THE LAWYER

BRIEFING: *Romania*

M&A

Smart and safe investments

2015 was a strong year for the Romanian M&A sector and it looks set for another excellent performance in 2016. Which sectors are flourishing?

By Florian Nitu, managing partner, Popovici Nițu Stoica & Asociații

With the largest economic annual growth rate in Europe exceeding 4 per cent GDP in 2015 and similar prospects for 2016/17, Romanian businesses look even more attractive. Regional and global synergies add up and the dynamics in the financial markets in mature jurisdictions favour the channelling of fresh private capital in the Romanian economy.

Significant transactions, in number and in value, were implemented in 2015 and there are very encouraging projects in the pipeline for 2016, in sectors from industrial to financial markets, from real estate to energy and natural resources and from agribusiness to IT and telecoms.

Buoyancy returned to the real estate market last year, with all long-established players making notable moves. These include new investments and divestments made by key funds such as Immofinanz, Global Worth or New Europe Property Investments, and also developers such as Portland Trust, Sonae Sierra or integrated groups, such as Skanska.

Investments and new development projects were particularly strong, with transactions generating more than €1bn for the entire market. These included key deals in the office sector, logistics, retail, and also residential. Of significant note was the sale of Immofinanz Logistics Portfolio to Blackstone, and the acquisition by P3 Properties of the Europolis Logistic Park. In retail, highlights included New Europe Property Investments acquiring Promenada Shopping Mall, while in the office segment the acquisition of Nusco Tower by Global Worth was the most visible.

In capital markets, Fondul Proprietatea remains prominent, having launched its fourth buy-back tender offer of 750 million shares, representing 8.13 per cent of the fund's paid share capital. Valued at €189m, this was the biggest offer conducted by a company on the market.

Investment in energy and natural resources looks set to yield substantial returns. The IPOs, SPOs and other private placements in or of state-owned utilities proved very successful. Indeed, Electrica, a power distribution and supply company, raised more than €400m in an IPO on the Bucharest and London Stock Exchanges, while an important stake of Romgaz has been sold on the Bucharest Stock Exchange by way of a private placement in exchange of €145m.

Last but not least, the agribusiness sector reached a stage of development that makes large investments possible. A solid and diverse mix of landowners and farmers, mainly Italians, Dutch, Danish or Spanish have already made significant acquisitions and have consolidated individual properties of sizeable dimensions (ie individual portfolios well exceeding 10,000 hectares), which may now become the object of large-scale investments.

Trends and prospects

Sectors offering organic growth opportunities such as IT and telecoms, agribusiness and energy and natural resources are very likely to attract even more investor interest. Deals are also expected in other domains, such as the consumer-related distribution businesses, retail, logistics and DIYs.

The banks and financial institutions will continue the NPL clearance, with high-profile deals being planned for 2016, while the real estate field is expected to flourish with the arrival of big portfolio deals. And, of course, there are the privatisation projects that have been announced but not yet implemented, including public offerings in government utility companies, sale of a state-owned stake in Romtelecom and the Romanian Post.

The bottom line is that for M&A deals, Romania offers significant potential in various economic sectors and a mix of private transactions, but also public-to-private deals.

What to know when dealing in Romania

Romania is a platform for investments in Eastern Europe and, in general, it is an M&A-friendly jurisdiction. This is a reality anchored in four major pillars consisting of (i) a stable and predictable legal framework, (ii) the related quasi-low tax treatment, (iii) pragmatic merger control rules, and (iv) legally manageable labour resources.

In terms of taxation, acquisition, establishment or merger opportunities may be structured locally with a high level of tax optimisation on the grounds of: (i) a 16 per cent flat tax quasi-universal, (ii) a 5 per cent dividend tax, (iii) an extensive network of conventions for the avoidance of double taxation, (iv) available benefits under EU tax legislation.

In terms of employment, the Acquired Rights Directive (Directive 2001/23/EC) applies.

For compliance and merger control, regulatory and control, authorities such as the Competition Council or the Financial Supervisory Authority have long implemented in their entirety the EU-based merger-control clearance proceedings. On these grounds, doing transactions in Romania is not only smart, but also very safe.

Romania: seeking more foreign investment

By Florian Nitu, managing partner, Popovici Nițu Stoica & Asociații

Projects, transactions and claims – this is the triad of legal services that is gaining momentum again in Romania and more generally in Eastern Europe.

We see new infrastructure and concession works being relaunched this year in line with the EU funded schemes being resumed, but also public procurements within areas of significant growth potential, such as green energy and biomass, solar, IT and telecommunications, and agriculture businesses.

The transactions realm fared very well in 2015 and it is likely to get closer to its heights of 2007 within the next two years or so, driven by real estate investment and by major industrialists showing an increasing interest for Romanian businesses and opportunities, as well as by key institutional investors, private equity funds and banks raising significant amounts and committing to big tickets.

Of course, there are strategic legal players that have set their Romanian positions since the mid-1990s and have continued to expand and consolidate, as the market entered a stage of unprecedented intensity in the past few years.

> "Projects, transactions and claims – this is the triad of legal services gaining momentum again in Romania"

Claims, litigation and arbitration in general keep lawyers very busy, with the resolution of assets being propelled by litigation tools. Also investor-state dispute resolution went through a process of maturation with foreign investors being more mindful to such regimes, which translates into complex legal work being now done before and alongside with virtually any investment process.

The new Fiscal Code that came in force on 1 January 2016 is definitely the major change in the legal market for years to come. With it, Romania strengthens its position as a low tax jurisdiction and an established location for investments, mergers and acquisitions in Eastern Europe. The new Fiscal Code restates the 16 per cent quasi-universal flat tax and establishes a 5 per cent dividend tax. It furthers the already extensive network of conventions for the avoidance of double taxation and also makes effective the EU tax legislation in key investment areas, such as the Parent Subsidiary, Interest and Royalty and Merger Directives.

This year will be marked by investments in IT and telecommunications and energy and natural resources, but also in agribusinesses and agricultural land in general will pay off. We expect these latter areas will attract even more interest. There will also be projects in other domains, such as the consumer-related distribution businesses, retail and logistics.

In the financial sectors, it is thought that banks and financial institutions will continue the non-performing loans clearance, while in the real estate field significant portfolio deals are expected.

Popovici Nitu Stoica & Asociatii will continue to invest in what are the building blocks of our independent legal practice: complex projects, transactions and claims.

Florian Nitu – managing partner

Popovici Nițu Stoica & Asociații
239 Calea Dorobanţi, 6th Executive Floor, Bucharest, 1st District, 010567 Romania
Tel: (0040) 21 317 79 19
Fax: (0040) 21 317 85 00 / 317 75 05
E-mail: office@pnsa.ro
Web: www.pnsa.ro