



# Energy and Restructuring, Playing Fields for **Legal** Advisory

**Chiomenti** and **Erede**, among the Italians, and **Clifford Chance** and **Freshfields**, among the British, confirm their leadership in the market. In which **complexity**, but not business, is growing. That's why emerging talents and law firms try to compete on the **new techniques** for price definition, **anti-embarrassment** clauses, **vendors** loans...

by Lorenzo Morelli

**A**fter seeing an average decrease in business of 40% in 2009, the legal advisors on the Italian market are seeking out adaption strategies and approaches for a market that is still in the doldrums, despite some positive signs. The prospects are a lot better than they were a year ago though. "I am expecting a decent amount of mid-market deals. The signs point to a revival of M&A activities led by private equity operators," forecasts **Francesco Gianni**, a senior partner and founder of the law firm Gianni Origoni Grippo. "The PE funds are carefully studying the dossiers available, a situation that has largely been brought about by an increase in the cash at their disposal."

The Roman lawyer, who is one of the busiest figures personally involved in corporate consultancy, believes that the sectors with the most activity will be energy, especially due to the opportunities that are opening up regarding renewable source-



es, and banking. "The small and medium institutions will be starting consolidation processes in order to gain ground on their competitors, while the big banks will be selling businesses in an attempt to improve their ratios," concludes Gianni. Energy is a key target for the Legance firm, which advised





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ness opportunities will mainly come from the middle of the market, "but above all in the second half of the year."

ENERGY WHO'S WHO

Nunziante Magrone's specialist knowledge of the energy production chain is paying off. In February this year, the firm dealt with Schneider Electric and Alstom's acquisition of Areva T&D, the energy transmission and distribution branch of the French nuclear engineering company Areva. The total value of the transaction was around € 4.090 bn and clearance from the Italian competition authority is expected by the end of June. Lawyer **Corrado Rosano**, a founding partner of the firm, worked side by side on the deal with his French counterparts from August & Debouzy, under the supervision of the partner Pierre Descheemaeker. "We are expecting a number of other acquisitions in the coming months, in particular in the energy sector, but also in real estate," Rosano tells Lombard. Carnelutti has also been very active in the energy field, working alongside SunEdison on the creation of the biggest photovoltaic power plant in Europe. Located in the Veneto region, it will have a surface area of over 850,000 m<sup>2</sup> and a production capacity of more than 70 megawatts. The law firm dealt with the purchase of the land, the acquisition of the company and the authorization and licenses needed to create the plant, the contractual aspects of the ad hoc partnership for the development of the project between SunEdison and Banco Santander, and the negotiation and drawing up of the EPC (Engineering, Procurement and Construction) Agreement with the Spanish Isolux Corsan



Energy experts (from above left, clockwise): Francesco Gianni, of the homonymous firm, advised F2i and Axa in the acquisition of Enel Rete Gas; Giovanni Nardulli, founder and managing partner at Legance, advised Total in the JV deal with Erg; DLA Piper partner Wolf Michael Kühne, who followed one of the largest deals in renewable energies in 2009, the sale of E.ON assets in Italy, worth €1.5 bn; Luca Arnaboldi of the Carnelutti law firm contributed to the arrangements for the creation by SunEdison of the biggest photovoltaic power plant in Europe, located in the Veneto region

Total in the negotiations and signing of a € 1.520 bn joint venture deal with Erg (assisted by Grimaldi & Associati) in the refining and marketing sector. "TotalErg will become one of the leading petroleum product distributors in Italy, with a market share of approximately 13% and 3,400 gas stations,"

explains **Giovanni Nardulli**, a partner at Legance. Erg controls 51% of the JV and Total 49%. It will also operate in the refining sector, with a continental capacity of approximately 116,000 barrels a day. This is enough to satisfy around 8% of Italian demand. Despite this example, Nardulli also believes that busi-



group. **Luca Arnaboldi**, a senior partner at Carnelutti, highlights the fact that "the predominantly downward trend of the last 18 months has led to the emergence of M&A transactions linked to company reorganizations and turnarounds. The majority of mergers at present are carried out for defensive reasons such as cost reduction or concentration of market share." According to DLA Piper partner **Wolf Michael Kühne**, "the market for deals of up to € 500 mn – the so-called mid-market – has remained steady and I think this trend will continue, while the number of big deals will still be low and marred by difficulties in gaining access to credit due to the gap between supply and demand in terms of prices, which remains sizeable." Kühne advised E.ON on the demerger by A2A of 20% of its assets. This made the German corporation one of the leading energy players in Italy, with a capacity of 6,300 megawatts. The operation was worth € 1.5 bn. "The only M&A sector that is going at full pace is renewable energy. However, with prices settling at lower levels, we expect things to pick up in other areas as well in the second half of 2010," says Kühne. DLA Piper is also focusing a lot on restructuring and has created a new team of 18 professionals for the purpose, including four partners: Nino Lombardo, Francesco Aleandri, Ernesto Apuzzo and Rodolfo Errore. They moved to the firm from Simmons & Simmons.

#### FINANCE AS WELL

Linklaters and Freshfields are getting their best results in the banking and insurance sec-

### Top legal firms in the Italian market by value: in 2009...

Pos		COMPANY	€ mn	
09	08		09	08
1	8	Clifford Chance	23,242	na
2	2	Chiomenti Studio Legale	20,972	39,548
3	1	Bonelli Erede Pappalardo	16,127	44,167
4	4	Uriá Menendez	14,439	30,917
5	-	Latham & Watkins	14,256	na
6	8	Cuatrecasas	14,246	17,552
7	7	Freshfields	6,786	18,096
8	10	Cleary Gottlieb Steen & Hamilton	5,924	14,122
9	9	Pedersoli & Associati	5,320	14,885
10	6	Gianni, Origoni, Grippo & Partners	4,760	22,120

Source: Mergermarket

### ... and in 2010 1Q

Pos		Company	€ mn	
10	09		10	09
1	3	Cuatrecasas, Goncalves Pereira	1.150	14.246
2	9	Legance Studio Legale Associato	901	432
3	-	Grimaldi e Associati	747	-
4	-	Cleary Gottlieb Steen & Hamilton	423	-
5	1	Bonelli Erede Pappalardo	353	14.941
6	7	Freshfields Bruckhaus Deringer	353	4.621
7	2	Chiomenti Studio Legale	285	14.677
8	-	Studio Legale Pavesi Gitti Verzoni	189	225
9	-	d'Urso Gatti e Associati Studio Legale	135	-
10	-	Jones Day	110	-

Source: Mergermarket

tor. The former advised BNP Paribas and Fortis on the formation of a joint venture with the UBI Banca group in the non-life insurance field. It is the Fortis group's first investment in Italy and will allow BNP Paribas to increase its presence in the country's insurance market. For Freshfields, the two partners **Fabrizio Arossa** and **Nicola Asti** worked on the biggest deal at the end of 2009,

advising State Street in its acquisition of Intesa Sanpaolo's securities services business for € 1.750 bn. "M&A management has seen some considerable changes," says **Francesco Stella**, a partner at Linklaters. Negotiations are longer and there is more emphasis on the quality of the due diligence process and the reps & warranties system, as well as the resulting indemnity obligations. The





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Deals

09	08
15	na
34	59
22	30
4	na
4	na
5	na
3	na
10	na
12	11
23	26

Deals

10	09
2	1
4	1
2	-
2	-
2	4
1	1
5	8
3	1
5	-
2	-

Clifford topped the rank

Chiomenti and Bonelli Erede Pappalardo are the law firms at the summit of Mergermarket's Top 10 for M&A advisory services in 2009. For years now they have been the two biggest players on the Italian market, in terms of both the volume of business covered and the number of deals. Nonetheless, the figures show that there was a sharp drop of 50% or more in 2009. This forced many organizations to make staff cuts and focus their efforts on individual businesses. Leaving aside the two Spanish companies, which lived off Enel's mega deals (the acquisition of 25% of Endesa from Acciona and the subsequent sale of Endesa assets in Spain and South America), there were greater than average losses for the firms in the top 10, such as the Anglo-Saxon giants Freshfields and Cleary Gottlieb, with the exception of Clifford Chance, as well as the Italians Pedersoli and Gianni. Gianni, Origoni, Grippo & Partners was nevertheless involved in a significant number of deals. There were 23 in 2009 compared to 26 the previous year, making it one of the firms with the biggest focus on pure M&A, also for small and medium companies. This is largely down to the drive of one of its founders: Francesco Gianni. Although it is only partial, the ranking for the first quarter of this year shows that the recovery trend for the law firms – which often come into play later than the financial advisors – has not yet picked up again. The big differences compared to 2009 for the large firms are due to the conclusion of Enel's acquisition of Endesa last year.

price structures are more complex: there is widespread use of earn-out clauses that allow the price paid to be partially tied to the actual future performance of the asset. There is greater use of vendors' loans as well, which give the purchasers access to alternative financing and allow the sellers to utilize part of the price at conditions that are more favorable than those offered by the market. Anti-

embarrassment clauses have also become more common. They give the sellers the right to receive part of any higher sales prices earned by the purchasers if they on-sell the assets previously acquired. **Stefano Cacchi Pessani** is a partner at Bonelli Erede Pappalardo, one of the leading law firms on the Italian M&A market. He too believes that "the contribution of lawyers in terms of value added

is more important in industrial operations brought about by the crisis which offer excellent opportunities for growth." One of the deals that Cacchi Pessani worked on in 2009 was the partnership agreement between Alitalia and Air France-KLM. The latter invested roughly € 320 mn in a 25% share of Alitalia. "It was a complex procedure and it was carried out very quickly," he explains. "The challenge for

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us was seeking out and elaborating innovative solutions for the governance." The problem was finding a balance in the relationship between the corporate partner (Air France-KLM) and the group of Italian investors that saved Alitalia. It was sealed in an industrial collaboration agreement that is one of the cornerstones of the overhauled Alitalia's business plan. "There are a lot of operations linked to winding up proceedings," notes **Cristina Fussi**, a partner at De Berti Jachia Franchini Forlani. "The mid-market is still the most active sector and great determination can be seen in the entrepre-

... a large ... 20% of Enel ... an agreement ... the transaction was worth ...





## WHO'S WHO IN LEGAL ADVISORY

### BONELLI EREDE PAPPALARDO ADVISED

- Alitalia in the sale of a minority stake (25%) to Air France-KLM. In charge: **Sergio Erede**, founding partner, **Giorgio Fantacchiotti**, **Massimo Merola**, **Stefano Cacchi Pessani** (partners),
- Charme II, a fund managed by the Montezemolo family, of a majority participation in Octo Telematics.
- BC Partners in the acquisition of Spotless Group SAS from AXA PE, European Capital Limited and the Gualandi family,
- Meridiana in the merger with Eurofly,
- BNP Paribas Personal Finance and BNP Paribas in the acquisition of 25% of Findomestic from Banca CR Firenze,
- Enel in the acquisition of 25.01% of Endesa S.A. from Acciona S.A. and Endesa on the sale of certain renewable energy assets to Acciona,
- Terna in the acquisition by from Enel Distribuzione of the entire share capital of Enel Linee Alta Tensione.

### CARNELUTTI ADVISED

- Dytech Dynamic Fluid Technologies in the sale of Dytech Ensa and its assets in Portugal and Inde to Borg Warner Inc (€ 120 mn). In charge: **Alberto Rittatore Vonwiller**,
- Banca Carige in the acquisition of 22 branches from Banca MPS (€130 mn). In charge: **Nicolò Bastianini**, **Cecilia Cagnoni Luoni**,
- Intesa Sanpaolo in the acquisition of a stake of Pirelli RE. In charge: **Luca Arnaboldi**, **Benedetta Amisano**,
- Class Editori in the sale of 30% of MF Honyvem to Intesa Sanpaolo.

### CHIOMENTI ADVISED

- Chrysler in the agreement with the Fiat Group. In charge: **Filippo Modulo**, **Alessandra Pieretti**, **Luca Frignani**, **Ida Palombella**, **Antonio Sascaro**, **Filippo Andreani**, **Emilio Cucchiara** (antitrust),
- Buziol family in the acquisition of 60% of Replay, Fashion Group. In charge: **Filippo Modulo**, **Antonio Sascaro**, **Eleonora Laurito**, **Luca De Matteis**,
- Telco in the sale of Telecom's share to Sintonia. In charge: **Francesco Tedeschini** and **Filippo Modulo**,
- Oshkosh Int in the acquisition of Brescia Antincendi Int. In charge: **Franco Agopyan** and **Davide Galantini**,
- Permasteelisa in the sale of majority stake to Investindustrial. In charge: **Luca Bonetti**, **Manfredi Vianini Tolomei**,

Some of the lawyers involved in the top deals of the last 12 months. From left, above, clockwise: Giuseppe Lombardi and Ugo Molinari of the omonymous law firm; Stefano Cacchi Pessani of Bonelli, Erede, Pappalardo; Claudio Rosano of Nunzianta Magrone law firm; Cristina Fussi of



- Nidec in the acquisition of Sole Motors from ACC. In charge: **Filippo Modulo**, **Antonio Sascaro**, **Eleonora Laurito**, **Marco Di Siena**,
- Tiscali in the sale of Tiscali UK to carphone (€ 274 mn). In charge: **Edoardo Andreaoli**, **Andrea Bernava**, **Giulia Battaglia**, **Antnella Brambilla**, **Paolo Giacometti**, **Michele Aprile**, **Luigi Vaccaro**, **Antonio Tavella**,
- GIC Singapore Investment Corporation in the acquisition of Omicron (€ 240 mn). In charge: **Umberto Borsi**, **Andrea Giannantonio**, **Vincenzo Troiano**, **Paolo Fedele**, **Agostino Papa**, **Michele Aprile**,
- Intesa SanPaolo in the acquisition of 30% of MF Honeyven: In charge: **Stefano Mazzotti**, **Luca Listro**, **Francesco Graziani**,
- Cattolica Assicurazioni in the sale of a minority stake of Cira to Iccrea Holding. In charge: **Edoardo Andreoli** e **Filippo Corsini**,
- Waittingin the sale of Reti Radiotelevisive Digitali to Screen Service fro € 20 mn. In charge: **Salvo Arena**, **Gianfilippo Pezzulo**, **Francesca Villa**,
- Dollon&Aitchinson (De Rigo Group), in the merge with Alliance Boots Opticians. In charge: **Stefano Mazzotti**, **Carlo Croff**,
- Tiscali in the sale of Tinet to BS Private Equity for € 47 mn. In charge: **Edoardo Andreoli**, **Stefania Bariatti**,

neurs who have decided to invest and internationalize despite the crisis.

### SLOW RECOVERY

The recovery is slow, but tangible." The law firm has helped

inject fresh vitality into Svenska Handelsbanken AB and Plastal Group AB, advising on the spin-off of the real estate and the restructuring of the underlying debt and negotiating the sale of Plastal shares to Prima. It was a typical





De Berti and Jacchia; Fabrizio Arossa of Freshfield; Francesco Stella of Linklaters and Nicola Asti of Freshfield



Alitalia in the sale of the Cargo business to Alis of Alcide Leoali for € 14,5 mn. In charge: **Michele Carpinelli**, **Filippo Modulo**, **Francesco Scanzano**, **Antonio Sascaro**, **Filippo Cecchetti**, **Rnato Genovese**, **Andrea Bernava**.

#### DE BERTI JACCHIA FRANCHINI FORLANI ADVISED

- Stena Metall, the Swedish group, in the acquisition of Siat,
- Dai Nippon Printing, in the JV agreement with a leader in the semiconductor industry,
- Alcea group in a JV in Russia and Brazil,
- Paolo Corazzi Fibre in the acquisition of Abrasix from in the arrangement before bankruptcy. In charge: **Giuseppe Cristiano**, **Marco Frazzica** and **Raffaella Romano** (partners), **Claudio Corba Colombo** (managing associate) and **Carlotta Pontecorvo**

#### DLA PIPER ADVISED

- E.ON in the demerger of 20% of the assets of E.ON Produzione in favor of A2A (€ 1.5 bn). In charge: **Wolf Michael Kühne**.
- Unoholding in the acquisition of Olympia Spa, with 10 branches in Italy. In charge: **Giampiero Falasca** and **Goffredo Guerra** (partners), **Dario Clementi** and **Christian Iannaccone** (associates)

mid-market transaction (worth approximately € 30 mn) that allowed Plastal and its staff of around 600 to continue to play a highly prominent role in the automotive components industry. Last but not least is Lombardi Molinari & As-

sociati. In 2009, they distinguished themselves with their legal advisory services for Nestlé in the sale of Motta and Alemagna to Bauli. They have made their mark again this year in their work for Effetti, a recently established company in

- Générale de Santé in the sale of assets to Synlabs in Italy and to Novescia in France. In charge: **Goffredo Guerra**, **Marica Pennesi** (partners) and **Elena Davanzo** (corporate), **Christian Montinari** and **Carlotta Benigni** (associates)
  - Bauli in the JV agreement with Switz Group for a new production in India. In charge: **Goffredo Guerra**, **Giorgio Olivi** and **Christian Iannaccone** (associate).
  - Sunbird Yacht Ltd, a leading Chinese yacht producer, in the JV agreement for the newco Marcopolo Yachts. In charge: **Goffredo Guerra**, **Claudio d'Agostino** (in Shanghai) and **Christian Iannaccone** (associate)
- Also in charge: **Nino Lombardo** (co-location head for corporate M&A, private equity e venture capital), **Francesco Aleandri**, (equity capital market and IPO), **Ernesto Apuzzo** (location head for insolvency & restructuring), **Rodolfo Errore** (project finance).

#### GIANNI ORIGONI AND PARTNERS ADVISED:

- Amcor in the acquisition of Alcan Packaging from Rio Tinto/Alcan (\$ 1.95 bn). In charge: **Francesco Gianni** e **Raimondo Premonte** (partners), **Laura Marotto** (senior associate),
- Unilever in the acquisition of the health and care products division of Sara Lee (€ 1,275 bn). In charge: **Alessandro Giuliani** (partner),
- F2i SGR and Axa PE in the acquisition of a stake (80%) of Enel Rete Gas, the largest European LBO in 2009 (€ 1,025 bn). In charge: **Francesco Gianni**, **Raimondo Premonte**, **Giuseppe Velluto**, **Matteo Bragantini**, **Mauro Sambati** (partners), **Laura Marotto**, **Dante Micallella** (senior associate).
- HAL Holding N.V. for the acquisition of a stake (up to 49%) of Safilo in different steps (€ 250 mn). In charge: **Francesco Gianni**, **Stefano Beghi**, **Marco Zaccagnini**, **Mario Todino**, **Mauro Sambati** (partners), **Giuseppe Cannizzaro**, **Giuseppe De Simone**, **Alfredo D'Aniello** (senior associate).
- Koninklijke Philips Electronics N.V. in the acquisition of Saeco International Group (€ 200 mn). In charge: **Francesco Gianni**, **Gabriella Covino**, **Luciano Acciari** (Partner), **Giuseppe De Simone**, **Alfredo D'Aniello**, **Fabio Chiarenza** (senior associate), **Chiara Gianni** (associate).

#### LEGANCE ADVISED

- Banca Popolare di Sondrio and Banca Popolare di Milano in the sale of Factorit (€ 170 mn),
- STMicroelectronics in the sale of Numonyx, JV between

followed next page ▶

which Ferak and the Fondazione Cassa di Risparmio di Torino hold shares. It bought 2.267% of Generali in an accelerated book-building process promoted by UniCredit. The transaction was worth approximately € 635 mn. **L**



## THE LAW FIRMS

STM and Intel in the flash memory industry, to Micron Technology (€ 931 mn).

- Axa in the bancassurance agreement between Banca MPS and ex Banca Antonveneta's network (€ 240 mn)
- Banca MPS in the sale of 22 branches to Gruppo Carige (€ 130 mn)

• STMicroelectronics in the jv with Enel Green Power and Sharp for the production of photovoltaic panels.

• Unicredit and Natixis in the debt restructuring of Upim (€ 200 mn) before the sale of the asset to Coin.

People in charge: **Giovanni Nardulli, Filippo Troisi, Alberto Giampieri, Bruno Bartocci, Gian Paolo Tagariello, Andrea Fedi, Gabriele Capecchi and Piero Venturini.**

### LINKLATERS ADVISED

- Sharp and RWE in the energy sector

• Citigroup, AXA, BNP Paribas, Fortis in finance

People in charge: **Giovanni Pedersoli, Luca Picone and Francesco Stella** (partners), **Matteo Almini and Pietro Belloni** (managing associates)

### LOMBARDI MOLINARI E ASSOCIATI ADVISED

- Investindustrial in the acquisition of Cogetech
- Tamburi Investment Partners in the tender offer of Management & Capitali

### NCTM ADVISED

• L Capital, sponsored by LVMh, in the acquisition of a stake in Dondup. In charge: **Paolo Montironi**, senior partner, along with salary partners **Pietro Zanoni** and **Eugenio Siragusa**

• Banca Nazionale del Lavoro in the financing of Busi Impianti (€ 23.5 XXX) related to the issue of Advance Payment Bond and Performance Bond. In charge: **Vittorio Valieri**

• Poligrafici Printing, Monrif group, in the application for listing on AIM. In charge **Luigi Croce**, equity partner, and **Lukas Plattner**, salary partner

• San Benedetto in the acquisition of total control of Dasanbe SA (€ 25 mn) from Dano

• Iccrea holding in the acquisition of 49% of Cira (now



From left, clockwise: **Gian Battista Origoni** founding partner of the GOP law firm, **Sergio Erede** founding partner of BEP, **Alberto Rittatore** partner of the Carmelutti law firm and **Tommaso Salonicco** partner of Freshfields

BCC Assicurazioni) from Cattolica di Assicurazioni. In charge: **Francesco De Gennaro and Paolo Quattrocchi** (partners)

### NUNZIANTE MAGRONE ADVISED

• Balchem Co in the acquisition of a division of Akzo Nobel Chemicals

• Performance in the acquisition of Lighting

• Geogas in the sale of its assets to Avelar Energy, controlled by Renova Industries. In charge:

**Valentina Ventriglio** (senior associate), **Giovanni Manzari** and **Guglielmo del Giudice**

### PAVIA ANSALDO ADVISED

• Clessidra Capital Partner in the acquisition of 100% of Prenergy, the owner of the authorization for the construction of the greatest plant (350 megawatt) in the UK for the generation of energy from biomasses

• IRIS in the sale of

its electricity and gas businesses (public tender underway)

• Ineos in the sale of Ineos Vinyls Italia Spa to an Italian entrepreneur (€ 80 mn in liabilities towards suppliers besides bank and tax debts)

• Micron Technology, world leader in the provision of high quality semiconductor solutions, in the acquisition of Numonyx Holding BV, world leader in the production of (NOR and NAND) memories and active in Italy with plants in Catania, Naples and Milan. In charge of the M&A deals: **Stefano Bianchi, Alessandro Giovannelli, Francesco Manara, Mia Rinetti and Roberto Zanchi.**