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Corporate M&A 2022

Poland: Trends & Developments

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Trends and Developments

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Introduction

The year 2021 was indeed another peculiar year for the M&A market in Poland. It was the second year of the pandemic and yet another record-setting one.

Ever since 2020, deal-making has changed a lot. With pandemic restrictions being imposed and lifted several times in a row, the market has developed the ability to run hybrid processes, in which face-to-face meetings and on-site visits have largely been replaced with video calls or even virtual site examinations, interspersed with more conventional forms of interaction. While it used to be unimaginable, it soon turned out to be a much more efficient way of running transactional processes. Cutting on travel costs and time savings are only two of the many benefits which paved the way for the success of this new way of transacting.

While it is always hard to rely on M&A statistics given that different sources tend to present different figures, it seems that the overall volume of transactions in Poland grew by a hefty several tens of percent in the last year! This is especially significant as the M&A market in Poland has been one of the most active in Central and Eastern Europe and has prospered continuously for almost a decade. The situation may not be the same for every sector, but this stands broadly true of the economy as a whole and a great majority of its sectors.

Market Structure

In 2021, the market was continuously dominated by sector investors. They accounted for a vast majority of transactions, while very active private equity (PE) funds made market trends even more pronounced.

It is difficult to indicate a single dominant sector, as the Polish M&A market is rather scattered. However, a type of duality has been observed. While some sectors struggled to survive, in particular the hospitality industry, others thrived. There is no doubt that the great activity in the broad media/IT/telecoms/e-commerce/logistics sectors again broke records.

Growth in those sectors was reinforced by an increase in e-commerce itself. It therefore accounted for a substantial portion of the market and also produced some of the largest deals of the year. Second place was taken, also no surprise, by the financial services sector.

Implications of COVID-19

At first the coronavirus pandemic caused fear over its impact on deals recently completed or still being negotiated. It was believed that certain boilerplate provisions in M&A agreements such as force majeure might be commonly triggered, causing chaos and effectively jeopardising neatly sewn-up deals. Likewise, it raised concerns over the occurrence of circumstances stipulated in contracts, particularly material adverse change or impact clauses – typically giving the parties (or one of them) the ability to terminate a contract due to the worsening situation of the target (eg, a certain decline in turnover or increase in debt). There may have been individual instances where this occurred, but no general tendency was observed.

Technological Boost

Practically, and paradoxically, the timing of the COVID-19 outbreak could not have been better. The key reason is, of course, technology.

In an age of progressive digitalisation, there is no barrier to continuing due diligence already begun, or even starting new due diligence projects. Such processes may be conducted on an entirely remote basis. However, a review must appropriately reflect circumstances related to the pandemic and its impact on the current and future condition of the target.

This particularly extends to negotiations and the technicalities of conducting transactional processes. While virtual signings and closings have never been customary in Poland (and are not likely to entirely replace physical ones, specifically due to Polish legal requirements for notarisation of most types of share transfer agreements and mandatory notarisation of contracts involving real property), they were quite swiftly implemented, thus limiting physical interaction between the parties and their lawyers to an absolute minimum.

The art of virtual negotiations was developed, replacing not only old-style conference calls and approximating in-person interactions in their effectiveness, but also providing the significant benefit of cutting time spent on the road for meetings. To some extent this has also forced parties to take a reasonable approach, as much more balancing and compromise are required to close a deal.

Continuing Analogue Threats

Certain practical threats cannot be disregarded, nor the consequences of the pandemic, such as the illness of employees and legal consequences (in extreme instances resulting in the restriction or temporary shutdown of activity), which may still impact the economic assumptions underlying a contract signed by the parties. This primarily concerns the valuation of the target and the mechanisms for setting the final price (whether based on a closing-accounts model or a locked-box model). For now, after over two years of pending lockdowns and restrictions, the actual impact of COVID-19 on the Polish M&A market has been rather limited (despite all the inconveniences).

Conversely, limitations on the work of courts, state offices, banks and other institutions have led (and presumably will continue to lead) at least to delays in fulfilling conditions for closing the transaction (eg, obtaining approval from competition authorities) or carrying out activities foreseen by the parties during the interim period (eg, corporate changes requiring entry in the National Court Register, deletion of pledges or mortgages, and the like).

This certainly presents a risk that the transaction cannot be closed by the long-stop date set by the parties, which in turn gives rise to a risk of automatic dissolution of the contract or termination by one of the parties.

"Ordinary" Impact on the Local Political Environment...

The impact of the political situation in Poland on the business environment, especially the M&A market, is still a vital issue. No one would deny that some changes in law, with potentially significant destabilising effects, have affected state institutions entrusted with maintaining stability, thus having a negative impact on the economy. This specifically applies to the judicial system, which has been subject to special concerns in the last several years. For one thing, these changes make the legal environment less predictable and thus riskier for investors.

Of course, Poland is not an utterly isolated case. It is an element of a Central European or perhaps even a broader trend. That is why the political impact on the economy is not apparent, at least not at this stage when analysing the situation from a high vantage point.

Politically driven attempts to influence or even take control of certain markets have not been overly excessive. Yet, one cannot exclude the risk (which is certainly not dormant) of the government planning or attempting to take over (or, as it is called, "nationalise") particular areas of the economy, particularly as COVID-19 has accelerated protectionism and regulatory restraints.

One of the main obstacles noted by investors, alongside merger clearance, is the new regime for oversight of foreign investments. It was introduced to protect companies and critical assets during the pandemic from capital flows from non-EU countries when acquisition could increase security risks. Thus, it seems inevitable that contracts will be subject to more conditionality.

... And a Threat of War and Its Implications Now Having Turned into a Dreadful Reality

"Conventional" threats related to the impact that politics has or may have on the market have recently been overshadowed by other factors. The reason of course is the outbreak of war in the very heart of Europe. The Russian invasion of Ukraine has not only instilled fear in the Polish public and investors but has also raised numerous questions around the impact this aggression may have on economies throughout the world. At the time of writing (April 2022), Ukraine has continued to resist the invasion and one cannot predict the outcome. Likewise, it is not possible to unequivocally determine whether war-related consequences, such as a substantial increase in petrol and gas prices will be a long-term phenomenon and how deeply it will affect the investment strategies of businesses. Regardless of when the war ends, its impact on Poland cannot be overestimated, with over 2.3 million refugees (at the end of March 2022) and geopolitical implications (to name only some factors) to contend with. New challenges for the country, its politicians, people and business will continue to arise.

Disrupted Supply Chains

The year 2021 was already very challenging for the supply chain in certain businesses, notably the semiconductor sector and (partially as a consequence) the automotive sector. These problems are not likely to vanish in the near future but will presumably increase. COVID-19 is of course one of the factors to blame, but geopolitics is yet another one. Geopolitics affect prices of gas and petrol or even the stability of their supply and there are those prices that further affect the sustainability of businesses, market prices and which further increase inflation. The war in Ukraine has already made access to supply chains even more difficult. This is not only because of the direct impact of the invasion on Ukrainian production capabilities, but also due to sanctions successively being imposed on Russia and their rebound effect on Western economies.

Inflation and the Weakening Currency

Inflation itself has played a vital role in shaping the Polish economy in 2021. The year ended with a record 8% rate, which placed Poland an inglorious third last among EU countries. While continuous growth of prices did not have significant consequences for Polish businesses in the previous year, sooner or later, a further increase in inflation will.

The effect of increasing prices is, simultaneously, being reinforced by the weakening of the zloty. The Polish currency has not been the only one affected by the war in Ukraine, but its depreciation has nevertheless been substantial. While from a practical perspective this has, and will have, adverse effect on imports (causing further price increases), it is likely to have some benefits for businesses focused on exports (particularly where sales are denominated in euros or dollars).

A New Climate for Renewables

Issues to with gas and petrol supplies seem to have finally brought discussion of active promotion of renewables to the forefront of policy debate. It is somewhat paradoxical that the factor that seems to have the actual potential to propel Western economies (particularly the highly fossil fuel-dependent Polish one) towards a "green" model is not a geopolitically more "independent" one.

Of course, investments in renewables will not blossom any time soon. However, as long as the trend continues, the sector is likely to be one of the most important in years to come.

Prospects Ahead

The long-term consequences of various factors affecting the global economy can hardly be predicted at this point, as the situation is dynamic, volatile and depends on too many variables. As of the end of March 2022 most pandemic-driven limitations have been lifted in Poland (following a more general European trend), which brings hope that the economy will no longer struggle with related obstacles. This is of course subject to these limitations not being reintroduced along with further coronavirus waves.

Issues related to growth of inflation and public debt can be expected to constitute factors making the business climate in Poland more challenging. The same applies to the weakening of the Polish zloty, thus affecting import-based businesses. On the other hand, the very same phenomena can still be beneficial to sectors focused on exports.

Risks related to further disruptions of supply chains may be yet another factor adversely affecting manufacturing sectors (particularly the already struggling automotive or technology fields).

At the same time there are great expectations associated with renewable technologies and related investments. While there are still some legal issues that must be overcome, a boost in this sector in years to come is both eagerly awaited and likely.

The above circumstances and war-related uncertainty mean that while one cannot be sure that a significant decrease in M&A transactions should be expected this year, there is a risk that Poland may face a certain "cooling down" of the investment climate. If this occurs, then effects would presumably not appear until the third or even fourth quarter of 2022, as a number of M&A projects are already in progress or otherwise at an advanced stage. The biggest question is, however, what sort and how heavy such a "cooling down" may be.

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Wardyński & Partners was established over 30 years ago. It is particularly noted among clients and competitors for its services in corporate and M&A, dispute resolution, intellectual property, employment, private client, real estate and title restitution and provides comprehensive multi-disciplinary legal advisory services. The firm has almost 150 lawyers and has offices in Warsaw, Kraków, Poznań and Wrocław. The corporate and M&A team has 30 lawyers in the core team. Its transactional experience is well established and covers the entire spectrum of industries, sectors and areas of expertise. Apart from building clients and peers relations both in Poland and abroad and being busy with a significant number of M&A projects, the team strives to be active in the implementation of e-solutions in the fields of M&A processes in Poland (such as machine learning software and automatised documents review solutions for due diligence projects).

AUTHORS

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