The Mergers & Acquisitions Review

Tenth Edition

Editor
Mark Zerdin

Law Business Research

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Mark Zerdin

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Gideon Roberton

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EDITOR'S PREFACE

The past year has seen a boom in dealmaking, with many markets reaching post-crisis peaks and some recording all-time highs. Mega-deals have been at the heart of the expanding market, with companies tapping into cash piles and cheap debt to fund transformational deals. Looking behind the headline figures, however, a number of factors suggest dealmaking may not continue to grow as rapidly as it has done recently.

In Europe, the European Central Bank was forced to start a programme of quantitative easing in the wake of consistently low growth, a full seven years after the Bank of England and the Federal Reserve undertook their programmes. US interest rates have also tightened for the first time since the financial crisis, contributing, according to some commentators, to the wobbly US markets that marked the start of 2016. Yet this uncertainty has now seemingly passed, and the Federal Reserve is contemplating raising rates further. Meanwhile, eurozone and UK interest rates look likely to remain low for some time to come due to continued slow growth and low inflation in the region. How the markets react to this bifurcation of monetary policy across the Atlantic will shape dealmaking in the year to come.

Elsewhere, there have been some concerns that falling commodities prices (particularly that of oil) have been driven by a fall in market confidence. However, it seems that this view is somewhat simplistic. It is more likely that prices have fallen due to excess capacity that built up to service Chinese industrialisation and somewhat weak growth figures. The recent uptick in prices should be seen as an indicator that perhaps the market overreacted and fundamentals remain strong.

Perhaps one of the biggest factors that poses a threat to dealmaking in 2016 is the political uncertainty affecting much of the world. In the UK, the first half of the year was clouded by the referendum on the UK's continued membership of the EU, and in the US, the presidential election result is likely to have a considerable impact on markets. It is hoped that the resolution of this uncertainty in the second half of the year will foster an environment in which markets can thrive.

I would like to thank the contributors for their support in producing the 10th 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 2016

Chapter 51

SLOVENIA

David Premelč, Bojan Šporar and Jakob Ivančič[1]

I OVERVIEW OF M&A ACTIVITY

M&A activity has formed a significant part of the macroeconomic processes that have been taking place in Slovenia during the past few years. There is no real cohesion of deal flow in terms of business sectors, as M&A activity is dispersed across all sectors of the market.[2] On the sale side, the state – acting through the Slovenian Sovereign Holding company – is still the most active seller. In fact, Slovenia (with one notable exception – the failed sale process of Telekom Slovenija in mid-2015) is ticking off asset sales from its itinerary quite successfully, with the keynote deal being the 2015/2016 sale of its 100 per cent share in Nova KBM (the second-largest Slovenian bank) to Apollo Global Management. The deal, valued at €250 million, represents the first sale in the privatisation of state-owned banks.

The food production industry sector also provided significant deals in 2015, with the sale of three regional heavyweights: Pivovarna Laško brewery, in which Heineken has acquired a 53.43 per cent share for about €119.5 million); Žito bakery and confectionery factory, in which Croatian company Podravka has acquired a 86.8 per cent share for about €55.6 million; and the poultry factory Perutnina Ptuj, in which Slovenska industrija jekla (SIJ) has acquired about a 47 per cent share for about €44.5 million).

The sale of distressed assets under the auspices of the state-owned Bank Assets Management Company (BAMC) has, on the other hand, fuelled the sale of Adria Airways, the Slovenian national Airliner, ELAN, a sporting goods manufacturer, and the currently undergoing sale of non-performing loans (NPLs) of the DZS Group, a publishing and

1 David Premelč and Bojan Šporar are partners and Jakob Ivančič is an associate at Rojs, Peljhan, Prelesnik & partners.

2 In the past year alone, Rojs, Peljhan, Prelesnik & partners have acted for buyers and sellers across the board, in industry sectors ranging from food production and energy to banking and aviation.

leisure industry conglomerate. BAMC is, however, not the only seller of NPL-related assets, as €800 million of non-performing small and medium-sized enterprise (SME) loans were put on sale by NLB in October 2015.

II GENERAL INTRODUCTION TO THE LEGAL FRAMEWORK FOR M&A

The Slovenian Companies Act provides the basic corporate law framework and, together with the rules of contract law embedded in the Obligations Code, forms the legal basis for any share purchase deal. The Companies Act sets out the rules regarding among other company types, corporate governance, rights of minorities, financial assistance and corporate reorganisations (e.g., divisions and mergers). In practice, target companies are incorporated either as joint-stock companies (whose shares can be listed or not listed) or limited liability companies. Strict rules on the prohibition of hidden profit payments and any kind of support for acquisitions apply to joint-stock companies, whereas investors acquiring a limited liability company are faced with fewer limitations.

Apart from share purchase deals, asset deals, joint ventures and quasi-joint venture cooperation transactions are also possible and quite common in Slovenia. While the Obligations Code does not specifically regulate cooperation agreements, such arrangements (joint-venture arrangements, franchising arrangements, etc.) are also possible as there is no *numerus clausus* of contract types under local law. In practice, some foreign investors have refrained from entering into an asset deal concerning assets acquired through external financing due to the possible joint and several liability of the buyer together with the seller for the debts of the seller relating to such assets as provided in the Obligations Code. Corporate restructurings can take the form of mergers (consolidation or absorption), divisions (several sub-types are possible, and vary with respect to the scope of assets transferred and the relationship between the transferor and the transferee post-completion) and changes in the form of incorporation.

The Takeovers Act sets out the legal framework regulating mandatory and voluntary takeover bids. It applies in relation to Slovenian joint-stock companies, the shares of which are listed on an organised stock market in Slovenia or in any other EU Member State as well as Slovenian joint-stock companies, the shares of which are not listed on an organised market, but which have at least 250 shareholders or a total capital of at least €4 million.

Pursuant to the Takeovers Act, a mandatory takeover bid requirement is triggered if a person, by itself or with persons acting in concert, reaches or exceeds the takeover threshold of one-third of voting rights in the target company. If the shareholder's initial takeover bid is successful, and if the shareholder attains at least 10 per cent of additional voting rights in the target, it must publish an additional takeover bid. The obligation to make additional takeover bids ceases once the shareholder has obtained at least 75 per cent of the target's shares with voting rights in the course of a takeover offer. Failure to launch a mandatory takeover bid or an unsuccessful mandatory takeover bid results in, *inter alia*, a full loss of voting rights, exposure to fines and potential liability for damages. The acquirer that is under an obligation to launch a mandatory takeover bid may regain its voting rights only by successfully completing a mandatory takeover bid or by lowering its shareholding below the threshold that triggered the requirement to publish the takeover bid.

The purchase price offered in a takeover bid must be at least equal to the highest price at which the offeror was buying the target's shares in the last year before announcing

the takeover bid. If, however, the takeover threshold was exceeded contrary to the Takeovers Act, then the relevant benchmark is the highest purchase price paid by the offeror in the year before the date of the infringement of the Takeovers Act. External audit of the offered price is required only in the case of non-listed joint-stock companies.

The Takeovers Act goes beyond the usual requirement of a guarantee of sufficient funds. The offeror must transfer the monies required to cover the purchase price of all remaining shares (all shares of the target other than those already owned by the bidder) to the central securities clearing depository before launching the bid. Alternatively, the offeror may deliver to the central securities clearing depository a sufficient funds bank guarantee issued by an EU Member State bank.

In cases where the acquisition of shares is subject to the prior consent of any regulatory authority (other than merger clearance), the validity of the takeover bid depends on the obtainment of such consent. If the consent of the relevant regulatory authority, such as the consent of the Bank of Slovenia for the acquisition of a qualified holding in a Slovenian bank, is not granted before the expiry of the takeover bid acceptance period or if the consent is denied, the takeover bid is unsuccessful and the offeror does not obtain any shares pursuant to the takeover bid. It is therefore preferable to seek the relevant consents before launching the takeover bid.

The validity of the takeover bid cannot be linked to merger clearance of the transaction. However, the bidder may make the bid conditional on reaching a certain shareholding in the company, this being the only elective condition that the offeror may choose for the validity of its bid.

The takeover intention has to be published within three business days of reaching or exceeding the relevant takeover threshold, to be followed with the publication of the takeover bid (and accompanying prospectus) within 10 to 30 days. The period for the acceptance of the takeover bid must be set between 28 and 60 days.

Rules on squeeze-out procedures are enacted in the Companies Act. A squeeze-out of minority shareholders is possible once a single majority shareholder has obtained at least 90 per cent of the entire share capital of the joint-stock company. Squeeze-outs are performed on grounds of a decision of the assembly of shareholders proposed by the majority shareholder and in exchange for a suitable compensation. The Companies Act also provides for rules on approval rights required in corporate restructurings. Typically, any type of corporate restructuring will require a three-quarters (share capital) majority vote of the shareholders (unless the relevant articles of association provide otherwise). Similarly, any asset deals that concern the transfer of or otherwise affect at least 25 per cent of all assets of a joint-stock company must be approved by the shareholders.

As already mentioned, strict rules apply in relation to financial or other types of facilitation of acquisitions and takeovers through the assets of the target joint-stock company. Targets are prohibited from providing security, advance payments, loans, guarantees or any other form of financial or collateral facilitation for the acquisition of their own shares. Furthermore, shares to be acquired in the takeover process may also not be promised to be pledged for takeover financing.

Other statutes relevant to M&A activity include:

a the Financial Instrument Market Act governs the requirements and rules with regard to securities traded on organised markets, the disclosure of information in relation to securities traded on organised markets and the trading rules for trading securities on organised markets;

b the Book Entry Securities Act governs the issuing and trading of book entry securities;
c the Law of Property Code governs property rights;
d the Financial Operations, Insolvency Proceedings and Compulsory Dissolution Act governs bankruptcy and insolvency proceedings related to the financial restructuring of companies;
e the Prevention of the Restriction of Competition Act governs merger control with respect to concentrations and other issues of competition law;
f the Employment Relationship Act governs rights of employees and employers, and also in relation to corporate restructurings; and
g the Worker Participation in Management Act governs rights of employees to participate in management, to information, consultation and co-decision making, and also in relation to corporate restructurings and changes of ownership in the company.

III DEVELOPMENTS IN CORPORATE AND TAKEOVER LAW AND THEIR IMPACT

The Companies Act in 2013 saw the introduction of measures preventing the incorporation or acquisition of companies by persons who have previously been convicted of criminal acts related to business activities or employment matters or who have failed to pay their taxes. The purpose of the ZGD-1H amendment is to combat the creation by the same person of chains of empty-shell companies that never pay taxes. The principle of free pursuit of business activities and separate legal personality of companies was to be balanced by limiting individuals (or companies) who abuse free market opportunities by creating or acquiring companies. In accordance with the new rules, a company may not be acquired or incorporated by a person convicted of certain criminal acts who has been publicly declared as a non-payee by the tax authority or has an equity stake exceeding 25 per cent in any such company. Additional upgrades have been incorporated into the Slovenian corporate legal framework with the adoption of the amendment ZGD-1I in late 2015. The ZGD-1I amendment the introduced rules, preventing the incorporation or acquisition of a company by a person that has already been involved in the incorporation of a limited liability company within the past three months or where the person has acquired a share in a limited liability company that was established within a three-month period before acquisition. Although these changes are not expected to have a significant effect on cross-border transactions, they are a step towards ensuring a safer legal environment.

The financial crisis showed that the rigid and formal approach of the Takeovers Act is not well equipped to deal with situations caused by the financial crisis. Before the economic meltdown hit Slovenia, financial and corporate restructurings were a rarity. In 2013, lenders operating in Slovenia started to act upon the realisation that they have to take decisions to either sink or take control over pre-insolvent companies to which they have heavily lent during the years of economic upturn. One of the practical risks that lenders were facing was that through measures of financial restructuring and realisation of share pledges they had the opportunity to become owners of pre-insolvent companies, but the resulting change of control in joint-stock companies would typically trigger a requirement to publish a mandatory takeover bid for shares of minorities. For apparent reasons, any kind of additional fund flows from the banks to obtain shares in companies whose value was close or equal to zero was not an option. This led to the introduction of an amendment to the Takeovers Act that empowers the Securities Market Agency to grant to persons who will, during the course

of financial restructuring, exceed the takeover threshold, an exception from the requirement to publish a takeover bid. The Securities Market Agency's approval has to be obtained in advance and applies for a period of five years. It is considered that five years are sufficient for lenders to restructure the target company and sell it to an investor.

An important consequence of any person (acting alone or with its concert parties) exceeding the takeover threshold but failing to publish a successful takeover bid is the civil sanction of standstill of voting rights. Before the amendments to the Takeovers Act in 2013, there were no rules enabling the Securities Market Agency to issue an individual or block exception allowing persons to vote on specific matters notwithstanding the general standstill of voting rights. Currently, the Takeovers Act provides that the Securities Market Agency can allow a person who is in breach of the mandatory takeover bid requirement to exercise voting rights on matters that are necessary for the protection of public interest (e.g., safety or defence of the state, public safety, the functioning of the economy). However, the Takeovers Act still does not provide the Securities Market Agency with the power to allow voting to a potential acquirer who has failed to publish a mandatory takeover bid in order for such acquirer to preserve the value of its investment (e.g., to avoid minorities seizing management control due to the standstill of voting rights applying to such acquirer).

Foreign investors should, however, not have any fears of 'losing' voting rights due to failing to publish a mandatory takeover bid, as all relevant steps towards reaching a successful takeover bid are within their scope of control. In this respect, the recent practice of the Securities Market Agency aimed at facilitating investments is noteworthy. The general rule of the Takeovers Act is that an acquirer who exceeds the takeover threshold of one-third of voting rights in a target company cannot exercise any voting rights until the acquirer 'makes a mandatory takeover bid' (Article 63 of the Takeovers Act). The Securities Market Agency has adopted a wide interpretation of this rule, and considers that an acquirer has and keeps voting rights even after exceeding the takeover threshold provided that the acquirer then follows all the procedural steps required to publish the takeover bid (i.e., it first publishes the takeover intention, then obtains the authorisation to publish the takeover bid and related prospectus; publishes the takeover bid and prospectus; and finally successfully completes the takeover bid). In practice, this means that, from the perspective of the Takeovers Act as interpreted by the Securities Market Agency, immediately after completion of the private acquisition of shares under a share purchase agreement the acquirer may take action to obtain management control over the target without the need to wait until completion of the takeover bid.

Amendments to the Slovenian Takeovers Act, which entered into effect in 2015, will likely be very material to cross-border investors. The keynote feature that seems to stem from these amendments is the intention to limit debt financing of acquisitions of public companies in Slovenia. The amendments have introduced further strict limitations into local law as to how an offeror may approach collateralisation of debt financing for an acquisition, making leveraged acquisitions of public companies particularly challenging to structure.

IV FOREIGN INVOLVEMENT IN M&A TRANSACTIONS

Given the relatively small geographic and economic size of Slovenia, all key M&A transactions have traditionally included foreign buyers, whereas outbound activity has been limited to Slovenian companies increasing their footprint on the ex-Yugoslavian markets.

According to the Bank of Slovenia report on Direct Investment 2012, average growth in foreign direct investment (FDI) was 17 per cent between 1994 and 2006, while the highest

growth to date, of 43.1 per cent was recorded in 2007.[3] Growth averaged 5 per cent between 2008 and 2011, with negative growth of 6.2 per cent having been recorded in 2009.[4] At the end of 2013, the value of inbound FDI decreased 3.5 per cent compared to the value of FDI at the end of 2012.[5] EU Member States prevail among investor countries, accounting for 82.7 per cent of all inward FDI in value terms at the end of 2012 and 82.3 per cent at the end of 2013, while the single most important investor is neighbouring Austria, which accounted for 47.8 per cent of all inward FDI in 2012 and 34.3 per cent in 2013. Buyers from neighbouring countries or countries with intimate knowledge of Slovenian brands and products play a key role, and have been involved in some of the larger transactions:

a Fructal, a fruit products manufacturer, was sold to a Serbian company in 2011;
b Helios was acquired by the Austrian Ring group;
c Droga Kolinska, a drinks and food producer, was purchased by the Croatian Atlantic Grupa;
d in April 2015, Žito, a food producer, was purchased by Croatian Podravka; and
e Apollo completed its takeover of NKBM in 2016.

Foreign equity was also strongly involved in the sale of Adria Airways and Aerodrom Ljubljana Airport, and the sale of ELAN and Radenska.

V SIGNIFICANT TRANSACTIONS, KEY TRENDS AND HOT INDUSTRIES

The companies designated for privatisation by the state continued to be the main drivers of M&A activity in 2015, and are expected to continue to be the main drivers in 2016. Until mid-2015, the sale of the following companies was successfully concluded:

a Helios, a chemical manufacturer was purchased by the Austrian Ring Group;
b Fotona, a manufacturer of high-performance lasers for medical, dental and aesthetic applications, was purchased by the Gores Group, a Los Angeles-based investment firm;
c Aerodrom Ljubljana was purchased by the German Fraport AG;
d Slovenian food producer Žito wsd purchased by Croatian Podravka;
e the state's 100 per cent share in Nova KBM (the second-largest Slovenian bank) was sold to Apollo Global Management;
f the Pivovarna Laško brewery was taken over by Heineken (Heineken acquired a 53.43 per cent share for about €119.5 million); and
g poultry factory Perutnina Ptuj was acquired by SIJ (a 47 per cent share for about €44.5 million).

3 Publication of Bank of Slovenia, Direct Investment 2012, October 2013: www.bsi.si/library/includes/datoteka.asp?DatotekaId=5339.

4 Ibid.

5 Publication of Bank of Slovenia, Direct Investment 2013, November 2014: www.bsi.si/publikacije/Neposredne_nalozbe-Direct_investment/NN_ang_13/index.html.

Other key transactions that have had an impact on the market include:

- *a* the sale of a stake in Zavarovalnica Maribor dd by NKBM;
- *b* the formation of a fully functioning joint venture between Telekom Slovenia and Antenna Group (the largest Greek media group) with a view to operate Planet TV. The joint venture plans to become one of the leading commercial televisions in Slovenia;
- *c* Agrokor's purchase of Mercator, the largest Slovenian retailer;
- *d* WWRD's acquisition of Steklarna Rogaška, one of the leading worldwide producers of crystal ware; and
- *e* the sale by Abanka bank and construction materials company Salonit Anhovo of their combined 92.5 per cent stake in polyurethane foam maker TKK Srpenica to the Belgian company Soudal Holding NV. This acquisition made Soudal the largest producer of one component foam worldwide, with plants in China, India, Belgium, Turkey and Poland.

VI FINANCING OF M&A: MAIN SOURCES AND DEVELOPMENTS

The domestic debt market has still not recovered from the impact of the financial crisis, and is dominated by refinancing and restructurings. The local banks – whether they are struggling with insolvency or not – are not keen to finance any substantial acquisition.

However, acquisitions in Slovenia continue to be financed with debt rather than equity, most likely as a reflection of the overall uncertainty existing in the equity market. Financing of acquisitions in Slovenia follows international trends; therefore, in nearly all cases, acquisition financing sources are foreign.

More and more transactions in Slovenia are financed through the high-yield bond market. As far as the existing debt at the target is concerned, in most cases it remains in place upon a change of control. There is, however, no true portability of existing debt: investors are usually required to enter into protracted discussions with existing lenders, and such restructuring negotiations have become an important aspect of all deals.

VII EMPLOYMENT LAW

There have been no recent legislative developments in the area of employment law that would be relevant to M&A.

The Acquired Rights Council Directive 77/187 (as amended by Directive 98/50/EC and consolidated in Directive 2001/23) is transposed into local legislation. Contractual and other employment rights and obligations that employees had on the day of transfer towards the transferor are transferred through the operation of law (*ex lege*) and continue towards the transferee. With respect to any rights that are conditional on or related to the period of employment, both the period of employment served with the transferor and the period of employment served with the transferee must be taken into account. Additionally and importantly, the transferor and the transferee are jointly and severally responsible for the performance or payment of the employees' claims that had arisen towards the transferor before the transfer. Employment rights and obligations arising under collective bargaining agreements, which had on the day of the transfer bound the transferor, must be respected

by the transferee for at least an additional year after transfer, unless the term of the collective bargaining agreement ends earlier or unless a new collective bargaining agreement is entered into prior to the lapse of the one-year period.

Upon transfer, employees of the transferor or transferee are afforded a two-year grace period in which they are allowed to terminate the employment agreement (and yet receive all benefits that they would if the employer had terminated the employment agreement for business reasons) if the working conditions alter significantly upon transfer as a result of objective reasons. On the other hand, the interests of the transferor and transferee are protected through the transferor's right to terminate the employment agreement if the transferred employee refuses to transfer to the transferee.

VIII TAX LAW

The general legal framework relevant to M&A activity is enacted in the Corporate Income Tax Act, which provides specific regimes for various types of transactions (transfer of assets, stock swaps, mergers and divisions). These transactions can generally be conducted as tax-neutral transactions under the regimes provided in the Corporate Income Tax.

Hidden reserves, which must be disclosed to the tax authority during the transaction, are calculated on the basis of the difference between the fair value of assets (defined as the value, for which the asset may be sold or otherwise transferred between well-informed and willing parties in a transaction in which the parties are mutually independent and equal) and the tax value of assets (defined as the value given to the asset for the purpose of taxation). Goodwill is subject to impairment, which is then recognised as an expense (up to 20 per cent of the original value, and the exceeding value is transferred to the following tax year).

With respect to funding, while payments of interest are generally tax deductible (unless issued to a resident of certain jurisdictions listed by the Ministry for Finance), payments of dividends are not. Thin capitalisation rules apply with respect to debt incurred from certain qualified shareholders (25 per cent share threshold, held by the lender or an affiliated person) – where the debt-to-equity ratio exceeds 4:1, interest paid on such loans is not deductible for the purpose of the corporate income tax.

Capital gains (sale of shares) are taxed with the corporate income tax unless certain exemptions apply (the shares represent at least 8 per cent of the capital, the shares have been held for at least six months, the seller had at least one employee during the entire period of holding the shares and the transferred share is not in a company seated in one of the tax-haven jurisdictions designated by the Ministry of Finance).

As of 1 July 2013, the value added tax rate has been set at a general rate of 22 per cent and is particularly relevant with respect to asset deals (as opposed to share deals). Additionally, real estate tax is imposed at a rate of 2 per cent of the purchase price for any transfer of real estate, except for those transfers of real estate that are charged with VAT (newly built real estate).

IX COMPETITION LAW

No recent legislative changes relevant to M&A in Slovenia have occurred in the past couple of years.

Concentrations in relation to companies operating in Slovenia could be subject both to European Union merger control legislation (Merger Regulation) and national rules of

the Slovenian Prevention of Restriction of Competition Act (Competition Act), whereby Article 42(2) of the Competition Act draws a distinction between concentrations with a EU dimension that are to be assessed by the European Commission, and transactions that are to be cleared by the Slovenian Competition Protection Agency (CPA).

The Slovenian merger control system is based both on mandatory notifications of concentrations and on notifications of concentrations upon the request of the CPA. A concentration is defined as a change of control on a lasting basis over an undertaking that is deemed to arise in the case of a merger of two or more previously independent undertakings or parts thereof; an acquisition of (direct or indirect) control over another undertaking or parts thereof; or a formation of a full-function joint venture. The concept of a 'concentration' under national rules therefore mimics the EU-level rules embedded in the EC Merger Regulation.

A concentration has to be notified to the CPA if the following turnover thresholds are met:

a in the last financial year, the combined annual turnover in the Slovenian market of the undertakings concerned together with other undertakings within the group exceeded €35 million; and

b in the last financial year, the annual turnover in the Slovenian market of the target undertaking together with other undertakings within the group exceeded €1 million or, in the case of a formation of a full-function joint venture, the annual turnover in the Slovenian market of at least two of the undertakings concerned together with other undertakings within the group exceeded €1 million.

Even if the turnover thresholds are not met but the combined market share in the Slovenian market of the undertakings concerned together with other undertakings within the group exceeds 60 per cent (if there is no local overlap, the test is met even if only one party exceeds the 60 per cent threshold), the CPA may request, within 15 days after the undertakings concerned inform it of such a concentration, that the concentration is notified to the CPA.

A concentration has to be notified to the CPA at the latest within 30 days after the conclusion of an agreement, announcement of a public bid or acquisition of control (the time period of 30 days runs from the first of any of these events), or, if the CPA is informed of a concentration that meets the market share threshold and the CPA requests that the concentration is notified, within 30 days of receipt of the CPA's request. Pre-notifications are not expressly regulated, but are possible in practice.

A general standstill obligation applies in cases of mandatorily notifiable concentrations. Undertakings may not exercise their rights and obligations arising from a concentration that is subject to notification until a decision declaring the concentration compatible with competition rules has been issued.

As regards fines for failure to file a notification, failure to file a notification in time or failure to comply with the standstill obligation, the Competition Act provides that a fine of up to 10 per cent of the worldwide annual turnover of an undertaking concerned together with other undertakings within the group generated in the preceding financial year may be imposed for an infringement. In addition, fines from €5,000 to €30,000 may be imposed on responsible individuals of the undertaking or of an individual entrepreneur.

X OUTLOOK

From our perspective, the short to mid-term outlook in terms of M&A activity remains the exiting of foreign buyers seeking opportunities from either the ongoing privatisation process or distressed asset sales. In line with commitments given to the European Commission, the state is required to privatise NLB bank, Slovenia's largest bank in terms of assets and market presence. The state is expected to retain a 25 per cent plus one share equity interest. The transaction is currently at its initial stages. The Slovenian Sovereign Holding, which will be acting as the seller on behalf of the state, has already chosen Deutsche Bank as the designated adviser. The government's privatisation approach of choice seems to be an initial public offering. However, rumours have surfaced that the Slovenian Sovereign Holding is not satisfied with the limited range of sales options available, and that it will be seeking more leeway in terms of transaction structuring. On a related note, in June 2016, NLB closed the sale of a part of its SME NPL receivables to Slovenian companies at a nominal value of approximately €396 million. Negotiations are continuing with regard to the remaining SME NPL portfolio (roughly €400 million).

We expect that foreign investor presence on the market will remain strong, and particularly that foreign equity houses will remain a notable presence in all key privatisation processes. The trend of professional investors is expected to further increase focus on legal due diligence and compliance, ranging from industry regulations to anticorruption requirements. Professional investors tend to be well informed of market specificities and to approach deals with clearly set out parameters. The demand for comprehensive, pinpoint accurate expertise of local law should therefore continue to increase.

Appendix 1

ABOUT THE AUTHORS

DAVID PREMELČ

Rojs, Peljhan, Prelesnik & partners

David joined RPPP in 2006 and has since practised corporate law, with a primary focus on mergers and acquisitions, corporate litigation and arbitration, media law and data protection. As a part of his commercial law and M&A specialisation, David has been advising many domestic and foreign clients in M&A transactions and corporate restructuring, which include some of the high-profile transactions in the financial, media, retail and industry sectors. His recent M&A work includes advising NKBM, the second-largest Slovenian bank, in its sale of Zavarovalnica Maribor (the third-largest insurance company in Slovenia), advising Agrokor in its acquisition of Mercator, advising Cimos in its sale of Litostroj Power, advising Antenna Group in its joint venture with Telekom Slovenije, advising Zavarovalnica Triglav (the largest insurance company in Slovenia) in its bid for Croatia Osiguranje (the largest insurance company in Croatia) and advising Styria Media Group in its acquisition of Moje delo. David also regularly represents the clients in administrative litigation as well as in international and domestic arbitration proceedings, and is consulted on a daily basis on data protection and media law issues.

BOJAN ŠPORAR

Rojs, Peljhan, Prelesnik & partners

Bojan Šporar joined (the then) Colja, Rojs & Partnerji in 2007 after his traineeship at Linklaters and court articling at the High Court in Ljubljana. His fields of expertise include M&A, and banking and finance transactions, in which he regularly assists foreign and domestic institutions on banking rules and financial regulations. Bojan's recent M&A work includes advising a client on takeovers, project documentation and financing with respect to the Helios privatisation, and heading the core legal team advising Agrokor in its acquisition of Mercator, the largest Slovenian retailer, these being the largest transactions in Slovenia since Novartis' acquisition of Lek (also handled by the firm). He has advised, among others, OMV AG with respect to a real estate storage capacity acquisition in Slovenia, Kimberly Clark in its acquisition of Balder, a high-technology company, and Bank of America Merrill

Lynch with respect to its asset purchases in Slovenia. Bojan's recent work has also concerned innovative work in bank and leasing companies' originated securitisations (synthetic and traditional) and structured finance deals.

JAKOB IVANČIČ

Rojs, Peljhan, Prelesnik & partners

Jakob Ivančič holds a bachelor's degree in law from the University of Ljubljana. He graduated with honours (*cum laude*) in 2013, ranked third in his class, and joined Rojs, Peljhan, Prelesnik & partners immediately upon graduation. He received several awards for his diploma thesis, including the United Nations Association of Slovenia's award for an outstanding thesis related to the work of the United Nations and the Faculty of Law's Commendation for an outstanding thesis. Jakob has worked on several M&A projects recently, including the acquisition of Mercator, Slovenia's largest retail chain, by Agrokor, the sale and financial restructuring of Helios Group, and the acquisition of LIV, one of the largest regional manufacturers of sanitary products, by Fluidmaster. Jakob's practice areas include banking and finance, restructuring and insolvency law as well as intellectual property. Jakob was seconded to Allen & Overy, A Pędzich sp k's banking department in September 2013.

ROJS, PELJHAN, PRELESNIK & PARTNERS

Tivolska cesta 48
1000 Ljubljana
Slovenia
Tel: +386 1 2306 750
Fax: +386 1 4325 123
sporar@rppp.si
premelc@rppp.si
www.rppp.si