



**ASSOCIATION OF EUROPEAN BUSINESSES IN
THE RUSSIAN FEDERATION**

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AEB M&A WORKING GROUP NEWSLETTER

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PART I. TOP DEALS

The data reveals a significant pick-up in Russian M&A activity in 2010 since the dark days of 2008/9. Activity is however still at a relatively low ebb and disproportionately local (Russian to Russian), which reflects both the almost universal lack of animal spirits on the part of foreign strategic investors and their high risk perception when it comes to specific Russian opportunities.

PE activity remains at a very low ebb indeed, indeed almost non-existent, reflecting the reduced size of the sector caused by the credit crisis, the lack of leverage available to these firms and the uncertainty relating to the timing of exits. The ongoing weakness of the IPO market will have done nothing to ameliorate this uncertainty. All of which means of course, that there will be some really good bargains to be had for those with courage.

As to the composition of the M&A activity over 2H10, with the exception of two big international initiatives (Pepsi and Trafigura), it's all mainly about domestic consolidation at the heavier end of the industrial spectrum – energy, mining and utilities, industrial and chemicals and TMT. The Pepsi and Trafigura deals show that, where material market shares are available, the bigger multinationals will commit.'

Prepared by David Herbert, Executive Chairman of the PBN Company

Top 10 Russian Announced M&A deals for Jul 10 - Dec 10

Announcement Date	Bidder Company	Bidder Financial Adviser	Bidder Legal Adviser	Target Company	Target Dominant Sector	Target/Seller Financial Adviser	Target/Seller Legal Adviser	Seller Company	Deal Value (US \$m)
20-Dec-10	JSC Uralkali	Goldman Sachs, JSC VTB Capital and Morgan Stanley	Debevoise & Plimpton	JSC Silvinit	Industrials & Chemicals	Bank of America Merrill Lynch	Linklaters		9,702
2-Dec-10	PepsiCo Inc	Centerview Partners and Morgan Stanley	Cravath Swaine & Moore (Advising Centerview Partners); Davis Polk & Wardwell; Dechert and Linklaters	Wimm-Bill-Dann Foods OJSC (WBD)	Consumer	JPMorgan	Latham & Watkins		6,127
1-Dec-10	Vnesheconombank		Herbert Smith/Gleiss Lutz/Stibbe	AO Gazprom (2.7% Stake)	Energy, Mining & Utilities		Advising Seller: Freshfields Bruckhaus Deringer	E.ON AG	3,446
20-Dec-10	Trafigura Beheer BV			MMC Norilsk Nickel (8% Stake)	Energy, Mining & Utilities				3,357
20-Dec-10	Gazprombank OJSC			Novatek OAO (9.41% Stake)	Energy, Mining & Utilities		Advising Seller: Pricewaterhouse Coopers (PwC) legal	AO Gazprom	2,796
27-Dec-10	INTER RAO UES OJSC			JSC OGC-3 (79.24% Stake)	Energy, Mining & Utilities	Advising Seller: JSC VTB Capital		MMC Norilsk Nickel	1,986
6-Dec-10	X5 Retail Group NV	Sberbank	Hogan Lovells	Kopeyka Trading House Ltd	Consumer	Morgan Stanley; Uralsib Bank OJSC	Skadden Arps Slate Meagher & Flom		1,648
16-Nov-10	Novatek OAO	BNP Paribas SA		Sibneftegaz OAO (51% Stake)	Energy, Mining & Utilities			Gazprombank OJSC	1,233
14-Aug-10	Forman Commercial Limited			JSC Silvinit (24% Stake)	Industrials & Chemicals				1,225
14-Aug-10	Fenguard Limited			JSC Silvinit (20% Stake)	Industrials & Chemicals				1,020

Notes:
Based on deals announced between 01 July 2010 and 31 December 2010, including lapsed and withdrawn bids
Based on the dominant target company geography being Russia
Data correct as of 24-Jan-2011
Activities excluded from table include property transactions and restructurings where the ultimate shareholders' interests are not changed

Top 5 Russian Announced Private Equity deals for Jul 10 - Dec 10

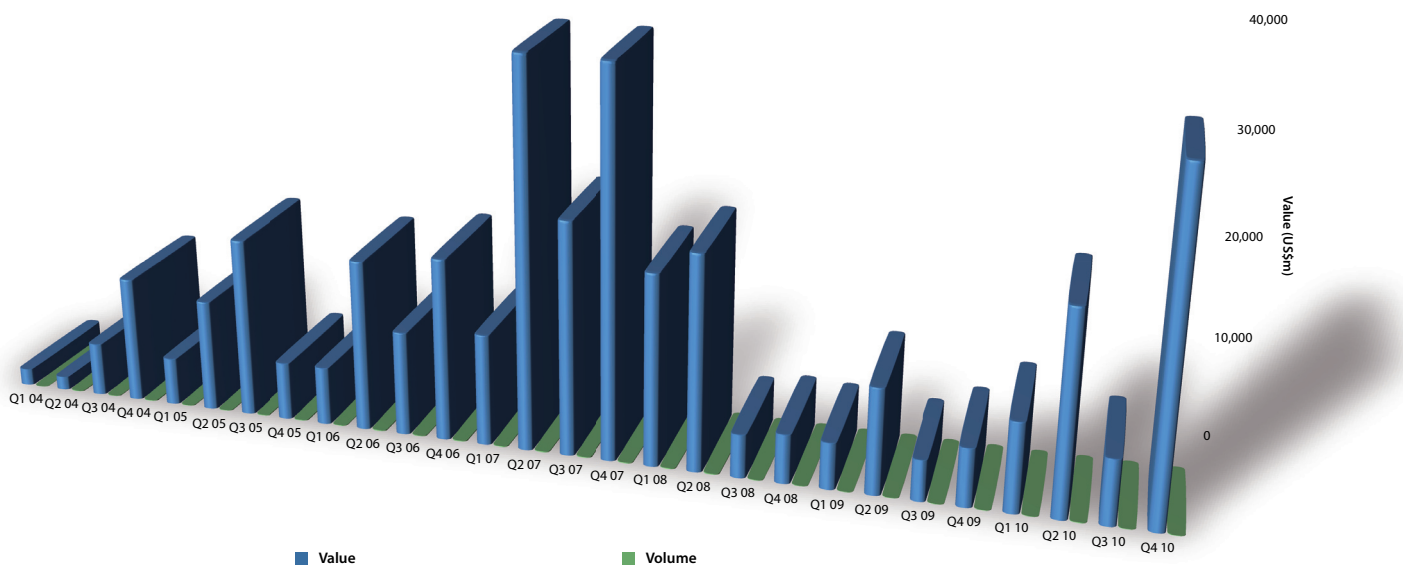
Announcement Date	Bidder Company	Target Company	Target Dominant Sector	Seller Company	Deal Value (US\$m)
2-Dec-10	Brunswick Rail LLC (16% Stake)	Industrials & Chemicals	Macquarie Group Limited		125
7-Jan-10	OOO Rising Star Media	Leisure	UFG Private Equity Fund	National Amusements Inc; and Soquel Ventures Ltd	30
20-Aug-10	Kuznetsk Milk Company	Consumer	Kuznetsk Milk Company (MBO Vehicle)	Kemerovo Region	19
1-Nov-10	GemaCor (48.8% Stake)	Pharma, Medical & Biotech	The Russian State Corporation of Nanotechnologies		16
26-Jul-10	anydayanyway.com (40% Stake)	TMT	Tiger Global Management LLC	Kirill Podolsky (Private Investor)	10

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PART II. CHART OF THE NEWSLETTER

Russian M&A Overall Trend

Source: mergermarket: Announced, excluding lapsed and withdrawn deals



COMMENTARY:

The Russian M&A market is showing signs of recovery after the crisis, however a true return to 2007 numbers is still far away.

Q410, especially December, was a peak period in terms of total value of announced Russian deals. The total deal value was USD 33bn, which is by far the largest number since Q4 2007. However, this rise can be attributed to only a small number of large deals. Five of ten largest deals of 2010 have been announced in Q4, including the year's two largest: the merger of Silvinit and Uralkali, PepsiCo's acquisition of WimmBillDann. The total number of deals rose only moderately. The subsequent quarter already saw the total deal value fall by a third, even taking into account the announced BP-Rosneft alliance and the privatisation of a stake in VTB.

PART III. FEATURE - PRIVATE EQUITIES



Consumer related sectors become attractive for investments in 2011 as Russian PEs regain confidence– analysis

- **Post –crisis trends**
- **Sectors attractive for PE investment in 2011**
- **Russian investment specifics**

Current PE trends

Many private equities in Russia are once again entering growth mode, Jan De Wijngaert, managing partner of Eagle Venture Partners, said.

Overall, 2010 was not a bad year, with PE deals increasing in comparison with recent years, he noted, adding that 2011 will be even better.

However, for some PEs, growth depends on when they made their investments, De Wijngaert added. Those that invested in 2007-08 were more affected due to high business valuations, so will have to wait longer to get good returns. Moreover, the lack of availability of bank financing and difficulty in securing loans on attractive terms stands in the way of PEs pursuing more aggressive growth strategies, De Wijngaert explained.

There is a lot of value to be regained after major dislocations of the recent past, according to Davron Rustamkulov, a partner at Ernst & Young CIS. The market has seen several transactions recently and the pipeline is filling up with new opportunities, Rustamkulov noted. However, PE funds are always cautious, carefully evaluating market opportunities and the risks involved, Rustamkulov said.

The global financial crisis has particularly affected investments in the financial and retail sectors and those with high levels of leverage, according to Eagle ventures' De Wijngaert.

The financial crisis made it more difficult for PEs to make new investments due to risk reassessment issues, Natalia Nikitenko, senior manager at Ernst & Young CIS, said.

The cost of financing became very prohibiting and many assets lost as much as 75% of their value, Roland Nash, senior partner and chief investment strategist at Verno Capital added. The industries with heavy investments such as machinery, metals and mining were the most affected, Nikitenko noted. Real estate and construction sectors were also badly affected, whereas consumer related sectors were relatively resilient, Nash said.

In 2008-09, private equity firms were mainly focused on survival of their portfolio companies by adapting their co-structures and management to the newly changed economic environment, De Wijngaert said.

Attractive sectors

There are two classic situations where PEs show interest: investing into sectors in need of consolidation and investing into assets which experience financial distress before turning into operational failure, Rustamkulov noted.

The sectors in need of consolidation are currently the most attractive sectors for private equity investment in Russia, Nikitenko said. These are: consumer products besides milk, bread and fish; the construction materials sector; the oil and gas service sector; and consumer services and financial services such as money transfers and debt collection. The telecom sector including broadband services are also very attractive due to their rapid growth and room for consolidation, she added.

Russian consumer related sectors are currently one of the most appealing for PE investments, De Wijngaert agreed. This is due

to the fact that they are the least risky because they are usually connected to middle class spending. The financial services and construction sectors are also attractive, although they are much riskier to invest in because they can turn for worse much quicker in the case of financial downturn.

Stressed sectors such as real estate and mining will become interesting in the short term, Nash said, adding that construction and agriculture will follow. The Russian government is removing barriers and promoting investment into high-technology, although this sector is more suitable for venture capitalist investments at the moment, he added.

In Nikitenko's opinion, Baring Vostok Capital Partners (BVCP), Delta Capital Partners, VTB Capital, Russia Partners, Troika Capital, Quadriga Capital, UFG, Mint Capital and Aton are currently the most active private equity players in Russia.

Russian investment specifics

Although companies have started to grow again and need more capital, many investors are nervous of Russia, Nash agreed. In Russia, the investment environment is different because the institutions and regulations that govern economic development

are weaker than in the West, he explained.

In Russia, private equities face different risks to those that exist in the Western countries, Nikitenko said. Tax risks, a sophisticated legal structure and quality of statutory accounts should be taken into consideration when making investment decisions in Russia. The distinctive Russian legal environment is normal for Russia but can be difficult to understand for Western newcomers to whom it might seem very different and risky, Nikitenko concluded.

According to Rustamkulov, those Private Equity funds which operate on their own turf and hence understand the market are in a much better position versus the newcomers and less prone to make bad investments.

Another feature of Russian private equity landscape is quasi private equities, which in many cases are not institutionalized, Nikitenko noted. Quasi PEs funded by Russian individuals with private wealth and invest into businesses with very high risks, she explained. Investments of this kind can be found in sectors such as oil and gas services, mining, and machinery, telecom and consumer products. Nikitenko declined to give examples of such entities.

By Marta Dovnar and Alexander Čajčyc

PART IV. TIPS FROM PROFESSIONALS



Changes into the Russian corporate law: distribution of profits and dividends

Prepared by Varvara Shamirova, Counsel, Levant & Partners

The Federal Law dated 28.12.2010 № 409-FZ «On Introduction of Amendments into Several Legal Acts of the Russian Federation in the Part of Regulation of Payment of Dividends (Distribution of Profits)» came into power on 31 December 2010 (further – «Law»).

The Law made more specific the procedure of payment of dividends (distribution of profits) by amending the Federal Laws «On Joint Stock Companies» and «On Limited Liability Companies», as well as the RF Tax Code, excluding the unclaimed dividends

from taxable income.

The purpose of the Law was the necessity to define the legal status of unclaimed dividends in joint stock companies (further – «JSC») and net profits, distributed among participants of limited liability companies (further – «LLC»).

The Law established a single 3-year term for the application of a shareholder (participant) to a JSC (LLC) claiming payment of dividends (distribution of net profits) after expiry of dividends' (profits) payment term, specified in the charter or decision of shareholders (participants) on payment of dividends (profits). The greater term may be provided by the charter, but not more than 5 years from the day of expiry of the term of payment of dividends (profits).

The Law introduced the new requirements to determination of

the term and the procedure of payment of the declared dividends (profits), which are to be reflected in the company's charter or decision of shareholders (participants) on payment of dividends (profits). The payment term should not exceed 60 days from the date of such decision.

After expiry of the term of application claiming payment, the unclaimed dividends (profits) shall be recovered within the undistributed profits of the company.

In case of non-claim in the prescribed term, the term will not be restored, except cases, when the person, entitled to dividends (profits), did not submit the claim due to constraint or a threat.

The Tax Code suggests to attribute to profits, not considered at determination of the taxation base on company's profit taxation, profits in the form of property, property rights or non-property rights in the amount of their monetary values, which were provided to the company for the purpose of increase of its net assets, those including, by forming the additional capital or funds by the shareholders (participants). This provision applies to the cases of increase of the company's net assets with a simultaneous decrease or termination of company's liabilities before the shareholders (participants), if such increase of the company's net assets was conducted in accordance with the RF legislation or provisions of the company's charter, or was due to a will of the shareholder (participant), and in cases of recovery within the undistributed profits of the company of the dividends (profits), unclaimed by the shareholders (participants).

Amendments to the Tax Code will regulate the relations, occurred after 1 January 2007.

Within 6 months from the date of entry of the Law into power, a person, whose term of claim expired before the entry of the Law into power, shall be entitled to apply for payment of dividends (profits), accrued in the period of 3 years before that day. If a person failed to perform his right, such dividends (profits) shall be recovered within the undistributed profits of the company.

If the term of submission of the claim can not be defined, then such provisions will be applied to the claims, occurred not later than 3 years before the date of entry of the Law into force.

Thus, the Law finally defined the legal status of the declared, but unpaid dividends (profits) and the procedure of their taxation, and also set the preclusive terms for submission of claims for payment.

We expect that the new amendments into the Law will increase the activity of shareholders (participants), unclaimed dividends (profits) will be brought into economic circulation, and possibility

of abusive acts in relation of shareholders (participants) will be lowered.

In light of the new Law it is necessary, that companies elaborate and introduce the according changes into their Charters with respect to their dividend policy and also to consider the new rules at preparation of tax declaration on the company's profits tax.



Russian LLC transactions: Role of the domestic sale and purchase agreement in a transaction governed by foreign law

Prepared by Dmitry Koronchik, Head of Private Equity Group, Pepeliaev Group

Background

The Federal Law "On limited liability companies" was amended, back in July 2009, to require a sale and purchase agreement concerning participation interests in a limited liability company (LLC) to be certified by a notary. The practical impact of this on transactions governed by foreign law is that a sale and purchase agreement governed by the laws of a foreign jurisdiction either: (i) needs to be certified by a Russian notary; or (ii) should contain provisions requiring the parties to the transaction to enter into a domestic sale and purchase agreement, which can be in a very simple form but which must be governed by Russian law and notarised. However this can pose a number of practical problems for both buyer and seller, and we discuss these below.

Practical problems

The overriding difficulty is that certain points of Russian legislation and the regime applicable to the work of Russian notaries make it impossible in practical terms to notarise a sale and purchase agreement governed by the laws of a foreign jurisdiction. To work around this problem, the parties have two options: either to provide for the transaction to involve, additionally, the entry into and notarization of a domestic sale and purchase agreement made in accordance with Russian law; or to complete the transaction under Russian law. In most cases, the parties do not find the second option attractive, so they tend to select the first scenario,



giving rise to various important practical considerations.

It should be noted that structuring the deal so as to require the parties to enter into a notarised domestic sale and purchase agreement does entail a degree of risk. This results, in particular, from a lack in Russia of both court practice and clear legal rules and regulations relating to M&A transactions governed by foreign law.

Most of the relevant risks that exist come from Russian enforcement proceedings in cases where an aggrieved party has claimed or petitioned in a foreign court for damages or for terminating a transaction. In such a case, the successful party may face practical problems in enforcing the foreign court's ruling in Russia, as the Russian Civil Code contains provisions which a Russian court may rely on as grounds for declining to enforce such a ruling.

The most important are those stating that:

- Imperative norms of Russian legislation which have an exceptional meaning (importance) for the purpose of regulating civil relationships shall be applied notwithstanding the choice of the foreign law (deem to be applicable to certain agreement) which have been made in accordance with the mutual parties' consent (article 1192 of the Civil Code);
- If it is evidenced that the agreement has close connection with (direct relation to) one country only, then imperative norms of such country legislation shall be applicable to the said agreement (article 1210 of the Civil Code).

Additionally, there is a risk that a Russian court could treat the domestic agreement as the main agreement regulating the parties' relationships with regard to the sale of participation interests in the LLC. All benefits of having an agreement governed by foreign law might then be lost to the parties (especially if dispute resolution process has moved to Russia).

Recommendations

We believe that recommendations how to mitigate or fully cover the risks described above shall contain of the following:

When structuring the transaction it has to be specifically taken into account whether it complies with the criteria of a deal having a direct connection to Russia only (in particular, when making a decision on which companies shall act as parties to the agreement). Another issue to consider here is the possibility for the investor (i) to make an "asset deal" instead of a "share deal", (ii) to arrange restructuring of the target company (in order to have the possibility to structure the deal in a foreign jurisdiction). Additionally, the alternative scenario whereas the transaction is chosen to be governed by a Russian law is subject to parties' careful and sensible consideration.

AEB M&A Working Group Open Event: M&A trends in the Russian agribusiness sector, February 17, 2011

On February 17, 2011, the AEB M&A Working Group held an open event on M&A trends in the Russian Agribusiness sector. The conference featured such topics as investment attractiveness of the Russian agribusiness sector and activities of foreign companies on the Russian market. A special attention was given to land acquisition issues, legal and taxation peculiarities.

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