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Corporate M&A 2022

Moldova: Trends & Developments
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Trends and Developments

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The Pandemic Dust and Its Flux Syndrome

As a result of the pandemic's waxing and waning, in 2021 the M&A market in Moldova has been experiencing feelings of whiplash, specifically after the sharp rise in cases after the Delta variant. There have also been feelings of numbness, as many of us are realising that the pandemic may not ever go away. It is unlikely there will be an "end of the pandemic" parade.

According to the IMF Staff Report, issued in December 2021, the COVID-19 pandemic, drought in 2020 and the ongoing surge in global energy prices have slowed economic activity, intensified downside risks and complicated policy-making in Moldova.

Despite this, the economy grew, financing was available at low rates and deal-makers proved resilient, driving M&A activity forward. According to the last available Monthly Report on the Socio-Economic Development of the Republic of Moldova, in the first nine months of 2021 the GDP amounted to MDL174.1 billion, which is roughly EUR8.7 billion, and registered a real increase of 10.3% compared to the same period in 2020. Accelerating the growth of domestic consumption, investment activity and revitalisation of economic activity are the determining factors that favoured this growth.

In light of this, we review Moldovan M&A developments in 2021 and trends that will impact deal-making in 2022.

Having ground almost to a halt in the first half of 2020, deal flow crept up timidly throughout 2021. The uncertainty brought by the pandemic in Moldova has led to the closing of many transactions started immediately before 2020, while in other cases, this uncertainty has put on hold transactions for two years or more.

As already suggested, the COVID-19 pandemic outbreak has not upset the appcart for the foreign investors who had M&A deals in the pipeline. Amidst the state of emergency enacted on 17 March 2020, the Irish firm CG Cell Technologies, assisted by this firm's lawyers, closed the acquisition of the second-largest mobile telephony operator Moldcell from the Telia Sonera Group, in a combination of an equity and debt acquisition.

Shortly thereafter, a deal even higher in numbers was announced and subsequently completed. The acquisition of the country's largest glasswork manufacturer by the Swiss Vetropack group, assisted by this firm's lawyers, was an extremely complex transaction, with several selling shareholders.

Finally, 2020 saw the largest investor to Moldova, the EBRD, assisted by this firm's lawyers, announce the acquisition of 25% of Vestmoldtransgaz, the gas transmission company operating the new Ungheni-Chisinau gas pipeline.

Despite these positive cases where transactions have been moved forward, it is fair to note that

the pandemic dust has stressed the acquisition plan of the largest Moldovan non-banking lending organisation by one of the most important banks from Romania, Banca Transilvania.

A newer trend, still increasing in magnitude, has been the international expansion of Moldovan companies. Since 2019 we have witnessed international capital markets appearances by the predominantly Moldovan-based businesses (Purcari Wineries and Aragvi Holding), which secured financing for Moldovan operations and business development at a higher pace.

Overview of 2021

In contrast to the global volume of mergers and acquisitions that hit new highs in 2021 – breaking prior records by a long shot – in Moldova, the large-scale M&A activity was rather limited. The Moldovan market was mostly driven by private M&A transactions. Privatisations played a rather minor, if not insignificant, role.

Although in 2021 the Moldovan Competition Council has approved 17 economic concentrations, which is almost twice above the average of around nine to 10 transactions per year for 2020 and 2019, it is fair to mention that the M&A activity in 2021 was below the volumes of 2020, which has seen multimillion-euro values.

M&A activity in Moldova was affected not only by the effects of the COVID-19 pandemic or the consequences of the severe drought of 2020, but also by political uncertainties. Moldovan real GDP fell by 4.5% in 2020. The IMF forecast that real GDP in Moldova will grow by 4.1 per cent on average in 2021 and 2022. During the second half of 2020, the presidential elections and the government's resignation led to political uncertainty, slowing down investors' appetites. However, on 28 April 2021, President Maia Sandu dissolved the Parliament and called snap parliamentary elections. The Party of Action and

Solidarity led by her took over the majority of the Parliament in these elections. This pro-EU and Western-orientation majority started to steer Moldova towards revitalising greater economic integration with European Union members.

Among the highlights of the M&A activity in 2021 shall be deemed the closing of the equity deal between EBRD and the Romanian national gas transmission system operator, Transgaz SA. One year after signing, and commissioning 120 km of gas pipeline, the EBRD has effectively become a shareholder in the second Moldovan gas transmission operator, with a stake worth 20 million euros.

Another notable deal was the merger by absorption between the leading Moldovan gasworks companies, Glass Container Company and Glass Container Prim, already part of the Swiss Vetropack group, a European glass packaging champion.

In 2021, there was also the acquisition by IuteCredit Europe, a leading European personal finance group, of a 59.7% stake in Energbank for 10 million euros. Notably, this acquisition came across after in January 2019, the National Bank of Moldova ordered that certain minority shareholders holding a stake of 52.77% in Energbank would have to dispose of their shareholding interest and that some of their rights would be suspended after an investigation found out that the stakes were acquired without its permission. Similarly, at the beginning of October 2020, NBM ordered that another shareholder owning 10% of Energbank's shares must sell his stake for the same reasons.

Finally, last year was a record for corporate fundraising on the Irish Stock Exchange by the leading Moldovan agri-group Trans Oil. Assisted by this firm's lawyers, after its successful initial Eurobond issuance in 2019, Trans Oil has

returned on the stock exchange to redeem the old bonds and issue new ones in an amount equal to 400 million US dollars. Shortly after this second issuance in spring, Trans Oil group performed two additional tap issuances of 50 million US dollars each, in summer and autumn respectively.

Another category of deals that were only cleared in Moldova from an anti-monopoly perspective were the foreign-to-foreign transactions with impact on the Moldovan markets. Among the observable clearances were the one for the joint venture between LG Electronics and Magna International Inc; the acquisition of Chipita Global, high-growth European leader in croissants and baked snacks, by Mondelez International Inc; and the acquisition of Mispol, a Polish pet food producer, by Partner in Pet Food, a leading European pet food manufacturer.

International IPOs have also appeared on the radar of the Moldovan firms this year. The largest Moldovan bank, maib, is contemplating a listing on one of the most reputable European stock exchanges, such as London, Amsterdam, Warsaw or Bucharest.

Outlook for 2022

Initial estimates for 2022 are up for the ICT industry. The greater acceptance of working from home, coupled with the government's pledges to further digitise public administration, is causing a surge of interest in this sector. In Moldova, particular interest present the companies registered in the "IT Park", which increases the regional competitiveness of the local IT sector by significantly reducing the tax burden and introducing a single tax of 7% of sales revenue, by facilitating immigration documentation of expats and by reducing bureaucratic barriers.

Risks to the new uptake in M&A activity remain fragile though, due to the Moldovan political set-

ting and the deep-rooted weaknesses in implementation capacity of the improvements in economic governance. Externally, downside risks to the global recovery and the spillover from the geopolitical tensions in Ukraine could have negative impact on trade, capital and remittance flows, thus complicating a desired robust and agile M&A outlook.

The year got off to a strong start, but the war in Ukraine, several kilometres from the Moldovan border, suddenly made clients look a lot more uncertain. It is becoming clear now that deals with exposure to Russia and Ukraine will be affected even in the medium- and long-term. The uncertainty brought by the media coverage of the events in Ukraine and Moldova is likely to hamper the enthusiasm of the investors.

A 2021 trend that has picked up momentum and will likely intensify this year is the Moldovans' strenuous efforts to enforce merger control and anti-competitive agreement regulation. Throughout 2021, the Competition Council has given record levels of fines of up to 6.5 million euros for violation of competition legislation. Facing increased political pressure to deploy the regulatory and supervisory capacities more effectively, both the antitrust and other regulators are drifting between the desire to please the policy-makers and the imperative to ensure a sound investment climate.

The trend toward increasing regulatory scrutiny of national security investment continued and has materialised itself in 2021. Investment activity in a list of open-ended fields is now regulated by a newly enacted, special legal regime, due to an enhanced state interest attached to such areas of national security. Some of these new rules can implicate transactions that involve buyers and sellers from the same country. The national security scrutiny features mandatory notice requirements with attendant penalties for

failing to file. The Law 174/2021 on the Review Mechanism of Investments of Importance for State Security, which kicked in formally on 19 January last year, is far narrower than the desired rules first presented for public consultations.

It is fair to mention that the professional business associations' (AmCham, EBA etc) sound voice has always been listened to in this case. Naturally, this should offer an element of confidence to the investors that the authorities will not throw the baby out with the bath water.

In 2022, companies must be prepared to address potentially broader sets of issues and more zealous regulators. There may be a risk of challenge, as well as longer review processes that may result from the heightened scrutiny and generally a slowdown of deal flow.

The long-term legal consequences of the above-mentioned issues can be hard to predict at this stage. The state of affairs is dynamic and depends on too many factors. Despite the challenges, however, since Moldova is also very rich in companies in the small- and medium-sized enterprise (SME) sector, where there is rarely a natural succession plan, these companies will need either a trade exit or a management buy-out. The outlook for M&A therefore remains quite promising.

Legislation, Jurisprudence and Policy Perspective Ahead

Acquisitions of businesses and companies are usually carried out through the acquisition of shares of Joint Stock Companies or of participatory interests of Limited Liability Companies. Very often, large transactions in relation to privately owned businesses are done at the level of holding vehicles outside of Moldova. Asset acquisitions are rare as they are technically burdensome, time-consuming and are subject to VAT.

M&A-related litigation is as rule not common at all in Moldova. Many investors prefer arbitration and discretion regarding a dispute. Since Moldovan law allows parties to shop in both jurisdiction and forum, the overwhelming majority of Moldovan cross-border M&A transactions will most likely continue to be English or other law-governed, with the London Court of International Arbitration (LCIA) or other reliable arbitral tribunals set as dispute resolution forums.

While at the onset of the pandemic, many companies focused on material adverse effect clauses, currently sellers often negotiate – and buyers are amenable to the idea of – a carve-out from the MAE for various COVID-related measures.

With 50 double taxation treaties in place, the country has actually invited investors to shop the tax jurisdiction as well. No wonder investors, including reputable ones, have preferred structuring investments via tax-friendly jurisdictions, such as the Netherlands or Cyprus, and that banking regulations have been shaped to accept special-purpose vehicles (SPVs) from transparent jurisdictions.

Sale-purchase framework agreements (backed by local law transfer instruments, both in the case of equity or asset deals) are quite often followed by shareholders and, less often, by share put-and-call agreements. Drag-along, tag-along, or first refusal-right provisions are widespread but untested in Moldovan courts, which are set aside.

Warranty and indemnity insurance is rarely considered by the parties and is typically not agreed on. Moldovan insurance companies, although allowed by the regulator to offer such services, have often hesitated in the past to contract such risks.

Covenants in relation to the obligation to non-compete and non-solicitation provisions (of employees or customers) are fairly common in Moldova. Seller restrictions usually imposed on the target business between signing the purchase agreement and closing, as well as access to books, records and management between signing and closing are also common. However, broad access or control in the form of veto rights over certain transactions can trigger competition law risks.

Earn-outs are, as a rule, used by private equity funds rather than by strategic investors, while

agreements on escrow mechanics are more common in Moldovan M&A. Depending on the object of such escrow agreements, these can ordinarily be executed by public notaries.

Although not specifically regulated and captured in Moldovan legislation, following the amendment and modernisation of the Civil Code in 2019, the aforementioned and other internationally recognised and M&A-applicable instruments should be more closely embraced in Moldovan deals.

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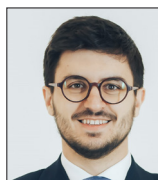
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grasp of Moldovan law and an understanding of cross-border jurisdictions, as well as different cultures and languages. The firm's clients include the largest banks in Moldova and multinational corporates, industrial manufacturers and public-sector authorities. The firm's expertise covers the full spectrum of industry sectors.

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