practice) would be regulated by secondary legislation enabling the AMO to react more flexibly to new developments in the law (such as new decisions by courts) in the future. As an alternative, it would be possible to end infringement proceedings through commitments offered by undertakings, too. In addition to testing such commitments, the AMO could ask for the appointment of an independent trustee to the costs of undertakings, who would be in charge of supervising the fulfillment of these commitments.

In this respect, a new weapon for combating cartels – already existing in Hungary and the UK – will be created. An individual who first discloses the existence of a cartel to the AMO would be entitled to a monetary reward in the amount of up to 1% of the aggregate amount of the fines imposed by the AMO on the cartel members. The maximum amount of the reward would be EUR 100,000. The "whistleblower" could, if he or she wishes, remain anonymous. The whistleblower can be neither an entrepreneur nor an employee of the leniency applicant. It cannot be avoided that this opportunity might be abused by former "hostile" employees wishing revenge upon their employer.

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

The powers of the AMO are also redefined. The Amendments distinguish between a general investigation by the AMO in a particular area of business aimed at "market" research into a competition situation and an investigation to discover if there are reasons for the commencement of an administrative proceeding. The new dawn raid regulation specifies the essential criteria for obtaining authorization to carry out the inspection, whereby an inspection in other or private premises must be accompanied by a court order (separate authorization by the AMO shall be no longer necessary).

Finally, the AMO has searched for a balance between the protection of proprietary/confidential information and ensuring the defense rights of the parties. Such protected information could be provided, under exceptional circumstances, to another party (with the consent of the affected party) or to its representative (in the absence of this consent), only for review – i.e. without the possibility to make copies or excerpts and under a confidentiality agreement. Moreover, as regards private enforcement of competition law, the undertakings which successfully apply for immunity would be protected from cartel damage claims provided that the claimant is able to obtain compensation for the damages suffered from the other cartel participants.

Even if the Amendments have not been passed in the final form in Parliament yet, the political will to approve them as currently constructed appears to exist.

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## Estonia

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

Like EU law, Estonian Competition Law prohibits abuse of dominance, i.e. unilateral abusive or harmful practices by companies who hold significant market power. Estonian law assumes that a company is dominant in a particular market and is subject to specific obligations vis-à-vis its conduct (including non-discrimination, bans on excessive or predatory pricing, etc.), if it holds more than 40% of turnover in a given market.

Currently, abusive conduct can be addressed by the Estonian Competition Authority (ECA) in an administrative, misdemeanor, or criminal investigation. The first is used when the ECA wants to adopt cease-and-desist orders and/or impose remedies – for instance, making a company's offer to alter its pricing practices binding upon it – which the ECA can later enforce by imposing (periodic) penalty payments. A misdemeanor procedure, a sort of a fining procedure, is used when the firm involved is a first time offender – including both those who have never committed an abuse of dominance and those who have but who paid fines more than a year ago – but the ECA wants to impose fines either on top of any remedies or when remedies are no longer available. If a company is a repeat offender – that is, it has been found guilty of an abuse of dominance and less than a year has passed from paying the resulting fine – then a criminal investigation will be initiated and, if the company is found guilty, a criminal fine will be imposed by the court. This criminal fine can reach EUR 16 million for companies, whereas individuals acting for the company are exposed to a criminal fine (up to 500 days average income) or a prison term of up to 3 years.

On December 9, 2013, the Estonian parliament started formal legislative proceedings aimed at adopting legislation, introduced by the Ministry of Justice, that would decriminalize abuse of dominance offences. The specific piece of legislation has passed the 1st reading (three in total are needed) and is currently being discussed in the Legal Affairs Committee. If adopted, the law would mean that in the future abuse of dominance cases will be handled under either the administrative or misdemeanor procedures and no criminal investigation or criminal fines could be triggered even for repeat offenders. That would mean a significantly lower overall level of exposure to fines and legal costs for dominant firms – criminal defense is not cheap – as well as their senior management and key staff. That's because neither legal entities nor individuals would be exposed to criminal liability in the future (as they are now).

But, there's also a flip side to this reform. Namely, there is a significant increase of potential fines for first time offenders of the ban on abuse of dominance written into the current draft. Today, first time offenders (again, including those who were found to have abused a dominant position and paid a fine over a year ago) are exposed to a fine of up to EUR 32,000 – which is, as most would agree, modest. The new ceiling for fines for abuse of dominance would be EUR 400,000, which is around twelve times higher than under current law.

Another practical implication of decriminalization would be that fines for abuse of dominance would be imposed exclusively by the ECA and never by a court. Currently fines of up to EUR 32,000 can be imposed by the ECA and up to EUR 16 million by the court in a criminal procedure. In the future fines for abuse of dominance of up to EUR 400,000 could be imposed by the ECA (though they could be appealed in a court of law). That means that the authority which investigates a case and decides upon the necessity of fines will also set the exact amount of those fines in all abuse of dominance cases (not only those of first time offenders).

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## Bosnia and Herzegovina

### Competition Issues in the Bosnia and Herzegovina Telecommunication Market

The central government's power in Bosnia and Herzegovina ("BiH") is limited, as the country is largely decentralized and consists of two autonomous entities, the Federation of Bosnia and Herzegovina ("FBiH") and Republika Srpska, with the Brcko District as a third region. Bosnia and Herzegovina is thus a prime example of an administratively, politically, and legally complex country in transition. Legislation is adopted on the state, entity, and – in FbiH – cantonal level, depending on the allocation of competences.

Nonetheless, and despite the complex legislative and political structures, which sometimes represent a challenge for conducting business, BiH has a clear goal: membership in the European Union. The institutions and competent bodies are therefore constantly engaged in an ongoing – albeit slow – process of harmonizing domestic legislation with EU law. This is reflected in the Competition Act of BiH, as well as the Competition Council of BIH ("CC"), established in 2004.

As BiH has an express obligation to harmonize its legislation with EU law, it is no wonder that the Competition Act is modeled after and is substantively equal to EU competition rules. Moreover, the Competition Act of BiH explicitly states that the CC may in its work use the practice of the Court of Justice of the EU and the decisions of the European Commission as guidance. This suggestion has been adopted by the CC in practice, especially in matters of merger control and abuse of dominant positions. In 2013 the CC adopted eight antitrust decisions and 16 merger decisions and issued 25 official opinions. Eight mergers were dismissed, while the other were authorized unconditionally. The CC imposed fines totaling about EUR 1.8 million on companies that infringed competition rules.

Despite this progress, the field of telecommunications has in recent years mostly been ignored by the CC, although competition on the market was generally limited. In 2011 a procedure against one of the three dominant operators in BiH was rejected by the CC in a decision which left more open questions than it provided answers, mainly because it did not state what the alleged abuse had been. However, the BiH Communications Regulatory Agency ("Agency") has in recent years focused on the implementation of regulation goals, set out by the Council of Ministers of BiH on the Telecommunications Sector Policy of BiH for the period 2008-2012. All the activities undertaken by the Agency are based on a common aim: to create prerequisites for further market liberalization and to improve the level of competition. It seems that this has now led the CC to start looking deeper into the Telecommunication sector.

Last year the CC found that the IKO Balkan S.R.L media company had abused its dominant position in the market by imposing conditions regarding the minimum number of subscribers in its sale of rights for the distribution of channels that included football contents of high quality, including the transmission of packets of Live English Premier League in BiH, and thereby restricted competition in the market. The CC assessed that football content of high quality is a very differentiated product, which does not have an adequate replacement and is not generally interchangeable, in that – for instance – a consumer who follows the German Bundesliga matches will not consider matches of the English Premier League an adequate substitute, and vice versa. IKO Balkan was fined BAM 125,000 (approximately EUR 64,000) for infringement of the Competition Act.

In a more recent decision, the CC found that BH Telecom Sarajevo, one of the incumbent telecommunications operators in BiH, had abused its dominant position in the market by forcing parties who wanted to sign an interconnection agreement to its fixed network to accept additional obligations which, by their nature, have no reasonable connection with that kind of agreement. Operators with significant market power (of which BH Telecom is one) prepare reference interconnection offers ("RIO") – documents describing conditions and modes of connection to their infrastructure – and the Agency gives consent to the contents and conditions contained therein. Operators with significant market power lay out their infrastructure through RIOs to alternative operators when providing certain telecommunications services. BH Telecom had a dominant position in its market and, as such, a special responsibility and obligation to provide interconnection to its network under the conditions set forth in the RIO documents. The CC fined BH Telecom BAM 150,000 (approximately EUR 76,000) for abuse of dominant position in the market for interconnection.

While the meaning and impact of these cases is subject to further discussion – for example to determine if the relevant market was appropriately identified – they clearly show that a liberalization of a market will also cause the CC to react accordingly. The question is if market players in BiH are ready for upcoming competition issues.

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## Lithuania

### Is Money Lending Subject to Merger Control?

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

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

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

Even though the regime of Merger Control in Lithuania is essentially based on the framework of European Union competition law, it, nevertheless has, or at least had, some peculiarities. Provisions of the national competition law effective until May 1, 2012, stated that failure to satisfy the prior notification and standstill obligations – the "cornerstones" of Merger Control – should result in a contract being found null and void and as creating no legal consequences, irrespective of whether or not that contract actually significantly impeded effective competition (since May 1, 2012, however, only transactions that in fact significantly impede effective competition and which are not cleared by the Competition Council are declared invalid).

The legal framework effective before May 1, 2012, allowed the undertakings (debtors) to attempt to declare loan agreements invalid on the grounds that through those agreements financial institutions had in fact acquired control over the companies and thus a concentration had taken place without prior notification. Recognition of loan (credit) agreements as invalid due to breach of concentration clearance procedures would allow debtors to avoid payment of credit interest and use the credit facilities free of charge. From the creditor's perspective the notion that such an agreement – and in particular the contractual provisions on mitigating financial risks – could lead to a de facto concentration might call for more than just mere amazement.

This matter was brought into question for the first time in October 2011, when the Competition Council of the Republic of Lithuania initiated proceedings upon the complaint of one of the debtor's shareholders. When it was finally resolved in September 2013, the Competition Council in fact agreed that purely economic relationships (i.e. debt financing), coupled with structural links, could indeed play a decisive role in the acquisition of control. Even more, the Competition Council concluded that, in this particular case, the creditor bank, through the risk mitigation provisions, had indeed acquired the ability to affect the conduct of the debtor at least to some extent. Nevertheless, the Competition Council concluded that that limited ability alone was not enough for the creditor to affect the strategic business conduct of the debtor, and ruled that no concentration had taken place.

The ruling was upheld by the Supreme Court of the Republic of Lithuania. By its decision of December 12, 2013, the Supreme Court refused to declare the credit agreement invalid on the grounds that a concentration had taken place. The Supreme Court explicitly stated that in today's business world typical contractual provisions on credit risk mitigation by themselves cannot be considered illegal either under the national rules of competition law or on any other legal grounds.

It is worth mentioning that the court of first instance in this case had in fact concluded that a concentration did take place, only later having its judgment reversed by the court of the second instance (appeal) – which decision was later upheld by the Supreme Court.

Thus, although the Appellate and Supreme Courts found that improper concentration did not take place in this particular instance, the case clearly shows that under the regime of Merger Control of the Republic of Lithuania even relationships of purely economic nature (i.e. debt financing) may indeed be subject to Merger Control. Therefore, it is highly advisable for undertakings, while drafting respective loan and other agreements which might conceivably lead to acquisition of control by one entity over the assets or business of another entity, to take the possibility into consideration and, in case of doubt, to consider pre-notification consultations with the Competition Council.

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## Hungary

### Introducing a Suspension Obligation into Hungarian Merger-Control Law

Nowadays important business opportunities often require immediate decisions. Such opportunities may arise at companies to be acquired, during, for example, the few months between the signing of an acquisition agreement concerning the company and the closing of the transaction envisaged by said agreement.

Acquirers are, for a few months, still in a comfortable position in Hungary when they intend to ensure that target companies operate properly and do not miss opportunities during the interim period between the signing of the acquisition agreement and the closing of the transaction. For example, they can replace the target's management with their own people, can get involved in strategic decision-making, and can even integrate the target into their own group. There is no suspension obligation or mandatory waiting period under Hungarian merger-control law, so the parties are allowed to implement the transaction prior to the receipt of approval from the Hungarian competition authority (the "Gazdasagi Versenyhivatal", or "GVH"). Obviously, acquirers run the risk that the GVH will eventually decide to prohibit the transaction, but in most cases where the concentration does not raise significant competition-law concerns, the risks are minimal in practice.

However, a recent amendment introduced a suspension obligation into Act LVII of 1996 on the Prohibition of Unfair Market Practices and the Restriction on Competition (the "Competition Act"), setting out Hungarian merger-control law, to take effect July 1, 2014. Transactions concluded after this date must not be implemented in the absence of (i.e., prior to the receipt of) the GVH's approval. In this context, for example, acquirers must not exercise any voting rights attached to the ownership interests to be acquired, and they must not exercise their right to appoint or elect the target's executive officers. Further, the target's business decisions must be adopted and the business relations between the parties must be operated on the basis of the pre-transaction situation – i.e., the acquirer and the target must remain independent. This prohibition remains in force until the completion of any condition possibly attached to the GVH's approval. The GVH may impose a fine for early implementation (for 'jumping the gun' as it is called in EC practice) by the acquirer.

There are certain exceptions to this general prohibition: (1) public bids, or (2) the conclusion of the transaction agreement, or (3)other agreements and statements on the basis of the above, provided that the actions do not result in the exercise of the acquirer's controlling rights, or (4) transactions classified as strategically significant by the Government.

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

To be fair, this change merely brings Hungarian merger-control law in line with EC Merger Regulations and most EU member states' merger-control laws, which all contain a suspension obligation. However, companies should keep this change in mind when planning and structuring their deals. There are many practical solutions by which unintended violations can be avoided and the target's proper operation during the interim period can be ensured. For example, an observer can be appointed, the transaction agreement may prescribe how the target should operate during the interim period, or a consent can be requested from the GVH for the pre-clearance exercise of controlling rights. The GVH will presumably only rarely grant its consent, and only for certain actions, and the conditions of such consent are yet to be developed in practice.

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

However, target companies' business partners face significant legal risk, often without even being aware of it, during the interim period. The Competition Act's Section 29/A (4) expressly provides that deals and statements violating the suspension obligation and/or the terms of the GVH's consent are null and void if the GVH prohibits the concentration. This means that the target company's business agreements concluded during the interim period on the basis of the acquirer's illegal control over its business decisions are null and void, even if they are lawful in all other aspects. Although the acquirer can not refer to the nullity, the target company, for example, may do so vis-á-vis its business partners. Such business partners can then only sue the acquirer for damages.

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

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## Macedonia

### Competition Law and the Oligopolistic Market

**Regulatory overview**

The governing legislation in the Republic of Macedonia regarding competition matters is the Law on the Protection of Competition (Official Gazette of the Republic of Macedonia no.145/2010 and no. 136/2011) and the Law on Control of State Aid (Official Gazette of the Republic of Macedonia, no.145/2010). The laws are based on the EU competition law and state aid law, encompassing standard competition law institutions: restrictive agreements and practices, abuse of dominant position and control of concentrations, and regulation of state aid.

The mandate of the Commission for the Protection of Competition is also set by the governing laws, which also prescribe certain specific procedural rules, besides the rules on general administrative procedure.

### Restrictive agreements and practices

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

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

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

### Recent developments and case law practice

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

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

Agreeing with this argument, the Court found that the Commission had failed to establish the existence of an agreement (written or oral) regarding the fixing of prices. Instead, the Court found, the companies' parallel pricing represented rational behavior. The characteristics of an oligopolistic market produce a great likelihood that companies will offer similar prices: a small number of bidders, high entry barriers, non-significant differences in the product, and easy detection of price changes. An oligopolistic market does not allow a company to minimize or maximize prices by itself due to the fact that it will cause spiral minimization/maximization by the other companies. In the current case it was found to be irrational to sanction the companies' behavior because the problem was natural in the particular structure of the market – a condition that may not exist in normal circumstances. That the parallelism in the present case had undeniable benefits for society was also important.

These arguments were supported by the plaintiffs' submission of theoretical and case law from the European Commission and the European Court of Justice.

After assessing the facts, the Administrative Court determined that the two companies had not fixed their prices; rather, their behavior was the result of typical rational behavior in an oligopolistic market and was not preconditioned by their previous dealings. In addition, the decision of the Commission was found contrary to the principles of objectivity of the proceedings, especially due to the lack of concrete evidence and documents in support of a finding that there had been a restrictive practice between the two companies. Accordingly, the Commission's decision was annulled. The Commission filed an appeal against the decision of the Administrative Court; however, the Supreme Administrative court in the appeal procedure upheld the decision of the Administrative Court

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## Latvia

### Latvian Courts Rediscover the "Object and Effect" Distinction

On February 3, 2014, the Supreme Court of Latvia decided case No. SKA-3/2014 [Rimi Latvia et al.] putting an end to a long and at times exasperating argument between Latvian competition law practitioners and the judiciary regarding the "object or effect" distinction under Latvian Competition Law.

In essence, the dispute concerned the approach taken by the Competition Council, which found all types of agreements listed under Article 11(1) of the Competition Law (Latvian equivalent of Art. 101(1) TFEU) as anti-competitive per se, thus essentially negating the requirement to evaluate whether a particular agreement was anti-competitive by "object or effect". This approach was convenient for the Competition Council, as it eliminated any need for in-depth analysis, and allowed the Council to label any arrangement as anti-competitive regardless of the factual background. And the approach found unexpected and strong support in the courts. The Supreme Court, in 2009, delivered a judgment in case No. SKA-234 stating that all types of agreements listed under Article 11(1) of the Competition Law are to be regarded as agreements whose object is anti-competitive and usually result in hindrance, restriction, or distortion of competition.

This passage became widely cited in subsequent judgments. In reaction to the Supreme Court's decision, the shocked members of the competition law community engaged in heated debate on an academic level, and tried, by referring to EU law, decisions of the EC, and judgments of the European Courts, to persuade the Latvian courts to return to a proper interpretation of Article 11(1) and to acknowledge that the sample list of agreements contained in Article 11(1) does not necessarily mean that every such agreement restricts competition 'by object'. Interestingly, the position of the Competition Council in this debate was somewhat evasive, as it undoubtedly realized that the Supreme Court was mistaken, however on a number of occasions it was all too convenient for the Council to rely on this misconception.

The case which finally has allowed the Supreme Court to change its position on this basic competition law concept involved the terms of trade center lease agreements under which the lessees, companies belonging to a large retail chain, restricted the ability of the lessor to lease premises to competitors of the retail chain. The Competition Council ruled that such agreements are restrictive per se. The Supreme Court stated that the content, aim, and the current and intended economic and legal context of the agreement must be taken into account in order to evaluate whether the agreement has an anti-competitive object. The Supreme Court also admitted that its statement in the judgment of 2009 must be adjusted in the light of the above.

Despite formally changing its interpretation of the law, the Supreme Court refused to revoke the decision of the Competition Council in the case before it – essentially allowing its former position to stand. In other words, the Supreme Court considered that the failure of the Competition Council to evaluate the market shares of the parties in the market of trade centers lease was not material and blamed the appealing parties for failing to provide more specific data.

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

The meandering journey of court practice demonstrates that Latvian judges are struggling hard to apply basic concepts of competition law. This may be the true reason behind the striking statistics of the success rate of the Latvian Competition Council: for at least the last four years the Competition Council has not lost a single case in the final instance. The website of the authority identifies only 6 revoked decisions in the past 12 years.

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## Montenegro

### Merger Control in Montenegro

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

The law provides that the Montenegrin Agency for Protection of Competition must be notified of any merger between undertakings or acquisitions of sole or joint control over an undertaking if at least one of two alternative thresholds is met: (i) the aggregate annual turnover of the undertakings concerned generated on the Montenegrin market exceeds EUR 5 million; or (ii) the combined aggregate annual worldwide turnover of the undertakings concerned exceeds EUR 20 million, out of which at least one of the undertakings concerned achieved EUR 1 million in the Montenegrin market (turnover data in each case from the year preceding the concentration). Even foreign-to-foreign transactions are subject to the duty to communicate concentration to the Montenegrin authority if the relevant thresholds are met, unless one ventures into a jurisdictional argument. According to its Article 2, the Competition Act applies to all acts and practices undertaken in Montenegro, as well as "acts and practices which have resulted as a consequence of acts and practices undertaken outside its territory which have as their object or effect distortion of competition on the territory of Montenegro." It should be noted, though, that the jurisdictional defense has not yet been verified before the Agency or the Montenegrin court.

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

The Ministry of Economy has issued an instruction on the content of and the manner of submitting a concentration notification. Unfortunately, the guidelines overcomplicate the content of a fully-pledged notice. For example, parties are instructed to provide: (i) information on competitors from the neighboring countries who are not directly or indirectly present on the Montenegrin market; (ii) information in possession of the applicants on all undertakings that have entered or exited the relevant market and on all concentrations in the relevant market, in each case for the period of 3 years prior to the concentration; (iii) information on horizontal agreements between the undertakings concerned or their affiliates in and outside Montenegro; (iv) information on projected market shares of the undertakings concerned over a period of 3 years following the implementation of concentration; (v) assessment of other markets which are closely linked to and/or interdependent with the relevant market or products from other markets that are purchased by the same group of customers, together with the estimated impact of the concentration on those other markets; and (vi) assessment of relevant markets where affiliates of the undertakings concerned have been present in the past three years (including the current year when the concentration is taking place).

A simplified notification is allowed under the following strict circumstances: (i) when the combined market share of the undertakings concerned on the relevant market is less than 10%, (15% on a vertically integrated market); or (ii) when joint control is converted to sole control by the undertaking that previously controlled the target jointly with another undertaking; or (iii) if the undertakings concerned are not present anywhere in the world on the same relevant product market, the same vertically integrated market, or closely connected markets.

The Agency has 105 working days from the date of receipt of a complete application to render a decision on an unconditional approval of concentration, 125 working days for a decision on a conditional approval, and 130 working days for a decision prohibiting the concentration. There is a presumption that approval is granted if the Agency fails to render its decision within any of the mentioned deadlines. It is, however, unclear how the presumption can work in the presence of these different deadlines. For example, if the Agency initiates phase II proceedings but does not render any decision within 105 working days, will it be considered that unconditional approval is granted even though the Agency has 125 working days to render a conditional approval and 130 working days to prohibit concentration?

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

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# Bulgaria

## Bulgaria Proposes to Introduce Rules on Significant Market Power

In March 2014 MPs from the parliamentary majority in Bulgaria proposed a bill for amendments to the Bulgarian Law on Protection of Competition ("LPC"). The stated purpose of the bill is to introduce rules to combat unfair practices in the retail sector.

### Background

The legislative proposal, which received an endorsement from the Government, is the most recent development in a long standoff between large (mostly international) retailers and smaller (mostly local) suppliers. In recent years suppliers have repeatedly complained that large retailers have used their superior bargaining position to impose unfair commercial terms in supply contracts. Based on these complaints, in 2009 the Commission on Protection of Competition ("CPC") started a full-fledged investigation against six large retailers for alleged abuse of dominance and horizontal coordination through the application of similar and allegedly unfair commercial terms in vertical agreements with suppliers. However, since the concentration of retail in Bulgaria is low (as of 2013 the market share of "modern trade" was below 45% and the market share of the largest retailer was about 10%), the abuse of dominance investigation was terminated. The cartel investigation was concluded in 2012 with a settlement decision pursuant to which the retailers agreed not to use in supply agreements: (i) clauses obliging suppliers to extend any reduction in the supply price that had been offered to another retailer, or (ii) clauses preventing suppliers from launching simultaneous promotions of one and the same product in different retailers. However, other practices and clauses that were commonly used by some retailers and viewed by suppliers as unfair were not addressed. Therefore, over the past couple of years there has been mounting pressure for adoption of legislation that would balance interests in the retail sector. Since 2010 the Government has submitted a couple of proposals for amendments to the LPC but legislation has not been passed, partly due to the absence of sufficient consensus on the nature and scope of legislative intervention that is needed.

### The Proposed Amendments to the LPC

Against this backdrop, the new bill provides for three main legislative changes:

First, it introduces the concept of Significant Market Power ("SMP") in the LPC, which is defined as a position held by an undertaking which is not dominant, but due to its market share, financial resources, access to markets, technological development, and established relations with other undertakings, may nevertheless distort competition on the market because its suppliers or customers are dependent on it.

Second, and without clear relation or relevance to the concept of SMP, the bill introduces into the LPC a requirement that retailers with annual turnover in excess of BGN 50 million (approximately USD 36.2 million) submit their general terms for supply contracts to the CPC yearly for review and approval. Once approved the terms would be published on the Internet and applied to all agreements with suppliers.

Third, the bill introduces changes in the Law on Foods pursuant to which retailers with annual turnover in excess of BGN 50 million would be prohibited from applying certain blacklisted clauses and practices in agreements and dealings with suppliers.

### Issues of Concern

Competition law practitioners and interested parties have raised concerns with the proposed legislation, including, among others, concerns about the scope and nature of the blacklisted practices and clauses (some of those are not identified as unfair in the recent Green Paper of the European Commission on Unfair Trading Practices in the Business-to-Business Food and Non-food Supply Chain in Europe); and due process concerns regarding the procedure for approval of general terms of supply agreements by the CPC and the level of penalties for abuse of SMP, etc. However, the issue which appears to stand out is whether unequal bargaining position and alleged unfair trading practices in the retail sector would be addressed through the introduction of new provisions on unilateral conduct in competition legislation. The bill does not consider issues of abuse of SMP in the context of specific bilateral relationships between entities with unequal bargaining position where the weaker party may be forced to accept certain unfavorable conditions because it does not have any other viable economic alternative. Rather, it introduces SMP in the provisions of LPC dealing with unilateral conduct and as a result the new institute would have universal applicability to all business dealings of certain category of undertakings without regard to the nature of their respective bilateral relationships.

Another effect of the legislative approach is that the established rules on dominance may be undermined by the new institute of SMP. The distinction between the two concepts may easily be blurred and dominance may lose its practical significance. Although Regulation 1/2003 permits member states to introduce stricter national rules on dominance, it is unclear how the introduction of this stricter test corresponds to the stated purpose of the bill. Surely, the introduction of SMP in the rules on unilateral conduct has much broader policy implications. Its effects spread far beyond the retail sector and those effects have not yet been fully assessed by the proponents of the bill.

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# Turkey

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

The end of 2013 witnessed a rather interesting judgment by the Turkish Competition Board (the "Board") on alleged price-fixing agreements among French high schools established in Istanbul, Turkey. The French Schools judgment, dated December 19, 2013, and numbered 13-71/960-407, was the outcome of a preliminary inquiry that the Turkish Competition Authority (the "Authority") had launched against five French high schools upon allegations that the institutions systematically exchanged information on future school tuition fees and fixed their prices.

All five institutions examined by the Board were established in the Ottoman Era before the turn of the 20th century and their legal status is defined in the Treaty of Lausanne (1923), the peace treaty that provided for the independence of the Turkish Republic after the collapse of Ottoman Empire.

The allegations also included the claim that there existed a "gentlemen's agreement" among the schools on restricting student transfers. As the Authority did not uncover any evidence in relation to the restriction of student transfers, the Board dismissed this claim.

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

The Board defined the relevant market as "educational services by private schools provided in a foreign language to high school students in Istanbul" and carried out its competitive assessment within this framework.

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

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

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

The judgment deviates from the Board's established approach, which has been to judge horizontal price-fixing agreements, including the exchange of price-related information, as per se (i.e., inherently) illegal, without discussing whether they restrict competition in reality. It also regularly imposes severe fines for price-fixing among competitors: In Banks (dated March 8, 2013, numbered 13-13/198-100), the Board held that twelve banks distorted competition by harmonizing their trade terms and levied a fine of approximately TL 1.12 billion (approximately EUR 484 million). In its Automotive Decision (dated April 18, 2011, numbered 11-24/464-139), the Board fined twenty three automotive companies approximately TL 277 million (approximately EUR 83.4 million) for information exchange on pricing strategies.

On the other hand, the Board has refrained from imposing fines for horizontal price-fixing in some cases. For example, in Private Schools Association (dated March 3, 2011, numbered 11-12/226-76), where certain private schools in Turkey fixed their pricing strategies jointly through the policies of the Private Schools Association, the Board did not open an investigation and only sent a warning to the examined schools. However, unlike its holding in French Schools, the Board found in Private Schools Association that these policies had as their object the restriction of competition and were in violation of Article 4.

French Schools undoubtedly remains an intriguing judgment, as it may be the beginning of a new line of case law where the Board will consider the circumstances of horizontal price-fixing agreements before directly labeling them as per se illegal.

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# Romania

## Recent Developments in Competition Law: New Rules on Judicial Review of Dawn Raids and Leniency Available for Criminal Charges

Pursuant to recent amendments to Romanian Competition Law no. 21/1996 (the "Competition Law"), the Romanian Competition Council ("RCC") can now carry out dawn raids only with prior judicial authorization on private as well as business premises. In addition, in an attempt to revitalize the leniency policy, which is rarely exercised in Romania, the legislature has now offered immunity from criminal liability for leniency applicants. Both amendments came into force on February 1, 2014.

### Extension of mandatory judicial authorization for dawn raids of public premises

Since February 1, 2014, companies visited by the RCC at their business premises must be presented with a judicial court order issued by the Bucharest Court of Appeal authorizing the dawn raid (in addition to the Order of the President of the Competition Council, which was already required). Although before the amendments a court order was required only for inspections performed at private premises (e.g. homes, lands, vehicles) of managers, directors, and employees of the company under investigation, prior judicial authorization is now mandatory for inspections of business premises as well. This is a surprising development welcomed by the business community, as it provides additional safeguards against abuse and arbitrariness by the competition authorities.

The authorization to perform a search of business premises is delivered by the Court of Appeal upon request of the competition authority. The Court of Appeal must rule on the request for authorization within 48 hours from the time of the RCC's application. The RCC's request should contain all information enabling justification of the inspection. Based on the information provided by the RCC, the judge reviewing the application must determine if the request is sufficiently grounded to justify the dawn raid.

Thus, the new provisions open the door for judicial scrutiny and real time cancellation of overly broad and imprecise RCC inspection decisions, thus blocking potential "fishing expeditions" by the authority. Moreover, companies should benefit from more clarity as regards the scope of the inspection, as it is expected that judicial orders will be drafted more carefully. By sufficiently specifying the essential characteristics of the subject matter and purposes of the inspection, the inspection orders should enable the undertakings concerned to better assess the scope of their duty to co-operate and to safeguard their rights during this early stage of the investigation procedure.

A concerned company may appeal an the court's authorization for a dawn raid before the High Court of Cassation and Justice within 48 hours from its issuance. The appeal does not automatically freeze the performance of the dawn raid – though suspension can be requested if manifest error of law or irreparable damage is proved. The decision can be challenged by the raided company based, inter alia, on the ground that the court warrant is too general and imprecise.

### Introduction of leniency for criminal charges

The Competition Law now limits criminal liability to persons holding a management position within an undertaking involved in an infringement of Article 5(1) of the Competition Law (corresponding to Article 101(1) TFEU): "Manager(s), legal representative(s), or any other person in a management position who intentionally conceive(s) or organize(s) one of the prohibited practices are subject to criminal liability." This amendment limits the subjects of criminal liability to persons with executive powers, who have the ability to initiate and organize cartel activities.

Moreover, leniency from criminal charges is now available under the following conditions: (i) an executive must inform the prosecution authorities regarding his involvement before the opening of criminal proceedings, and (ii) the information must lead to the identification and sanctioning of other participants. Therefore, the cooperation must be truthful, timely, and complete. If criminal proceedings have already started, the executive may still benefit from a reduction to half of the initial sanction if the information he or she provides is still relevant to the authorities and enables them to prosecute other participants. Finally, the imprisonment sanction for a criminal offense was increased from three years to a maximum of five years.

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## Albania

### Vodafone Albania: Non-Abuse of Dominant Position

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

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

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

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

The Authority noticed that the prices applied to Vodafone Card subscribers regarding on-net calls were fixed, while the prices applied to Vodafone Club subscribers depended on whether the calls were made toward Vodafone Club subscribers or Vodafone subscribers in general. The calls of Vodafone Club subscribers toward other Vodafone subscribers were charged at almost twice the rate of calls toward Vodafone Club subscribers. Such a difference was deemed not justified, as the costs for both origination and termination were the same.

Furthermore, the Authority found that the prices applied to off-net calls were significantly higher than those applied to on-net calls, despite the fact that the costs were almost the same. By applying such high prices to off-net calls, Vodafone discouraged its subscribers from making calls to other telecommunications operators. The Authority found that this practice deprived the latter from the incomes resulting from termination costs that Vodafone should pay to them and damaged their position in the relevant market.

Further, smaller telecommunication operators had to apply off-net call prices equal or lower than Vodafone's on-net call prices in order to be competitive. In practice, the application of such low prices was impossible, since it would not be profitable due to the level of termination prices that small operators had to pay to Vodafone. As a result, this on-net/off-net tariff differentiation could drive small operators out of the market, effectively constituting a barrier for the entrance of new operators into the mobile telecommunications market.

Despite its conclusion that in the long term, the application of differentiated tariffs (on-net vs. off-net) could distort competition and have a negative effect on small operators, the Authority decided that Vodafone had not abused its dominant position in the present case. The Authority recommended that EPCA, inter alia, monitor the implementation of Vodafone commitments related to equalization of tariffs within Vodafone Club and outside the Vodafone network (toward other fixed and mobile operators) and, in particular, related to the reduction of the difference between off-net and on-net call prices.

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

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

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## Serbia

### Retail Mergers in Serbia – Predictability vs. Substance: The Case of Agrokor/Mercator

Competition authorities are often faced with a dilemma – they can either aim to build a set of predictable legal rules, one in which companies understand what they can and cannot do; or they can develop a set of principles – a framework for assessing issues on a case–by-case basis, using complex economic and legal methodology. In most cases this is a clear trade-off, and therefore they all aim for a middle ground – a compromise, which in the eyes of companies and practitioners inevitably leads to less predictability and less substance.

The Serbian competition authority is, to some degree, an exception. In most cases it focuses on substance. It employs experienced case handlers and skilled economists who use modern merger-review tools to help them ask the right questions to come to the best conclusions.

However, when it comes to mergers affecting low-income consumers – predominantly in the 'food markets' (fast-moving consumer goods and retail in general) – they tend to focus more on predictability and prefer to err on the side of caution. It comes as no surprise that social policy plays an important part in the agenda of any competition watchdog. But inevitably this approach comes at a cost. It disregards the dynamic aspects of market analysis and ultimately leads to inefficiencies in serving customers and allowing a stable, modern trade channel for the suppliers.

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

Ultimately, the Serbian authority cleared the merger with remedies and made the clearance conditional upon Agrokor's obligation to divest or close a number of retail outlets. Using the dominance threshold set by the competition law at 40%, the authority decided that the companies should divest stores in those areas in which they combine to exceed 40%. Midway through the merger review, Lidl, a financially potent retailer from Austria with close to 10,000 retail stores, announced its immediate plans to open dozens of new stores in Serbia. By the time the clearance was granted, it owned a number of lots for its future stores. The authority had considered the 'Lidl argument' but gave it little weight.

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

There is a strong precedent for this flaw in Serbia. In 2006, the authority reviewed the Delta/C Market acquisition, in which the acquirer had failed to file notification of the intended merger and then received a blocking decision from the authority, only to implement it regardless of the blocking decision. At the time, the law provided for inefficient remedies and was unable to do anything. However, that makes this case ideal for a post-factum analysis, as it offers real data instead of economic models.

At the time of the acquisition, Delta was dominant in the market (with 40% market share in the capital) and C Market was number two (with about 23%). By competition-law standards, the merger would have caused serious concerns over its effects on competition: the combined entities would hold almost two thirds of the market.

However, five years later, Delta and C Market merged and their combined share dropped to about 35% - i.e., from almost two thirds to barely over a third of the market. From today's perspective, the authority failed to analyse how saturated the market was at the time of the transaction. Surprisingly, the retail market seems to have been, and perhaps still is, a 'new market'. At the same time, it could be an 'old market,' as online traders are breathing down the neck of modern and traditional traders alike.

In conclusion, there seem to be fewer and fewer traditional markets. Traditional tools have become obsolete and should be used with great caution. Achieving predictability in this legal environment might come at the cost of distorting markets and slowing down innovation. Any merger-control reform therefore requires more of a 'more economic approach' than it has before. The regulator should understand the markets better and decide to intervene only when necessary. Otherwise the cost of intervention will outweigh the benefit to both the consumers and economic efficiencies in general.

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## Belarus

### New Developments in Belarusian Competition Law

Belarus cannot be said to have an old Competition Law tradition. There is still no "landmark" Competition Law case in Belarus, and according to the statistics of the Competition Authority (the Pricing Policy Department of the Ministry of the Economy), the total amount of all Competition Law fines imposed in 2013 was just BYR 2.3 billion (approximately EUR 171,000). But there are a wide variety of norms of Competition Law that are contained in the Constitution of the Republic of Belarus; International Treaties that have been ratified by the Republic of Belarus; Presidential Edicts; the Belarus Civil Code; the Code of Administrative Offenses; the Criminal Code; and other antitrust laws and regulations for business and economic activities.

The amended Belarusian Act against restraints of Competition (The Law of the Republic of Belarus "On Counteraction To Monopolistic Activity And Development Of Competition" – known as the "Competition Act") has been in force since 1992. After a long and controversial debate and a process of harmonization with the regulatory frameworks of the Common Economic Space of the Russian Federation, the Republic of Belarus, and the Republic of Kazakhstan (collectively, the "CES"), the new Competition Act was finally adopted in December 2013, and will come into force on July 1, 2014.

The new Competition Act is based on the provisions of the Treaty On Common Principles And Rules On Competition signed in the frameworks of CES on December 12, 2010, and defines the institutional and legal frames for the prevention, restriction, and suppression of monopolistic activity and unfair competition in order to ensure the necessary conditions for the establishment and effective functioning of commodity markets, the promotion and development of fair competition, and the protection of the rights and legitimate interests of consumers.

The most important development of the new Competition Act is the increased role of the Competition Authority and the extension of its powers. The full range of investigatory, enforcement, regulatory, and decision-making powers is granted to the Competition Authority and its officials. This should help them to react promptly and flexibly in any situation; the authority will have stronger investigative powers and will be able to set its own priorities in competition policy.

Another key new provision of the Competition Act is the imposition of new requirements and thresholds for merger control tests and the requirement of prior consent on concentration deals from the Competition Authority. At the moment only concentration deals involving more than 30% of market share, majority share deals of more more than 25%, or direct control are require the prior consent of the Competition Authority. After July 1, 2014, however, additional factors, including balance sheet assets value (more than 100,000 base rates – approx. EUR 1 million) and annual revenue (more than 200,000 base rates – approx. EUR 2 million) will also be taken into account.

Furthermore, the new Competition Act calls for a more detailed determination of dominant position (commonly more than 35% market shares, but other more complex criteria can be applied) and actions treated as abuse of dominant position. At the same time, despite the application of other criteria, an entity cannot be treated as dominant if its market share does not exceed 15%, except for natural monopoly issues. Persons who according to the definition of the Competition Act are members of a group are exempted from obtaining prior consent on concentration deals, and need only notify the Competition Authority.

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

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

The new Competition Act is a milestone in the history of Competition Law in Belarus. It should have a major impact on business in Belarus and, due to its extraterritorial provisions, also on foreigners doing business with Belarusian counterparts. Thus, it is crucial to make a full competition compliance review of current agreements and undertakings with Belarusian partners to avoid the risk of fines or other negative consequences.

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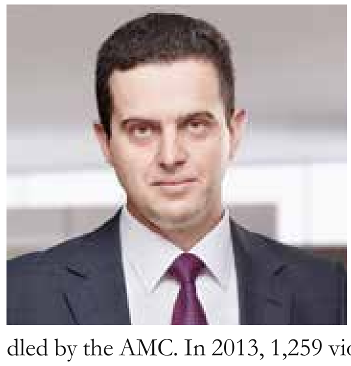
## Ukraine

### Fair Business in Ukraine From a Competition Perspective?



While in many jurisdictions fair competition is safeguarded by consumer protection agencies, in Ukraine significant powers are allocated to the competition authority – the Antimonopoly Committee of Ukraine (the "AMC"). Investigations of any dishonest or fraudulent practices that may unfairly distort competition constitute about 16% of all cases handled by the AMC. In 2013, 1,259 violations of unfair competition laws were investigated by the AMC.

The Law of Ukraine "On Protection Against Unfair Competition" (the "Competition Law"), adopted in 1996, distinguishes among the following main types of violations: (i) actions that are contrary to honest practices and involve illegal use of intellectual property or business reputation of another undertaking, e.g., parasitic copying; (ii) restrictive and discriminatory practices, e.g., dissemination of false or misleading information; and (iii) unlawful collection, disclosure, and use of trade secrets.

Traditionally, the AMC pays primary attention to restrictive and discriminatory practices. According to the Annual Report of the AMC for 2013, 85% of all unfair-competition cases reviewed by the AMC last year were related to dissemination of misleading information by market players, primarily in the course of advertising and promotional campaigns. The authority is convinced that dissemination of misleading information is one of the most destructive types of unfair competition, and fraudulently influences the end choice of consumers to purchase a particular product.

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

The maximum fine in the unfair competition area was imposed by the AMC on a local pharmaceutical company which indicated in its advertising campaign that 9 out of 10 Ukrainians chose its drug. No market studies could confirm the accurateness of this statement.

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

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

As far as the sanction list is concerned, the AMC is empowered to apply a broad spectrum of penalties for unfair business practices, including seizing infringing products or recalling them from the market. Yet fines remain the most common sanction applied by the AMC. In principle, they may reach up to 5% of the violator's gross worldwide income (sales) for the fiscal year preceding the year in which the fine is imposed. As a practical matter, the highest fine imposed by the AMC for unfair competition so far approached USD 1 million (it was imposed in 2012). Since then, the AMC has expressed its intention to increase the amount of fines for any competition-law violations. However, the maximum fine imposed for unfair competition in 2013 was only about USD 115,000.

In the context of the AMC's declared intention to make its fines-policy stricter, it is of key importance for businesses to understand the procedure of fine calculation, which has not been made public. This is one of the main issues raised by the business and legal communities before the AMC to date. Following numerous requests and pleas, the AMC has prepared and internally adopted a methodology. The document is expected to shed some light on how the fines are being calculated and eliminate uncertainties within the business and legal communities, making the procedure more transparent. Due to some internal resistance, it is very difficult to predict when the AMC will publicly release this methodology.

In light of the current political situation in Ukraine, the leadership of the AMC is undergoing substantial changes. The majority of the commissioners of the AMC are likely to be replaced. Yet one can hope that the new appointees will continue the AMC's efforts in combating unfair competition and will apply the best practices available from other jurisdictions.

*Vladimir Sayenko, Partner, and Valentyna Hvozd, Senior Associate, Sayenko Kharenko*

## Moldova

### Turnover Calculation Under the New Competition Act

The recently adopted Moldovan Competition Act no.°183, dated July 11, 2012 (the "Competition Act") aims to transpose the provisions of Council Regulation (EC) No.1/2003 of December 16, 2002 "on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty" and, partially, of Council Regulation (EC) No.139/2004 of January 20, 2004 "on the control of concentration between undertakings", regarding, inter alia, the rules of notification for operations of economic concentrations (the "Operations").

#### Notification Thresholds

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

#### Turnover Calculation

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

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

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

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

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

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

The rules on turnover calculation under the Competition Act, including its secondary legislation, appear to be more transparent than under previous competition legislation. At this stage, however, it is not clear whether the implementation of these rules will succeed. Time will tell. Until then, to avoid unnecessary risks, companies are advised to keep consultants close by their side. Inaccurate computation may incur fines up to 4% of turnover.

*Vladimir Iurkovski, Managing Attorney, and Andrian Guzun, Associate, Schoenherr*

## Russia

### Fair Business in Ukraine From a Competition Perspective?

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

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

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

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

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

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

The discussions about the draft amendments are still ongoing. The fourth antitrust package was initially scheduled to be considered at the last year`s autumn session of State Duma of the Russian Federation (in which case it would have been adopted before the end of 2013). However, the document is still being adjusted and its introduction is now scheduled for the spring session of 2014, so it is not possible at the moment to predict when and in what form the draft will be approved.

*Natalia Korosteleva, Partner, and Evgeny Bolshakov, Senior Associate, Egorov Puginsky Afanasiev & Partners*

## European Union

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

The Member States' ambassadors to the EU, sitting as the Committee of Permanent Representatives, have now endorsed the agreement between the Council Presidency and representatives of the European Parliament on a proposed new EU Directive on rules governing actions for damages for infringements of competition law. This follows the submission in June 2013 of a proposal by the European Commission. The final text is expected to be voted through by the Parliament by mid-April and could be formally adopted by the end of the year.

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

As a Directive, the new law does not bring about rule changes which are immediately directly applicable. Unlike a European Regulation, which has immediate direct application and creates rights and obligations for individuals and corporations straight away, a Directive constitutes an instruction to each Member State to implement new national laws in order then to bring about the changes specified. Therefore, the proposed Directive does not itself directly make any changes and Member States will then have two years to implement required national rules. However, the Directive allows Member States, if they wish, and their national laws permit, to make new laws pursuant to the Directive with retroactive effect back to the date of entry into force of the Directive.

Secondly, the new law does not contain any measures regarding perhaps the single most important driver of private actions in competition law – class actions and other forms of collective redress. Class actions are a relative rarity in Europe by comparison with the U.S., and many Member States have no or only basic legal frameworks to permit collective litigation. This is a key instrument in competition claims where typically multiple business customers or consumers will all claim to have suffered loss arising from a competition law infringement – for example, artificially high prices resulting from a cartel or from market partitioning and discriminatory pricing operated by a dominant supplier. Rather than include provisions on collective redress in the Directive, the Commission opted, in order to respect different legal traditions in Member States, to make a non-binding recommendation to Member States on collective redress. In addition to creating no legal obligation for the Member States to introduce any changes the Commission's recommendation, like the Directive, provides for an implementation period of two years. The recommendation advocates an "opt in" system requiring express consent from each class member, with no contingent fees.

The key changes in areas other than collective dress which Member States will be obliged to implement within two years are the following:

The national courts will have power to order disclosure of evidence held by the opposing party or a third party, once a plausible case is made. This will be subject to showing necessity, justifiable scope and proportionality, and also to legal privilege. Confidential information will be subject to disclosure with appropriate measures to protect confidentiality. Penalties must apply for failing to comply with disclosure orders.

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

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

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

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

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

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

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

*Edward Miller, Partner, Reed Smith*

## Next Issue's Expert Review: Privatization

# In Closing: TopSite Award

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

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

Faithful readers will remember that we select two Central and East European markets for each issue. This time around, we shine our CEELM TopSite spotlight on Romania and Serbia, and after studying many websites the editors found two outstanding sites in each of those markets that seemed to stand out, showing distinctive qualities that earned them spots as finalists for our award.

### Romania

Our two finalists from Romania were Nestor Nestor Diculescu Kingston Petersen (www.nndkp.ro) and Tuca Zbarcea & Asociatii (www.tuca.ro). Both sites manifested unique graphic design elements that were attention-getting while focusing that attention on the content they offered. Both employed scrolling text to convey a dynamic sense of their practice and successes. Tuca Zbarcea 's red-themed home-page graphic conveys a sense of movement and energy. NNDKP's green home page offers an artist's paintbrush as an explicit metaphor linking accomplishments

*www.nndkp.ro*

and style. NNDKP also invested in a humorous and compelling six-and-a-half minute cartoon video telling the history of the firm "in a nut shell."

We awarded this issue's TopSite honor among Romanian websites, ultimately, to NNDKP for the depth and richness of detail shown throughout the site. Balancing the light touch of the front-page video, every link offers an abundance of professional detail, effectively conveying breadth and substance.

NNDKP's Director of Marketing and Business Development, Irina Melecciu, said a basic redesign of the site in 2008 was "a result of our brand audit and part of our brand identity fine tuning. We aimed at creating an online tool with relevant, complete and updated information that could express our values in a user-friendly way and clearly communicate the client benefits. We also believed it was essential to provide details about our teams of lawyers, integrated legal and tax services, practice and industry area expertise, while also offering useful legal updates, articles, and career insights with an online application and information about our international affiliations." She said the firm felt "great joy in acknowledging the 'TopSite Award' from CEE Legal Matters, especially that it came from specialists highly experienced in providing top-notch, relevant editorial content to their readers in the region." (Thanks, Irina!)


*www.tuca.ro*

Finalist Tuca Zbarcea's site carries its quiet design principles from page to page as it presents its news, specialties, staff, and other links. Alina Pintica, the firm's Chief Marketing and Communications Officer, said the site's intention was to consolidate its branding strategy and to reinforce its core values of "professionalism, openness, performance, accessibility, friendliness. It was designed to provide interesting and well structured information in a user-friendly and interactive manner. While we knew that aesthetics came second, we were well aware of the fact that it had a major role in conveying the values that needed to be enforced by the web tool. We also aimed at implementing a visual interface that would, first of all, provide intuitive access to all information and instruments available on the website."

### Serbia

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

The Jankovic Popovic Mitic site employs muted colors and consistent and artistic use of black-and-white photographs to call attention to its firm, areas of practice, and staff.

*www.jpm.rs*

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

*www.pricapartners.com*

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

Edward Johns