The Mergers & Acquisitions Review

Ninth Edition

Editor
Mark Zerdin

Law Business Research

The Mergers & Acquisitions Review

The Mergers & Acquisitions Review
Reproduced with permission from Law Business Research Ltd.

This article was first published in The Mergers & Acquisitions Review - Edition 9
(published in August 2015 – editor Mark Zerdin)

For further information please email
Nick.Barette@lbresearch.com

The Mergers & Acquisitions Review

Ninth Edition

Editor
Mark Zerdin

Law Business Research Ltd

PUBLISHER
Gideon Roberton

BUSINESS DEVELOPMENT MANAGER
Nick Barette

SENIOR ACCOUNT MANAGERS
Katherine Jablonowska, Thomas Lee, Felicity Bown

ACCOUNT MANAGER
Joel Woods

PUBLISHING MANAGER
Lucy Brewer

MARKETING ASSISTANT
Rebecca Mogridge

EDITORIAL COORDINATOR
Shani Bans

HEAD OF PRODUCTION
Adam Myers

PRODUCTION EDITOR
Anna Andreoli

SUBEDITOR
Hilary Scott

MANAGING DIRECTOR
Richard Davey

Published in the United Kingdom
by Law Business Research Ltd, London
87 Lancaster Road, London, W11 1QQ, UK

www.TheLawReviews.co.uk

ISBN 978-1-909830-62-2

Printed in Great Britain by
Encompass Print Solutions, Derbyshire
Tel: 0844 2480 112

THE LAW REVIEWS

THE MERGERS AND ACQUISITIONS REVIEW

THE RESTRUCTURING REVIEW

THE PRIVATE COMPETITION ENFORCEMENT REVIEW

THE DISPUTE RESOLUTION REVIEW

THE EMPLOYMENT LAW REVIEW

THE PUBLIC COMPETITION ENFORCEMENT REVIEW

THE BANKING REGULATION REVIEW

THE INTERNATIONAL ARBITRATION REVIEW

THE MERGER CONTROL REVIEW

THE TECHNOLOGY, MEDIA AND TELECOMMUNICATIONS REVIEW

THE INWARD INVESTMENT AND INTERNATIONAL TAXATION REVIEW

THE CORPORATE GOVERNANCE REVIEW

THE CORPORATE IMMIGRATION REVIEW

THE INTERNATIONAL INVESTIGATIONS REVIEW

THE PROJECTS AND CONSTRUCTION REVIEW

THE INTERNATIONAL CAPITAL MARKETS REVIEW

THE REAL ESTATE LAW REVIEW

THE PRIVATE EQUITY REVIEW

THE ENERGY REGULATION AND MARKETS REVIEW

THE INTELLECTUAL PROPERTY REVIEW

THE ASSET MANAGEMENT REVIEW

ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following law firms for their learned assistance throughout the preparation of this book:

AABØ-EVENSEN & CO ADVOKATFIRMA

ǼLEX

AGUILAR CASTILLO LOVE

AKD NV

ALLEN & GLEDHILL LLP

ANDERSON MŌRI & TOMOTSUNE

ARIAS, FÁBREGA & FÁBREGA

ASHURST LLP

AZMI & ASSOCIATES

BHARUCHA & PARTNERS

BOWMAN GILFILLAN

BREDIN PRAT

BRIGARD & URRUTIA

CLEARY GOTTLIEB STEEN & HAMILTON

CORRS CHAMBERS WESTGARTH

COULSON HARNEY

CRAVATH, SWAINE & MOORE LLP

DELFINO E ASSOCIATI WILLKIE FARR & GALLAGHER LLP

DITTMAR & INDRENIUS

DRYLLERAKIS & ASSOCIATES

ELLEX

FENXUN PARTNERS

HARNEYS

HENGELER MUELLER

HEUKING KÜHN LÜER WOJTEK

ISOLAS

KBH KAANUUN

KEMPHOOGSTAD, S.R.O.

KIM & CHANG

KINSTELLAR, S.R.O., ADVOKÁTNÍ KANCELÁŘ

KLART SZABÓ LEGAL LAW FIRM

LEGAL ATTORNEYS & COUNSELORS

LETT LAW FIRM P/S

MAKES & PARTNERS LAW FIRM

MATTOS FILHO, VEIGA FILHO, MARREY JR E QUIROGA ADVOGADOS

MNKS

MORAVČEVIĆ VOJNOVIĆ I PARTNERI IN COOPERATION WITH SCHÖNHERR

MOTIEKA & AUDZEVIČIUS

NISHIMURA & ASAHI

OSLER, HOSKIN & HARCOURT LLP

PÉREZ BUSTAMANTE & PONCE

POPOVICI NIȚU & ASOCIAȚII

ROJS, PELJHAN, PRELESNIK & PARTNERS

RUBIO LEGUÍA NORMAND

RUSSIN, VECCHI & HEREDIA BONETTI

S HOROWITZ & CO

SCHELLENBERG WITTMER LTD

SCHINDLER RECHTSANWÄLTE GMBH

SELVAM & PARTNERS

SEYFARTH SHAW LLP

SLAUGHTER AND MAY

STRELIA

SYCIP SALAZAR HERNANDEZ & GATMAITAN

TORRES, PLAZ & ARAUJO

URÍA MENÉNDEZ

UTEEM CHAMBERS

VON WOBESER Y SIERRA, SC

WEERAWONG, CHINNAVAT & PEANGPANOR LTD

WH PARTNERS

WILSON SONSINI GOODRICH & ROSATI

CONTENTS

EDITOR'S PREFACE

By a number of measures, it could be argued that it has been some time since the outlook for the M&A market looked healthier. The past year has seen a boom in deal making, with many markets seeing post-crisis peaks and some recording all-time highs. Looking behind the headline figures, however, a number of factors suggest deal making may not continue to grow as rapidly as it has done recently.

One key driver affecting global figures is the widely expected rise of US interest rates. Cheap debt has played a significant part in the surge of US deal making in the first few months of 2015, and the prospects of a rate rise may have some dampening effects. However, the most recent indications from the Federal Reserve have suggested that any rise will be gradual and some market participants have pushed back predictions for the first rate rise to December 2015. Meanwhile, eurozone and UK interest rates look likely to remain low for some time further.

The eurozone returned to the headlines in June as the prospect of a Greek exit looked increasingly real. Even assuming Greece remains in the euro (as now seems likely), the crisis has severely damaged the relationship between Greece and its creditors. The brinksmanship exhibited by all parties means that meaningful progress cannot occur except at the conclusion of a crisis: the idea that reform will benefit Greece has been lost and each measure extracted by creditors is couched as a concession. However, while the political debate has become ever more fractious, the market's response to the crisis has been relatively sanguine. This is largely a result of the fact that the volume of Greek debt is no longer in the market, but in the hands of institutions. But it is also a sign of the general market recovery and expectations that major economies will continue to grow.

Perhaps one of the more interesting emerging trends in the last year is the interplay between growth and productivity. Some commentators have suggested that the recent rise in deal making is a symptom of a climate in which businesses remain reluctant to invest in capital and productivity. Pessimistic about the opportunities for organic growth, companies instead seek to grow profits through cost savings on mergers. It is difficult to generalise about such matters: inevitably, deal drivers will vary from industry to industry, from market to market. However, if synergies have been the principal motivation in much of the year's deal making (it certainly has been in a number of large-cap deals) then it may be that the market is a little farther from sustainable growth than some would like to think.

I would like to thank the contributors for their support in producing the ninth edition of *The Mergers & Acquisitions Review*. I hope that the commentary in the following chapters will provide a richer understanding of the shape of the global markets, together with the challenges and opportunities facing market participants.

Mark Zerdin
Slaughter and May
London
August 2015

Chapter 54

ROMANIA

Andreea Hulub, Ana-Maria Mihai and Vlad Ambrozie[1]

I OVERVIEW OF M&A ACTIVITY

Among the very few European countries that succeeded in resuming economic growth relatively quickly after the 2008–2009 financial turmoil, Romania has maintained its attractiveness to foreign investors due to its position as an emerging market and owing to investment safeguards offered by its EU membership.

Although M&A activity stayed low, the market generated a reasonable number of and a diverse range of transactions. Notable developments ranged from distressed businesses, materialised start-ups, long-awaited exits and successful greenfield projects to corporate-debt restructurings and failed privatisation projects.

M&A activity in 2014 concentrated on a handful of areas, with clear predilection for the financial services sectors, real estate and the agribusiness area. Significant transactions likewise occurred in fast-moving consumer goods sector.

The market continued to be dominated by strategic investors with established players consolidating their positions.

II GENERAL INTRODUCTION TO THE LEGAL FRAMEWORK FOR M&A

An EU Member State since 2007, Romania incorporated in its M&A legal framework the main body of relevant European law, having already implemented all pre-eminent directives in the field, such as the Merger Directive 2005/56/EC, the Prospectus Directive 2003/71/EC, the Takeover Directive 2004/25/EC and the Insider Dealing and Market Abuse Directive 2003/6/EC.

1 Andreea Hulub, Ana-Maria Mihai and Vlad Ambrozie are senior associates at Popovici Nițu & Asociații.

As such, M&A transactions in Romania are largely regulated by Company Law No. 31/1990, the Trade Registry Law No. 26/1990 and by the Civil Code.

In addition to the regulations mentioned above, listed companies are subject to special rules provided by the Capital Markets Law No. 297/2004 and to the regulations issued by the former National Securities Commission (NSC), currently the Financial Supervisory Authority (FSA). Among such specific regulations, NSC Regulation No. 1/2006 on issuers and securities operations and NSC Regulation No. 6/2009 regarding exercise of certain shareholders' rights in connection to companies' general shareholders' meetings stand out as the most significant.

M&A deals involving banks and non-banking financial institutions, insurance companies or other specialised vehicles are subject to additional sector regulations.

The Romanian merger control rules are provided by the Competition Law No. 21/1996 under the Romanian Competition Council instructions, guidelines and control, with the limitations derived from exclusive jurisdiction reserved by the European Commission under the EU Merger Control Regulation of 2004.

III DEVELOPMENTS IN CORPORATE AND TAKEOVER LAW AND THEIR IMPACT

The corporate and takeover legal framework in Romania is generally aligned with the various EU corporate directives, such as the Takeover Directive 2004/25/EC, the Shareholder Rights Directive 2007/36/EC and the Merger Directive 2011/35/EC, as well as with the OECD principles of corporate governance.

The Romanian corporate governance and takeover system is thus a stable one, ensuring a level playing field for shareholders and stakeholders, a good level of access to information and company transparency, and delimitation of board and management responsibilities and related liability.

Having reached maturity, the corporate and takeover legal framework is also sound, with no significant regulatory amendments having recently been passed. In the capital markets sector, FSA launched STEAM project – Action Plan to Obtain the Status of Emerging Market in August 2014. STEAM (Set of actions Towards Establishing and Acknowledgment of the Emerging Market status) is a reform project of the Romanian capital market with regard to its size, liquidity and accessibility by investors, aiming to trigger an economic development by enforcing a set of strategic measures meant to reclassify the Romanian capital market as an 'emerging market' (rather than its current status as 'frontier market'). The set of measures proposed by STEAM includes:

a increasing the accessibility and attractiveness of the Romanian capital market; *b* streamlining and making more fluid the financial instrument lending operations and short selling transactions;

b developing the local primary and secondary bond markets (municipal and corporate);

c increasing the liquidity and attracting new investors;

d increasing the visibility of Romanian undertakings listed on the capital market by giving the possibility to be listed on other markets as well;

e increasing the implementation level of the corporate governance principles at the level of issuers, intermediaries, market operators, depositories, etc.; (vii) improving the accounting system of the entities regulated and supervised by FSA by aligning it with the International Financial Reporting Standards.

Also, last year meant the much expected abolition of the unquoted stock market and of Rasdaq – the unregulated segment of Bucharest Stock Exchange – and the creation of a brand new alternative trading system named AeRO. The companies listed on Rasdaq were given the alternative of either de-listing and becoming closed joint stock companies or switching to the regulated segment of the stock exchange or on the new alternative trading system, AeRO. AeRO was received with enthusiasm by the market, with a number of former Rasdaq companies moving on the new ATS and with a series of fresh companies already listing on this segment.

In the financial services sector, Romania's National Bank Regulation No. 5/2013, as subsequently supplemented by Regulation No. 5/2014 has added, among other things, additional corporate governance and capital quantity and quality requirements for financial institutions.

As a Member State, Romania will keep pace with the developments of the European company law and corporate governance rules and further extend transparency requirements, shareholder protection and engagement principles and safeguards.

IV FOREIGN INVOLVEMENT IN M&A TRANSACTIONS

The Romanian National Bank figures for 2014 show that the value of foreign direct investment reached €2.4 billion. By comparison with the results for 2013, the peak of the last four cycles, the current value translates into a mild decrease. However, the country strives to become more and more attractive abroad as foreign large direct investment is still below expectations, and considerably far from the €9.5 billion all-time record achieved pre-crisis.

Traditionally, foreign investment has been the main driver of the Romanian M&A market, as Romania became an M&A-friendly jurisdiction in the last decade.

The view that Romania is one of the potential deal-structuring platforms, at least for deals of regional reach, keeps strengthening. This view is fundamentally supported by a fairly low 16 per cent flat rate corporate income tax and a fiscal consolidation process well under way; structural reforms in a number of sectors, such as public services and particularly health care; enhancement of legal and political predictability as a result of EU membership; and, most of all, the stability Romania enjoys and keeps projecting, particularly in light of the current regional political developments.

Romania remains vulnerable, however, to outbound developments while CEE growth forecast is low, turbulence involving important European countries is foreseen and liquidity constraints are overreaching. Even so, the former lack of competition (which made post-bubble Romania an appealing destination for some) is lessening, and there are signs that capital is starting to shift beyond the stability of Poland and the Czech Republic into Romania and other CEE countries. Naturally, reshaping economies also change the FDI outlook. Despite the two traditional leaders still preserving their top positions, the 2014 edition of EY European Attractiveness Survey acknowledges that they are losing points, naming the up-and-coming Romania as the third most attractive country in the CEE region with a fair two-point positive margin.

In such a landscape, the main M&A foreign investors remain those who originate in the United States and the western EU economies, such as the Netherlands, Austria, Germany, France and Italy. South Africa remains among the most acquisitive nations, special regard going to the group New Europe Property Investments, which, for the third year in a row, was involved in one of the largest transaction in the real estate sector (acquisition of Promenada shopping mall in a €150 million deal).

When looking ahead, projections for foreign investment are positive, as backed up also by the preliminary results of Q1 2015 when the disclosed value rose to 50 per cent (by reference to Q1 2014).

V SIGNIFICANT TRANSACTIONS, KEY TRENDS AND HOT INDUSTRIES

During 2014, the most attractive sectors for M&A in Romania proved to be financial services, real estate, energy and natural resources, industrial and agribusiness.

i Financial services

The financial services sector dominated the M&A market in 2014, being, however, characterised by consolidation mechanisms, along the same lines as in the previous year. Extensive transactions were carried out in banking and insurance.

The following transactions shared the spotlight:

a Banca Transilvania acquired Volksbank Romania, the local unit of Österreichische Volksbank AG for an unofficial price of €600 million, according to sources in the financial market. Volksbank ranked ninth in top 10 largest banks in Romania by assets, at the end of 2013, with €3 billion in assets and a market share of 3.8 per cent. Its revenues lost 8 per cent to €119.9 million, while the assets shrank from €4.7 billion in 2012 to €3 billion last year.
Previously, in July 2014, Volksbank Romania sold 3,566 non-performing and sub-performing loans (NPL) with a nominal value of €495 million to a consortium made up of Deutsche Bank, AnaCap Financial Partners LLP, HIG Capital International Advisers and APS Holding SE, reducing its NPL ratio to below 8 per cent from approximately one-third of its overall credit portfolio.

b UniCredit Țiriac Bank, the Romanian subsidiary of UniCredit acquired the corporate business of RBS Romania (the Romanian branch of Royal Bank of Scotland plc), consisting in assets with a total value exceeding €200 million.
The deal represents the second step in the exit process of RBS from the Romanian market, following a previous acquisition made by UniCredit Tiriac Bank SA and UniCredit Consumer Financing IFN SA in 2013, which concerned the Retail and Royal Preferred Banking business of RBS Bank Romania SA, attaining approximately €315 million in assets and €315 million in liabilities.

c Fondul Proprietatea SA 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 €189 million, this was the biggest offer conducted by a company on the market.

d OTP Bank acquired Millennium Bank Romania from Banco Comercial Português in exchange for €39 million. Following the acquisition of Millennium Bank Romania, OTP Bank has a market share of 2 per cent and it was ranked 13th among the Romanian banks.

e Deutsche Bank in association with APS Holding and, possibly, with several investment funds acquired non-performing loans amounting to €750 million from BCR. The financial terms of the transaction were not disclosed.

f Certinvest, one of the largest asset management companies in Romania, acquired both the majority package (70 per cent) in Axa Life Insurance, the local division of the French-based group Axa, operating in the savings and life insurance operations, along with SIF Transilvania, which acquired a 30 per cent package, as well as APF, the company for facultative private pensions owned by Metropolitan Life. The financial terms of the transactions were not disclosed.

ii Real estate

Real estate remains a key driver for economic growth, particularly in Romania's post-bubble period where market corrections proved to be excessive compared with the robust development potential. Nowadays, the market has consolidated and the continuous expansion wave is beneficial only for the experienced developers and investors.

For instance, almost all noteworthy active developments are carried by the highly matured Portland Trust, Sonae Sierra, Skanska, Immochan, Immofinanz, Afi, Anchor Group, Vastint, Global Worth or New Europe Property Investments. Just as in the past few years, it is still the industry leaders that thrive.

Although, like other markets, Romania has seen its share of investors exiting or potentially new investors inconclusively scrutinising the market, 2014 real estate sector has had it all, at every level. Not only office and retail sectors highly increased exposure, but there was no shortfall of real estate transactions in logistics and residential sectors either. On top of it, improvement of portfolio necessities led to many extensions of standing investments, as well as to several reconversion projects.

What is more encouraging is that the market has started to attract fresh investment capital. This is prominently visible in the residential sector, which endured a few turbulent years and would have shut down without government support for projects, that now generates activity in both primary and secondary markets. Of course, the National Bank of Romania's key rates decreasing to rock bottom and banks' commitment to relaunching financing are a boost. In such a setup, the residential market has witnessed the return to a new era of a few well-known investors, namely the founders of Adama Group and the former management team of Globe Trade Centre (in a partnership with Gindi Group), both planning multi-phased residential projects in Bucharest. Already present, Adama and Hercesa Groups have also chosen to exit the silent mode by embarking on new residential developments. In addition, there is also significant interest from TriGranit, having disclosed that it is working on resuming investment in the Romanian market.

Lenders have consistently adopted the same strategies and have acknowledged the failure of projects due to unrealistic asset valuation, though this problem is being confronted. A leading figure here once more is Alpha Bank, which has taken over Asmita Gardens and Green Vista residential projects following massive funding granted in pre-bubble years.

With a focus on the retail and office sectors that were the market's stars, the following were the most important real estate transactions.

One of the biggest real estate transactions involves New Europe Property Investments acquiring Promenada shopping mall. The seller was Raiffeisen Evolution, while the reported deal value was of €150 million. The new owner has secured an adjacent surface of 12,000m² designed to accommodate a new extension, at no less than two years as of the shopping mall opening to the public. This follows the pattern of City Park Constanta, a shopping mall currently gaining a 21,000m² extension, shortly after its acquisition in an €80 million deal that made the highlights of 2013.

In its relentless expansion, New Europe Property Investments further acquired Aurora shopping centre, also with the view to reposition, along with various other land plots throughout the Romanian major cities. For the fund, last year also meant the opening of Vulcan Value Center, an approximately 26,000m² retail development park, as well as the opening of the first phase of The Office, a BREEAM certified office project located in the prime area of Cluj-Napoca.

Global Worth's investment programme continued in 2014 with the acquisition of Nusco Tower (in a €46 million deal), the first phase of Skanka's Green Court (in a €45 million deal) and of UniCredit HQ (in a €43 million deal). In addition to the ongoing development of Bucharest One project, a 22-storey office tower scheduled for completion in 2015, Global Worth secured a 23,000m² development area where work for Global Worth Campus, an office project envisaged to accommodate approximately 87,000 m² gross leasable area, is due to start soon. Global Worth also intends to focus on logistics, the first step already having been made by the acquisition of Timisoara Airport Industrial Park in an €18 million deal, with further extensions envisaged in this sector.

In logistics, a growing field, it is worth mentioning P3, a vehicle owned by the blue-chip companies TPG and Invanhoé Cambridge, acquiring Europolis Logistic Park. Such warehousing facility of over 200,000m² is located in the outskirts of Bucharest and was taken in as part of a larger portfolio acquired from CA Immo further to a €120 million deal. Once again, the real estate field confirmed its growth prospects. However, consolidation of growth is expected to be a few years away still; the time it will take for private equity giants, traditional institutional investors, to enter the market.

iii Energy and natural resources

The energy and natural resources sector remained an attraction for investors, in spite of a volatile political environment. Investors could not ignore the resources' potential and the favourable investment incentive and tax treatment and, therefore, seized local opportunities.

The main movements in this field were subject to central transactions on the local market (IPOs, SPOs and private placements), being part of the privatisation programme of the state-owned companies in the energy sector imposed by the International Monetary Fund, as follows:

a Electrica, one of the most important players in the field of power distribution and supply in Romania, raised 1.95 billion lei in an initial public offering on Bucharest and London stock exchanges of a 51 per cent stake, with a final pricing at the low end of a previously indicated range. The fact that the volume of shares offered was oversubscribed by approximately two times and that 80 per cent of the IPO was sold through shares listed on the Bucharest Stock Exchange, while only 20 per cent was structured in global depository receipts (GDRs) listed in London (in contrast to the approximately 36 per cent in the Romgaz IPO conducted in 2013) shows that more international funds were persuaded to buy shares instead of GDRs and to enter the Romanian market directly.

After the IPO, the Romanian state remained the largest shareholder with a stake of 48.8 per cent of Electrica's shares, while the European Bank for Reconstruction and Development has become the second largest shareholder in Electrica with an 8.65 per cent stake.

b A 4.99 per cent stake package of Romgaz, a majority state-owned company active in the gas exploration and production industry, was sold on the Bucharest Stock Exchange last year by the Property Fund, by way of a private placement, in exchange for €145 million, generating a profit of approximately €114 million for the Property Fund.

iv Industrial and agribusiness

Alongside the above-mentioned market segments, FMCG, industrial and agribusiness were particularly active areas for acquisitions in 2014.

Fast-moving consumer goods (FMCG)/retail

Similarly to the previous years, the fast-moving consumer goods and retail industries accounted for some of the year's largest value transactions in Romania.

The retail and DIY sectors were the most active:

a Retailer Auchan continued its expansion through the acquisition of 12 hypermarkets and commercial galleries in a transaction exceeding €280 million. Auchan has thus reached the second position on the retail sector after German retailer Kaufland and thus outplacing competitors like Carrefour and Cora.

b Retailer Mega Image further expended through the acquisition of 20 Angst supermarkets in a deal of around €14 million.

c In the DIY sector, French group Adeo consolidated its presence through the acquisition of all bauMax stores in Romania in a deal estimated at around €80 million.

The local DIY sector suffered a significant contraction in the years following the economic crisis, making the competition between the remaining players more fierce. Relevant examples are the:

a Acquisition by lead DYI player Dedeman of a number of land plots in three of Romania's major cities in a deal of around €10 million.

b Acquisition by Hornbach of Obi store in Sibiu in a deal of around €10 million.

Industrial

With institutional investors taking a more cautious approach in expectance of improved predictability and more stable market conditions, strategic players have taken advantage of these circumstances and continued consolidation movements in line with previous years' trends.

In the industrial sector and particularly in the manufacturing segment, the economic downturn and specific market contraction created good opportunities. Conversely, other transactions occurred as a consequence of larger regional or international deals. Finally, there were a couple of deals done by institutional investors, but this is only an exception confirming the strategic players' continuing dominance.

a The takeover by Irish Group CRH of important assets owned by Lafarge in Romania (two cement plants, 19 concrete stations and one grinding plant) as part of the divestments necessary as precondition for implementing the merger between Lafarge and Holcim, the largest transaction in the last 20 years in the construction industry.
b Swedish fund Oresa Ventures continued consolidating its local assets portfolio through the acquisition of two Eurofabricate precast concrete products plants, in a deal of around €8 million.
c The acquisition of 85 per cent in the bricks producer Ceramica Iasi by the Asian fund ADM Capital.
d The acquisition by Italian steel producer Aso Siderurgica of Cromsteel Industries – a local processor of steel beams and pipes – as part of its larger production integration strategy.
e The acquisition by Italian group Iseo of Feroneria SA – a local ironware fittings and accessories producer.
f In the automotive industry, acquisition by German Kromberg & Schubert of an auto components plant in Arad County in a deal estimated at €5 million.

Agribusiness

Romania has significant agricultural growth potential, given the extensive resources and the need for heavy investment offering vertical and horizontal expansion and consolidation opportunities. Furthermore, projects are encouraged by both EU and government subsidies available for investments in the sector.

In line with the previous years' trends, 2014 M&A activity in this sector was dominated by strategic investors, be it already established players consolidating their local presence or extending their portfolios or new entrants penetrating the local market.

An example of the above in the agribusiness and food segments includes the takeover of the port operator United Shipping Agency by giant Nidera – grains and oilseeds trader – in a deal of more than €100 million. For Nidera, the acquisition represented a part of their larger plan of expansion in Romania, while the direct access to the Black Sea was of key importance for the group.

An exception to the general trend of strategic investments defining the agribusiness sector is the intensive acquisition of agricultural land made in recent years (including 2014) by institutional investors. Well worth mentioning are the very large acquisitions made by institutional investors such as Rabobank, insurance groups such as Generali Assicurazioni, investment funds such as German Germanagrar and Agrarius Insight Investment, and British private equity fund Insight Investment.

VI FINANCING OF M&A: MAIN SOURCES AND DEVELOPMENTS

i Overview

The tensions between international financial markets undergoing restructuring and local inertia have restricted the Romanian financial sector in recent years.

However, during 2014 enthusiastic restructuring began to be seen. There are three drivers of the recent activity.

First, the banks have finally accepted the failure of certain financing projects and, through foreclosure and liquidation procedures, have tested their real values with the market. This approach generated a series of new work-out deals, sufficient in number and volume so as to enable a benchmark. Work-outs either involved individual projects, or, as in the case of retail financing, client portfolios. The restructuring mood was fostered by an increase in non-performing loans, in both corporate and retail lending. Banks are cleaning up their balance sheets either by way of sale of non-performing loans to third parties or by way of removing the exposure from the balance sheets following an official request in this respect sent by the National Bank of Romania to commercial banks.

Second, the sellers' expectations decreased, thus leading to a new dynamic and to the disappearance of the lingering concept of 'frozen market', with sellers being forced to adjust their expectations.

Looking past the purely psychological aspect – the drop in enthusiasm and general interest reverberating directly onto the evaluations – one would find the origins of this trend in a deterioration of the economic outlook. Then there is the 'deal under distress' scenario limiting the ambit of potential investors, the nature of capital involved and requiring a certain appetite for risk. All these weigh strongly in valuations.

Third, on the backdrop of the Cypriot deposit meltdown, the banking market is facing scepticism and distrust towards saving schemes. Investors' refocus from liquid-asset income generators (deposits, bonds, etc.) to hard-asset income generators (real estate, operating businesses, etc.) is noticeable.

Following a prudent lending strategy, domestic banks focused in 2014 primarily on short-term lending. Although this approach generated an increase in the private sector loans with maturity of up to one year, the volume of outstanding credit allowed long-term loans to still hold the main share of the financial market. Generally, one may note a slight relaxation in credit standards and collateral requirements in Q3 2014.

ii Debt to equity ratio

One of the negative consequences of the financial tensions in the eurozone was the equity requirements' increase, with full effects on the Romanian market. As such, in corporate financing the level of equity required for investors has been, unsurprisingly, significantly increased by the majority of banks.

Therefore, although banks are still willing to carry on disbursing loans, the number of potential eligible borrowers undoubtedly fell.

iii New trend – a more regulated and stable loan market

The most significant events in the banking sector in 2014 derived from Romania's commitment towards the European Union, the International Monetary Fund and the World Bank on preserving an adequate level of bank prudential indicators.

The set of measures adopted by the Romanian government is intended to continue to improve the confidence level of foreign investors in the Romanian financial market.

The banking legal framework in Romania is generally aligned with the EU regulations and directives. The latest EU legislative package passed by the European Parliament consists of Capital Requirements Regulation No. 575/2013 (CRR) and Capital Requirements Directive 2013/36/EU (CRD IV). While CRR is directly applicable in Romania, CRD IV was transposed by the Government Emergency Ordinance No. 99/2006 (GEO No. 99/2006) as further amended and supplemented by the Government Emergency Ordinance No. 113/2013 (GEO No. 113/2013).

The National Bank of Romania (NBR) issued a regulation (Regulation No. 5/2013) in order to ease up the applicability of CRR. Nevertheless, the provisions contained by the aforementioned regulation are in line with CRR.

CRR and CRD IV recast and replace the Banking Consolidation Directive 2006/48/EU and the Capital Adequacy Directive 2006/49/EU and implement the new Basel III requirements. This is also the general direction followed by NBR's Regulation No. 5/2013 and GEO No. 99/2006.

GEO No. 99/2006 and NBR's Regulation No. 5/2013 include provisions regarding corporate governance, prudential supervision, systems and controls, remuneration, credit risks adjustments, supervisory reporting requirements and sanctions. They also apply stricter capital quantity and quality requirements compared to the previous regulations, and introduce minimum standards on liquidity risk. In December 2014, NBR issued the Regulation No. 5/2014 supplementing NBR's Regulation No. 5/2013 (Regulation No. 5/2014). NBR's Regulation No. 5/2014 mainly stipulates that credit institutions should establish risk management policies in terms of encumbrance of assets and, in respect of preparing the financing plans for contingency, it should be taken into account the contingent encumbrance of the assets generated by relevant crisis, such as a rating downgrade of the credit institution, the impairment of pledged assets and increase of margin requirements, as well as liquidity risk concentrations where, for its determination, quantitative indicators will be used for supplementing the qualitative assessments.

By implementing CRD IV through GEO No. 99/2006, the Romanian business environment became clearer and more predictable, as well as in line with the provisions of the EU legislation. This was one of the first steps in supporting the banking union that will soon be operational in the EU.

As a Member State, Romania will further develop its banking legal framework in keeping with the EU regulations and directives.

VII EMPLOYMENT LAW

Further to the notable adjustments made to the labour regulatory framework in recent years, Romania moved away from the image of a jurisdiction that is overprotective of employees. The employment legal framework is a stable and reliable one, ensuring adequate protection for both employers and employees or their representative bodies.

In 2014, there were no significant amendments to the labour regulatory framework.

Generally, an M&A deal in Romania should consider the following minimal aspects as regards labour resources and employment matters.

i Overview

Management of labour resources requires legal intervention at both an individual and collective employment level.

At the individual level, an employer currently has seemingly wide flexibility in opting for a fixed-term labour contract or for a temporary work contract and can extend this up to a period of 36 months.

As regards employees' evaluation and redundancy grounds, the newly introduced 'job performance' notion and evaluation criteria were largely welcomed by employers. These new concepts manage to align the previously formalistic provisions with the realities of a demanding and dynamic labour market.

At the collective level, employers benefit from the liberty of opting whether to add an additional level of protection for their employees (i.e., that of a collective bargaining agreement). Thus, although national collective bargaining agreements have been completely eliminated, the industry level agreements are applicable only if the employer company has participated in its negotiation.

ii Scrutiny of employment within M&A

Looking at (individual) employment matters in an M&A transaction in Romania would require particular focus on the following fundamental elements:

a conciliation between individual employment contracts and collective labour relations (if applicable);

b salary practices, in respect of which particular importance should be given to special non-compete clauses and related bonus arrangements imposing payment obligations on the employer, as well as to the 'mandatory' types of add-ons or bonuses; and

c health and safety compliance, involving mandatory documentation, appointment of specialised personnel or outsourcing to authorised providers, performance of periodic trainings etc.

Within an assessment of the collective employment relations one shall consider at least:

a the forms of employees representation and affiliations to trade union federations;

b the more favourable provisions secured through collective bargaining agreements at industry level (if applicable); and

c the mechanics for resolution of any collective labour dispute.

Additionally, if the deal is structured as a transfer of an undertaking (TUPE transfer), as regulated through Directive 2001/23/EC (implemented in Romania through Law

No. 67/2006), careful attention should be directed towards the particular rights of the transferred employees and the buyer's corresponding obligations.

All things considered, the legislative climate in Romania regarding labour regulation accommodates the implementation of different transaction structures, while allowing employers a good degree of flexibility in labour resources integration and management.

VIII TAX LAW

The recent period has brought fewer changes to the fiscal legislation, as a broader project of rewriting and modernising the Romanian Fiscal Code is currently under way (expected to be finalised in the second part of 2015). Among the changes brought, the matters of particular interest to M&A transactions include: the temporary tax exemption for reinvested profit, the regularisation of interest income withheld tax, as well as a new procedure regarding the registration for VAT purposes.

i Tax exemption for reinvested profit

According to Government Emergency Ordinance No. 19/2014 of 23 April 2014 for amending and supplementing Law No. 571/2003 regarding the Fiscal Code, the profit reinvested in technological equipment – machines, equipment and work installations used for carrying on economic activities is exempt of corporate income tax. The exemption is applicable starting with 1 July 2014 for the profit reinvested in technological equipment produced or acquired after 1 July 2014 and put into use up to 31 December 2016 inclusive. The exemption also applies for the technological equipment under financial lease that is put into operation between 1 July 2014 and 31 December 2016, provided that the equipment is kept in the patrimony of the user for a period of at least half of the economic usage period of the respective equipment, but no more than five years.

ii Interest income – regularisation of the tax withheld

As of 1 June 2015 non-resident legal entities and individuals (EU/EEA residents) can opt for the regularisation of the tax withheld in connection with the interest income obtained from Romanian residents by declaring and paying corporate income tax (16 per cent). The corporate income tax will be applied to the taxable profits related to the interest income (income less related expenses) and the tax initially withheld at source (applicable on the income, without any deductible expenses) will be considered as a pre-payment. These provisions were introduced by Government Emergency Ordinance No. 6/2015 for amending and supplementing Law No. 571/2003 regarding the Fiscal Code, in order to eliminate the infringement of EU law (i.e., the freedom to provide services and freedom of capital movement for non-resident legal entities and individuals) entailed by the previously applicable system.

iii New provisions regarding the registration for VAT purposes

Starting on 1 February 2015, a new procedure for VAT registration is in place that is more complex than the previous one. The information requested through the procedure includes answers to 18 detailed questions, on topics such as the number of individual employment contracts concluded by the company, the education and profession of individual shareholders, the income obtained by the directors or shareholders of the company in the previous 12 months, residency status of non-EU directors and contact details for persons who can provide a reference for them, etc.

IX COMPETITION LAW

The merger control activity of the Romanian Competition Council during 2014 decreased in volume by 34 per cent. By number of files, the merger control assessments involved prominently the following markets: real estate, finance, energy and DIY.

With almost two decades of practice and some very intense recent years following *de facto* the principles laid down in the EU Merger Control Regulation of 2004 and subsequent guidelines, the Romanian Competition Council has reached an era of legal pragmatism and efficiency. M&A activities are thus, if not supported by the regulator, at least not hindered as in past years. In fact, the Organization for Economic Cooperation and Development acknowledges in its 2014 report on Romania regarding the policy and competition law that Romania's Competition Act is firmly anchored in the European enforcement standards, namely the framework for substantive analysis, secondary regulations and law enforcement practices are in line with the European enforcement model. What is more, the same report holds that the merger review follows the standards developed for effective and efficient merger review regimes.

During the merger control assessment and, especially, in the context of defining the relevant markets, the Romanian Competition Council attributes an important role to the results found in its surveys on certain markets. Periodically reviewing various sectors of industries and markets and preparing related reports is one of the Romanian Competition Council's policies.

In H2 2014, the Romanian Competition Council finalised two such surveys expected to have an impact on future merger control assessments of transactions achieved in the relevant sectors. One of the surveys concerns the evolution of competition in key sectors, now a yearly survey of the Romanian Competition Council, while the second covers the beer market.

i The survey concerning the evolution of the competition on the key sectors

Within the 2014 survey on competition in key sectors, the Romanian Competition Council analysed, *inter alia*, the aggregate index of competitive pressure (AICP) for certain industries of the national economy. The Romanian Competition Council found on the one hand that (1) the industries that are the most predisposed towards free competition are the architectural services, disposal services, food retail (supply), wholesale distribution of automobiles and production of drugs. On the other hand, (2) the industries that are held to be the most predisposed towards anti-competitive behaviours include the distribution of LPG for cookers, retail fuel distribution, mobile services, life insurance, notary services, and the production and sale of cement.

With respect to the mobile industry, the Romanian Competition Council holds that the AIPC registered the most significant increase among the analysed industries, having risen by 3 per cent since the year before. The aspects considered to have supplemented the pro-competition pressure in this sector were the intensification of marketing actions and communication among participants in the market, an increase in the position of the rebel competitors and a larger opening towards innovation.

As regards the life insurance market, the Romanian Competition Council holds it as being characterised by rigidity and even a decrease in the offers. Few new players are entering the market due to tougher entry barriers, such as the market's tendency towards concentration, where the first five players maintain high market shares and the first 10 players control almost the entire market, with a concentration of 95 per cent.

ii The survey on the beer market

The market was held to be characterised by significant entry barriers, due to the high value of the initial investment in production, high marketing and publicity costs that are necessary for constructing and promoting the brand, and the creation of a distribution network with national coverage.

X OUTLOOK

There are many pro-growth predictions and forecasts for 2015 remain cautiously optimistic.

By reference to macroeconomics and fundamental parameters, there is plenty of growth potential, but the real stake for M&A is attracting additional fresh capital. Solid fiscal commitments, a low budget deficit, unfreezing of financing and the government's focus on infrastructure are the key priorities and are expected to continue at a strong pace.

Advancement of the Romanian M&A market is tightly linked to the European economy and significantly depends on the local ability to increase attractiveness by comparison with neighbouring eastern European markets.

So far, energy and natural resources, real estate and agribusiness, and certain sector privatisations appear to be more appealing to new investors. Indeed, local energy and natural resources are already well known and expected to continue to attract new capital. The sector is only indirectly affected by the latest developments and ambiguity surrounding the state assistance package scheme, and investors cannot ignore the huge resources Romania has. Shale gas investments remain a hot topic on the agenda, but 2015 is unlikely to bring clear answers to the associated geopolitical concerns.

As regards real estate, the sector that has suffered perhaps the most severe blow, it has had and is expected to further generate some of the strongest transactions in 2015. A large amount of office and retail stock is planned for delivery in 2015, along with other restructurings, reconversions, workouts and liquidations.

The agribusiness sector will continue to grow organically and new acquisitions are likely to happen, from PE leveraging of land to conglomerates involving chain food processors and manufactures, related logistics and distribution networks.

Also, there is still a lot to privatise in Romania. After the successful IPOs of government utility companies, the market is expected to receive new impetus from the planned national privatisation programme. Deals may include strategic companies such as Romanian Post Company, National Railway Freight Transportation Company CFR Marfa, Cuprumin (Romania's largest copper mine) and Oltchim (petrochemical plant).

Appendix 1

ABOUT THE AUTHORS

ANDREEA HULUB

Popovici Niţu & Asociaţii

Andreea Hulub is a senior associate with Popovici Niţu & Asociaţii, within the M&A practice group and corporations.

Andreea Hulub advises companies, institutional and strategic investors in relation to mergers and acquisitions and capital markets transactions, particularly takeover schemes and delisting. She also provides assistance in a broad range of corporate and commercial matters, mainly associated with foreign investments and developments. Andreea Hulub holds a degree in law from the University Alexandru Ioan Cuza of Iasi and is a member of the Bucharest Bar and the Romanian Bar Association.

ANA-MARIA MIHAI

Popovici Niţu & Asociaţii

Ana-Maria Mihai is a senior associate with Popovici Niţu & Asociaţii, within the M&A practice group and corporations.

Ana-Maria's practice is focused on energy and natural resources issues and she is also involved in M&A and corporate matters.

Ana-Maria Mihai completed a double education in Romanian and European law, at the University of Bucharest (Degree in Law) and at Collège Juridique Franco-Roumain d'Etudes Européennes (Université Paris I Panthéon-Sorbonne). Ana-Maria Mihai holds an LLM in Banking and Finance, and Insurance Law from the University Nicolae Titulescu of Bucharest and is member of the Bucharest Bar and of the Romanian Bar Association.

VLAD AMBROZIE

Popovici Niţu & Asociaţii

Vlad Ambrozie is a senior associate with Popovici Niţu & Asociaţii, within the M&A practice group and investment funds.

Vlad's expertise is focused on real estate-related M&A work. His practice also covers real estate development and project finance.

Vlad Ambrozie holds a degree in law from the University of Bucharest and is a member of the Bucharest Bar and of the Romanian Bar Association.

POPOVICI NIȚU & ASOCIAȚII
239 Calea Dorobanti, Sixth Floor
1st District
Bucharest
Romania
Tel: +40 21 317 79 19
Fax: +40 21 317 85 00
office@pnpartners.ro
www.pnpartners.ro