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The International Comparative Legal Guide to:

Merger Control 2017

13th Edition

A practical cross-border insight into merger control issues

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Country Question and Answer Chapters:

EDITORIAL

Welcome to the thirteenth edition of *The International Comparative Legal Guide to: Merger Control*.

This guide provides the international practitioner and in-house counsel with a comprehensive worldwide legal analysis of the laws and regulations of merger control.

It is divided into two main sections:

Four general chapters. These chapters are designed to provide readers with an overview of key issues affecting merger control, particularly from the perspective of a multi-jurisdictional transaction.

Country question and answer chapters. These provide a broad overview of common issues in merger control laws and regulations in 50 jurisdictions.

All chapters are written by leading merger control lawyers and industry specialists, and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editors, Nigel Parr and Catherine Hammon of Ashurst LLP, for their invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at www.iclg.co.uk.

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1 Relevant Authorities and Legislation

1.1 Who is/are the relevant merger authority(ies)?

The competent merger control authority in Romania is the Romanian Competition Council ("RCC"). In the case of mergers that may have an impact on national security, notification to the Superior Council for National Defence ("CSAT") is also required.

1.2 What is the merger legislation?

The main legislative acts regulating economic concentrations are:

- Law no. 21/1996 on competition ("Competition Law"), republished, as further amended and supplemented.
- Regulation on economic concentrations ("Merger Regulation"), approved by RCC Order no. 385/2010, with the subsequent amendments.
- Guidelines on the concepts of concentration, concerned undertaking, full-function joint ventures and calculation of turnover, approved by RCC Order no. 386/2010.
- Guidelines regarding restrictions directly linked and necessary for the implementation of concentrations, approved by RCC Order no. 387/2010.
- Guidelines for the implementation of Article 32 of the Competition Law no. 21/1996 on the calculation of the clearance fee for economic concentrations, approved by RCC Order no. 400/2010, with the subsequent amendments.
- Guidelines on the calculation of sanctions for the misdemeanours stipulated in Article 50 and Article 50, Part 1 of the Competition Law, approved by RCC Order no. 419/2010.
- Guidelines on the calculation of sanctions for the misdemeanours stipulated in Article 51 of the Competition Law, approved by RCC Order no. 420/2010.
- Guidelines on remedies applicable for cases of economic concentrations, approved by RCC Order no. 688/2010.
- Guidelines on rules of access to the Competition Council file, approved by RCC Order no. 438/2016.
- Regulation on tariffs charged for procedures and services provided under the Competition Law and the regulations issued for its implementation, approved by RCC Order no. 426/2011, with the subsequent amendments.
- Regulation on application of sanctions by the RCC, approved by RCC Order no. 668/2011.

1.3 Is there any other relevant legislation for foreign mergers?

The merger control rules set out under question 1.2 above apply equally to domestic and foreign-to-foreign mergers.

1.4 Is there any other relevant legislation for mergers in particular sectors?

There are no special merger control rules for particular sectors. Special sectors which are sensitive from a national security perspective may also fall under the analysis of the CSAT.

2 Transactions Caught by Merger Control Legislation

2.1 Which types of transaction are caught – in particular, what constitutes a "merger" and how is the concept of "control" defined?

The merger control legislation applies to mergers and acquisitions of control over undertakings or parts of undertakings (together referred to as "economic concentrations").

"Control" is defined as deriving from rights, contracts or any other elements which, together or separately, confer to an undertaking or person, the possibility to exercise a decisive influence over an undertaking. The definition of control is sufficiently broad to encompass all types of transactions that bring about changes in control (share deals, asset deals, shareholder agreements, etc.).

2.2 Can the acquisition of a minority shareholding amount to a "merger"?

The acquisition of a minority shareholding is deemed to amount to a concentration only if it implies an acquisition of control. This may occur if the respective minority shareholding is associated with controlling rights, e.g. decisive veto rights in joint control cases providing the possibility to block decision-making processes in negative sole control cases.

2.3 Are joint ventures subject to merger control?

The setting-up of a full-function joint venture may be subject to merger control in Romania if certain turnover thresholds are

exceeded. Full-function joint ventures are defined as jointly controlled undertakings which may carry out their business on a long-lasting basis and which may perform all functions of an autonomous economic entity. The Romanian criteria for assessing whether such requirements are met mirror the principles defined in the European Commission's Consolidated Jurisdictional Notice.

2.4 What are the jurisdictional thresholds for application of merger control?

The merger control review process applies to concentrations involving undertakings with a combined worldwide turnover for the previous financial year exceeding EUR 10,000,000. Furthermore, at least two of these concerned undertakings must each have had a Romanian turnover exceeding EUR 4,000,000 for the previous financial year. The above-mentioned thresholds may be amended by decision of the Plenum of the Competition Council, and such new thresholds shall be applicable after six months from the publication of the decision in the Romanian Official Gazette.

2.5 Does merger control apply in the absence of a substantive overlap?

Merger control applies whenever there is an economic concentration meeting the conditions mentioned under question 2.4, regardless of the absence of substantive overlaps between the concerned undertakings. However, the absence of substantive overlap will make the process less complex (following a simplified notification procedure).

2.6 In what circumstances is it likely that transactions between parties outside your jurisdiction ("foreign-to-foreign" transactions) would be caught by your merger control legislation?

Foreign-to-foreign transactions are also subject to the merger control of the RCC, whenever the turnover thresholds defined under question 2.4 above are met (of course, the Romanian thresholds must be assessed in this case, and direct sales to Romania should be taken into account).

2.7 Please describe any mechanisms whereby the operation of the jurisdictional thresholds may be overridden by other provisions.

Except for the one-stop-shop principle and the referral mechanisms under the EC Merger Regulation, there are no further mechanisms whereby the jurisdiction of the RCC may be overridden.

2.8 Where a merger takes place in stages, what principles are applied in order to identify whether the various stages constitute a single transaction or a series of transactions?

The Competition Law provides that acquisitions of different assets taking place between the same undertakings within a period of two years are considered as a single concentration, finalised on the date of the last transaction. This mechanism aims to avoid artificially partitioning a business in order to avoid the notification requirements. This is also applicable in the scenario where the first operation is notifiable, the threshold conditions being met, and is followed, within two years, by another operation between the same parties, the threshold conditions not being met. In this case, although the first operation was notified, the second operation (with reference to the first one) must also be notified to the RCC, according to a recent decision of the authority.

Also, the secondary legislation identifies several situations where a series of transactions are treated as a single concentration:

(a) In successive operations, whereby the first transaction is transitory. The acquisition of control over an undertaking is deemed transitory when such acquisition is made:
- jointly by several undertakings for splitting the target's assets among themselves within a short period of no more than one year; or
- jointly by several undertakings for a transitory period of no more than one year, after which time one of the associates is to acquire final sole control.

(b) By an "intermediary acquirer" on behalf of a final purchaser. In interdependent transactions, one transaction would not have been carried out without the other, and, where control is acquired, it is ultimately by the same undertaking(s). This covers the following situations if interdependent:
- the same buyer acquires a business or undertaking through several acquisition transactions of shares or assets;
- the same buyer acquires the control over several undertakings from different sellers; and
- the same buyer acquires sole control for a transitory period, at the end of which it would be turned into joint control with a third undertaking.

3 Notification and its Impact on the Transaction Timetable

3.1 Where the jurisdictional thresholds are met, is notification compulsory and is there a deadline for notification?

Economic concentrations meeting the turnover thresholds described under question 2.4 above are subject to a mandatory notification to the RCC. This notification may be submitted upon the conclusion of the agreement underlying the respective transaction or upon the announcement of the public bid in the event of an acquisition of control over publicly traded companies. The Competition Law provides that notifications can be submitted even earlier if the parties prove that they intend to conclude the transaction or, where an acquisition takes place by public offering, after the parties have announced their intention to make such an offer. There is no specific deadline for notifying a transaction. In any case, the notification must be submitted before the concentration is implemented and, excepting certain situations, the operation must not be implemented before the RCC issues its clearance.

3.2 Please describe any exceptions where, even though the jurisdictional thresholds are met, clearance is not required.

Pursuant to the Competition Law, the following operations are not considered economic concentrations:

- Where 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 take place within one year of the date of acquisition. The one-year term may be prolonged by the RCC.

- Where 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.
- Where there is restructuring and reorganisation within the same group of undertakings (intra-group operations).
- Where 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.

3.3 Where a merger technically requires notification and clearance, what are the risks of not filing? Are there any formal sanctions?

The failure to obtain clearance from the RCC prior to the implementation of a notifiable concentration may be sanctioned with a fine ranging from 0.5% to 10% of the total turnover obtained in the previous financial year. 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 set-up companies that did not register any turnover in the previous financial year, the fine may range from RON 15,000 to RON 2,500,000.

The RCC has experience in sanctioning undertakings for fulfilling the merger control procedure.

An undertaking failing to file an economic concentration may benefit from a fine reduction ranging from 10% to 30% if it expressly acknowledges its competition law infringement and, if applicable, proposes remedies. It must be noted that the reduction applies also in cases where the fine was fixed at the minimum of 0.5%, but that it shall never decrease below 0.2% of the turnover achieved in the last financial year.

For example, recently this year, the RCC issued a fine of RON 766,255 (approx. EUR 169,357) in relation to a breach of the obligation to notify on the advertising market, where Publicis Groupe Holdings B.V. acquired 80% of Zenith Media Communications SRL's shares.

3.4 Is it possible to carve out local completion of a merger to avoid delaying global completion?

Romanian merger control legislation does not expressly regulate the possibility of a carve-out mechanism that would allow for an implementation outside Romania. Also, there is no relevant case law on this matter. Currently, there are discussions with the RCC in order to amend the competition legislation with the possibility of a carve-out scenario, but at present, there is no certainty on when/if such provision will be included in the secondary legislation.

Under the Competition Law, however, the RCC is competent to appraise only the effects of the respective concentration on the Romanian market. Therefore, if it is possible to hold the target's Romanian business separate until clearance is obtained by the RCC, it may be argued that the implementation of the merger outside Romania is not prohibited given the absence of the RCC's jurisdiction outside Romania.

In addition, the Romanian merger control legislation provides for the possibility to apply for derogation from the standstill obligation. This approach appears to be the safest solution for implementing an international transaction.

3.5 At what stage in the transaction timetable can the notification be filed?

The notification can be submitted prior to the execution of the agreements covering the transaction, provided that there is a binding pre-agreement or a Letter of Intent supporting the clear intention to buy and sell.

3.6 What is the timeframe for scrutiny of the merger by the merger authority? What are the main stages in the regulatory process? Can the timeframe be suspended by the authority?

Pre-notification phase: parties may initiate pre-notification contacts with the RCC prior to the submission of the notification based on a pre-agreement of other binding agreements. The Merger Regulation recommends for initiation of pre-notification discussions with the RCC at least two weeks prior to filing. The undertakings must provide the RCC with information regarding the economic concentration, the parties and the markets five days prior to the scheduled meeting. In practice, such discussions are useful in order to clarify certain aspects of the proposed operation with the RCC representatives, which may shorten the assessment period of the operation.

Submission of notification: within five days as of the submission of a notification, the RCC informs the parties in writing whether the notification file meets (from a formal perspective) the requirements to be deemed validly submitted.

Effective date: within 20 days as of the valid submission of the notification, the RCC may request the parties to submit additional information/documentation. In principle, the deadline for submission of such documents cannot be longer than 15 days from the date of the RCC request, although the parties might justifiably request that the answering period is extended by five days. There may be several rounds of requests for information/answers until a notification is deemed complete by the RCC ("effective day").

Phase I: proceedings may last for a maximum of 45 days from the effective day, at the end of which the RCC may issue either a "non-opposition" decision whereby the transaction is authorised (a clearance decision) or a decision launching Phase II. Non-opposition decisions may be issued if: (i) there are no serious doubts regarding the compatibility of the concentration with a normal competition environment; or (ii) if serious doubts regarding compatibility with a normal competition environment have been removed by commitments proposed by the parties concerned and accepted by the RCC. Phase I may also conclude within 30 days of the effective day, with the issuance of a letter stating that the respective transaction does not fall under the merger control process before 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. In recent years, the RCC launched and closed a Phase II investigation

in one case only, concerning the case *Lidl/Plus* (in 2013, the RCC published an ex-post analysis of the *Lidl/Plus* case) deferred by the European Commission for review by the Romanian and Bulgarian competition authorities.

Regarding the timeframe for submitting remedies, please refer to question 5.4 below.

Tacit approval: if the RCC does not make a decision within the deadlines established by the law, the notified concentration is considered approved and can be closed.

The current legislation does not expressly regulate the possibility for the RCC to suspend proceedings. Since Phase I and Phase II periods only start from the effective day, proceedings are practically suspended until the parties provide all the information required by the RCC. Once a notification is deemed complete, there is no regulated mechanism to suspend proceedings.

The RCC must substantiate and communicate its decision to the interested parties within 120 days from the date of the deliberation of the Plenum of the Competition Council on the case.

3.7 Is there any prohibition on completing the transaction before clearance is received or any compulsory waiting period has ended? What are the risks in completing before clearance is received?

It is forbidden to implement a concentration prior to its clearance by the RCC. The RCC may grant derogations from this standstill obligation, upon the parties' reasoned request, even prior to the submission of the formal notification. In its practice, the RCC has usually approved derogation applications backed by the financial and economic distress of the target undertaking, as well as other reasons (e.g. in Banca Transilvania's takeover of Volksbank operations in Romania, the RCC approved a derogation form the above based on a need to take immediate actions related to credits granted to natural persons in Swiss francs subject to a massive increase of the rate exchange, through Decision no. 5 of 27.01.2015).

However, the standstill obligation does not impede the carrying-out of a public offer or series of dealings with publicly listed securities whereby control is acquired from different sellers, provided that the respective concentration is notified without delay to the RCC and that the acquired voting rights are not exerted – no implementation occurs prior to the clearance decision.

The following are considered as acts of implementation, *inter alia*:

- exercising voting rights in respect of the strategic business decisions such as: budget; investment plan; business plan; and appointment of members in the managing bodies of the target undertaking;
- changing the scope of the business or the commercial name of the target undertaking;
- market entry/exit of the target undertaking;
- restructuring, dissolution or spin-off of the target undertaking;
- selling assets of the target undertaking;
- layoff of employees of the target undertaking;
- conclusion or termination of long-term or other important agreements between the target undertaking and third parties; and
- listing of the target undertaking on a stock exchange market.

Regarding the risk of fines related to completing before clearance, please refer to question 3.3 above. The validity of implementation measures taken in breach of the standstill obligation will depend on the outcome of the merger control procedure before the RCC.

3.8 Where notification is required, is there a prescribed format?

There are two types of notification forms: the simplified form; and the full form. The simplified form requires information on the parties, their business and turnover and certain market data. The full form requires, in addition, data on the suppliers, customers and competitors of the parties and extensive information on the competitive effects of the concentration on the affected market(s). The list of all of the relevant information is contained in the merger control regulation.

3.9 Is there a short form or accelerated procedure for any types of mergers? Are there any informal ways in which the clearance timetable can be speeded up?

The Merger Regulation provides that the following categories of economic concentrations may be assessed under the simplified merger control procedure:

(i) transactions where two or more undertakings acquire joint control over an undertaking that does not carry out any business in Romania or has only an insignificant business in Romania. This requirement is met if the turnover of the joint venture and/or of the transferred business, as well as the value of the assets transferred to the joint venture, does not exceed EUR 4,000,000 in Romania;

(ii) transactions between parties operating on non-related markets;

(iii) transactions which do not affect markets (i.e., for vertical overlaps, neither of the parties operating upstream or downstream to another party has a market share in excess of 30%; for horizontal overlaps, the parties' combined market share is below 20%); or

(iv) transactions whereby an undertaking acquires sole control of a target over which it previously held joint control.

As mentioned above, the concerned parties may initiate pre-notification discussions with the RCC at least two weeks prior to when they intend to submit a simplified notification form to the RCC.

Ideally, a simplified notification form should be deemed effective on the day of its submission to the RCC.

The clearance timetable can be sped up if (a) notification is submitted prior to the signing of the transaction documents as the RCC has flexibility to start processing merger control filings on the basis of a Letter of Intent or Memorandum of Understanding or even a draft sale and purchase agreement, (b) offering of remedies already during Phase I if a conditional clearance is anticipated, and (c) face-to-face meetings with RCC experts and business people with knowledge about the industry with an aim to clarify specific elements of the relevant market and the impact of the operation.

3.10 Who is responsible for making the notification?

Mergers should be notified by each of the concerned parties. Acquisitions of control must be notified by parties acquiring control. When there is a change from sole to joint control or when the number of parties holding joint control increases, the notification must be filed by all parties holding joint control.

3.11 Are there any fees in relation to merger control?

All merger control notifications are subject to a filing fee of RON 4,775 (approx. EUR 1,100).

Cleared concentrations are subject to a clearance fee whose margins vary depending on the RCC's approach to the notified concentration. Consequently, if the RCC issues a decision in Phase I, the fee ranges between EUR 10,000 and EUR 25,000, depending on the turnover achieved in Romania in the year preceding the clearance of the concentration by the target. Should the RCC launch an investigation regarding the economic concentration and issue a clearance decision, the fee ranges between EUR 25,001 and EUR 50,000, depending on the turnover achieved in Romania in the year preceding the clearance of the concentration by the target.

The equivalent in RON is computed by taking into account the exchange rate, set by the National Bank of Romania, for the last day of the year preceding the issuance of the clearance decision.

3.12 What impact, if any, do rules governing a public offer for a listed business have on the merger control clearance process in such cases?

Rules on public offers for listed businesses (not included in the merger control regulation) have no impact on the merger control clearance process in Romania.

However, please note that, although merger control does not impede the application of a public offer, if the thresholds are met, the economic concentration must be notified to the RCC right away and the undertaking acquiring control must not exert its voting rights, except if granted derogation by the authority and only in order to conserve its investments.

3.13 Will the notification be published?

Entire notification files are not published by the RCC. However, where the RCC finds the Competition Law applicable to an economic concentration, it may publish on its website and/or release information on the notification, 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. Nevertheless, the RCC will take into account the legitimate interests of the undertakings in order to protect their business secrets and other confidential information. Also, based on the parties' written request, the RCC may delay publication of the press release in order to avoid any damages incurred by the parties as a result of such disclosure prior to the implementation of the operation (in cases where the operation has a significant impact on the market, the RCC will be reluctant to refrain from informing the market prior to implementation of the operation). In addition, the RCC publishes (except for grounded cases where a non-confidential version may not be obtained) the non-confidential version of the clearance decision.

4 Substantive Assessment of the Merger and Outcome of the Process

4.1 What is the substantive test against which a merger will be assessed?

The substantive test applied by the RCC in merger control proceedings is whether a concentration leads to significant impediments to efficient competition on the Romanian market or a part thereof, especially by creating or strengthening a dominant position on the Romanian market or a part thereof.

In applying the test in most cases, the RCC follows the EU practice.

4.2 To what extent are efficiency considerations taken into account?

The Merger Regulation sets out rather broad criteria which the RCC needs to consider upon the assessment of every filing (e.g. market position, sourcing and entry barriers). Such criteria also refer to economic and technical progress to the extent that such represents a benefit to the end consumer and not an obstruction to competition. Apart from this quite broad wording, applicable laws are currently silent in regulating other efficiency considerations. In practice, the RCC often uses the considerations set out in the EU guidelines in cases where (i) clearance is sought in Phase I and there is an overlap which results in a combined market share of around 40% (threshold as of which market dominance is presumed), or (ii) there are Phase II proceedings in connection with discussions around remedies.

In recent decisions, the RCC took into account reduction of costs and prices, increasing the innovation on the market or improvement of supply when assessing efficiencies of a merger.

4.3 Are non-competition issues taken into account in assessing the merger?

When rendering its assessment, the RCC may consider some major economic or social aspects on a case-by-case basis. However, there is no express reference to non-competition issues in the merger control rules.

4.4 What is the scope for the involvement of third parties (or complainants) in the regulatory scrutiny process?

There are several stages where third parties may intervene in the merger control review process:

Submission of comments: in practice, in cases which may raise doubts as to their compatibility with the Romanian market, the RCC proceeds to publish on its website an invitation for third parties to submit comments on the respective concentration. The RCC may also ask third parties to submit their comments within a deadline when it intends to accept commitments proposed by the concerned parties. For this, the RCC will publish a summary of the case and the essential content of the proposed commitments. For example, earlier this year, the RCC requested the market players to comment upon Carrefour acquiring control over Billa, and thus published a non-confidential version of the proposed commitments on its website (the operation was cleared by RCC in June 2016).

Questionnaires: in some cases, the RCC may send questionnaires to third parties such as suppliers, customers, competitors or trade associations in order to obtain information on the concerned markets. This is the case especially in highly technical markets or in markets where entry barriers are (or may be) high.

Complaints: third parties may file complaints with the RCC regarding concentrations. Upon receipt of a complaint, the RCC may theoretically decide to investigate the contested transaction. In addition, a clearance decision may be challenged in court by any interested third party.

4.5 What information gathering powers does the merger authority enjoy in relation to the scrutiny of a merger?

The RCC may require the concerned parties, as well as third parties, to provide the information and documents which it deems relevant for assessing a concentration. The RCC may also interview any legal or natural person who agrees to be interviewed. The case handlers may also request meetings with representatives of the concerned undertakings (especially on technical matters or issues related to a relevant market definition). RCC officials are also empowered to conduct dawn raids and collect relevant information from any type of support, should the RCC open an investigation for a suspected failure to notify a concentration or for an infringement of the suspension clause.

Also, if during the notification process, the concerned party is required by the RCC to provide certain information/and fails to do so (without an objective reasoning) or provides incomplete, false or misleading information, it may be liable for a fine ranging between 0.1% to 1% of the aggregated turnover obtained in the year prior to sanctioning. For newly set-up companies, the fine may vary from RON 10,000 to RON 1,000,000.

4.6 During the regulatory process, what provision is there for the protection of commercially sensitive information?

The parties have a full disclosure obligation towards the RCC. The parties are requested to, and should identify, confidential information by marking it appropriately in the notification file or in the written answers to the RCC as "business secret" or "confidential information".

The RCC is bound, however, by the confidentiality of such information when publishing a decision or when granting third parties access to the file. Also, the RCC inspectors reviewing the notification file are expressly bound by law with a confidentiality obligation.

Confidential documents, data and information may not be consulted or copied by third parties unless the President of the RCC issues a decision expressly authorising this. The Order of the President of the RCC may be appealed only together with the sanctioning decision based on the same court claim.

If necessary, the courts have the power to retrieve confidential information when reviewing cases regarding the awarding of damages. In such circumstances, the courts may ask the RCC to provide them with the entire documentation for decisions whereby an anticompetitive conduct was established and sanctioned. Courts are, however, bound by the confidentiality of commercially sensitive information or any other information qualified as confidential.

Even though, according to the 2011 amendments to the Competition Law, information collected by the RCC may only be used for the purpose of enforcing the Competition Law, the RCC may nevertheless inform other authorities of aspects provided therein pertaining to their jurisdiction.

5 The End of the Process: Remedies, Appeals and Enforcement

5.1 How does the regulatory process end?

Please refer to the comments under question 3.6.

5.2 Where competition problems are identified, is it possible to negotiate "remedies" which are acceptable to the parties?

Subsequent to filing a merger control notification, the parties may submit proposals for remedies/commitments to the RCC. It is possible to submit both behavioural and structural remedies. However, structural remedies are preferred. For example, possible remedies encompass, individually or jointly, the following: divestments; termination or amendment of existing exclusive agreements; access to necessary infrastructure; networks or key technologies by way of licence agreements or otherwise; and price-reporting obligations and mechanisms designed to prevent customer discrimination. The RCC may also accept compartmental remedies/commitments, but only under exceptional and specific circumstances, such as where necessary to remedy competition issues arising from conglomerate structures.

As an example, in the above-mentioned Carrefour-Billa merger, the RCC issued a conditional clearance decision containing structural divestment commitments that were acceptable to both the parties and the authority.

5.3 To what extent have remedies been imposed in foreign-to-foreign mergers?

To the best of our knowledge, the RCC has not yet issued any decision involving remedies in foreign-to-foreign mergers. On the other hand, for example, in 2015, the RCC issued an unconditional clearance decision in the Linamar Forging GmbH-Seissenschmidt AG merger.

5.4 At what stage in the process can the negotiation of remedies be commenced? Please describe any relevant procedural steps and deadlines.

Remedy proposals may be submitted in both phases of a merger control proceeding. However, remedies may be accepted if submitted either before when the notification becomes effective or within two weeks after, or within 30 days after Phase II proceedings have been opened. In exceptional circumstances, the parties may request a 15-day extension of the 30-day period in order to find an acceptable remedies solution. If the remedies are accepted, the RCC will issue a conditional clearance decision, also stating therein the timeline within which the remedies must be implemented. Failure to comply with the remedies imposed on the concerned undertakings may lead to the revocation of the clearance decision, the suspension of the concentration and the imposition of fines of up to 10% of the total turnover.

5.5 If a divestment remedy is required, does the merger authority have a standard approach to the terms and conditions to be applied to the divestment?

The RCC does not issue model texts for divesture commitments and trustee mandates, and acts on a case-by-case basis.

5.6 Can the parties complete the merger before the remedies have been complied with?

The rule in clearance decisions is that the RCC sets a timeline within which all remedies must be implemented. Meanwhile, parties may proceed to implement the transaction, taking into account the

agreed schedule. However, for certain types of remedies such as divestments, the parties may have to delay the implementation of the transaction, depending on the circumstances, until a suitable buyer is found. In all cases, the clearance decision includes clear references to any delay in the implementation due to the observance of the remedies (if the case may be).

5.7 How are any negotiated remedies enforced?

The monitoring of remedies may be done either by the RCC or by a third party expressly appointed for this task.

5.8 Will a clearance decision cover ancillary restrictions?

RCC clearance decisions are deemed to cover ancillary restraints. Nevertheless, the parties to a transaction must assess on their own whether a restriction falls within the ancillary restraints category, pursuant to the RCC Guidelines on ancillary restraints. In practice, the RCC still plays an active role and informs the parties of the requirements it deems necessary to render restrictions ancillary. It should be noted that, if the parties request a special assessment of the ancillary restrictions, the concentration cannot be assessed under the simplified merger control procedure. In addition, in respect to certain ancillary restrictions (e.g. non-compete in joint ventures) the RCC is stricter than the EU Commission.

5.9 Can a decision on merger clearance be appealed?

RCC merger control decisions are subject to appeal before the Bucharest Court of Appeals within 30 days of their communication to the parties or from the moment when the decision was known by the third interested party.

5.10 What is the time limit for any appeal?

Please refer to question 5.9 above.

5.11 Is there a time limit for enforcement of merger control legislation?

The statute of limitations for the failure to notify a concentration or for its implementation is five years. The statute of limitations for procedural infringements is three years. These periods begin to run from the date on which the unlawful practice occurred. In the case of continuous unlawful practices, the statute of limitations is calculated from the date of the last unlawful act.

6 Miscellaneous

6.1 To what extent does the merger authority in your jurisdiction liaise with those in other jurisdictions?

The RCC is a member of the International Competition Network and the European Competition Network. The RCC may demand documents and information, and may carry out inspections of various undertakings at the request of the European Commission and of other competition authorities in the EU Member States.

6.2 Are there any proposals for reform of the merger control regime in your jurisdiction?

Currently, a legislative project for amending and supplementing the Competition Law is in works in the Parliament; however, none of the working points refer to merger regulation.

Also, the RCC is constantly updating the secondary legislation as to mirror the EC rules and guidelines.

6.3 Please identify the date as at which your answers are up to date.

Our answers are up to date as of 25 August 2016.

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Cătălin Suliman is a local partner with Schoenherr in Romania and heads the Competition Practice Group. Cătălin focuses on providing legal advice on competition and intellectual property issues, as well as life sciences and regulatory matters in the retail sector. Cătălin provides the entire spectrum of day-to-day advice on competition and compliance matters, as well as overseeing competition-related trainings and mock dawn raids. Prominent competition-related matters on which Cătălin has advised include assisting a leading oil and gas group being investigated by Romania's Competition Council. He has also advised one of the country's largest telecommunications operators in its competition investigation, which led to the application of the first commitments procedure in the telecommunications sector in the EU. Cătălin also assisted two suppliers in the RCC's retail investigation. From 2009 to 2013, Cătălin acted as an external collaborator at the University of Bucharest's Law Faculty, where he was a teacher of various competition law seminars of the Business Law LL.M. at the University of Bucharest.

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Silviu Vasile has been an associate with Schoenherr since 2013. Silviu's main practice area is competition law, providing legal advice on competition and compliance matters, as well as competition-related trainings and mock dawn raids. Furthermore, Silviu covers the entire array of merger control assistance for both local and international clients. Prior to joining Schoenherr and while a student, Silviu spent two years as an intern for a national law firm, where he was part of the law firm's competition group. He graduated from the University of Bucharest Law School, and he is admitted to the Bar of Bucharest.

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