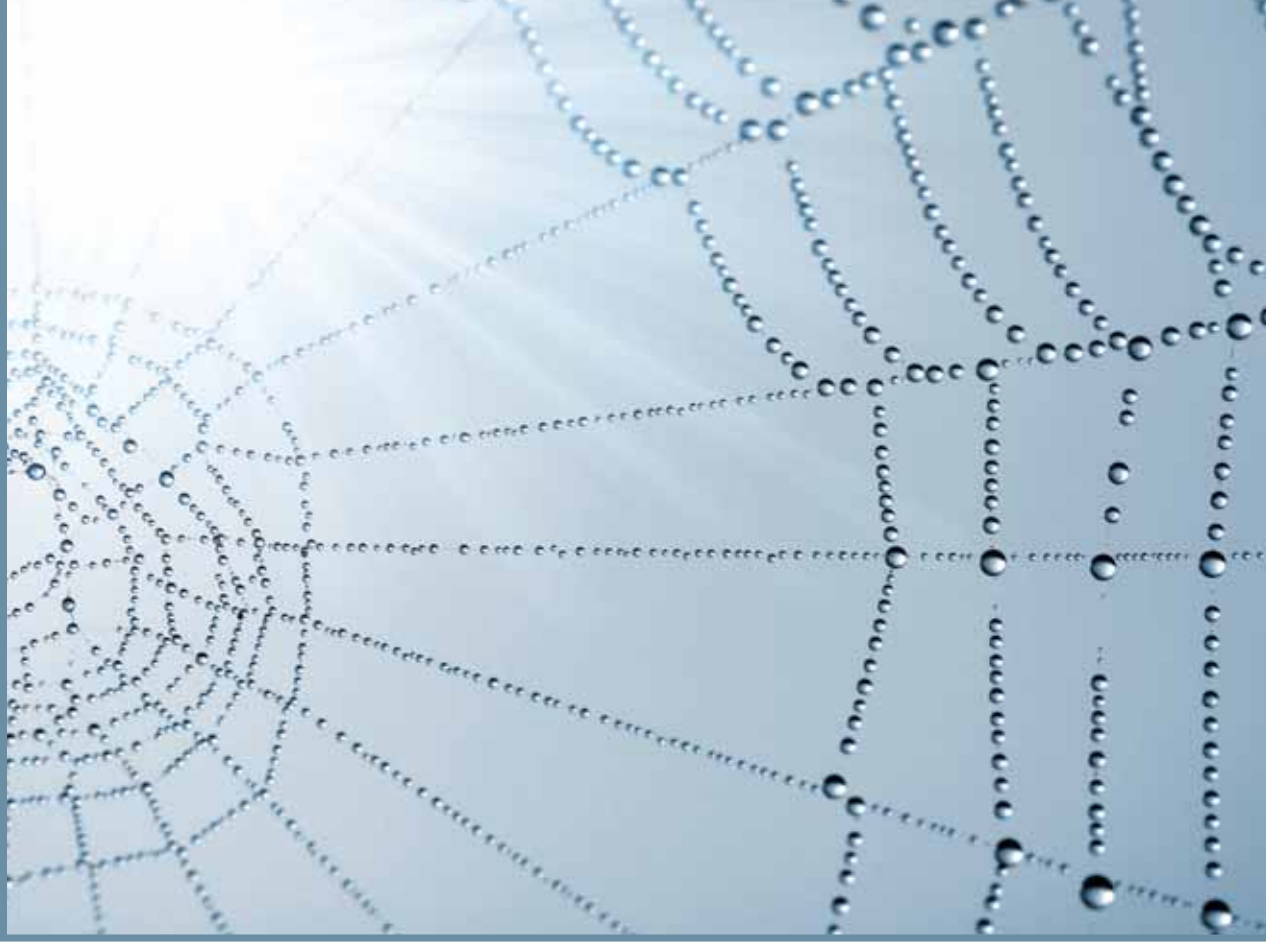

Merger Control Survey **2015**

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1. REGULATORY FRAMEWORK

1.1 What is the applicable legislation and who enforces it?

The Law 21/1996 (Competition Act) is the main applicable legislation governing Romanian merger control. The secondary legislation is mainly enforced by the Merger Control Regulation, which first entered into force in March 2004, and has been further amended and supplemented.

The main responsibility for applying the Competition Act and Merger Regulation lies with the Romanian Competition Council (RCC). The RCC reviews the notifications of concentrations and is empowered to clear or prohibit them. However, in certain cases (such as economic concentrations that may raise a national security risk), in parallel with the powers exercised by the RCC, an important role is also played by the Supreme Council of National Defence and the Government.

1.2 What types of mergers and joint ventures (JVs) are caught?

Under the Competition Act, the following may be subject to merger notification (provided that the involved parties meet the requested turnover thresholds): economic concentrations; mergers between two or more previously independent undertakings (or part of such undertakings); the acquisition of control over the whole or part of one or more undertakings (by one or more persons or undertaking already controlling at least one undertaking) either through the acquisition of securities or assets, through a contract or any other method; or, a JV between independent parties.

2. FILING

2.1 What are the thresholds for notification, how clear are they, and are there circumstances in which the authorities may investigate a merger falling outside the thresholds?

An economic concentration must be notified to the RCC when: the combined aggregate turnover of the undertakings involved exceeds €10 million ($11.2 million); and, each of at least two of the undertakings involved has an aggregate turnover of at least €4 million in Romania.

The thresholds for mandatory notifications are reasonably clear. If the thresholds are not fulfilled, the parties involved may still decide to make a voluntary notification.

2.2 Are there circumstances in which a foreign-to-foreign merger may require notification, and is a local effect required to give the authority jurisdiction?

There are no specific rules for foreign-to-foreign transactions. These transactions are caught if they meet the relevant requirements for the turnover thresholds and the long-lasting change of control.

2.3 Is filling mandatory or voluntary and must closing be suspended pending clearance? Are there any sanctions for non-compliance, and are these applied in practice?

Under the Competition Act, filing is mandatory for economic concentrations that exceed the turnover thresholds. The filling must be done the implementation and following the conclusion of the agreement, the announcement of the public bid or the acquisition of a controlling interest. Notifications can also be made where the undertakings concerned demonstrate good faith to the RCC in the intention to conclude an agreement or, in the case of a public bid, where a public announcement has been made or there is an intention to make such a bid (provided that the intended agreement or bid would result in a concentration within the threshold).

The undertaking is penalised with a fine ranging from 0.5% up to 10% of the total turnover achieved in the previous financial year if, willfully or negligently, it: (a) fails to notify a concentration falling within the scope of the Competition Act; or (b) implements a concentration prior to obtaining the RCC's authorisation. For newly established companies with no turnover in the previous year, the fines are between L15,000 ($3,800) and L2.5 million.

2.4 Who is responsible for filing and what, if any filing fee applies? What are the filing requirements and how onerous are these?

A concentration that consists of a merger of two or more undertakings should be notified by each of the parties involved. In all other cases, the concentration must be notified by the person or the undertaking acquiring control of the whole or parts of one or more undertakings.

The notification must be filled in the forms provided in the Merger Regulation (which are available only in the Romanian language) and the notification must be submitted only in Romanian.

In the notification procedure, there is a fixed fee of approximately €1,000 or $1,200 (filling fee) and a variable fee depending on the turnover generated by the target (authorisation fee), which can range from €10,000 to €25,000.

3. CLEARANCE

3.1 What is the standard timetable for clearance and is there a fast-track process? Can the authority extend or delay this process?

As a general rule, the RCC must adopt merger decisions within: (a) 45 days as of the effectiveness of the notification if the conditions are met or (b) within five months of the effectiveness of the notification if a further investigation is needed. Should the RCC fail to adopt a decision according to this timetable, the notification is considered to be approved.

In those cases where the RCC reaches the conclusion that the assessed operation does not meet the legal conditions to fall under the scope of the Competition Act, it will notify, through an address, the parties concerned about such conclusion within 30 days of the date the notification is deemed as complete.

As mentioned above, if the conditions set out in the Competition Act are met and no special circumstances occur, the RCC will issue a non-objection decision within 45 days of the effectiveness of the notification.

However, if the RCC considers that the economic concentration falls within the Competition Act and raises serious doubts as to its compatibility with the common market and these doubts could not be eliminated through commitments, the RCC may decide to open an investigation. In this case, the RCC must, within five months of the effectiveness of the notification, adopt one of the following legal options: (i) issue a decision whereby it declares the economic concentration to be incompatible with a normal competitive environment; (ii) authorise the economic concentration in cases which do not raise serious doubts; or (iii) authorise the economic concentration subject to certain commitments undertaken by the parties involved, in order to ensure the compatibility of the proposed operation with a normal competitive environment.

3.2 What is the substantive test for clearance, and to what extent does the authority consider efficiencies arguments or non-competition factors such as industrial policy or the public interest in reaching its decisions?

Contrary to the dominance test applied until 2010, the Merger Regulation introduced the SIEC test as the assessment test for economic concentration. Based on this test, RCC will assess whether an economic concentration significantly impedes effective competition on the Romanian market or on a substantial part of it, particularly following the creation or strengthening of a dominant position.

3.3 Are remedies available to alleviate competition concerns? Please comment on the authority's approach to acceptance and implementation of remedies.

The RCC may accept commitments from the undertakings involved in an economic concentration proposed in either of the two Phases (Phase I or Phase II). The main purpose of such commitments is to eliminate any anti-competitive concerns identified by the RCC and so to clear the economic concentration. Until now, the RCC has accepted both structural and behavioural commitments.

4. RIGHTS OF APPEAL

4.1 Please describe the parties' ability to appeal merger control decisions – how successful have such challenges been?

The RCC's decision may be challenged mainly by the parties to whom it is addressed before the Bucharest Court of Appeal within 30 days of its communication. The decision of the court of appeal may in its turn be reviewed by the High Court of Cassation and Justice of Romania. Even if the competition legislation does not include a special reference, third parties – prior to the condition that they justify a legitimate interest (based on general law provisions) – may also challenge the RCC's decision.

However, up to this moment, based on public information available, no merger decisions have been challenged before court, neither by the parties to whom they were addressed, nor by third parties.

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He has been commended in *Chambers Europe* as a 'very client-oriented', 'open-minded' lawyer who is 'focused on solutions'. His established clients include Philip Morris, Cargill, ArcelorMittal, Innova Capital and Oresa Ventures, whom he has advised on an array of competition matters and investment issues.

He has been with the firm since its inception, first as an associate then up to senior associate and head of practice group. He holds a degree in law from the University of Bucharest Faculty of Law and is a member of the Bucharest Bar Association. He attended US Legal Methods – Introduction to US Law at the Institute for US Law in Washington, DC and the International Development Law Organization Development Lawyers Course (DLC-20E) in Rome.

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