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The new Serbian law on protection of competition

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As a consequence to various open points that have been raised in practice concerning the competition legislation in Serbia; the Parliament of Serbia adopted the new law on protection of competition that shall be applied as of November 1 2009 to all acts made on the territory of Serbia (i.e. outside of Serbia with impact on the Serbian market).

The law introduces new provisions concerning the restrictive agreements and conditions for general and specific exemption from prohibition. However, the law (as well as the one in force at present) refers to the decree of the government in regards to the general exemptions and the procedure for specific ones. Such a decree of the government has not been adopted.

The next amendment that will have bearing on the foreign investors are changes of conditions with respect to the mandatory approval of concentration, making it slightly more flexible in comparison to the present law by not setting an obligation of submission request for approval for concentration in cases when the company in Serbia had insignificant market participation.

The assessment whether the concentration may be approved is made on the basis of:

- analyses of the structure of the relevant market;
- real and potential competitors on the market;
- position of the participants on the market and their economic and financial strength;
- possibility of choice of customers and potential competitors;
- legal and other obstacles for entry to the relevant market;

- level of competitiveness or the participants in concentration;
- trend of trading of relevant goods i.e. services;
- trend of technical and economic development; and
- the interests of the customers.

Additional amendment

Further, the law sets additional measures that the Commission for Protection of Competition, as the competent body, may take against the participants regarding violation of competition on the market.

(i) In cases where a market participant has carried out concentration contrary to, or without the decision of the commission, the commission may instruct such participant to implement a division of the relevant operations, sale of shares or terminate the agreement in order to re-establish viable competition on the market, and not just to pay a penalty as is provided under the present law.

(ii) A penalty of up to 10% of the total annual income shall be payable for abuse of dominant position on the relevant market, for making or implementing a restrictive agreement, if a participant does not implement measures for removing violation of concentration, i.e. de-concentration, or carries out concentration contrary to the law. The time period for the payment of the penalty may not be shorter than three months or longer than one year as of receipt of the decision.

A party to a restrictive agreement that has first reported the existence of an agreement to the commission shall be exempt from paying the penalty provided that the commission had no knowledge of the existence of the restrictive agreement prior to it being reported by a participant.

The law also introduces changes regarding the process such as:

- the commitment of granting data on market;

- co-ordination of administrative bodies and organisation with the commission;
- co-operation with the police;
- special forms of site examination and search of premises and goods; and
- temporary seizure of goods and documents and similar.

The important novelty is the sector analyses that facilitate analyses of competition in a specific branch of economy or a specific category of agreements if a breach of competition is suspected. The law differentiates between the process *ex officio* and per request of a party; as a consequence the law defines silence of administration as assuming the positive approval of the request by the commission.

Organising the commission

The law also introduces amendments regarding the organisation of the commission. Namely, the law introduces and sets the competences of the chairman of the commission. For example the chairman is authorised to initiate the process of inspection of a breach of competition, manages the process, chairs the meeting of the council etc.

The law sets that the members of the council shall be appointed by the Parliament elected from among the persons listed by the Parliamentary commission on the basis of a public selective competition. The persons so appointed may not be conflicted during or following the term of their office with the commission.

The decisions of the commission are subject to judicial control. Namely, a party may initiate a process by filing a claim before the court against a final decision of the commission however such a claim does not extend the time period for implementation of the decision. The commission may however stay a decision from implementation if it finds that such implementation could cause irreparable damage to the claimant and especially if it could cause bankruptcy of termination of operations.

The law also provides a possibility for a person whose rights are infringed by the acts of the commission to request compensation of any damage before the competent court. The damage is not assumed and therefore it has to be evidenced in grounds and amount before the court.

The full implementation of the law shall require a number of secondary regulations to be adopted and the legal stability will require the practices of the commission to follow the existing precedents wherever possible. The practises of the court have yet to be seen.

Financial and corporate

Recommended firms	
Tier 1	
Jankovic Popovic & Mitic in association with CHSH	
Karanovic & Nikolic	
Prica & Partners	
Tier 2	
CMS Reich-Rohrwig Hasche Sigle	
Harrisons Solicitors	
Moravcevic Vojnovic Zdravkovic in co-operation with Schoenherr	
Spasic & Partners	
Wolf Theiss	
Tier 3	
Drazic Beatovic & Partners	
Gide Loyrette Nouel	
Joksovic Stojanovic & Partners	
Zivkovic & Samardzic	
Tier 4	
IKRP Rokas & Partners	
Law Office Milosevic	
Ninkovic	
Studio Legale Sutti	

In 2008, Serbia was undergoing significant privatisation and greenfield investment. In 2009, following the effects of the global financial downturn, privatisation work dropped off considerably.

The effects of the crisis didn't hit the country until Q1 of 2009, after which firms reported an average drop in deal volume and number of around 20%. M&A and private equity work suffered the most. However, in the absence of pure M&A and private equity mandates, firms have been kept busy with corporate restructurings and the sale of distressed assets.

The combined effects of the financial crisis and a perceived lack of government reform of the financial system have meant that foreign

investors have turned their attention back to their home markets. The drop in foreign direct investment (FDI) has been fairly dramatic. As one partner put it: "At the end of 2006, we recorded \$5.5 billion in FDI. This year, if we record \$1 billion we'll consider it a triumph."

Another crisis-survival strategy being employed by firms who have already built up their leads has been to strengthen their focus on other territories in the region, including Montenegro, Macedonia and Bosnia.

The partners at one firm pointed out that firms who are ready to act on corporate and financial restructurings, distressed sales and energy and infrastructure deals will do well over the next 12 months.

Jankovic Popovic & Mitic in association with CHSH

Jankovic Popovic & Mitic in association with Cerha Hempel Spiegelfeld Hlawati moves up to tier one this year due to the proven strength of its practice and a shift in market opinion. The team has carved out for itself a reputation working on some of the biggest deals involving international parties.

The firm has had a particularly active year in M&A, working on some big-ticket mandates, including advising Naftna Industrija Srbije on the €400 million sale of a majority stake to Gazprom Neft. Senior partner Nenad Popovic, who led the deal, was described by one client as being "a true professional. He's a dependable lawyer you can trust to go the extra mile when it's most needed".

Other standout M&A matters involved acting for Daimler Germany, Casinos International Austria and the Republic of Serbia. In the latter, senior partner Julijana Jevtic and senior lawyer Dusan Djordjevic acted for the Republic of Serbia in the creation of a joint venture between the Republic and Fiat Automobiles.

Leading lawyers

Nikola Jankovic
Nenad Popovic

Harrisons Solicitors

English law firm Harrisons moves down a tier this year following a shift in sentiment across this fast-moving market. However, the firm continues to be busy with large, complex international transactions, as well as in deals for domestic clients. The Serbian market has seen considerable slowdown over the past year, especially in real estate and privatisation work, but the firm, led by founder Mark Harrison, has been working on some notable instructions.

In M&A, partner Aleksandar Preradovic has been leading a team advising Delta Holding on the sale of part of their retail and distribution business, and acting for Mattoni on the acquisition of the mineral water producer Knjaz Milos. Goran Martinovic, head of the firm's real estate and energy practice, advised the US-based Carlyle Group on matters post-acquisition of a Serbian fertiliser company.

Harrisons have also been very busy with financing work coming from European development banks, including advising Victoria Group on a €40 million capital increase from the European Bank for Reconstruction and Development and advising the German Development Bank on a loan facility to tyre manufacturer Tigar.

Leading lawyers

Mark Harrison
Goran Martinovic
Aleksandar Preradovic

Moravcevic Vojnovic Zdravkovic in co-operation with Schoenherr

Moravcevic Vojnovic Zdravkovic in co-operation with Schoenherr moves up another tier this year following further peer recommendations. The office is continuing its rapid growth, with one high-ranked peer commenting upon its development: "I would say that they are now pretty much our main competitor: they're young, hungry, expanding fast and really understand how this market will develop."

The firm, led by managing partner Matija Vojnovic, has been acting on some landmark deals. On the M&A side, the firm advised Aim-listed Reconstruction Capital II on the acquisition of a 21.3% stake in East Point Holdings, whose interests include a controlling stake in the country's largest copper processor.

Also on the buy side, the team advised Germany's Waz group on its acquisition of the newspaper publisher and distributor Stampa, following a deal in which the firm represented Waz in the sale of its 50% stake in the Serbian Futura Plus.

In projects work, Vojnovic led a team advising construction company Porr on a number of large infrastructure deals, including a joint venture relating to the construction of a landmark bridge in Belgrade, an asphalt-production joint venture and a greenfield development of a quarry with a local partner.

Also, driven by rising demand in the wake of the financial crisis, the firm's distressed transactions team has been engaging in some high-profile workouts and restructurings, including representing the key creditor in the

ELP/Eurolux Group – the region's largest workout to date.

Leading lawyers

Matija Vojnovic

Wolf Theiss

Wolf Theiss has had a busy year, advising on some acquisitions and project finance deals, as well as picking up some newer other high-profile work.

The team continues to act for Deutsche Bank on the €1 billion financing of the Horgosh-Pozega highway, advises MPC Properties on a real-estate joint-venture acquisition and represents UniCredit Markets & Investment Banking regarding €83 million of syndicated secure facilities.

One client says of Andreas Schmid: "Unlike some lawyers, he's very professional and to the point, direct and supportive. He looks beyond the usual scope of the matter and has a keen eye for the issues."

One notable recent mandate involved advising Gazprom Neft, the new majority owner of the Serbian oil company NIS, on all legal matters arising from the €700 million acquisition. Another high-profile deal the firm has been handling is advising Ikea on all matters related to its establishment in Serbia.

Wolf Theiss has also been advising Gazprom on its South Stream gas pipeline, and acting for Aeroflot on the privatisation of Jat.

One high-profile client, who has worked with the firm for a number of years, says: "We have total confidence in them. We always recommend them to our own clients."

Leading lawyers

Bojana Bregovic

Milan Parivodic

Miroslav Stojanovic

Other notable firms

Law Office of Tomislav Sunjka is a firm offering a full range of legal services and has been assisting some high profile clients, such as Merrill Lynch, the European Bank for Reconstruction and Development, the Greek National Bank and BNP Paribas, in matters relating to large-scale M&A, privatisations, large cross-border financings and private acquisitions.

Ninkovic, led by Ivan Krsikapa, has been advising an interesting host of international clients on aspects of Serbian law. The firm advised HSBC Bank on custodianship law, Isuzu Motors on competition law regarding distribution deals, Du Pont on data protec-

tion issues and the Pembroke Group on issues surrounding aircraft mortgages.

Zivkovic Samardzic Law Offices, led by Branislav Zivkovic, is known for providing quality legal services to a diverse range of local and international clients active in a variety of sectors. Over the last year, the firm has handled some notable deals, including securing Serbian merger clearance for Pernod Ricard's €5.6 billion acquisition of Vin & Spirit and the restructuring of Nestlé Ice Cream Srbija, which involved the settlement of decade-long disputes with minority shareholders.