



M&A – Belarus 2013

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and law firm SORAINEN



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Key trends of 2013 in M&A

- » Increased activity of Belarusian businesses in the sphere of M&A in the domestic market.
- » Growth in volume of investments by Belarusian private and public businesses abroad. On the one hand, this tendency bears evidence of growing financial opportunities; on the other hand it bespeaks the absence of environment for growth of business inside the country.
- » Remaining low transparency of deals.
- » Reserved attitude of foreign investors to Belarus. Virtually the whole volume of announced projects was accomplished by Belarusian companies. Nevertheless, evident interest of investors towards greenfield and brownfield projects is discernible.
- » Growing proportion of privatization deals. This concerns both large scale one-time deals and purchase and sale transactions of minor blocks of shares at the stock exchange.

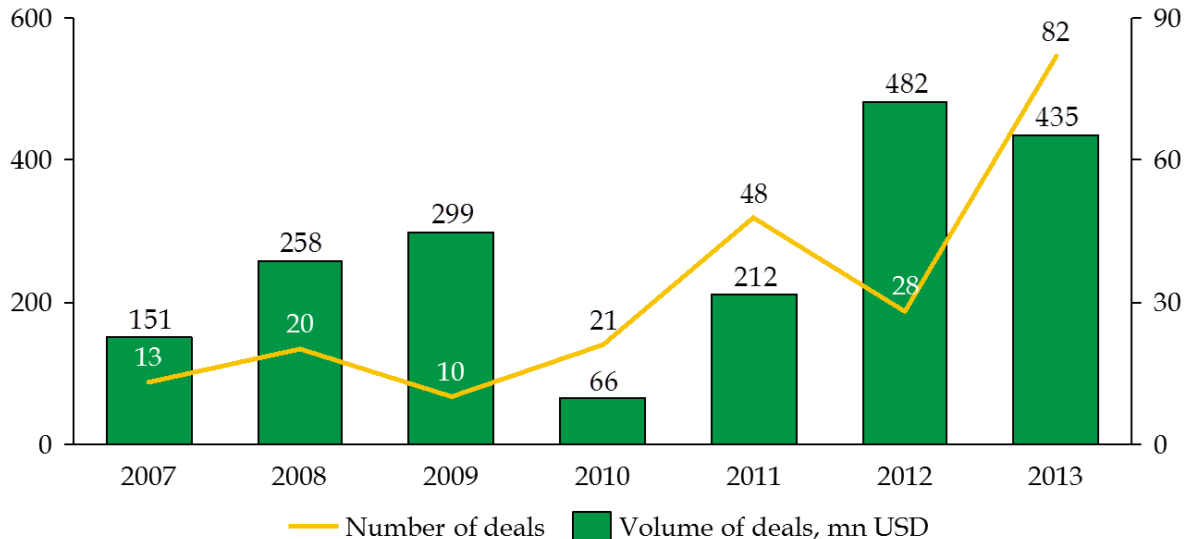
Forecast trends for 2014 in M&A

- » Increase in the number of real estate and retail trade deals.
- » Increase in the number of privatization deals. Implementation of a number of large-scale deals with “blue chips”.
- » Continuing acquisitions abroad by Belarusian enterprises.
- » Increase in the amount of financial investments (Private Equity deals).
- » Activation of interest from foreign investors.

Review of M&A market in Belarus

In 2013 the volume of Belarusian M&A market (officially announced deals) was 435 mn USD, which is 9.7% lower than the year before. However, it should be pointed out that the amount of deals increased almost threefold from 28 in 2012 to 82 in 2013.

Figure 1 Volume and amount of M&A deals in Belarus*, mn USD/number.

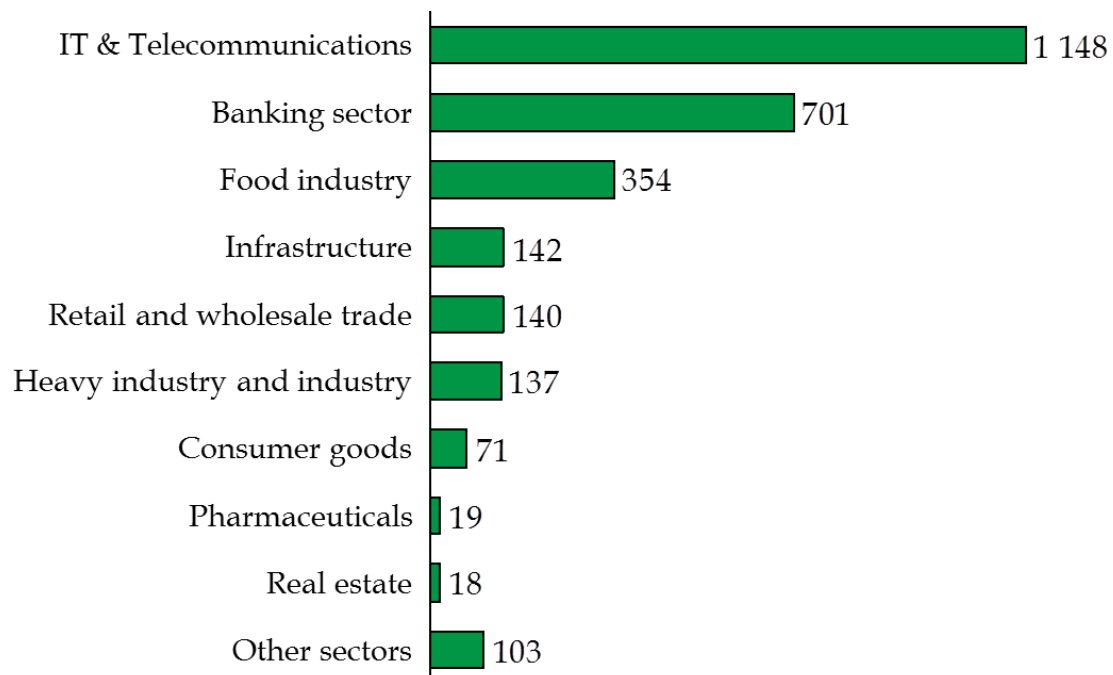


* hereinafter statistics do not include the deal on acquisition of OJSC Beltransgaz and the deal on acquisition of Velcom.

Accordingly, average size of a deal contracted from 17.2 mn USD to 5.8 mn USD.

In 2007-2013 the highest declared amount of M&A deals was observed in IT and telecommunications sectors. (The statistics provided do not include the major deal on acquisition of Velcom by Telekom Austria for 1 bn USD). Accumulated volume in this sector had amounted to 1.15 bn USD by 2013, or 41% of total market volume.

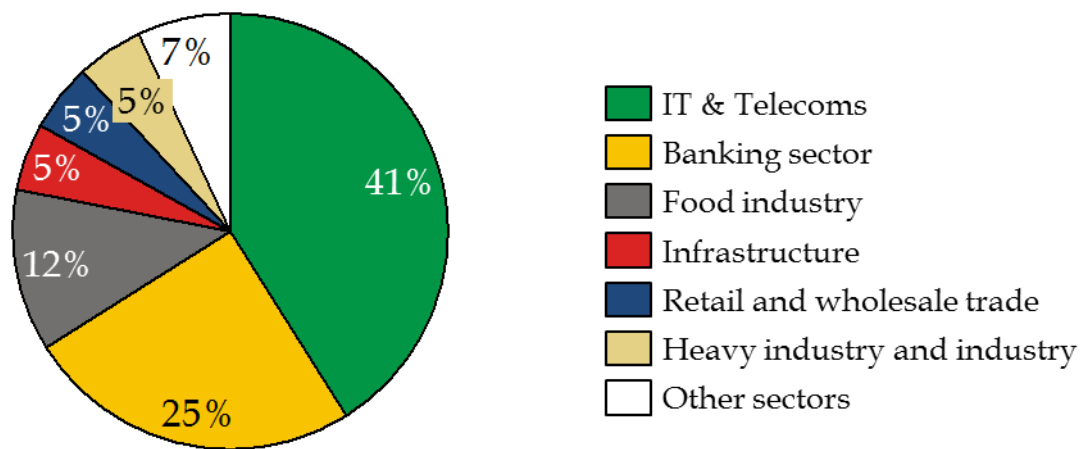
Figure 2 Accumulated volumes of M&A deals by sector in 2007-2013, mn USD



The second place by volume of deals is occupied by the banking sector with 25% of total volume or 701.48 mn USD in monetary terms. It should be pointed out that this particular sector is the unconditional leader, both by transparency of transactions and by presentability of investor base.

Expectedly, the third place is taken by food industry with an accumulated volume of 354 mn USD, which is 12% of total market volume. This is the sector that was actively invested in by foreign players, such as Heineken, Olvi, BBH, and this is also the sector that has experienced active privatization processes, mainly connected with acquisition of assets in production of poultry meat and dairy products.

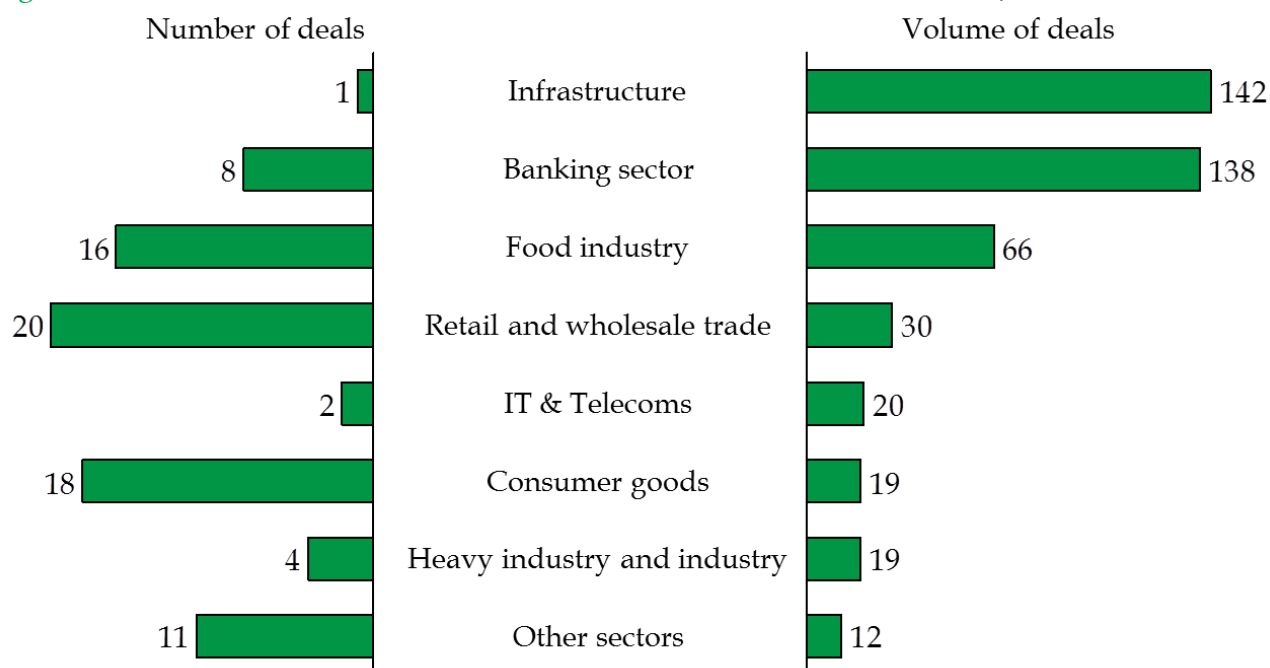
Figure 3 Segmentation of M&A market in Belarus in 2007-2013, %



Retail and wholesale trade segment is one of the leaders as well. With accumulated volume of deals amounting to 139.53 mn USD and a share of 5%, this sector is one of the most active with regard to the number of deals concluded. However, most of them are not transparent, since often associated with minor sums. Also, leading roles are played by deals in infrastructure (even excluding the acquisition of OJSC Beltransgaz) that amount to 142.2 mn USD.

Obviously, officially announced deals do not reflect the actual situation in real estate market that is actively growing and developing as well. In 2007-2013, the officially announced volume of deals in real estate sector amounted to 17.7 mn USD.

Figure 4 Amount and volume of M&A deals in Belarus in 2013, number/mn USD



Infrastructure

In 2013 the Russian subsidiary of Belorusneft, LLC Belorusneft Siberia, acquired 86.57% of shares in a Siberian oil and gas company LLC Yangpur for 112 mn USD. The conclusion of this deal signaled the entrance of a Belarusian oil company to a foreign market through acquisition of a foreign legal entity that already had necessary licenses and reserves in particular. Up to that point, attempts of this kind were unsuccessful, and production projects were implemented either in Iran or in Venezuela with varying degrees of success.

One more state-owned company Belaruskali acquired 30% of JSC Biriu Kroviniu Terminala in the Port of Klaipeda for 30 mn USD.

Banking sector

Banking sector is the leader of 2013 by the number of M&A deals concluded. In 2013, the total volume of deals was 138 mn USD. The largest of them was the acquisition of a 30% share in Hellenic, a Cyprian bank, by Wargaming for 40 mn EUR. Undoubtedly, this deal was in many respects compelled because of recapitalization necessity for the Cyprian banking system, brought around by the crisis. However, this indicates growing opportunities for Belarusian businesses in the sphere of cross-border acquisitions. Currently Wargaming is one of the leaders in Belarus with regard to acquisitions abroad.

Also, 2013 put an end to the lingering saga on the Russian VTB's acquisition of 26% of its Belarusian subsidiary CJSC VTB (Belarus) for 19.1 mn USD. This deal was anticipated and its successful conclusion has already resulted in increased investments from VTB in the economy of Belarus due to increased authorized capital in the first place, and due to increased lending to Belarusian enterprises in the second.

In 2013, Idea Bank, that is part of Getin Holding group, extended its presence on the Belarusian market through acquiring the small-scale Belarusian Bank for Small Business (BBSB) for 6.7 mn USD. This deal is also a milestone event in its own way, since initially the

shareholders of BBSB included largest financial institutions of the world, such as EBRD, IFC, Commerzbank, KfW, FMO, Swedfund and Shorebank International. The withdrawal of such institutions from the project is somewhat of an indicator of IFIs' perception of the situation in the Belarusian economy and its financial system.

Other deals were either technical or did not have significant influence on the future of the banking sector in Belarus.

Food industry

Total volume of announced deals in this sector amounted to 66.39 mn USD. The most significant of them is the conclusion of Servolux's acquisition of a 49% share in OJSC Smolevichi Broiler Poultry Factory for 49.4 mn USD.

Another major deal was the acquisition of 43% shares in OJSC Turov Dairy Factory by LLC Interservis. This investment can be regarded as a financial one, as Interservis is primarily a large supplier and processor of crude oil and refined products.

Retail trade

Retail trade is still one of the most dynamic sectors where M&A deals take place on a continuing basis. At year-end 2013, the number of officially announced deals was 20, and their total volume reached 30 mn USD.

Greatest activity on the market in 2013 was demonstrated by RTL Holding, which concluded a number of deals on buying out shares of minority shareholders in various supermarkets in Minsk. For instance, the company paid 6.7 mn USD for 76.6% of shares in Volgograd supermarket. A block of 78.5% shares of Nevel supermarket was bought for 3.3 mn USD. It is also worth mentioning that Evropeiskiy supermarket got under control of RTL Holding as well. The sum of the deal is not publicized.

Moreover, Vitalur acquired 98% of shares of Tehnika v Bitu shop for 3.53 mn USD.

The rest of the announced deals were not large-scale and did not involve acquisition of major blocks of shares, but rather served as preparatory deals.

IT and telecommunications

In 2013, active expansion on the international market (except for acquisition of banks) was carried on by Wargaming, which concluded two acquisitions. Day 1 Studios was bought for 20 mn USD. The sum of the deal on acquiring Gas Powered Games is not publicized.

Industry

Landmark deals of Belarusian businesses abroad also included the acquisition Günther-Tore's main plant in Germany by Alutech. The sum of the deal is not publicized.

Legal aspects of the M&A transactions regulation in Belarus 2013

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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. The new Antimonopoly Law of Belarus entered into force on 1 July 2014. One of the reasons for the adoption of the new Law was adjustment of local legislation to the Agreement on Common Principles and Rules of Competition Concluded in the Context of the Common Economic Space of Belarus, Russia, and Kazakhstan. 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 2 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. At the same time, the new edition of the Law on Companies is expected in 2014; it should introduce the concept of «shareholders agreement» in Belarusian Law.
- The draft in its current form may be evaluated positively, but there are potential issues with its practical application. According to the draft the commercial company may not be the party of a shareholders agreement made by its shareholders. By default, obligations arise only for shareholders, so breach of an obligation may not be the reason for nullity of company’s resolutions and transactions if all provisions of the law and the company’s articles were observed.
- The draft Law does not regulate correlation of the legal power of the company’s articles, provisions of the shareholders agreement, and special provisions of the law. In the light of the foregoing, the practical significance of the new regulations on the shareholders agreement may essentially decrease. Besides that, the draft Law does not directly provide for a possibility to refer disputes under a shareholders agreement to arbitration, or have foreign law govern the agreement. Therefore, the efficiency of the shareholders agreement as a new corporate governance tool under Belarus law will depend on how the practice of its application and enforcement develops. If the courts, other government bodies, and the market favor the shareholders agreements, investors will be able to resolve a whole range of questions more efficiently:
 - ensure parity of the shareholders’ representation (or representation with necessary proportion) in the Supervisory Board, the Board of Directors;
 - additionally regulate or limit transfers of the company’s shares;
 - resolve deadlock situations;
 - additionally regulate procedure and conditions of termination of the shareholding;
 - regulate more efficiently the shareholders’ obligations to finance the company t various stages of the investment projects (as well as depending on various scenarios of the project implementation);
 - restrict participation of the parties to a shareholders agreement in competing business (to the extent not conflicting with the antimonopoly law provisions);
 - prohibit solicitation of key employees following exit from the business by a shareholder (to the extent not conflicting with labor and other laws).
- 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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