
THE MERGERS & ACQUISITIONS REVIEW

TENTH EDITION

EDITOR
MARK ZERDIN

LAW BUSINESS RESEARCH

THE MERGERS & ACQUISITIONS REVIEW

Tenth Edition

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EDITOR'S PREFACE

The past year has seen a boom in dealmaking, with many markets reaching post-crisis peaks and some recording all-time highs. Mega-deals have been at the heart of the expanding market, with companies tapping into cash piles and cheap debt to fund transformational deals. Looking behind the headline figures, however, a number of factors suggest dealmaking may not continue to grow as rapidly as it has done recently.

In Europe, the European Central Bank was forced to start a programme of quantitative easing in the wake of consistently low growth, a full seven years after the Bank of England and the Federal Reserve undertook their programmes. US interest rates have also tightened for the first time since the financial crisis, contributing, according to some commentators, to the wobbly US markets that marked the start of 2016. Yet this uncertainty has now seemingly passed, and the Federal Reserve is contemplating raising rates further. Meanwhile, eurozone and UK interest rates look likely to remain low for some time to come due to continued slow growth and low inflation in the region. How the markets react to this bifurcation of monetary policy across the Atlantic will shape dealmaking in the year to come.

Elsewhere, there have been some concerns that falling commodities prices (particularly that of oil) have been driven by a fall in market confidence. However, it seems that this view is somewhat simplistic. It is more likely that prices have fallen due to excess capacity that built up to service Chinese industrialisation and somewhat weak growth figures. The recent uptick in prices should be seen as an indicator that perhaps the market overreacted and fundamentals remain strong.

Perhaps one of the biggest factors that poses a threat to dealmaking in 2016 is the political uncertainty affecting much of the world. In the UK, the first half of the year was clouded by the referendum on the UK's continued membership of the EU, and in the US, the presidential election result is likely to have a considerable impact on markets. It is hoped that the resolution of this uncertainty in the second half of the year will foster an environment in which markets can thrive.

I would like to thank the contributors for their support in producing the 10th edition of *The Mergers & Acquisitions Review*. I hope that the commentary in the following chapters will provide a richer understanding of the shape of the global markets, together with the challenges and opportunities facing market participants.

Mark Zerdin

Slaughter and May

London

August 2016

Chapter 47

ROMANIA

Andreea Hulub, Alexandra Niculae and Vlad Ambrozie¹

I OVERVIEW OF M&A ACTIVITY

Among the 11 countries in the Central South-Eastern Europe region, Romania has witnessed a particularly dynamic evolution visible in terms of both overall number of transactions, as an indicator of investor interest, and increased average deal value, as an indicator of improved market stability.

Thus the market has generated a good number of transactions in a diverse range of areas, including financial services, real estate, energy, agribusiness, retail and healthcare services. The market continued to be dominated by strategic investors, with established players consolidating their positions; there were also a couple of deals conducted by institutional investors, but this was only an exception confirming the continuing dominance of the strategic players.

II GENERAL INTRODUCTION TO THE LEGAL FRAMEWORK FOR M&A

An EU Member State since 2007, Romania has incorporated in its M&A legal framework the main body of relevant European law, having already implemented all pre-eminent directives in the field, such as the Merger Directive (2005/56/EC), the Prospectus Directive (2003/71/EC), the Takeover Directive (2004/25/EC), the Insider Dealing and Market Abuse Directive (2003/6/EC) and, recently, the Alternative Investment Fund Managers Directive (2011/61/EU).

M&A transactions in Romania are largely regulated by Company Law No. 31/1990, Trade Registry Law No. 26/1990 and the Civil Code.

¹ Andreea Hulub is a managing associate and Alexandra Niculae and Vlad Ambrozie are senior associates at Popovici Nițu Stoica & Asociații.

In addition to the above-mentioned regulations, listed companies are subject to special rules provided by the Capital Markets Law No. 297/2004 and to the regulations issued by the Financial Supervisory Authority (FSA). Among these, Regulation No. 1/2006 on issuers and securities operations and Regulation No. 6/2009 regarding exercise of certain shareholders' rights in connection to companies' general shareholders' meetings, as well as Law No. 74/2015 on managers of alternative investment funds, stand out as the most significant.

M&A deals involving banks and non-banking financial institutions, insurance companies and other specialised vehicles are subject to additional sector regulations.

The Romanian merger control rules are provided by Competition Law No. 21/1996 under the Romanian Competition Council instructions, guidelines and control, with limitations derived from the exclusive jurisdiction reserved by the European Commission under the EU Merger Control Regulation of 2004.

III DEVELOPMENTS IN CORPORATE AND TAKEOVER LAW AND THEIR IMPACT

The corporate and takeover legal framework in Romania is generally aligned with various EU corporate directives, such as the Takeover Directive, the Shareholder Rights Directive (2007/36/EC) and the Merger Directive (2011/35/EC), as well as with the OECD principles of corporate governance.

The Romanian corporate governance and takeover system is thus a stable one, ensuring a level playing field for shareholders and stakeholders, a good level of access to information and company transparency, and delimitation of board and management responsibilities and related liability.

Having reached maturity, the corporate and takeover legal framework is a sound one, with no significant regulatory amendments having recently been passed.

In the capital markets sector, Romania finally implemented the Alternative Investment Fund Managers Directive (2011/61/EU) through Law No. 74/2015 thus aligning to European standards defining minimum transparency and risk management policies at the level of alternative investment funds managers.

On the Bucharest Stock Exchange, the newly created alternative trading system, AeRO, has met investors' expectations, with a number of additional fresh companies listing on this market platform and building up momentum.

In the financial services sector, Romania's National Bank Regulation No. 5/2013, as subsequently supplemented by Regulation No. 5/2014, has added, *inter alia*, additional corporate governance and capital quantity and quality requirements for financial institutions.

As a Member State, Romania will keep pace with the developments of the European company law and corporate governance rules, and will further extend its transparency requirements, shareholder protection and engagement principles and safeguards.

IV FOREIGN INVOLVEMENT IN M&A TRANSACTIONS

Positive projections have been confirmed, and after a spectacular start of 50 per cent advance in Q1 2015, the year under review recorded a +€3 billion value of foreign direct investment. This translates into a 25 per cent increase by comparison with the results of 2014, and stands out as the best investment year post-crisis.

The view that Romania is a platform for investments in Eastern Europe keeps strengthening. Already a low tax jurisdiction, the new Fiscal Code, in force as of 1 January 2016, is expected to be a game-changer for the upcoming period. Investors targeting Romania are closely connected to the legislative development, and the fiscal consolidation process was one of the most anticipated elements. Next on the priorities list, and already well under way are structural reforms in healthcare, infrastructure works being massively reloaded and the implementation of the new public procurement legislation.

Romania has notably succeeded in preserving its geopolitical stability, and has remained unaffected by current regional political developments. Strong proof that the regional synergies add up is the fact that Romania has hosted two of the largest transactions in Central and Eastern Europe (CEE), namely the approximately €700 million acquisition of UniCredit Tiriac Bank and the approximately €700 million merger between Banca Transilvania and Volksbank Romania.

In such a landscape, the main M&A foreign investors remain those originating in the United States and the western EU economies, such as the Netherlands, Great Britain, Austria, Germany and France. South Africa remains among the most acquisitive nations, with special regard going to the New Europe Property Investments group, which, for the fourth year in a row, was involved in one of the largest transactions in the real estate sector (the acquisition of Iris Titan Shopping Centre in a €90 million deal).

The figures keep improving yearly, and the M&A sector looks ready for another excellent year of performance. Projections for foreign investment are positive, and this is confirmed by the preliminary results for Q1 2016, when the disclosed value kept its sustained pace.

V SIGNIFICANT TRANSACTIONS, KEY TRENDS AND HOT INDUSTRIES

During 2015, the most attractive sectors for M&A in Romania proved to be financial services, real estate, energy and natural resources, agribusiness, retail and healthcare services.

i Financial services

The financial services sector dominated the M&A market in 2015, being characterised by high levels of transaction activity and some high value deals, the most important finalising with changes at the shareholder level.

The following transactions shared the spotlight:

- a* The largest 2015 M&A deal in the banking sector was the acquisition of Volksbank Romania, the local unit of Österreichische Volksbank AG, by Banca Transilvania, the biggest credit institution with local majority equity. According to financial market sources, the transaction was worth €711 million in total, and launched Banca Transilvania at second place on Romania's banking market.
- b* Another significant transaction on the Romanian banking sector was the exit of the Romanian investor Ion Tiriac from UniCredit Tiriac Bank. Ion Tiriac sold its 45 per cent stake to the majority shareholder of the bank, the Italian group UniCredit, in exchange for an unofficial price of €700 million, according to financial market sources. UniCredit Bank Austria increased its stake from 50.6 to 95.6 per cent of UniCredit's share capital.

c The European Bank for Reconstruction and Development (EBRD) reduced its equity stake in Banca Transilvania by selling 86.76 million shares (a 2.86 per cent stake) in an accelerated book build placement on the Bucharest Stock Exchange. Following the sale, the EBRD continues to hold 11.47 per cent of Banca Transilvania's shares. The Bank has been the largest shareholder of Banca Transilvania since 2001, when it acquired a 15 per cent stake.

The EBRD is a leading institutional investor in Romania, with almost €1.5 billion invested in 75 projects over the previous country strategy period. In aggregate, the Bank has invested over €7 billion in the country to date, and has also mobilised more than €14 billion from other financing sources in all sectors of the country's economy.

d The biggest transaction with non-performing loans in the banking sector history was conducted by BCR (controlled by Austria's Erste Group), which sold a non-performing loans package worth €1.2 billion to a consortium of Deutsche Bank, International Finance Corporation (IFC) and APS Holding.

ii Real estate

2015 was a strong year for the real estate sector, with almost all notable players being involved in investments and new development projects. While office and retail have remained most prominent, and the logistics sector has seen greatly increased exposure, the recently resurrected residential sector is unfortunately once again on the verge of becoming a frozen market. This is due to upcoming regulations allowing mortgagors, under certain conditions and thresholds, to simply pass the ownership over households to the banks instead of payment. As lenders were shocked by such an approach, coupled with certain key elements of the regulations that are debatable from a legal standpoint, the upcoming period will bring nothing but uncertainty, with lenders attempting to stop the enforceability of the upcoming regulations and, in any case, with a strong deterioration of the commercial terms for the granting of mortgage loans.

With a focus on the retail and office sectors, which were the market's stars, the following were the most important real estate transactions.

One of the biggest real estate transactions involved New Europe Property Investments acquiring Iris Titan Shopping Centre. The seller was Aberdeen Asset Management Deutschland AG, while the reported deal value was €90 million. The South African fund also delivered two new shopping centre projects, Mega Mall in Bucharest and Coresi in Brasov. Last year also saw the completion of the extensions of two other retail projects, Deva Shopping Center and Severin Shopping Center.

Global Worth's investment programme continued in 2015 with the acquisition of the second phase of Skanska's Green Court (in a €47 million deal), while German GLL fund consolidated its Romanian share with the acquisition of two office projects, namely Floreasca Park (in an approximately €100 million deal) and Victoria Center (in a €27 million deal).

In logistics, a growing field, it is worth mentioning Blackstone acquiring the entire logistics portfolio of Immofinanz further to a regional €500 million deal. While Blackstone steps into CEE logistics with approximately 1 million square metres, Immofinanz completed its reorientation to exclusively focus on retail and commercial segments.

iii Energy and natural resources

In 2015, the energy and natural resources sector was not in the spotlight as in previous years, being a consolidation year in which transactions were an effect of international arrangements, as follows:

- a* Hungary's oil and gas group, MOL, completed its acquisition of ENI Romania, including 42 Agip-branded service stations. This transaction, with a value of €50 million, was part of a complex international deal in which the Hungarian group bought 208 service stations in Romania, the Czech Republic and Slovakia from Italian group ENI.
- b* General Electric (GE) finalised the acquisition of the power and grid businesses of the French conglomerate Alstom in a transaction of €12.35 billion, which is the biggest industrial investment GE has ever made. In Romania, the transaction involved the acquisition of Alstom's shares in Alstom General Turbo SA and Alstom Grid Romania SRL by GE.
- c* Romanian investment fund Fondul Proprietatea sold 4.15 per cent of the stakes in local gas producer Romgaz through an accelerated private placement on the Bucharest Stock Exchange and London Stock Exchange for a total of €103.1 million, with a discount of 6.4 per cent to the last closing price. Upon completion of the transaction, the fund still holds 5.85 per cent of the share capital of Romgaz.
- d* Investment fund Abris Capital grew its investment portfolio in Romania with the acquisition of tissue paper manufacturer MG-Tec, controlled by the local entrepreneur Ioan Tecar. Abris took over a stake in four companies owned by MG Tec Group, Pehart Tec, Metalicplas Distribution, Metalicplas Impex and Samus Constructii, as well as a 25 per cent stake held by the EBRD at Pehart Tec factory.

iv Agribusiness, retail and healthcare services

Alongside the above-mentioned market segments, agribusiness, retail and fast-moving consumer goods (FMCG) and healthcare services were particularly active areas for acquisitions in 2015.

Agribusiness

Romania has significant agricultural growth potential, given its extensive resources, and the need for heavy investment offering vertical and horizontal expansion and consolidation opportunities. Furthermore, projects are encouraged by both EU and government subsidies available for investments in the sector.

In line with previous years' trends, 2015 M&A activity in this sector was dominated by strategic investors, be it already established players consolidating their local presence or extending their portfolios, or new entrants penetrating the local market. As a general trend, intensive acquisitions of agricultural land by institutional investors carried on with new acquisitions or consolidations were continued by big institutional investors, insurance groups or investment funds. Some example in this regard are:

- a* The takeover of the largest grains port operator at Constanta Port, United Shipping Agency, by giant Nidera in a deal of more than €100 million. For Nidera, the acquisition represented a part of their larger plan of expansion in Romania, while direct access to the Black Sea was of key importance for the group.

- b* The acquisition by American group ADM of full control in Minmetal and North Star Shipping, two important port operators at Constanta Port, in a transaction evaluated at around €60 million.
- c* The acquisition by giant TransOil of Racova Group, a large agricultural business operating around 45,000 hectares of land, a number of sorting and warehousing facilities, and various processing plants. The transaction was evaluated at around €110 million and also included a financing component provided by IFC.
- d* The acquisition by Irish group Origin Enterprise of two important fertiliser distributors, Comfert Bacau and Redoxim, in a transaction amounting to around €50 million.

Retail and FMCG

Similarly to previous years, the retail and the FMCG industries accounted for some of the year's most important transactions in Romania. Some examples are as follows: retailer Carrefour acquired all 86 Billa supermarkets from German Rewe Group in a transaction of almost €100 million. Carrefour has in this way reached the second position on the retail sector after German retailer Kaufland, and outpaced competitors such as Auchan and Cora; French group Lactalis acquired the majority stake in Albalact, Romania's biggest dairy producer, in a deal of around €90 million; and Polish group Maspex Wadowice acquired Rio Bucovina, a key player on the mineral water segment, in a transaction estimated to exceed €10 million.

Healthcare services and pharma

In 2015, the healthcare services and pharma segment saw a complete turnaround by reference to 2014's inactivity. With institutional investors' continuing reluctance in expectance of improved predictability and more stable market conditions, strategic players have continued consolidation movements. Only one notable deal was done by an institutional investor.

The most significant transactions included:

- a* The acquisition by investment fund Mid Europa Partners of Regina Maria, the second-largest healthcare services chain in Romania, in a transaction exceeding €100 million.
- b* MedLife, the market leader in the private healthcare sector, continued consolidating its position through the acquisition of a number of smaller medical clinics – Diamed Center, Prima Medical, Sama Medical Center and Ultratest – and of the majority stake in a stem cell bank.
- c* Diaverum, one of the largest dialysis services providers, acquired 15 new dialysis and nephrology centres, thus doubling its network in Romania.
- d* Pharmacy chain Help Net acquired 19 pharmacies from competitor Centrofarm, while Farmaceutica Remedia acquired seven new pharmacies and five functioning permits from insolvent competitor ADM Farm.

VI FINANCING OF M&A: MAIN SOURCES AND DEVELOPMENTS

i Overview

During 2015, the Romanian banking sector was well capitalised and liquid, and the volume of non-performing loans decreased significantly.

Banks cleaned up their balance sheets either by way of sales of non-performing loans to third parties or by removing the exposure from the balance sheets following an official

request of the banking supervisor. As such, the risks associated with high non-performing loans have been diminished by the prudent loan-loss provisioning policy. According to the Romanian Banking Association, the Romanian banking sector is one of the few banking systems in the European Union that did not require financial support from public funds during the financial and economic crisis.

The loan-to-deposit ratio in the banking sector witnessed a modest recovery generated by the reduction of deposit activity, combined with slightly favourable lending developments.

Foreign financing continued to decline, which was offset by the pick up in funding from local sources. Following a prudent lending strategy, domestic banks continued to focus in 2015 primarily on short-term lending. Although this approach generated an increase in private sector loans with maturity of up to one year, the volume of outstanding credit allowed long-term loans to still hold the main share of the financial market.

ii Debt-to-equity ratio

One of the negative consequences of the financial tensions in the eurozone was the increase in equity requirement, which has full effects on the Romanian market. As such, in corporate financing the level of equity required for investors has been, unsurprisingly, significantly increased by the majority of banks.

Therefore, although banks are still willing to carry on disbursing loans, the number of potential eligible borrowers undoubtedly fell.

iii Giving-in-payment law

A hot point that came to public notice recently was the giving-in-payment law, which allows, under certain conditions and thresholds, mortgage debtors who cannot repay their loans to transfer the ownership of the mortgaged assets to the bank and close the loan. This controversial law has triggered waves of criticism and raised concerns from various sides, with the bank supervisor as well as investors and commercial banks opposing to it.

The giving-in-payment law determines that the banks must revise their risk appetite when it comes to lending, with lenders no longer deciding only based on the borrower's capacity to repay the loan, but also considering the potential loss of value of the mortgaged property. As a consequence, the banks have tightened their lending criteria and increased down payments, giving rise to additional pressure on banks and limiting access to finance.

VII EMPLOYMENT LAW

Further to the various adjustments made to the labour regulatory framework in recent years, Romania's employment legal framework is now stable and reliable, ensuring adequate protection for both employers and employees or their representative bodies.

Nonetheless, in 2015, there were some pro-employee amendments to the labour regulatory framework (e.g., an increase of the national minimum gross salary; cancellation of an employer's possibility to suspend an individual labour agreement throughout the duration of disciplinary or criminal investigations regarding employees; additional social protection for union leaders); however, these did not trigger important consequences in an M&A context.

Generally, an M&A deal in Romania should consider the following minimal aspects as regards labour resources and employment matters.

i Overview

Management of labour resources requires legal intervention at both an individual and collective employment level.

At the individual level, an employer currently has seemingly wide flexibility in opting for a fixed-term labour contract or for a temporary work contract, and can extend this up to a period of 36 months.

As regards employees' evaluation and redundancy grounds, the 'job performance' notion and evaluation criteria can be used by employers to ensure a flexible evaluation of employees by reference to the realities of the demanding and dynamic labour market.

At the collective level, employers benefit from the liberty of opting whether to add an additional level of protection for their employees (i.e., that of a collective bargaining agreement). Thus, although national collective bargaining agreements have been completely eliminated, the industry level agreements are applicable only if the employer company has participated in its negotiation.

ii Scrutiny of employment within M&A

Looking at (individual) employment matters in an M&A transaction in Romania would require particular focus on the following fundamental elements:

- a* conciliation between individual employment contracts and collective labour relations (if applicable);
- b* salary practices, in respect of which particular importance should be given to special non-compete clauses and related bonus arrangements imposing payment obligations on the employer, as well as to the 'mandatory' types of add-ons or bonuses; and
- c* health and safety compliance, involving mandatory documentation, appointment of specialised personnel or outsourcing to authorised providers, performance of periodic training, etc.

Within an assessment of the collective employment relations one shall consider at least the forms of employees' representation and affiliations to trade union federations; the more favourable provisions secured through collective bargaining agreements at industry level (if applicable); and the mechanics for the resolution of any collective labour dispute.

Additionally, if the deal is structured as a transfer of an undertaking (TUPE transfer), as regulated through Directive 2001/23/EC (implemented in Romania through Law No. 67/2006), careful attention should be directed towards the particular rights of the transferred employees and the buyer's corresponding obligations.

All things considered, the legislative climate in Romania regarding labour regulation accommodates the implementation of different transaction structures, while allowing employers a good degree of flexibility in labour resources integration and management.

VIII TAX LAW

As previously mentioned, the new Fiscal Code entered into effect starting 1 January 2016, as well as related secondary legislation. Among the changes, matters of particular interest to M&A transactions include:

- a* transfer pricing clarifications;
- b* changed conditions for tax-neutral reorganisations;
- c* new thin cap limitations;

- d* changes in the taxation of dividend payments;
- e* changes in the VAT rate; and
- f* the introduction of simplification measures for certain real-estate transactions.

i Transfer pricing developments

The concept of ‘control’ for the purpose of identifying related party relationships has been clarified. As such, it is considered that a person effectively controls a legal entity if it is established that, from a practical and legal standpoint, by utilising information or documents, or both, the administrator or management personnel have the capacity to decide on the activity of the legal person by concluding transactions with entities under common control, or the person with management functions has the capacity of shareholder or director.

In addition, clarifications have been brought to the application of the procedure for the avoidance of double taxation between related parties further to transfer pricing adjustments performed by tax authorities.

ii Tax-neutral reorganisations

A partial spin-off entails the transfer of one or more business branches towards one or more existing or newly established companies, while the entity being spun-off retains at least one business branch against the issuance of participation titles towards the shareholders of the spun-off entity representing the capital of the beneficiary company (and, if applicable, a cash amount not exceeding 10 per cent of the nominal value or accounting value of the titles).

The requirements that the transferred items should constitute one or more branches of activity, while at least one branch of activity should be retained by the spun-off company, have been newly introduced. A branch of activity is deemed to be the totality of assets and passives belonging to a certain division that form, from an organisational perspective, an independent activity, namely an entity capable of functioning through its own means.

In cases where the above-mentioned conditions are not met, the spin-off will not be tax neutral from a corporate income tax point of view.

From a VAT perspective, spin-offs and mergers are deemed as being outside the scope of VAT transactions (‘transfer of assets’, ‘transfer of business as a going concern’) without additional testing; nevertheless, with the lack of a definition of the terms ‘merger’ and ‘spin-off’ in the VAT legislation, the general definition provided in the Companies Law should be observed.

iii Interest income – thin cap limitations

The deductibility capping for interest on inter-company loans in foreign currency has been lowered from 6 to 4 per cent. The interest amount exceeding this capping is permanently disallowed (non-deductible expense).

The secondary capping, depending on the debt-to-equity ratio, continues to apply (i.e., interest and net losses from foreign exchange rate differences connected to the loan are deemed as non-deductible in cases where the debt-to-equity ratio is higher than 3:1 or is negative; such items can be carried forward indefinitely and deducted in periods when the debt-to-equity ratio allows it).

iv Tax treatment of dividend payments

The standard domestic dividend withholding tax applicable for non-resident shareholders has been lowered from 16 to 5 per cent. The relief provided under the Parent–Subsidiary Directive or bilateral conventions for the avoidance of double taxation continue to be applicable.

Dividends obtained by resident shareholders are non-taxable if obtained from Romanian subsidiaries, but are subject to 5 per cent dividend withholding tax if the shareholder does not hold a minimum participation of 10 per cent for an uninterrupted period of 1 year; non-taxable if obtained from a subsidiary located in the European Union or in a jurisdiction with which a convention for the avoidance of double taxation has been concluded if the Romanian shareholder holds a minimum participation of 10 per cent for an uninterrupted period of one year (additional conditions exist).

At the same time, certain transactions previously assimilated to dividend payments cease to fall under this category (but are generally taxable under different categories).

v VAT – standard rate and simplification measures for real-estate

The VAT standard rate has been lowered from 24 to 20 per cent.

In addition, simplification measures applicable for inland transactions have been extended to include, *inter alia*, the delivery of constructions and land (in circumstances where such assets are subject to VAT either by default or further to the seller's option).

The simplification measures apply only in circumstances where both the seller and the buyer are registered for VAT purposes in Romania. Under the simplification measures, the seller issues the invoice without VAT (reflecting only the value of the transferred assets) and the beneficiary applies VAT on the transaction through the reverse-charge mechanism. This ensures a cash-flow benefit for the beneficiary (but the input VAT incurred under the reverse-charge mechanism is subject to the same deduction restrictions as input VAT incurred under the normal regime).

vi VAT – single fiscal group

The 'single fiscal group' simplification, which allows Romanian taxable persons to pay VAT to the state budget based on a consolidated VAT return (in cases where certain conditions are met), can now be implemented even if the persons forming the group are not administered by the same tax administration.

The single fiscal group continues to not be a VAT group within the meaning of the EU legislation, as transactions between the members of the VAT group are subject to VAT under general rules.

IX COMPETITION LAW

The merger control activity of the Romanian Competition Council during 2015 decreased in volume by 17 per cent. By number of files, the merger control assessments involved prominently the following markets: food, finance and energy.

In 2015, the Competition Council used the special derogation procedure twice, and allowed the acquirers to implement control rights over the targets before obtaining the merger control clearance. One of these decisions referred to the merger between Banca Transilvania

and Volksbank Romania. Here, the Competition Council took into consideration that the acquirer needed to find a feasible solution for the retail clients of the target that were engaged in Swiss Franc loans and had difficulties in observing the reimbursements.

With almost two decades of practice and some very intense recent years following *de facto* the principles laid down in the EU Merger Control Regulation of 2004 and subsequent guidelines, the Romanian Competition Council has reached an era of legal pragmatism and efficiency. In a report on policy and competition law in Romania, the OECD found that more than 30 per cent of notified economic concentrations were cleared by the Competition Council in the simplified assessment procedure. Mergers that qualify for the simplified procedure do not pose risks to effective competition on the market. In this context, the OECD recommended some legislative changes. Probably one of the most important changes in the merger control area is that the Competition Council gained the power to change, if it deems necessary, the turnover thresholds above which an economic concentration falls under the Competition Council's scrutiny. Before changing the turnover limits, the Competition Council must obtain the opinion of the Ministry of Economy and, once obtained, the new thresholds will be approved by a decision of the Competition Council's Plenum. Such new attributions should turn into an effective instrument for the Competition Council to increase its efficiency and reduce administrative costs by lowering the number of risk-free notified economic concentrations through higher turnover thresholds.

During the merger control assessment, and, especially in the context of defining the relevant markets, the Competition Council attributes an important role to the results found in its surveys on certain markets. Periodically reviewing various sectors of industries and markets and preparing related reports are some of the Competition Council's responsibilities.

In the 2015 survey on competition in key sectors, the Competition Council analysed, *inter alia*, the aggregate index of competitive pressure for certain industries of the national economy. The Competition Council found on the one hand that the industries that are the most predisposed towards free competition are architectural services, IT services and consultancy, distribution of spare parts for the automotive industry, wholesale distribution of automobiles and the production of drugs. On the other hand, the industries that are held to be the most predisposed towards anticompetitive behaviours include retail fuel distribution, rail transport services for passengers and goods, motor vehicle liability insurance, notary services, and the production and sale of cement.

A notable activity of the Competition Council in 2015 was launching for public consultation the preliminary reports of sector inquiries concerning the following markets: the primary market for wood, the market for access services to the electronic communication infrastructure in Bucharest, the motor insurance market and the market for insolvency practitioners' services.

For example, in a survey on the beer market, the market was held to be characterised by significant entry barriers due to the high value of the initial investment in production, the high marketing and publicity costs that are necessary for constructing and promoting the brand, and the creation of a distribution network with national coverage.

X OUTLOOK

There are many pro-growth predictions and forecasts for 2016.

By reference to macroeconomics and fundamental parameters, there is plenty of growth potential – the government has taken strong measures to attract foreign investments in a full array of domains by strengthening Romania's position as a low-tax jurisdiction and a place for establishment in view of investments and M&A in Eastern Europe.

Romania is also making tremendous progress in improving public services in general, and in fighting against corruption and other illegal practices in particular, to the extent that it is already named frequently as a role model in the region.

In this context, fresh new capital is expected, particularly in areas like IT and telecom, agribusiness, and energy and natural resources.

On the financial services segment, banks and other financial institutions will continue their non-performing loans clearance, with some high-profile deals being planned.

As regards real estate, restructuring and workout processes will continue in 2016 in parallel with the arrival of big portfolio deals.

The agribusiness sector will continue to grow organically, and new acquisitions are likely to happen, from private equity leveraging of land to conglomerates involving chain food processors and manufacturers, related logistics and distribution networks.

Finally, there is still a great deal to privatise in Romania. The government is expected to re-launch its privatisation projects after many years of rather low action in this area.

Appendix 1

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