CHAMBERS

Global Practice Guides

Merger Control

Law and Practice – Romania

Contributed by

Popovici Nițu Stoica & Asociații

2018

CHAMBERS AND PARTNERS

ROMANIA

The 'Law & Practice' sections provide easily accessible information on navigating the legal system when conducting business in the jurisdiction. Leading lawyers explain local law and practice at key transactional stages and for crucial aspects of doing business.

Contributed by Popovici Nițu Stoica & Asociații **Authors:** Silviu Stoica, Mihaela Ion

Law and Practice

Contributed by Popovici Nițu Stoica & Asociații

CONTENTS

Contributed by Popovici Nițu Stoica & Asociații ***Authors:*** Silviu Stoica, Mihaela Ion

Popovici Nițu Stoica & Asociații is one of the first incorporated professional partnerships in Romania. The firm combines strong local resources with exceptional credentials, outstanding records and distinguished careers in law, business and academia. Experienced in most major legal fields, the firm's lawyers provide quality legal services combined with strong client relationships. Popovici Nițu Stoica & Asociații has a strong competition practice that covers all aspects of the field, including antitrust, unfair competition and state aid. The firm provides a full range of legal services, including assistance and representation in relation to antitrust litigation, investigations and inquiries, guidance during merger control proceedings and counselling in respect of restrictive agreements and abuses of dominant position.

Authors

Silviu Stoica is a partner with Popovici Nițu Stoica & Asociații and head of the competition practice group. His practice focuses on a broad range of contentious and non-contentious competition matters, with an emphasis on cartel investigations and industry inquiries, abuses of dominant position and antitrust disputes. Mr Stoica also advises clients on restrictive agreements and works closely with in-house corporate counsels in sensitive internal compliance reviews. Mr Stoica has contributed to numerous industry publications.

Mihaela Ion is a managing associate within the competition practice group of Popovici Nițu Stoica & Asociații. Her area of expertise covers in particular antitrust litigation, unfair trade practices, consumer law, merger control proceedings and state aid. She also assists clients in structuring and implementing compliance programmes, providing regular training as external legal counsel on all relevant aspects of competition law. Ms Ion regularly contributes to industry publications.

1. Legislation and Enforcing Authorities

1.1 Merger Control Legislation

Law No 21/1996 (the "Competition Act") is the main applicable legislation governing Romanian merger control. The secondary legislation is mainly enforced by the Merger Control Regulation (the "Merger Regulation"), which entered into force in March 2004 and has been amended and supplemented.

The Romanian Competition Council (RCC) has issued several guidelines (the "Merger Guidelines") that explain the RCC's approach to assessing mergers, including merger notification, thresholds, ancillary restrictions, commitments and setting out processes and timeframes.

1.2 Legislation Relating to Particular Sectors

Foreign-to-foreign mergers require notification if they meet the relevant requirements with respect to turnover thresholds and long-lasting change of control. A local effect is not required to give the RCC jurisdiction.

Mergers that take place in special sectors qualified as sensible from a national security perspective may also fall under the rules and analysis of the Supreme Council of National Defence (SCND) and the government. The list of sectors that are sensible from a national security perspective is included in the SNDC's Decision No 73/2012.

1.3 Enforcement Authorities

The main responsibility for applying the Competition Act and Merger Regulation and Guidelines lies with the RCC, which reviews the notifications of concentrations and is empowered to clear or prohibit them. However, in certain cases (ie, economic concentration that may raise a national security risk), in parallel with the attributions exercised by the RCC, an important role is also played by the SCND and the government. Where the economic concentration does not meet the notification thresholds (see **2.3 Types of Transactions** and **2.5 Jurisdictional Thresholds**) but falls into categories mentioned in the SNDC's Decision No 73/2012, the transactions must be notified through the RCC to the SNDC.

2. Jurisdiction

2.1 Notification

Notification is compulsory. The economic concentrations detailed in **2.3 Types of Transactions** that exceed the turnover thresholds (outlined in **2.5 Jurisdictional Thresholds**) are mandatory for filing under the Competition Act.

The only exception is when Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (the EU Merger Regulation, or EUMR) thresholds are met, in which case the parties should (only) notify the concentration to the EC.

2.2 Failure to Notify

The RCC may apply a fine ranging from 0.5% up to 10% of the total turnover achieved in the previous financial year if the company, wilfully or negligently, (i) fails to notify a concentration falling within the scope of the Competition Act and/or (ii) implements a concentration prior to obtaining the RCC's authorisation.

If in the previous financial year the undertaking achieved no turnover, the last turnover registered by the undertaking shall be taken into account. For newly established companies with no turnover in the previous year, the fines are between RON15,000 and RON2,500,000.

For breaches committed by a non-resident person (defined as any foreign person or other foreign entities, including collective investment undertakings without legal personality, not registered in Romania), the turnover in relation to which the fine is calculated is replaced by the sum of the following revenues: (i) the turnover generated by each of the undertakings registered in Romania and controlled by the infringer, (ii) the revenues generated in Romania by each of the non-resident undertakings controlled by the infringer and (iii) the own revenues generated in Romania by the infringer and recognised in its individual financial statements.

An undertaking failing to notify an economic concentration may benefit from a fine reduction ranging from 10% to 30% if it expressly acknowledges the infringement and, if applicable, proposes remedies. The reduction also applies in cases where the fine was fixed at the minimum of 0.5%, but it will never decrease below 0.2% of the turnover achieved in the last financial year.

The fines mentioned above are applied by the RCC whenever it discovers merger control breaches. The sanctioning decisions are posted on the RCC's website.

2.3 Types of Transactions

The rules on merger control areas cover all types of transactions that bring about long-lasting changes in control (share deals, asset deals, shareholder agreements, etc).

Under the Competition Act, economic concentrations; mergers between two or more previously independent undertakings, or part of such undertakings; the setting-up of a full-function joint venture; the acquisition of control over the whole or parts of one or more undertakings (by one or more persons/an undertaking already controlling at least one undertaking) through the acquisition of securities or assets, contract or any other methods; and a joint venture between independent parties may be subject to merger notification (provided that the involved parties meet the requested turnover thresholds).

However, the Competition Act includes a list of operations that are not considered economic concentrations and therefore are not covered by the merger control rules. These include the following cases.

- There is only a restructuring and reorganisation within the same group of undertakings (intra-group operations).
- The banks and other credit and financial institutions, insurance and reinsurance companies – the normal activities of which include transactions and dealing in securities for their own account or for the account of others – acquire securities on a temporary basis for resale, provided that they do not exercise voting rights in respect of those securities to determine the competitive behaviour of that undertaking or provided that they exercise such voting rights only to prepare the disposal of those securities and that any such disposal takes place within one year of the date of acquisition.
- The control is acquired by a liquidator appointed by a court decision or by another person mandated by a public authority to pursue proceedings related to cessation payments, judicial liquidation or any other any similar proceedings.
- The acquisition of control is made by an undertaking – the sole business purpose of which is to acquire, manage and dispose of the respective participations – without involvement in the management of that undertaking and without exercising the voting rights in respect of the controlled undertaking; in particular, in relation to the appointment of the management and supervisory bodies of the undertaking controlled, except where only to maintain the full value of such investment, but not to determine directly or indirectly the competitive conduct of the undertaking controlled.

2.4 Definition of 'Control'

As under the EUMR, the definition of control that applies under the Competition Act is based on the concept of "decisive influence." The Merger Regulation defines "control" as deriving from rights, contracts or any other elements that, together or separately, confer to an undertaking or person the possibility to exercise a decisive influence over an undertaking. Also, there are three levels of interest that amount to control: a controlling interest (de jure control), de facto control (control of commercial policy) and material influence (ability to influence commercial policy, irrespective of shareholding).

The acquisition of a minority shareholding would amount to a concentration only if it implies an acquisition of control. This would usually occur where the minority shareholding is associated with controlling rights; for example, decisive veto rights in joint control cases providing the possibility to block decision-making processes in negative sole control cases.

2.5 Jurisdictional Thresholds

The Romanian jurisdictional thresholds are turnover-based. A relevant merger situation arises when the following cumulative thresholds are met: (i) the combined worldwide aggregate turnover of the undertakings involved exceeds EUR10 million for the previous financial year and at least two of these concerned undertakings must each have had a Romanian turnover exceeding EUR4,000,000 for the previous financial year.

2.6 Calculations of Thresholds

The turnover relevant for merger control requirements is the amount derived from the sale of the products and the provision of services. There are special rules for calculating the turnover of banks, insurance companies and other financial institutions.

Turnover must be geographically allocated according to where the goods and services are being delivered, generally the location of the customer or the location where the product is delivered and the services are rendered. The turnover must correspond to the ordinary activities of the concerned undertaking in its previous audited financial year as adjusted to account for acquisitions/divestments occurred after the date of the audited account. The turnover taken into account is "net turnover," as included in the financial statement after taxes, value of exports and intra-community deliveries. Intra-group turnover should also be disregarded.

When sales or assets are booked in a foreign currency, the parties should convert those sales or assets from foreign currency to Romanian leu using the National Bank exchange rate at December 31 of the previous year.

2.7 Relevant Businesses/Corporate Entities for the Purpose of Calculation

For the purpose of calculating the turnover of the undertakings involved, the turnover relating to all undertakings belonging to the group must be considered.

The concept of "undertakings involved in the merger or acquisition" and group of undertakings are equivalent to the concepts used under the Consolidated Jurisdictional Notice under the EU Merger Regulation (the "Notice").

The whole turnover of all the undertakings under the sole control of the concerned undertaking should be aggregated. For the joint venture controlled jointly by the concerned undertaking together with the other third party, the turnover of the joint venture should be allocated equally between its parents.

2.8 Foreign-to-Foreign Transactions

If the jurisdictional thresholds are met then the foreign-to-foreign transaction requires notification even if the competitive effects are predominantly applicable outside the state. There is no local effects test under the Competition Act.

2.9 Market Share Jurisdictional Threshold

There is no market share jurisdictional threshold. Whenever the conditions detailed in **2.3 Types of Transactions** and **2.5 Jurisdictional Thresholds** are met, the economic concentration should be notified. If there is no substantive overlap, the assessment procedure might be simpler, following a simplified notification form.

2.10 Joint Ventures

The formation of a joint venture is subject to the merger control requirements of the Competition Act if it meets the jurisdictional thresholds and if the full function criteria are met. Only full-function joint ventures are caught by the Romanian merger control regime.

The relevant definition is included in the Competition Act: the creation of a joint venture to perform, on a lasting basis, all the functions of an autonomous economic entity shall constitute a merger. The Merger Regulation sets out several criteria to ensure that a joint venture has sufficient autonomy towards its parent companies and therefore might be subject to merger control requirements. The criteria are similar to those detailed in the Notice.

For the joint venture, in determining whether the thresholds are met, the RCC will look to the economic reality of the transaction: if the joint venture is only an acquisition vehicle then the RCC will treat each parent company as an undertaking concerned but if the joint venture is a pre-existing full-function undertaking, the RCC will usually consider that the joint venture is a single acquiring undertaking.

2.11 Power of Authorities to Investigate Transactions

The RCC can also investigate mergers that fall below the turnover thresholds where it believes that the merger could have as its object or effect the prevention, restriction or distortion of competition or involves the creation or strengthening of a dominant position.

The statute of limitations for procedural infringements is three years and five years for all the other breaches, including failure to notify and non-observance of the standstill obligation. These periods begin to run from the date on which the unlawful practice occurred or from the date of the last unlawful act in the case of continuous unlawful practice.

2.12 Requirement to Close Before Clearance

A concentration falling under the Merger Regulation cannot be implemented until the RCC issues clearance, except for the cases detailed in **2.13 Exceptions to the Suspensive Effect**. The derogation depends mainly on the RCC's view

with respect to the effect of the suspension on the parties and other third parties, and the threat posed by the concentration to the competition. Penalties for closing prior to expiration or early termination of the RCC waiting period are the same as those described in **2.2 Failure to Notify**.

2.13 Exceptions to the Suspensive Effect

The parties are allowed to implement the concentration before the issuance of the RCC's clearance in the following specific situations: (i) in a public bid (or series of transactions in securities listed on the stock exchange) but only if the concentration is notified without delay and the acquirer does not exercise its voting rights or exercises them only to maintain the value of its investments (based on the derogation granted by the RCC), or (ii) cases where the RCC granted a derogation based on a reasoned request from the parties.

2.14 Circumstances Where Closing Before Clearance is Permitted

Romanian merger rules do not include express provision with respect to a carve-out mechanism.

3. Procedure: Notification to Clearance

3.1 Deadlines for Notification

Notification should be submitted before its implementation and following any of these triggering events: conclusion of the agreement, announcement of a public bid and acquisition of a controlling interest. The penalties for failure to notify and/or non-observance of the standstill obligation are detailed in **2.2 Failure to Notify**. The sanctioning decisions issued by the RCC are published on its website.

3.2 Type of Agreement Required

The parties may submit the notifications even before the conclusion of a binding agreement if they prove the intention to conclude the transaction or, in the case of a public bid, after the parties have announced their intention to make such a bid.

3.3 Filing Fees

The merger rules require all acquiring persons to pay a filing of RON4,775. The Competition Act also provides a clearance fee fillthat ranges between EUR10,000 and EUR25,000 depending on the target's turnover for decisions issued in Phase I of the proceedings and between EUR25,001 and EUR50,000 depending on the target's turnover for decisions issued in Phase II of the proceedings.

3.4 Parties Responsible for Filing

According to the Competition Act, the undertaking(s) acquiring control must notify the RCC. In merger cases, all the parties involved in the merger must submit the notification. In the case of a full-functioning joint venture, the notification obligation rests on the parent undertakings.

3.5 Information Required in a Filing

There is a standard form for a filing to the RCC. The notification form is available (in Romanian only) on the RCC's website. The filing must be in Romanian and the parties must certify the accuracy of the information in the form filing.

For some specific mergers, the parties may enjoy a simplified assessment procedure (for example, where there is no overlap in parties' activities on the relevant markets, including upstream and downstream markets, or, where any horizontal or vertical overlap exists, it remains below 20% or 30% respectively). Even if these conditions are fulfilled, the RCC may, at its discretion, require a full notification. Accordingly, a discussion with the RCC in the pre-notification phase is recommended regarding what type of notification procedure is to be followed.

Merger notifications made under the simplified procedure are subject to an expeditious assessment by the RCC. Simplified notifications mean a shorter merger notification form, with less information to be provided by the involved parties.

3.6 Penalties/Consequences if Notification Deemed Incomplete

If the RCC considers that the notification file is incomplete, will require additional information, data and/or documents, these requests will stop the clock; a notification being considered effective only if and when it is deemed to be complete/includes all the required documents/data.

If incorrect or misleading information is supplied, the RCC can impose a fine of up to 1% of the aggregate turnover of the notifying party.

3.7 Phases of the Review Process

Timing

The Competition Act and the Merger Regulation provide for a statutory 45 working day time limit for Phase I (see details below), which starts on the first working day after the RCC confirms that the merger notice is complete/effective.

The RCC is also subject to a five-month statutory deadline (as of the effective date for completed mergers) for Phase II.

As both phases start from the effective day, the proceedings are practically suspended until the parties provide all the information required by the RCC and the RCC confirms that the notification is effective.

Each requirement for further information will therefore stop the clock. Also, the RCC will suspend the proceedings when the SCND informs it that the economic concentration must

be analysed from a national security viewpoint. The RCC immediately informs the parties that the transaction is subject to the scrutiny of the SCNC, in which case, the analysis by the Competition Council is suspended until a final decision is communicated by the SCND.

Pre-notification Phase
The phase is not mandatory, but the Merger Regulation recommends the initiation of pre-notification discussions with the RCC at least two weeks prior to filing. The parties must provide the RCC with information regarding the economic concentration, the parties and the markets within five days prior to the scheduled meeting.

Phase I
Within five days as of the submission date, the RCC informs the parties in writing whether the notification file meets the formal requirements to be deemed validly submitted (for example, the number of copies, certified copies of the transaction agreement, certified copies of the balance sheets, etc).

Within 20 days of the valid submission of the notification, the RCC may request the parties to submit additional information. Such requests will stop the clock. Only when all the information needed/required is provided will the RCC consider the notification as being complete ("effective day").

As a general rule, the RCC must adopt merger decisions within 45 days as of the effectiveness of the notification if the conditions are met. 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 shall notify, through a letter, the parties concerned about such conclusion within 30 days as of the date the notification is deemed as effective.

At the end of this phase the RCC may issue a "non-opposition" decision whereby the transaction is authorised (a clearance decision) for cases where there are no serious doubts regarding the compatibility of the concentration with a normal competition environment, or where these doubts have been removed by the commitments proposed by the parties and accepted by the RCC.

Phase II
If the RCC opens Phase II proceedings, it must decide within five months as of the effective day whether (i) to clear the transaction unconditionally, (ii) to clear the transaction subject to commitments, or (iii) to prohibit the transaction.

Phase II proceedings may not be extended beyond this five-month period.

3.8 Accelerated Procedure
The Merger Regulation provides for a simplified procedure and short form for concentrations that satisfy certain conditions (Article 13 of the Merger Regulation). This simplified notification procedure is available for:

- acquisitions of joint control over a company that is not, or only to a limited degree, active on the Romanian market, which is the case when the turnover of the joint venture and/or the contributing activities in Romania is below EUR4 million and the value of the joint venture's accumulated assets in Romania is below EUR4 million;
- mergers or acquisitions of sole or joint control where none of the parties is present in the same product/geographic market or on an upstream or downstream market to one of the markets in which another party to the concentration is present;
- mergers or acquisitions of sole or joint control where the parties' combined or individual market share remains below 20% (in the case of horizontal relationships) or the parties' individual or combined market share remains below 30% (in the case of a vertical relation); and
- a change from joint to sole control.

4. Substance of the Review

4.1 Substantive Test
The substantive test is whether the concentration will result in a significant impediment of effective competition in the Romanian market or a part thereof, inter alia, by creating or strengthening a dominant position. This test is aligned to the test provided for by the EUMR.

4.2 Competition Concerns
In accordance with the guidance set out in its guidelines, the RCC will consider, in its assessment, whether the merger will have unilateral or co-ordinated anti-competitive effects. In terms of the specific matters that will be considered, the RCC's Guidelines on Merger states that it will consider, inter alia, the market structure (degree of concentration, market shares, unilateral and co-ordinated effects, and vertical foreclosure); the likely reaction of competitors and customers; and countervailing buyer power.

4.3 Economic Efficiencies
The RCC considers all aspects of the concentration, including efficiency arguments. However, there is no knowledge of any examples of mergers being cleared only on the basis of efficiency arguments.

4.4 Non-Competition Issues

Aside from mergers in the sectors qualified as being sensitive from a national security perspective, where the SCND should assess whether the transactions raise risks for national security, non-competition issues are not otherwise relevant under the provisions of the Competition Act.

4.5 Special Consideration for Joint Ventures

Joint ventures will be reviewed by the RCC by considering not only the merger control rules but also the risks of possible co-ordination between the parents under the provisions of Article 5 (1) of the Competition Act.

5. Decision: Prohibitions and Remedies

5.1 Authorities' Ability to Prohibit or Interfere With a Transaction

The RCC is empowered to prohibit a concentration that will significantly impede effective competition in Romania, or a part of it. However, so far, the RCC has not issued any prohibition decision.

If the parties implement a notifiable merger before clearance has been obtained or after a prohibition decision has been issued, the companies may incur fines but may also be ordered to dissolve the merger in its entirety. The RCC may also impose interim measures or take any other action that it considers appropriate to restore conditions of effective competition.

5.2 Parties' Ability to Negotiate Remedies

The RCC may enter into discussions with the merging parties with a view to identifying measures that would ameliorate any negative competitive effects of the merger. These discussions can have as their outcome divestment undertakings or behavioural remedies. The negotiation of parties' commitments may be commenced at any stage of a Phase I or Phase II investigation.

5.3 Typical Remedies

The RCC's preference is where possible to identify an available structural remedy and then to consider behavioural remedies. The RCC has previously accepted divestment undertakings and behavioural remedies as conditions for clearance.

5.4 Negotiating Remedies with Authorities

The RCC is willing to consider remedies in Phase I and Phase II. The Merger Regulation provided specific terms for remedies submissions: (i) in Phase I, the parties may propose remedies before the effective date or within two weeks after this date and (b) in Phase II, the parties may propose remedies within 30 days as of the date when the investigation was launched (subject to a 15-day potential extension based on the parties' reasoned request).

There are specific formal requirements for the submission of remedies detailed in the specific guidelines issued by the RCC in this respect. If the RCC wants to consider the remedies proposed by the parties, it will publish on its website a summary of the case and the remedies proposed, inviting all interested parties to submit their views/comments.

5.5 Conditions and Timing for Divestitures

The RCC does not require remedies to be complied with before the merger can be completed. Seemingly, the RCC has so far not imposed the obligation to comply with the remedies before completion of the merger.

5.6 The Decision

The final decision issued by the RCC with respect to the notified concentration should be communicated to the concerned parties within 120 days from the date of the deliberation of the RCC's Plenum on the case. Also, a non-confidential version of the decision will be published on the RCC's website.

5.7 Prohibitions and Remedies for Foreign-to-Foreign Transactions

There are no special rules provided for foreign-to-foreign transactions. In the last two years, there have been accepted remedies in three cases.

- The case concerning Billa/Carrefour, where the RCC accepted a structural divestment commitment; more precisely, Carrefour undertook to assign the activity of retail sale of three supermarkets. In addition, Carrefour undertook not to acquire control again over said supermarkets for a period of ten years. The RCC issued a final decision within four months as of the notification date.
- The case concerning PC Garage/Dante (Emag), where the RCC accepted structural and behavioural commitments. Here, Dante undertook to sell several websites (online shops).
- The case of Radu Group/Zoto/Postmaster, whereby the RCC accepted behavioural commitments; for example, the contracts are to be limited to a one-year period, the parties should have the right to terminate the agreements unilaterally, the contracts will not include exclusivity clauses or impose minimum quantity on their clients, the acquirer will not execute any other transaction (notifiable or not) on the relevant market affected by this transaction for a period of three years, etc.

6. Ancillary Restraints and Related Transactions

6.1 Clearance Decisions and Separate Notifications

A merger clearance decision issued by the RCC covers not only the notified transaction but also any arrangements constituting restrictions that are directly related and necessary to the implementation of the merger, and that have been described by the involved parties in the notification form. The RCC issued specific guidelines with respect to ancillary restrictions, the principle set out here following those included in the EC's Notice on Ancillary Restraints.

7. Third Party Rights, Confidentiality and Cross-Border Cooperation

7.1 Third Party Rights

Third parties may submit comments and when they demonstrate sufficient interest, they are heard by the RCC at the hearing. The Competition Act does not automatically give third parties (with sufficient interest) rights to access the file. The RCC may grant access upon request and subject to the protection of confidential information.

7.2 Confidentiality

Third parties are informed of a notified concentration via the publication of a notice on the RCC's website, mentioning the name of the involved undertakings, their country of origin, the nature of the concentration, the involved economic sectors and the date of receipt of the notification. Based on the parties' reasoned request, the RCC may delay publication of the press release to avoid any damages incurred by the parties as a result of the disclosure prior to the implementation of the operation.

Any party submitting information to the RCC can indicate for which information it claims confidential treatment and must at the same time submit proposed non-confidential versions of such submissions. The RCC's president will review the claims. If the president rejects the confidentiality treatment request, the party can appeal the decision, along with the final decision issued by the RCC with respect to the notified transaction, which is published on its website only after due account has been taken of the parties' legitimate interest in respect of confidential information.

7.3 Cooperation With Other Juridictions

The Competition Act (Article 24 (7)) permits the RCC to enter into arrangements with other EU competition authorities in other countries for the exchange of information provided that the receiving authority will (i) use the information received only in connection with the application of competition rules and (ii) treat the information received as confidential. The RCC also participates in the International Competition Network (ICN) and the European Competition Network (ECN).

8. Appeals and Judicial Review

8.1 Access to Appeal and Judicial Review

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 from 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.

9. Recent Developments

9.1 Recent Changes or Impending Legislation

Based on the amendments that entered into force in 2015, the jurisdictional turnover thresholds may be amended by decision of the Plenum of the Competition Council (CC). But, before making the change, the RCC must obtain the approval of the Ministry of Economy and Commerce. Nevertheless, the new thresholds will become applicable following the lapse of a six-month period as of the publication in the Official Gazette of Romania.

2016 brought important clarifications regarding the relationship between parallel proceedings conducted by the SCND and the CC, with respect to economic concentrations that present risks for national security. According to the new rules, the proceedings before the CC will be suspended until the SCND decides whether a risk to national defence exists or not. In addition, the new provisions rule the effect of the SCND's decision of prohibition of the economic concentration that presents risks for national security in relation to the CC. Now, if the SCND issues a prohibition decision, the procedure in front of the CC will end and the CC will inform the notifying party in this respect.

The procedure of recognition has also been detailed in the secondary instructions of the CC entered into force in November 2016. Now it is expressly mentioned that if the undertaking for which the RCC accepted the recognition as a mitigating circumstance will challenge in court the RCC's decision then it will lose the benefit (reduction) afforded to it.

On 15 June 2017 the RCC published a proposal for a new merger regulation. As a general note, the proposal (i) is trying to make much clearer the process, documents and information required for a notification to be considered as

being effective, and (ii) is focusing on a simplified assessment, mentioning that if between the involved parties there are vertical and horizontal relationships that may create a co-ordination issue, the RCC will go to a full assessment and notification form.

9.2 Recent Enforcement Record

The RCC has never issued prohibition decisions. With respect to the fines applied, the RCC has issued sanctioning decisions for failure to notify and non-observance of the standstill obligation during the last three years. However, the number of sanctioning decisions is lower compared with previous years, as companies are now much more aware of the merger control requirements. In 2016 the level of the aggregate fine applied by the RCC for failure to comply with merger control rules was approximately EUR194,000; much lower if compared with the total fines applied for antitrust breaches, which amounted to approximately EUR14.5 million.

9.3 Current Competition Concerns

The RCC had a full year concerning its merger control activity in 2016. The merger control decisions issued by the RCC represented approximately 70% of the total number of decisions issued by the RCC. As a general remark, all the RCC's decisions were issued during Phase I of the notification proceedings. In 2016, almost 24% of the notified concentrations received the RCC's clearance after undergoing the so-called simplified assessment procedure.

The RCC continues its process of undergoing complex assessments, increasing the usage of economic indicators and analysis (mainly with respect to analysis of the unilateral effects, such as gross upward pricing pressure and upward pricing pressure). Also, with respect to ancillary restrictions, the RCC is still very strict. As of 2014, it seems that in order for the ancillary restriction to be analysed by the RCC together with the notified transaction, the parties should expressly require this analysis.

Popovici Nițu Stoica & Asociații
239 Calea Dorobanti, 6th Floor
Bucharest 1st District,
Postal Code 010567
Romania

Tel: +40 21 317 79 19
Fax: +40 21 317 85 00
Email: office@pnsa.ro
Web: www.pnsa.ro