

THE  
Mergers &  
Acquisitions  
Review

TWELFTH EDITION

Editor  
Mark Zerdin

THE LAWREVIEWS

# THE MERGERS & ACQUISITIONS REVIEW

TWELFTH EDITION

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# PREFACE

Despite a slight decrease in overall activity compared with 2016, 2017 was a strong year for global M&A activity as, for the fourth consecutive year, global deal-making activity exceeded US\$3 trillion with announced transaction volumes reaching US\$3.7 trillion. Even though 2017 did not replicate the record-breaking number of mega-deals in 2015 nor the high volume seen in 2016, market participants in a number of sectors took advantage of continued access to cheap capital globally to engage in M&A activity.

The United States remained the most active region, although aggregate deal value decreased by 16 per cent year on year. However, deal volume surged with a record 12,400 individual deals, largely due to an increase in transactions with a value of less than US\$1 billion. The relative decline in mega-deals in 2017 is largely attributable to continued regulatory uncertainty, particularly in the United States, where President Donald Trump's electoral rhetoric on antitrust has led to an increase in scrutiny for M&A deals. In Europe, however, continuing uncertainty arising out of the stuttering progress in the Brexit negotiations and a number of significant elections within the European Union did little to halt the momentum of the M&A market as aggregate deal value in Europe increased by 12.1 per cent in 2017 to reach a post-financial crisis high of more than €830 billion. Notably, the industrials and chemicals M&A sector flourished, with record high aggregate deal value and deal volume. Chinese outbound M&A was limited during 2017 by both a new capital-controls regime and increased scrutiny from the US and European governments.

On the back of tax reform in the United States and encouraging economic growth in Europe, the first quarter of 2018 has displayed record-breaking deal-making activity. However, global political uncertainty presents a threat to global M&A in 2018. Although there were positive signs from the European M&A market in 2017 and Europe registered the largest year-on-year increase in deal volume in the first quarter of 2018, the rise of anti-EU populist parties threatens to derail the buoyant global M&A market. Notably, the election of an anti-EU populist government in Italy, formed from a coalition of the Five Star Movement and the League, threatens to unnerve foreign investors and increase uncertainty about the integrity of the eurozone.

In addition, President Trump's imposition of tariffs and protectionist instincts have raised concerns about the possibility of a global trade war. It is hoped that a resolution to Brexit-related uncertainty and a settling of trade worries will foster an environment in which markets can thrive. All that being said, markets have shown during the past two years that despite an ever-evolving geopolitical landscape, there are numerous opportunities for those market participants who are keen to pursue them.

I would like to thank the contributors for their support in producing the 12th edition of *The Mergers & Acquisitions Review*. I hope the commentary in the following 50 chapters will provide a richer understanding of the shape of the global markets, and the challenges and opportunities facing market participants.

**Mark Zerdin**

Slaughter and May, London

July 2018

# HUNGARY

*József Bulcsú Fenyvesi and Mihály Barcza*<sup>1</sup>

## I OVERVIEW OF M&A ACTIVITY

Compared to 2016, the number of published M&A transactions increased by 21 per cent in 2017 to 133, which represents a peak since 2010.<sup>2</sup>

The value of the Hungarian M&A market (calculations based on estimates relying on disclosed transactions) demonstrates an increase of 150 per cent compared to 2016, pushing the value of the M&A market up to US\$4 billion.

## II GENERAL INTRODUCTION TO THE LEGAL FRAMEWORK FOR M&A

The main source of legislation governing M&A activity and corporate governance in Hungary is Act V of 2013 on the Civil Code (the Civil Code), specifically Book Three, which contains the general rules applicable to all forms of legal persons, including high-level rules on the transformation, merger and demerger of legal persons, and sets forth definitions of the types of legal transformations allowed by Hungarian law.

The provisions constituting the legal framework for transactions in Hungary implemented by way of transformations, mergers or demergers may be found in Act No. CLXXVI of 2013 on the Transformation, Merger and Demerger of Certain Legal Persons (the Transformation Act). This contains the prerequisites and procedures to be followed in the case of a company transformation, and the documentation, transparency and financial requirements of mergers, demergers and spin-offs, prescribing specific rules for companies limited by shares, especially in the field of audit and management reports.

In the event that a company involved in a merger is not domiciled in Hungary but in another country of the European Union, in addition to the provisions of the Civil Code and the Transformation Act, the rules laid down in Act CXL of 2007 on Cross-Border Mergers of Limited Liability Companies (Cross-Border Mergers Act) shall also be observed. The Cross-Border Mergers Act serves the implementation of Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005.

The procedural aspects of registering M&A in Hungary are set forth in Act V of 2006 on Public Company Information, Company Registration and Voluntary Liquidation

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1 József Bulcsú Fenyvesi and Mihály Barcza are partners at Oppenheim Law Firm.

2 Business data and trends described based on Ernst&Young's M&A Barometer 2017: [www.ey.com/Publication/vwLUAssets/ey-csema-barometer-2017/\\$FILE/ey-csema-barometer-2017.pdf](http://www.ey.com/Publication/vwLUAssets/ey-csema-barometer-2017/$FILE/ey-csema-barometer-2017.pdf), [www.ey.com/Publication/vwLUAssets/EY\\_MA\\_Barometer\\_March\\_2018\\_Press\\_Release/\\$FILE/EY\\_Sajtokozlemenye\\_MABarometer\\_FINAL.pdf](http://www.ey.com/Publication/vwLUAssets/EY_MA_Barometer_March_2018_Press_Release/$FILE/EY_Sajtokozlemenye_MABarometer_FINAL.pdf) and [www.ey.com/Publication/vwLUAssets/EY\\_MA\\_Barometer\\_March\\_2018/\\$FILE/EY\\_MA\\_Barometer\\_2017.pdf](http://www.ey.com/Publication/vwLUAssets/EY_MA_Barometer_March_2018/$FILE/EY_MA_Barometer_2017.pdf).

(the Company Procedures Act). The Company Procedures Act lists the specific documents to be prepared and submitted to court to register a merger or acquisition, and sets out the applicable procedural requirements.

Part Three of Book Three of the Civil Code provides for the regulation of business associations, regulating in Chapter No. XV the aspects of the acquisition of majority interests (i.e., the direct or indirect purchase of 75 per cent of the voting rights) in limited liability companies and private companies limited by shares. These rules set forth a special 'statutory tag-along right' obliging a shareholder who acquires a majority interest to purchase the shareholdings of the other shareholders at least at equity value if such other minority shareholders wish to sell their stake after the acquisition.

Act CXX of 2001 on the Capital Market (the Capital Market Act) contains essential rules on issuing and offering securities. Such rules must be observed if any of the target companies concerned with an M&A transaction is a company limited by shares. In respect of publicly traded companies, the Capital Market Act sets forth the specific provisions for the acquisition of majority interests in public companies limited by shares, such as reporting obligations, IPOs and minimum offer prices. Tender offers and M&A activity in the financial sector are controlled and approved by the Hungarian National Bank, which became the general supervising authority of financial institutions and markets in 2013. Act CXXXIX of 2013 sets out the scope of activity and the procedural rules applied by the Hungarian National Bank.

In the field of M&A legislation, special rules apply to companies engaged in the energy, media and financial sectors. The acquisition and transformation of such companies may also require the prior approval of the competent regulatory bodies, setting further preconditions and documentation requirements for carrying out a successful merger. The competent authorities for these sectors include the Hungarian Energy and Public Utility Regulatory Authority, the National Media and Infocommunications Authority and the Hungarian National Bank, respectively.

Irrespective of the industry or sector concerned, M&A reaching a certain market threshold shall be reported to, or approved by, the Hungarian Competition Authority (GVH). The reporting obligations and the rules for approval are set forth in Act LVII of 1996 on the Prohibition of Unfair Trading Practices and Unfair Competition.

Besides the above acts and laws, significant parts of foreign investments in Hungary are also protected by way of bilateral investment treaties (BITs). BITs grant basic rights to foreign investors in compliance with international standards, and enable them to seek remedies before international fora if their right to fair and equitable treatment should be violated.

### **III DEVELOPMENTS IN CORPORATE AND TAKEOVER LAW AND THEIR IMPACT**

#### **i Amendments to the Civil Code**

Amendments were made to the Civil Code to clarify or eliminate ambiguities in the new act, as well as to achieve compliance of the act with other laws.

After an essential amendment to the Civil Code in 2016 eliminating concerns about the undesired personal liability of managing directors in relation to third parties, which made it clear that (except in the case of a managing director causing damage intentionally) instead of a managing director being directly and personally liable, a legal entity shall be liable in relation to third persons if its managing director caused damage to a third person when acting

in his or her capacity as managing director, and other notable modifications concerning rules of dividends and collateral, in 2017 further material amendments were brought about in relation to securities.

The regulation of securities was replaced with a new and simplified regime: on the one hand, legal rules outside the Civil Code will have to be observed in depth for detailed rules of securities; on the other, the new unified regulation for dematerialised and printed securities leaves room for legal interpretation as to whether certain rules pertain to dematerialised or printed securities only, or to both of them.

Although the Civil Code compiles the general rules of securities, and detailed rules are incorporated into other pieces of law, it is also worth mentioning that a new act regarding bills of exchange was introduced at the end of 2016, effective from 2017. Besides remaining compliant with the relevant convention regarding bills of exchange, such new legislation contains rules falling within the competence of the Member States, and modernised procedural rules applicable in lawsuits regarding bills of exchange.

## **ii Financial and banking regulations**

The most important drivers of recent changes in Hungarian financial regulations that can affect M&A transactions have been amendments of the law in relation to implementing EU rules and the introduction of national rules to supplement directly applicable EU regulations. With effect from January 2018, the Hungarian legislator transposed Directive 2015/2366/EU on payment services in the internal market, Directive 2014/65/EU on markets in financial instruments (MiFID II Directive), which led to the amendment of the Banking Act,<sup>3</sup> the Investment Services Act<sup>4</sup> and the Capital Markets Act, and to the adoption of new Decree 35/2017 (XII.14) of the Hungarian National Bank on the provision of payment services.

Amendments to the Investment Services Act include the transposition of the MiFID II Directive.

The Hungarian National Bank adopted amendments to its recommendations in connection with risk assessment of encumbered assets and the restructuring of jointly financed corporate debtors.<sup>5</sup> Although these recommendations are not legally binding, they have soft law effect in the Hungarian financial sector due to the fact that the Hungarian National Bank is the supervising authority of the financial market.

Pursuant to these recommendations, the Hungarian National Bank set out a guideline to credit institutions regarding which assets are qualified as encumbered assets. Generally, any asset is deemed as encumbered if the asset is pledged or is subject to any dealing as security or for improving an institution's credit rating, and cannot be freely withdrawn from such dealings. As a non-exhaustive list, the encumbrance may arise from, *inter alia*, secured payment guarantees, securities granted for dealings on derivatives, security agreements, secured financing agreements and secured bond issuing. Based on the recommendations, the Hungarian National Bank requires that the risk assessment of the encumbered assets includes an evaluation of risks arising from changes in the value of the encumbered assets, and the risks and characteristics of local markets. Furthermore, credit institutions are required to monitor the level of encumbrance over the encumbered assets, the reason for encumbrance, the amount of assets free of encumbrance and any changes thereof.

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3 Act CCXXXVII of 2013.

4 Act CXXXVIII of 2007.

5 Recommendations 6/2017 (V.30) and 14/2018 (III.6) of the Hungarian National Bank.



Upon the restructuring of jointly financed debts, the Hungarian National Bank requires constructive, good-faith negotiations between the creditors and the debtor. It is recommended that the creditors involve independent advisers in order to reach a mutual agreement in the restructuring phase, and credit institutions should develop internal policies about the restructuring of debts, which policies are in line with their general strategy in connection with non-performing corporate loans. The Hungarian National Bank recommends that credit institutions not only calculate the direct operation costs of the debtors when granting a bridge loan: they shall also evaluate whether the payment of any taxes and publicly due burdens may be included in the scope of the bridge loan in order to avoid any enforcement of such obligations, which could endanger the restructuring procedure. Creditors shall require that the debtor put forward a plan to maintain continuous operation and to give regular updates of its financial status. Creditors shall also check and ensure that the bridge loan does not breach any obligations of the debtor towards any creditors that are not participating in the restructuring procedure. In the event that such breach is threatening, the consent of that creditor to the bridge loan shall be required. The Hungarian National Bank considers a restructuring effective if the continuation of the debtor's operation is restored and the debtor remains able to discharge its obligations following the restructuring.

### **iii Administration and proceedings**

Pursuant to changes introduced in 2016, administrative aspects of transactions have become simpler and more client-friendly. Under an amendment in the Company Procedures Act, changes in company data (including the deletion of a company from the company registry) are now reported to all the competent authorities by the Hungarian court of registry, instead of the company (or its legal successor) having to notify all the relevant authorities separately. Furthermore, certain changes in company data may now be reported to the court of registry free of any procedural fees. In 2017, the registration of certain corporate changes became quicker for companies limited by shares, and a specific procedure was regulated for private companies limited by shares for going public.

As a consequence of a new codex on Hungarian civil proceedings, adopted in 2016 and coming into force as of 1 January 2018, further changes have arisen regarding certain aspects of company proceedings, and remarkable changes have been introduced regarding litigation that also affect potential litigation related to companies or transactions. Increased attention will have to be paid to such new rules to successfully proceed and litigate under the new civil proceedings regime.

Further changes implemented in 2017 aimed at ensuring compliance with relevant EU legislations on connecting company and commercial registers of the member states (BRIS) and facilitating the operation of a unified system of electronic administration in relation to companies. The modifications of the Cross-Border Mergers Act implemented in 2017 aimed at the transposition and further harmonisation of Hungarian national law with EU law, including Directive 2005/56/EC of the European Parliament and of the Council, Directive 2009/109/EC of the European Parliament and of the Council and Directive 2012/17/EU of the European Parliament and of the Council in respect of cross-border mergers and the related registers, reporting and documentation obligations.

Although it is not a new piece of legislation, a trend significantly affecting companies in 2017 was the increasing requirement of compliance with the General Data Protection Regulation. Such compliance is now thoroughly observed in the course of M&A transactions, and a number of investors and purchasers have required targets and sellers to ensure compliance to the best of their abilities.

#### **IV FOREIGN INVOLVEMENT IN M&A TRANSACTIONS**

Although the deals with the highest transaction value in 2017 involved foreign parties, as in previous years, the Hungarian market was dominated by domestic transactions (where both the target and the buyer were Hungarian), representing 63 per cent of all disclosed transactions in 2017 over foreign transactions, and Hungary demonstrated the highest rate of domestic transactions in Central Europe.

Regarding transactions related to foreign targets or buyers, inbound transactions were dominant (2,863 per cent of the disclosed transactions). Inbound foreign investments came from the UK, Austria and the Czech Republic, and in a smaller ratio from the United States and Germany.

Outbound transactions remained at a rather low level (9 per cent of all disclosed deals) and the most significant transaction was directed at Romania and Serbia.

#### **V SIGNIFICANT TRANSACTIONS, KEY TRENDS AND HOT INDUSTRIES**

Considering publicly disclosed transactions, the absolute leading sector in terms of the number of deals in 2017 was real estate, with the ratio of domestic deals also increasing as compared to 2016.

Media and telecom demonstrated a growth of 33 per cent, ranking second based on the number of deals.

IT and technology, which was the leading sector in 2015, but which dropped to third place in terms of the number of deals in 2016, retained its third-place ranking in 2017, seeing a decrease of 8 per cent in the number of closed transactions even as compared to 2016.

Further active sectors in 2017 were services, food and beverages, and energy and mining.

The transaction with the biggest deal value was closed in the real estate sector, while the other most significant transactions were implemented in the media and telecom, and banking and financial services sectors.

In a trend continuing from 2015, strategic investors dominated over financial investors in 2017: their ratio increased by 4 per cent as compared to 2016, and Hungary ranked second in the CEE region in this respect.

#### **VI FINANCING OF M&A: MAIN SOURCES AND DEVELOPMENTS**

In the past couple of years, financial institutions have cleared significant parts of their non-performing loan (NPL) portfolios from their balance sheets either by selling them to third-party bidders, or by restructuring them into subsidiaries to operate and manage the NPL portfolios separated from the parent financial institution. Consequently, in recent years, many transactions have focused on the restructuring of currently existing debts and

portfolios. In 2017, corporate lending increased by 10.4 per cent.<sup>6</sup> Within such dynamic increase, the credit amount granted to SMEs increased by 12 per cent. The increase in the market was also influenced by sizeable single transactions. The largest expansion was seen in the energy sector, with a 38 per cent increase since 2016,<sup>7</sup> which included the acquisition of the Mátrai Power Plant by Opus Global Nyrt.<sup>8</sup>

Because of the divestment of the NPL portfolios and the financial crisis, several Hungarian financial institutions have adopted a more specialised focus and policy in relation to the projects and investments they are willing to finance. Knowing these policies and the drivers of credit institutions can be a key factor when selecting a financier. Therefore, choosing experienced advisers on the borrower side who can also support investors in selecting the right financier for their project has become even more important. Nevertheless, in general banks are competing for good projects and investors after years of deleveraging in the Hungarian economy. Based on a report of the Hungarian National Bank, in the last quarter of 2017 financiers loosened their strict criteria on corporate lending. Banks are calculating further growth in the outstanding credit amount (substantially as long-term credits). Subsidised loans and financing are also available to certain investments and projects (e.g., renewables). However, access to these is rather limited.

Interest rates for credits denominated in Hungarian forints or in foreign currency decreased in 2017. Credits are generally granted in Hungarian forints or in euros. However, changes in the currency exchange rate still pose a risk. Since the beginning of April 2018, the forint/euro exchange rate has deteriorated by 3.5 per cent and at the time of writing, it currently stands, with minor fluctuations, at 319 forints to one euro.<sup>9</sup>

Equity funds are also active in Hungary. Such funds are mainly either financed by the state, state-owned institutions and entities, or by the European Union. Although private equity funds are present in Hungary, their activity level and net investments are still low in the whole CEE region. The share of private equity funds from the overall volume of transactions has not significantly developed in recent years.

To facilitate the lending activities of private equity, the Hungarian National Bank and the state-owned Exim Bank have launched several equity funds, including hedge funds. These funds have clear investment policies to support and promote projects and transactions that are beneficial for Hungary's public affairs. Additionally, in 2017 multiple private equity funds were created to finance acquisitions of specific strategic companies (e.g., the acquisition of MKB Bank Zrt by Metis Private Equity Fund). Although these private equity funds took part in large transactions, the aggregate volume of funds held in such companies is still relatively low compared to other regions.

Furthermore the government, co-financed by the European Union, is making new funds available to the investment market. Such new investment funds will support mainly SMEs and research and development projects.

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6 Lending activities report March 2018, published by the Hungarian National Bank, [www.mnb.hu/kiadvanyok/jelentesek/hitelezesi-folyamatok/hitelezesi-folyamatok-2018-marcius](http://www.mnb.hu/kiadvanyok/jelentesek/hitelezesi-folyamatok/hitelezesi-folyamatok-2018-marcius).

7 M&A Barométer Magyarország 2017, published by Ernst &Young Tanácsadó Kft.

8 [https://index.hu/gazdasag/2017/12/14/meszaros\\_cseh\\_ceggel\\_osszeallva\\_viheti\\_a\\_matrai\\_eromuvet/](https://index.hu/gazdasag/2017/12/14/meszaros_cseh_ceggel_osszeallva_viheti_a_matrai_eromuvet/).

9 <https://www.portfolio.hu/arfolyam-panel/FX-EURHUF=X/euro-arfolyam.html>.

## **VII EMPLOYMENT LAW**

There have been no major legislative changes in the employment rules in connection with corporate transformations in Hungary in the past couple of years. However, we are experiencing a slight change of focus when it comes to mergers or acquisitions of businesses also involving a transfer of personnel. The Hungarian labour market has always been sensitive to such changes. Corporate changes and reorganisations have often been associated with mass layoffs, and recently, in several instances, the closure of plants and business units as well. In general, trust in employers is usually lower than it is in Western Europe. Consequently, this may cause loss of talent or key personnel even before the conclusion of a transaction. Therefore, in the course of a transaction, communication is of paramount importance, and it is similarly vital to maintain good relationships with employee representatives, and to pay attention, to retain key personnel to safeguard operations and preserve the business potential of a target.

It is usual to decide early in the planning phase of a transaction whether the employees of the target will be retained by the purchaser. Rules pertaining to mass layoffs and transfers of undertakings, including the protection of employees' rights, are harmonised with the respective EU directives and remained unchanged in 2017. However, beyond the general rules on the protection of employees, and consultation and announcing obligations, individual communication with employees is just as important both in the case of a mass layoff and in an M&A transaction in which the employees of the transferred business unit are intended to be retained.

Considering that shortages can be experienced on the Hungarian market for several key workforce positions, retention of key staff can sometimes be more challenging than layoffs. In several cases, interim loyalty or other types of incentive schemes may be of great help for a purchaser in retaining experienced and valuable staff. Sometimes, putting restrictive covenants in place specifically for the purposes of a transaction may also work well.

## **VIII TAX LAW**

Under Hungarian law, specific rules regarding M&A, spin-offs and divisions of companies are regulated by Act LXXXI of 1996 on Corporate Tax and Dividend Tax, which has to be interpreted together with the general rules of the Hungarian Civil Law on business associations.

### **i Corporate tax**

The biggest recent change in the legislation relevant to M&A and companies in Hungary is the change in the corporate income tax rate.<sup>10</sup> Until the end of 2016, the corporate income tax rate was 10 per cent of the positive tax base (accounting profits adjusted with certain items) up to 500 million forints, and 19 per cent above 500 million forints. From the beginning of 2017, the corporate income tax rate is 9 per cent of the positive tax base, regardless of any threshold.

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<sup>10</sup> <http://abt.hu/hu/adozasi-hirek/>.

As of 2018, large companies in the central region of Hungary are entitled to a tax credit under certain circumstances, including for investment projects resulting in product diversification or new procedural innovation; and for investment projects with a value of at least 6 billion forints, and of at least 3 billion forints in the case of investment projects serving to create jobs.

Again as of 2018, favourable corporate tax rules for notified shares may be applied also for shareholdings under 10 per cent.

## **ii Revaluation of assets and tax base adjustments**

In the case of a transformation of a company structure, fixed assets (+/-), liabilities (+/-), receivables (-) and provisions (+/-) can be revaluated.

The corporate tax base normally has to be adjusted by the revaluation difference mentioned above at the predecessor, and by the difference between the accounting net book value and fiscal net book value of tangible and intangible assets at the predecessor and in the case of a spin-off at the successor (in the tax year of the transformation).

However, in the case of 'preferential company transformations' it is possible to avoid corporate tax adjustments. The conditions for the preferential company transformation status are that both the predecessors and successors must be companies, none of the shareholders of the predecessors acquire more than 10 per cent cash over the acquisition of shares of the successor and there is no change in the proportion of the shareholders in the case of a spin-off (a merger into the only shareholder of a one-person company is also considered to be a preferential transformation).

In the case of a preferential company transformation, corporate tax adjustments may be avoided if the following conditions are met: the successor keeps a record of all assets and liabilities taken over from the predecessor as if no reorganisation had taken place (it has to continue the records with the same purchase value, and accounting and fiscal net value); the deed of foundation of the successor refers to this liability; and the preferential company transformation status is referred to in the corporate tax return of the predecessor.

## **iii Asset deals**

A sale of assets of a company is usually subject to corporate tax. The taxable profit is the difference between the selling price and the fiscal net book value of the assets. However, it is possible to avoid corporate tax impacts in the case of a 'preferential asset deal' where an independent division of the company (with its own structure, assets and ability to operate) is sold to a buyer in exchange for the acquisition of shares.

Similar to a preferential company transformation, the special rules can be applied if:

- a* the asset transfer agreement lists all assets, liabilities and accruals (including purchase values, net accounting and fiscal book values), and has a declaration to apply special accounting rules;
- b* the buyer keeps all assets taken over in its books as if no asset deal had taken place (e.g., it continues the records with the same purchase value, accounting and fiscal net value as taken from the seller); and
- c* the seller reports the preferential asset deal status in its corporate tax return.

## **iv Real estate companies**

A transfer of real estate may be subject to property transfer duty not only in the case of an asset deal but also a share deal, if a company is considered to be a 'real estate company' having

at least 75 per cent real estate property within its total assets (not including cash, receivables and accruals). The general transfer duty rate payable by the buyer is 4 per cent up to 1 billion forints and 2 per cent over such amount. This regulation is applicable to indirect owners as well, but there are exemptions for related companies having a registered principle business activity of real estate property selling, leasing or management.

**v Transfer pricing**

As of 2018, a new transfer pricing regulation came into force.<sup>11</sup> The aim of the new regulation is to introduce changes to comply with the requirements set forth by the EU Joint Transfer Pricing Forum.

**IX COMPETITION LAW**

**i New turnover thresholds**

As of 15 January 2017, new turnover thresholds were introduced into the Hungarian merger control law. According to these, a concentration shall be notified to the GVH if the aggregate net turnover in and from Hungary of all undertakings concerned exceeded 15 billion forints in the last audited financial year, and the net turnover in and from Hungary of each of at least two of the undertakings concerned exceeded 1 billion forints in the last audited financial year (this latter threshold was raised from 500 million forints).

Even if the above thresholds are not met, the GVH may investigate a transaction within six months after its implementation if it is not obvious that the merger would not have a significant impediment on effective competition, in particular by creating or strengthening a dominant position; and the aggregate net turnover in and from Hungary of all undertakings concerned exceeded 5 billion forints in the last audited financial year. In such cases, however, no suspension obligation applies.

According to a GVH notice, a concentration shall be regarded as ‘obviously’ not significantly impeding effective competition if the parties’ combined market share does not reach 20 per cent on any overlapping (horizontal) markets or 30 per cent on vertically related markets (or, where such market shares are reached, the market share increment stemming from the concentration is below 5 per cent).

**ii Calculation of turnover**

The recent amendments have introduced a change in the calculation of turnover of Hungary-based companies. Prior to the amendments, in the case of entities incorporated in Hungary, all of their net turnover, whether from sales within or outside of Hungary, had to be taken into account. As of 15 January 2017, again in the case of Hungary-based entities, it is only the net turnover from sales into Hungary that shall be taken into account for the purposes of the turnover calculation (i.e., export sales shall be deducted).

**iii Procedure and filing fee**

Transactions that ‘obviously’ do not significantly impede effective competition will be cleared within eight calendar days (fast track procedure). A formal merger control procedure will

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<sup>11</sup> <http://abt.hu/hu/adozasi-hirek/>.

only be initiated in cases where, on the basis of a notification, such impediment on effective competition cannot be obviously excluded, where the notification is regarded as incomplete by the GVH or where the special approval of the Media Council is required.

In the case of fast track procedures, the filing fee is reduced to 1 million forints. The filing fee for regular Phase I and Phase II proceedings has remained unchanged (altogether, 4 million forints for Phase I procedures and 16 million forints for Phase II procedures).

#### **iv Recent developments in case law**

Since 2016, the GVH has begun imposing significant procedural fines in merger control proceedings for incomplete or incorrect data supply. In cases Vj-33/2016 and Vj-1/2017, following the issuance of a clearance decision, the GVH discovered that the notifying parties had provided incorrect information regarding the group structure or the relevant markets. These clearance decisions were therefore revoked, and substantial procedural fines (7 million forints to 75 million forints) were imposed. The GVH has also been recently more vigilant in cases concerning a breach of the suspension obligation: for example, it imposed such fines in early 2018 in case Vj-44/2017.

## **X OUTLOOK**

As a consequence of a new codex on Hungarian civil proceedings adopted in 2016, which came into force as of 1 January 2018, further changes have arisen regarding certain aspects of company proceedings, and remarkable changes have been introduced regarding litigation that also affect potential litigation related to companies or transactions. Such new rules will have to be paid increased attention to successfully proceed and to litigate under the new civil proceedings regime. The coming months or years will be a notable period for the interpretation and practice of the new procedural rules to crystallise.

Legislation has been adopted to simplify registrations and make official proceedings simpler and quicker, which may have a positive impact on registration proceedings related to M&A transactions. Among others, in order to simplify registration of company data, commercial courts will be notified by certain other authorities to register changes in certain data of persons registered in a company's registry automatically or *ex officio*, sparing the registration of such changes by the company in separate proceedings.

Compliance with the GDPR is foreseen as a continuing trend in the coming months, and some aspects are expected to be crystallised in practice.

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