

## 10. ROMANIAN COMPETITION LAWS

### 10.1 ECONOMIC CONCENTRATION

*Updated October 2016*

The relevant **Romanian competition laws and regulations** regarding economic concentrations are:

- ✓ Competition Law No. 21 of 1996, as amended (the “**Competition Law**”)
- ✓ Order no. 385 of 2010 regarding the Approval of the Application of the Regulation regarding the Economic Concentrations, as further amended (“**Regulation**”)
- ✓ Order no. 386 of 2010 regarding the Guidelines on the concepts of economic concentration, undertakings concerned, full-function joint-ventures and calculation of turnover
- ✓ European Union Council Regulation no. 139 of 2004 on the Control of Concentrations between Undertakings (“**Merger Regulation**”)

#### **Types of transactions considered as economic concentrations**

The Competition Law defines an economic concentration as merger of two or more companies, or by a company taking over the control of another independent company.

The authority controlling the economic concentration at the national level is the Competition Council. Its goal is to prevent the establishing of monopolies or companies/joint ventures with a dominant position on a certain market which can lead to a significant restriction, prevention, and distortion of the competition.

#### **Turnover thresholds**

The Competition Law provides that a merger notice has to be filed with the Competition Council if the following requirements regarding the turnover values in the calendar year preceding the transaction are cumulatively met:

- i) the combined turnover of the companies involved in the transaction exceeds the Lei equivalent of EUR 10,000,000, and
- ii) at least two of the companies involved in the transaction have each a turnover in Romania in excess of the Lei equivalent of EUR 4,000,000.

#### **Note:**

*The turnover thresholds mentioned above are calculated by taking into account the combined turnover of the entire group.*

*The turnover threshold should be calculated by taking into consideration the value of the total of the revenues obtained from the sale of products and/or rendering of services by the company*

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*during the last financial year, out of which the amounts owed as tax obligations and the accounting value of the exports performed directly or by proxy, including the intra-community deliveries, are subtracted.*

### **Notification of the Competition Council**

If the above thresholds are met, a Notification and supporting documentation must be filed prior to implementing the concentration.

The preparation of the Notification and of the related documentation is a laborious process, involving information and documentation from the parties involved in the transactions.

### **Decisions issued by the Competition Council**

Within forty-five (45) days from the date when the Notification becomes effective, i.e. the application together with all the supporting documents are filed with the Competition Council, the said authority may issue the following decisions:

- a) a decision of non-objection if, although the transaction represents an economic concentration:
  - (i) There are no serious doubts regarding the compatibility with a normal competitive environment.

OR

- (ii) There are no serious doubts regarding compatibility with a normal competitive environment, or such doubts were removed by the commitments proposed by the involved parties and accepted by the Competition Council. The Competition Council may establish by decision conditions and obligations that are likely to ensure the compliance by all the involved parties with the commitments they undertook in order to obtain the compatibility of the concentration with a normal competitive environment.
- b) a decision to start an investigation, if the transaction represents an economic concentration and there are doubts regarding the compatibility with a normal competitive environment and such doubts could not be removed according to the provisions under paragraph (a) ii above.

Within five (5) months as of the receipt of the full notification of an economic concentration for which the Competition Council decided to start an investigation, the Competition Council may issue:

- (i) a decision by which it will declare the economic concentration operation incompatible with a normal competitive environment, as it raises significant barriers against the actual competition on the Romanian market or on a substantial part thereof, especially as a result of the creation or consolidation of a dominant position;
- (ii) a decision for the authorization of the economic concentration if the economic concentration operation does not raise significant barriers against the actual competition on the Romanian market, or on a substantial part thereof, especially as a result of the creation or consolidation of a dominant position;

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- (iii) a decision for the conditional authorization of the economic concentration which will include certain conditions in order to ensure the compatibility of the economic concentration with a normal competitive environment.

If the Competition Council considers that the economic concentration does not meet the legal requirements, it will issue a letter in respect thereof within thirty (30) days from the date when the Notification became effective.

According to the Regulation, until the Competition Council issues a decision related to the approval of the economic concentration, the following actions cannot be implemented:

- (i) the entry of the acquired legal entity on another/new market;
- (ii) the exit of the acquired legal entity from the market where it carried out its operations;
- (iii) the changing of the scope of activity of the acquired legal entity;
- (iv) the exercising of the voting rights for the appointment of members in the executive management of the acquired legal entity;
- (v) the exercising of the voting rights for the approval of the income and expenses budget of the acquired legal entity;
- (vi) the exercising of the voting rights for the approval of the business plan of the acquired legal entity;
- (vii) the exercising of the voting rights for the approval of the investment plan of the acquired legal entity;
- (viii) the changing of the name of the acquired legal entity;
- (ix) the restructuring, closing, or splitting up of the acquired legal entity;
- (x) the sale of the assets of the acquired legal entity;
- (xi) the dismissal of the employees of the acquired legal entity;
- (xii) the conclusion or termination of long-term contracts or other important agreements signed with third parties;
- (xiii) the listing of the acquired legal entity on the stock market.

However, the law provides that by filing an application with the Competition Council, the parties may apply for derogation from the above rules. When granting the derogations, the Competition Council must take into consideration the effects of the suspension of the economic concentration, upon one or several of the economic agents involved in the operation, or upon third parties, or upon competitors.

### **Violations of the antitrust legal norms**

The breach of the provisions of the Competition Law regarding:

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- (i) the filing of the Notifications;
- (ii) the actions which cannot be taken prior to the issuance of a Decision by the Competition Council regarding the approval of the economic concentration; and
- (iii) the non-compliance with an obligation or a condition required by a Decision of the Competition Council in accordance with the law,

is punishable with a fine ranging from 0.5% to 10% of the turnover registered during the fiscal year prior to the transaction.

### **Economic Concentration on the European Union Community Market**

According to the Merger Regulation, an economic concentration has a Community dimension where:

- (i) the combined aggregate worldwide turnover of all the undertakings concerned is more than EUR 5,000 million, and
- (ii) the aggregate Community-wide turnover of each of at least two of the undertakings concerned is more than EUR 250 million,

unless each of the undertakings concerned achieves more than two-thirds of its aggregate Community-wide turnover within one and the same Member State. The above conditions are cumulative.

A concentration that does not meet the above-mentioned thresholds has a Community dimension where:

- (i) the combined aggregate worldwide turnover of all the undertakings concerned is more than EUR 2,500 million;
- (ii) in each of at least three Member States, the combined aggregate turnover of all the undertakings concerned is more than EUR 100 million;
- (iii) in each of at least three Member States included for the purpose of item (ii), the aggregate turnover of each of at least two of the undertakings concerned is more than EUR 25 million; and
- (iv) the aggregate Community-wide turnover of each of at least two of the undertakings concerned is more than EUR 100 million,

unless each of the undertakings concerned achieves more than two-thirds of its aggregate Community-wide turnover within one and the same Member State. Also, in this second scenario, the above conditions are cumulative.

It is considered that an economic concentration exists regardless of the fact that the companies involved in the concentration have or do not have their registered offices or their main activity fields within the Community, provided that they conduct significant operations within the Community.

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If the annual turnover of the combined businesses exceeds the specified thresholds mentioned above in terms of global and European Union sales, the proposed transaction must be notified for review to the European Union Commission ("**EU Commission**").

The EU Commission may also examine mergers which are referred to by the national competition authorities of the Member States. This may take place upon a request of the national competition authority of a Member State, or of the merging companies. Under certain circumstances, the EU Commission may also refer a case to the national competition authority of a Member State.

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