

# M&A – Belarus 2012

This review was developed by investment consulting company EnterInvest and  
law firm SORAINEN



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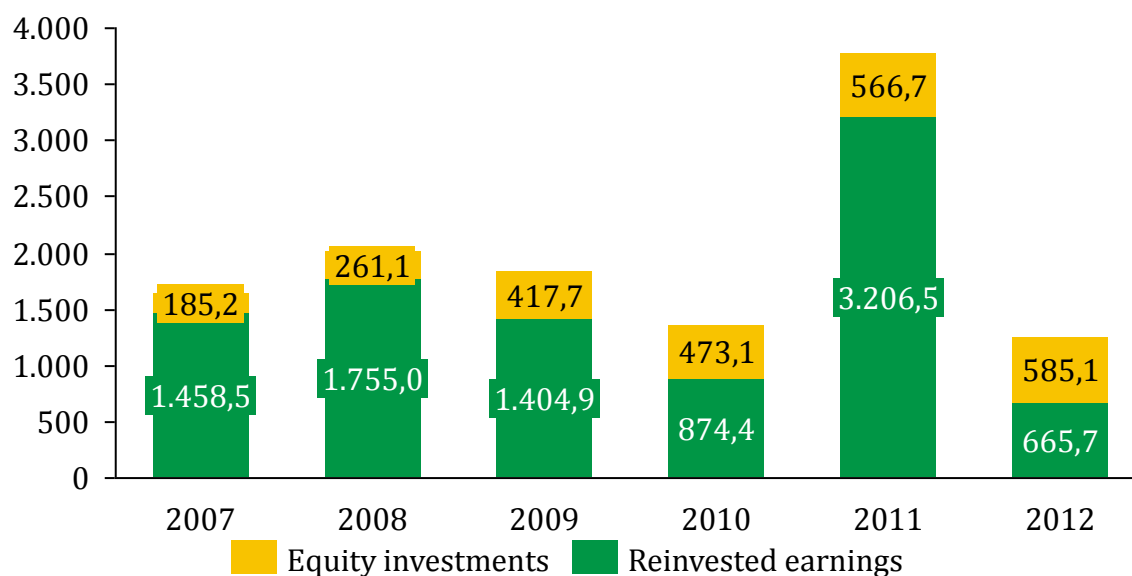
ESTONIA LATVIA LITHUANIA BELARUS

2012 can be considered one of the most successful for Belarusian M&A market over the last 5 years. The total volume of M&A transactions in 2012 amounted to \$383 million and it is 2.5 times more than in 2011.

The activity of local business has become a key driver for market growth. 92% of total market was made with the involvement of Belarusian equity.

Both the accession of Belarus to Common Economic Space and gradual entry of the agreements into force are a perfect background for market growth in the years to come.

In 2012 equity investments and reinvested earnings into Belarusian companies amounted to \$1.25 billion, which is about 70% less than in 2011. However, providing 2011 data is considered without \$2.5 billion obtained as a result of sale of the rest 50% of «Beltransgaz» OAO (JSC) shares, the downfall will only be about 2%.



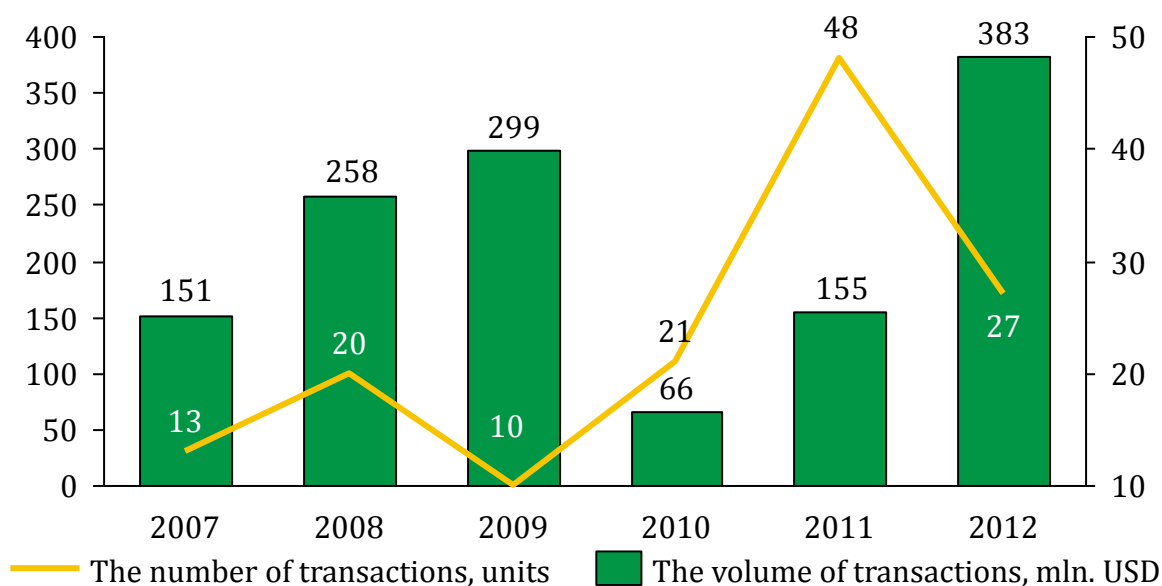
**Picture 1. Equity Investments in the capital of Belarusian companies, mln.USD**

In 2012 the amount of newly attracted investment was more or less equalled to the amount of reinvested resources due to the downswing of the first indicator.

Nevertheless, it should be noted that the year of 2012 has been the first when the country did not get large one-time payment for any privatization deal. It should be recalled that from 2007 to 2010 «Gazprom» had been paying for the purchase of 50% of «Beltransgaz» shares (\$625 million annually). In 2011 «Gazprom» paid another \$2.5 billion at once.

In 2012 all the privatization processes in the economy virtually stopped by order of Belarusian President. During the 1H 2012, the authorities had been waiting for the final decision on the strategy in this direction. After it was announced that all the privatization lists were cancelled the processes did not become more active. The situation on the whole as well as the shiftlessness of the authorities in this matter put the end to the opportunity to attract \$2.5 billion from privatization under the agreement with EDB Anti-crisis fund (ACF) dated 2011.

Despite the poor statistics on the inflow of foreign direct investments in Belarusian economy in 2012, M&A activity has got many times higher as compared to any period since 2009. Moreover, it was the accession of Belarus to Common Economic Space that several major projects with good chances to be implemented were announced. It is unmistakable that the first sign of that was the acquisition of another 50% of shares of «Beltransgaz» by «Gazprom». \$2.5 billion earned from privatization was one of the conditions of allocation of EurAsEC Anti-Crisis Fund resource. This acquisition was tied up with the low cost of energy for Belarus, which, in its turn, was the direct consequence of the Common Economic Space functioning.

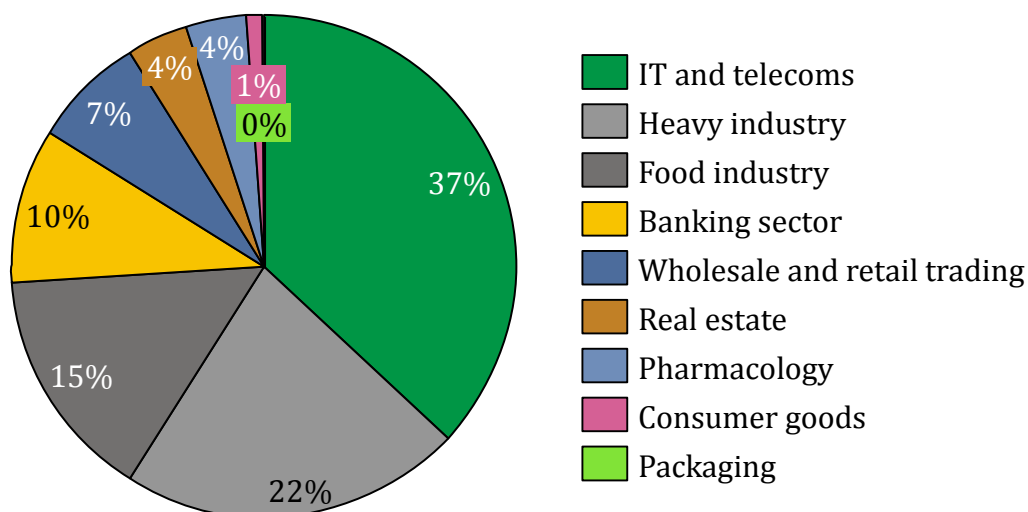


**Picture 2. The volume of M&A transactions in Belarus.**

\* -the diagram leaves out major single transactions in telecommunications and oil and gas sectors

If the calculation of M&A market is made in money terms, then, no doubt, owing to the transaction with «Gazprom», in 2012 the volume of the market is much less, however in quantitative terms the growth of the market is evident. At this rate in 2012 28 of the M&A transactions announced with the total volume of \$382.6 million were completed in partnership with Belarusian business. Thus, the average volume of a transaction increased by 4 times against that of 2011.

If we consider the transactions by sector, in 2012 the market had the following structure:



**Picture 3. Sectoral analysis of M&A transactions in Belarus in 2012, by volume**

### **Telecommunications and the Internet**

In January 2012 the provider «Alternativnaya Tsifrovaya Set» («Atlant-Telecom» and «Shparki damavik» brands) acquired 100% of «Solo» ZAO (CJSC) shares. The shareholders of the merged company are private equity fund SMH managed by «Zubr Capital» and European Bank for Reconstruction and Development (EBRD). It should be noted that this fund is controlled by Belarusian businessman O. Husaenov (the owner of the largest automotive distributor «Atlant-M», a listing company, a distributor of pharmaceuticals, etc.), who is acting within the Common Economic Space and CIS.

The objective of any investment fund is to earn on the rise in value of assets. It is quite obvious that «Atlant-Telecom» is consolidating the assets on Belarusian market at the moment to carry out the following resale to a strategic investor.

In April 2012 Russian online-trading company «Biglion» acquired Belarusian online-store bongo.by for \$1 million.

In March 2012 «Beltecom» RUP (RUE) resigned from «Belsel» shareholders by selling 50% of operator's shares.

At the beginning of 2012 largest Russian portal banki.ru acquired Belarusian Internet resource infobank.by.

One interesting transaction that took place outside Belarus but with the participation of a Belarusian businessman should also be mentioned. The co-owner and CEO of Belarusian developer of massively multiplayer online-game (MMO) Wargaming.net Victor Kisly paid \$45 million for Australian game engine producer Big World.

In addition, in September American fund FCM (Fidelity Capital Management) acquired 12.1% of EPAM shares with a total cost of \$90 million.

The last two examples show that Belarusian business grows and extends beyond the borders of Belarus as it is ready to invest in foreign projects. This fact is worth noting because it is an indicator of the development of those sectors of economy with minimal intervention by the state.

## **Machinery**

2012 was marked by a whole number of transactions in Belarusian machinery sector. For example, in February 2012 Ukrainian company «Motor-Sich» acquired 57% of shares of unprofitable Orsha Aircraft Repair Plant for BYR 12 billion (about \$ 1.5 million). «Motor-Sich» is the largest manufacturer of aircraft engines (mostly for helicopters) on the territory of the former USSR. The acquisition of Aircraft Repair Plant in Orsha allowed the company to enter the market of helicopters repair in Belarus and become closer to Russian consumers («Motor-Sich» is also a major supplier of engines for Russian helicopter manufacturers). Potential customers of the plant are the airlines and governments that use helicopters produced by Russian and Soviet manufactures. They have already received a major order from Mongolian authorities.

During February and March Niva Group of Companies (Soligorsk) bought 51.2% of LMZ «Universal» OAO (JSC) shares (Soligorsk) for BYR 41 billion (about \$5 million). The aim of this transaction was to prevent, in the opinion of LMZ «Universal» OAO management, a hostile takeover by Russian investors. The attempts of Russian investors to acquire assets in Belarus have already taken place several times and will only multiply in the future. One of success stories is actions of Hydromashservice Group, which has already acquired 2 assets in Belarus in 2008 and in 2011.

In September 2012 it was announced that «Promstroi Group» invested in «Novopolotsk technical metalworks factory» SOOO (JLLC). Construction and Installation Holding «Promstroi Group» is a leader in industrial construction in the Russian Federation. The company operates in oil and gas industry (gas extraction, transport and oil and gas processing, petrochemicals), small-scale and large-scale power generation, metallurgy. The Company has been eyeing up Belarus for quite a time, even before the crisis, wanting to purchase some assets. The company does not deny the fact that the key factor in decision-making was the intensification of integration processes within the Common Economic Space.

At the end of 2012 a landmark transaction took place: after «Amkodori» OAO (SPO) carried out the additional issue of shares, large Belarusian oil-trader «Interservice» OOO (LLC) acquired 53.64% of its shares for \$76.7 million. This transaction allowed «Amkodori» OAO to remove the financial constraints for a number of investment projects. Capital investment served as direct alternative to credit resources, which is a rare case for Belarusian realities.

In 2013 several major transactions in this sector may take place. The most expected one is completing automobile holding on the basis of «Kamaz» OAO (OJSC) and «MAZ» OAO (Minsk Automobile Plant JSC). The offer of Belarusian part to buy Rostselmash and merge it with Belarusian combine harvester manufacturer «Gomselmash», on the contrary, was quite unexpected.

Russian Concern Tractor plants took the initiative to join forces with «MTZ».

The possibility of selling Naftan OAO (JSC) to Russian oil companies has been discussed recently.

Rostehnologii takes interest in setting up the joint venture based on «Integral» NPO, while «GrodnoAzot» is of interest to «Eurochem».

Russian corporation «Roscosmos» has expressed interest in purchasing Belarusian company «Peleng».

These facts clearly demonstrate that the establishment of Common Economic Space encouraged the interest of Russian business for privatization of assets in Belarus thus stimulating the development of M&A market.

### **Food industry**

In 2012 the activity in food industry sector was worth noting because of «Minsk Sparkling Wines Factory» OAO (OJSC). In the middle of the year the additional issue of shares of the company was carried out and then 13% of its shares were bought by «Triple».

At the end of 2012 the leader of Belarusian food industry «Santa-Bremor» SP 000 (JV LLC) acquired «Russkoe more» ZAO (CJSC) for \$52 million, thus shoring up its position in Russian fish preserves market.

In 2013 a number of major transactions are expected with the participation of not only Belarusian businessmen but also foreign inventors.

### **Retail**

At the beginning of 2012 NTS («Rodnaya Storona») finally bought control stake of «Baranovich trader Producty» OAO (OJSC).

In June 2012 NTS («Rodnaya Storona») purchased one of the largest Minsk self-service stores «Yubileiny-92». The transaction valued about \$5 million. NTS is one of the most aggressive players on Belarusian retail market, until recently expanding actively into the regions of Belarus.

In May 2012 another major player in Belarusian retail trade «Evrotorg» acquired Mogilev hypermarket «Liniya». In general, it should be noted that «Evrotorg» has come outside Belarusian borders and started expanding on Russian market by opening its stores in Smolensk and Moscow.

The primary goal of these transactions is the consolidation of smaller players, the privatization of small state "food-trading units" and thus the creation of major national players. These companies are likely to be later resold to Russian and international large retail chains.

In summer 2012 Lithuanian company «Mart Inn Food» entered Belarusian market with the intention to create a major retail operator in the country. The company is founded with the support of investment funds by the former co-owners of the largest Baltic retail operator – «Maxima» retail chain. The company has made more than 30 investment agreements in

Belarusian regions and is going to create a chain of more than 100 stores. The final goal is to sell the company to a strategic investor. I am quite sure that the participation of Belarus in the Common Economic Space influenced greatly their decision to enter Belarusian market.

At the end of 2012 Russian company «Vester» sold its business in Belarus RTL Holdings («Rublevsky» retail chain).

On the whole, in the near future an increased competition for the customer and therefore an increase in number of M&A transactions on Belarusian retail market should be expected.

### **Banking sector**

For several years it was silent and in 2012 banking sector reminded of itself with a number of transactions. In December 2012 the acquisition of «Belrosbank» ZAO (CJSC) by Russian Alfa Group was announced. The transaction amounted to about \$31 million. As a result Alfa bank has strengthened its position on Belarusian market, especially in retail sector.

In June 2012 Evrotorg purchased unexpectedly the smallest bank in Belarus - International Reserve Bank. The value of the transaction was about €4.7 million. The purpose of the transaction is customer retail lending in home appliance stores.

### **Other sectors**

In March-April 2012 the leaders in Belarusian light industry company «Milavitsa» and «Conte-Spa» acquired 30% stake of «Brest Stocking Mill» OAO (OJSC). This acquisition can be considered as an extension of production capacities of the largest Belarusian light industry players and exporters of their production to Russian market.

In July 2012 Belarusian company oil-trader «Interservice» acquired «Veska EmulBit» KUP for \$30 million. It should be noted that in 2011 this company was bought by Russian company «Nafta Stroi» for \$30 million. However, owing to a more thorough check, it was found out that part of the company's property was given in mortgage and it was not reflected in the initial presentation.

It is quite possible that negotiations on «MTS» SOOO (JLLC) state share sale will be completed. As of food industry, the transactions with foreign investors' involvement were announced in beer and meat industries.

Thus 2012 has been one of the most successful for M&A processes over the past few years. The key point in it is that 92% of transactions volume was carried out with the participation of only national capital. That speaks volumes not only for its step-by-step maturation but also for its desire to consolidate being confronted with inevitable competition with powerful Russian and Kazakh structures. Unfortunately, there is not much time left and financial resources of Belarusian business are quite limited. Nevertheless, it is an investment activity of local business that is usually a catalyst for foreign investors.

Step-by-step implementation of the agreements on business environment harmonization within the Common Economic Space, as well as stable and predictable economic situation

in Belarus creates great opportunities for Belarusian economy investment prospects both for foreign and local investors.

### **Peculiarities of structuring and executing M&A transactions in Belarus**

The legal environment for business and the M&A transactions, was created in Belarus not long ago and therefore still has certain gaps and inconsistencies in regulation. There is also a lack of systematic and coherent practice of the courts and other government authorities in relation to the transactions.

The laws are improving but parties to the transactions should understand that they act in the environment where laws and practice of their application are subject to frequent change, sometimes even with retroactive effect. Another peculiarity of transactions in the Belarusian reality is a limited possibility of structuring with instruments which are more common to more mature market economies.

Please see our more detailed comments about main nuances of the M&A transactions in Belarus below:

- Types and structure of the transactions: share deals prevail, asset deals (sale of business as asset complex) are quite rare. The main reason is that the procedure of sale of the asset complex is much more complex and lengthy, it requires valuation and registration of the complex prior to the sale. Besides a simple sale of the shares, other forms of transfer such as contribution to the authorized capital of other companies (including foreign ones), acquisition of the additionally issued shares, sometimes exchange of the shares, are used.
- Belarusian business offered for sale often arrives to the transaction unprepared in terms of its structure. The explanation to this is that many companies, now large and successful, were founded 15 – 20 years ago as small businesses without a defined strategy or were created on the basis of the government enterprises under unstable and poorly drafted privatization laws of those times. Therefore the company which is allegedly ready for financing by an external investor or sale, often has among its shareholders several local individuals with more or less equal shares, large number of minority shareholders, the state represented by its organizations or local authorities. Many businesses have grown organically and now consist of legal entities, branches, representative offices scattered across the country, whose creation and existence is not always well justified and complicates the transaction structure.
- Limited use of provisions on material adverse effects, price adjustment at closing, regulation of damages. On many occasions, seller's representations and warranties are very limited as well. The parties at their own risk rely on the statutory provisions.
- In the light of the previous peculiarity the importance of legal due diligence is elevated. In Belarus, legal due diligence normally has a wide scope and is considered to be one of the most important tools to mitigate the buyer's risks. Nevertheless, many transactions are executed without a legal due diligence.
- Local authorities (Minsk city and 6 oblast executive committees) have a pre-emptive right to purchase the shares of strategically important enterprises and enterprises

engaged in processing of the agriculture products which were acquired in the course of the voucher privatization in 1990's. The above mentioned government authorities have 90 days to either exercise their pre-emptive right or waive it.

- Merger control. Antimonopoly laws of Belarus are rather underdeveloped and the respective authorities have not received the same role and powers as the same bodies of the neighboring countries. Change may come with the new antimonopoly law which is expected already in 2013, and further unification of the laws of the countries of the Eurasian Community. Nevertheless, we estimate that about half of the share transactions in the market require a full-fledged merger clearance. However, in most cases the procedure is not very burdensome and takes from 1 week to 1 month. Merger clearance should be obtained prior to execution of the transaction.
- Regulatory issues. In case of acquisition of the business not all licenses and permits pass to the buyer automatically – this would rather be an exception. This factor may be the deciding one for the transaction structure, especially in case of acquisition of the company whose main business requires one or more licenses.
- Shareholders agreement, special rights like tag along and drag along are not regulated by the law and therefore may be used to the extent they do not contradict the articles of the company and mandatory rules of law. So far autonomy of the shareholder's will prevails. Things may change when the new edition of the Law on Companies, expected in 2013, is adopted.
- Dispute resolution and applicable law. Due to a number of the mandatory rules of the local law M&A transactions often may not be subjected to regulation by foreign law, and the disputes may not be referred for resolution to foreign or international arbitration. Still, there is a tendency of increased application of the foreign law and arbitration clauses, also through special structuring of the transactions.



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