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National Competition Laws e-bulletin

Competition Law in Romania

MERGERS

- **LEGISLATION & INSTITUTIONS**

1. "What is the substantive test for mergers? What are the relevant provisions?"

- The test is quasi-identical to the old EU substantive test, namely "creation or strengthening of a dominant position, as a result of which effective competition would be significantly impeded". However, it appears that the substantive test will be relatively soon aligned to the current EU test, namely "significant impediment of effective competition, in particular as a result of the creation or strengthening of a dominant position". The relevant provision is to be found in Article 12 of the Competition Law No 21/1996, as amended, which forbids those economic concentrations which, having as effect the creation or strengthening of a dominant position, lead or are likely to lead to the significant restriction, prevention or distortion of competition on the Romanian market or on a part of it.

Georgeta Harapcea, Nestor Nestor Diculescu Kingston Petersen (Bucharest), Radu Tufescu, Nestor Nestor Diculescu Kingston Petersen (Bucharest), Antitrust encyclopedia: Romania, January 2010

2. "What types of mergers does the legislation cover ? What are the relevant provisions? "

- As the corresponding EU legal provisions, the Competition Law No 21/1996 treats as merger any change of control on a lasting basis, which results either from the merger of two or more previously independent undertakings or parts of undertakings, or from the acquisition, by one or more persons already controlling at least one undertaking, or by one or more undertakings, whether by purchase of securities or assets, by contract or by any other means, of direct or indirect control of the whole or parts of one or more other undertakings. Control shall be constituted by rights, contracts or any other means which, either separately or in combination and having regard to the considerations of fact or law involved, confer the possibility of exercising decisive influence on an undertaking. The relevant provisions are to be found in Article 10 of the Competition Law No 21/1996, as amended.

Georgeta Harapcea, Nestor Nestor Diculescu Kingston Petersen (Bucharest), Radu Tufescu, Nestor Nestor Diculescu Kingston Petersen (Bucharest), Antitrust encyclopedia: Romania, January 2010

3. "Does the merger legislation cover joint ventures? What are the relevant provisions? "

- The Competition Law in Article 10(3) still distinguishes between concentrative and cooperative operations in a way similar to the original form of the Council Regulation No 4064/89, as following: On the one hand, the cooperative operations: the association leading to the creation of a joint venture, which has as its object or effect the coordination of the competitive behavior of undertakings which remain independent shall not constitute a concentration within the meaning of the Competition Law. On the other hand, the concentrative operations: the creation of a joint venture performing on a lasting basis all the functions of an autonomous economic entity, which does not give rise to coordination of the competitive behavior of the parties amongst themselves or between them and the joint venture, shall constitute a concentration within the meaning of the Competition Law. Accordingly, the Regulation regarding the authorization of economic concentration establishes that an operation of association constitutes a merger in the meaning of the Competition Law if the following cumulative conditions are met: a) Joint control by two or more undertakings; b) Structural autonomy: the joint venture must perform, on a lasting basis, all the functions of an autonomous economic entity. The 'full functionality' criterion is met when the joint venture has all the necessary financial, technical and human resources, so as to enable it to perform the functions normally carried out by other undertakings operating on the same market; c) Concentrative venture: the joint venture does not give rise to coordination of the competitive behavior of the parent companies and/or the undertakings controlled by them. The risk of coordination will be assessed by taking into account whether the undertakings concerned will be present either on the same relevant markets, or on downstream/upstream markets. There are quite a few cases that can be cited as authority, one of them is Decision 64/2006.

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4. "Are there specific provisions/exceptions for markets of insufficient importance?"

- There are no particular regulations or guidelines derogatory from the general regime of mergers. Certain operations (not based on the criteria of the markets on which they occur) may benefit of the simplified analysis procedure.

Georgeta Harapcea, Nestor Nestor Diculescu Kingston Petersen (Bucharest), Radu Tufescu, Nestor Nestor Diculescu Kingston Petersen (Bucharest), Antitrust encyclopedia: Romania, January 2010

5. "Which institutions have the burden of merger enforcement?"

- The Competition Council is the administrative authority in charge with merger enforcement.

Georgeta Harapcea, Nestor Nestor Diculescu Kingston Petersen (Bucharest), Radu Tufescu, Nestor Nestor Diculescu Kingston Petersen (Bucharest), Antitrust encyclopedia: Romania, January 2010

6. "What is the role of each institution?"

- The Competition Council analyzes the mergers notified to it, issues decisions approving / rejecting the proposed operations (with or without the initiation and performance of an in-depth investigation), and imposes sanctions in case of failure to comply with the merger-related obligations under the Competition Law.

Georgeta Harapcea, Nestor Nestor Diculescu Kingston Petersen (Bucharest), Radu Tufescu, Nestor Nestor Diculescu Kingston Petersen (Bucharest), Antitrust encyclopedia: Romania, January 2010

▪ INVESTIGATIONS

1. "What is the process of decision making in a merger case?"

- Within 7 calendar days from the signature of the act on the basis of which the economic concentration is performed, the parties have the obligation to inform The Competition Council with respect to the operation which will be notified within the legal deadline, which is of 30 calendar days from the signature of the act on the basis of which the economic concentration is performed. The Competition Council may request additional information within 20 days after the filing, with the term for response depending upon the nature of the information requested, but without exceeding 15 days after receipt of the request . The Competition Council may send to the parties further requests for additional information, with the 20 days period starting from the date the additional information previously required was submitted. The notification becomes effective as of the date the additional information registered with the Competition Council is deemed accurate and complete, and the Competition Council must immediately inform the notifying parties in respect of the date when the notification has become effective. The elapse of the 20-day term without the Competition Council transmitting any request for additional information renders the notification effective as of the date of the last filing. Within 30 days from the moment the effective date, the Competition Council needs to adopt one of the following decisions: a) issue a non-intervention decision - the operation of economic concentration does not fall under the scope of the Competition Law; b) issue a non-opposition decision - even if the operation falls under the scope of the Competition Law, there are no serious concerns regarding its compatibility with a normal competitive environment; c) order the initiation of an investigation -the operation of economic concentration falls under the scope of the Competition Law and there are serious concerns regarding its compatibility with a normal competitive environment. In such a case, no later than 5 months after the effective date, the Competition Council will issue either a decision of refusal, of authorization or of conditional authorization of the concentration. Should the Competition Council not take any of the above decisions within the specified time limits, the notified economic concentration operation may be carried out.

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2. "What are the investigative powers used in merger assessment? Are third parties obliged to answer questions set by the authorities? What are the relevant provisions? "

- During both Phase I and Phase II / in-depth investigations, the Competition Council is entitled to request, and the undertakings and associations of undertakings are obliged to provide, the information and documents deemed necessary for the assessment of the operation. According to Article 35 of the Competition Law, as amended, this obligation belongs not only to the notifying party / the undertakings involved, but also to third parties. The Competition Council must specify the legal basis and the purpose of the request. During in-depth investigations, the Competition Council is

also entitled (according to Article 36 of the Competition Law), in case there are indications pointing towards the existence of information / documents relevant to the assessment, to conduct all necessary inspections of undertakings and associations of undertakings, namely: (a) to enter any premises, land and means of transport of undertakings and associations of undertakings; (b) to examine the books and other records related to the business, irrespective of the medium on which they are stored; (c) to ask any representative or member of staff of the undertaking or association of undertakings for explanations on facts or documents deemed relevant; (d) to take or obtain in any form copies of or extracts from such books or records; (e) to seal any business premises and books or records for the period and to the extent necessary for the inspection. According to Article 37 of the Competition Law, the Competition Council is also entitled, with judicial prior authorization, to inspect any other premises, including the private home / vehicles of the undertaking's managers and members of the staff.

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3. "What are the thresholds/tests for asserting jurisdiction? What are the relevant provisions? "

- Article 15 of the Competition Law provides two cumulative notification thresholds: (a) the cumulated turnover of the involved undertakings (worldwide) needs to exceed Euro 10 million and (b) there are at least two undertakings involved which achieve, each of them, a turnover in Romania exceeding Euro 4 million. There are specific rules in defining the 'undertaking involved' and the 'group', and in calculating the turnover. 'Undertakings involved' By 'undertakings involved' we also refer to their groups, and in case of the target, it also includes any undertakings it controls. According to paragraphs 50-52 and 68-69 of the Regulation regarding the authorisation of economic concentrations, for the purpose of calculating the thresholds, the 'undertakings concerned' are as follows: a) in case of acquiring sole control:
- the acquirer and its group; and
- the target and the undertakings controlled by the target (or the part acquired). b) in case of acquiring joint control over a newly created undertaking
- the acquirers and their groups. c) in case of acquiring joint control over an existing undertaking
- the acquirers and their groups; and
- the target and the undertakings controlled by the target.

According to section 3.4 of the Guidelines regarding the calculation of turnover in cases of anticompetitive conduct provided by article 5 (1) of the Competition Law 21/1996 and on cases of economic concentration, the 'group' is defined for the purpose of calculating the turnover as follows: there must be determined whether the undertaking, as a part of the group, has the right to manage the business of groups' undertakings, and which undertakings having direct or indirect links with the concerned undertaking have the right or powers to manage its business being thus considered as part of the group where the concerned undertaking belongs to. The 'group' therefore includes: a) the undertaking directly concerned; b) those undertakings in which the undertaking concerned directly or indirectly: owns more than half the capital or business assets, or has the power to exercise more than half the voting rights, or has the power to appoint more than half the members

of the administrative board or bodies legally representing the undertakings, or has the right to manage the undertakings' affairs; c) those undertakings which have within the undertaking concerned the rights or powers listed in let. b); d) those undertakings in which the undertaking as referred to in let. c) has the rights or powers listed in let. b); e) those undertakings (joint ventures) in which two or more undertakings as referred to in let. a), b) and c) jointly have the rights or powers listed in let. b). The turnover of a directly concerned undertaking which belongs to a group (let. a)) should include, by case: the turnover of its own subsidiaries (let. b)); the turnover of the parent companies (let. c)); the turnover of the other subsidiaries of the parent companies of the undertaking concerned (let. d)), and the turnover of the companies jointly controlled by two or more companies of the group (let. e)).
According to the Guidelines regarding the calculation of turnover in cases of anticompetitive conduct provided by article 5 (1) of the Competition Law 21/1996 and on cases of economic concentration, the turnover relevant is the one derived in the year prior to signing, as per the balance sheet, and represents the incomes obtained from the sales of products and/or provision of services achieved by an undertaking during the last financial exercise within a given period of time, less the amounts representing the fiscal debts (excises) and the accounted value of exports. When a certain economic concentration takes place in the first half of the year, when the audited accounts (balance sheet) are not available, the turnovers to be taken into account are those from the trial balance at December 31 for the previous year and from the related documents the trial is based on. Adjustments must be always made in order to account for acquisitions or divestments subsequent to the date of the last balance sheets/ trial balance, in order to identify the true resources being concentrated (to reflect e.g., sale or closing down of subsidiaries or acquisitions made by the concerned undertaking subsequent to the closing of the most recent audited balance).

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4. "What types of Guidelines/Notices are there?"

- The regulations and guidelines relevant for the merger process are: (a) the Regulation regarding the authorization of economic concentration; (b) the Guidelines regarding remedies acceptable in case of conditional clearance of economic concentrations; (c) the Guidelines regarding the calculation of turnover in cases of anticompetitive conduct provided by article 5 (1) of the Competition Law 21/1996 and on cases of economic concentration and (d) the Guidelines in the application of article 33 of the Competition Law 21/1996 regarding the calculation of the economic concentrations authorization fee.

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5. "Do all mergers need to be notified? Are there any exceptions?"

- All mergers meeting the notification thresholds mentioned above need to be notified.

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6. "Are there pre-notifications discussions?"

- The simplified procedure for the analysis of certain economic concentrations is aimed at both increasing the efficiency of the control of economic concentrations meeting certain conditions and at encouraging the contacts between the notifying parties and the competition authority before filing the economic concentration notification. The Regulation regarding the authorization of economic concentrations expressly provides only in case of the simplified procedure for the analysis of certain economic concentrations that the Competition Council recommends that the parties contact them before filing (especially for the purpose of defining the relevant market). However. the competition inspectors are generally open to discussions prior to filing in case of the usual procedure for analysis.

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7. "How many types of notifications are there?"

- There are two types of notifications: a regular notification (which will be analysed under the regular procedure) and a short form notification (which will be analysed under the simplified procedure).

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8. "Which party notifies and what is the deadline for notification?"

- The acquirer of sole control/ the acquirers of joint control have the obligation to file the notification in 30 calendar days from the date of the signature of the act on the basis of which the acquisition of control is performed. The time limits for filing the notification can be extended with maximum 15 days, upon grounded request by the parties made within the initial 30-day term.

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9. "Who pays for the notification and how much?"

- The notifying party pays both a notification fee in amount of RON 2,800 (approximately Euro 700) and an authorisation fee of 0.1% of the cumulated turnover of the undertakings concerned on the relevant market in the year prior to the issuance of the decision.

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10. "Can the merger complete prior to clearance? If not, what is the penalty for completing prior to the decision?"

- To the extent there is an obligation to notify the economic concentration operation, the party/ parties acquiring control has/ have the obligation to notify and incurs/ incur the risk of being sanctioned in case it implements/ they implement the operation prior to its approval by the Council (fine of up to 10% of the turnover in the year prior to the sanction). There is therefore the obligation to refrain from implementing the operation prior to its approval, by adopting an irreversible measure, i.e., a measure that irreversibly changes the market. Neither of the competition authorities have provided an exhaustive list of measures that are considered irreversible - however, the list provided at in the Competition Council Regulation regarding the authorization of economic concentrations gives a general idea as to what a buyer cannot do in relation to the target before clearance is granted by the Competition Council. The following may constitute irreversible measures: the acquired undertaking entering on another/new market; the acquired undertaking exiting a market when it is present; the modification of the acquired undertaking's field of activity; exercising the voting rights attached to the acquired shares with a view to appoint members in the acquired undertaking's governing bodies; exercising the obtained voting rights to adopt the acquired undertaking's budget; exercising the obtained voting rights to adopt the acquired undertaking's business plan; exercising the obtained voting rights to adopt the acquired undertaking's investment plan; changing the name of the acquired undertaking; restructuring, closing or selling the acquired undertaking; selling the assets of the acquired undertaking; dismissing the employees of the acquired undertaking; terminating any long term contracts or other important agreements signed with third parties by the acquired undertaking; causing the acquired undertaking's listing on the stock market. The Competition Council may grant derogation from the stand-still obligation (not to implement the merger prior to its authorization), both before and after the notification. In analyzing the request for derogation, the Council shall take into account inter alia the effects of the suspension on one or more undertakings concerned by the concentration or on a third party and the threat to competition posed by the concentration. Such derogation may be made subject to conditions and obligations in order to ensure conditions of effective competition. The validity of the operation for which derogation from the stand-still obligation was granted shall be dependent on the decision taken by the Council following the actual notification - thus, a negative decision would lead to the dissolution of the merger (which has not yet been the case). The request for derogation could be made before the notification and should contain the following elements: the information needed by the Council in order to assess prima facie the effects of the implementation of the merger on the competitive environment (activity of the buyer and of the target, relevant markets, status of competition on those markets etc.); and a sound motivation as regards the necessity of the derogation - e.g., the urgency of the situation, due to the imminent insolvency of the target etc. There is no specific procedure regulating the content and granting of derogation - it is therefore recommendable to discuss with the Council in advance, while preparing the derogation application. However, the competition authority should normally decide on the request for derogation within the general time frame of 30 days. The final decision on the transaction will be adopted by the Council following the assessment of the merger notification, properly submitted. This assessment implies a thorough analysis of the market and of the future implication of the merger. In theory, the authority may issue a negative decision refusing to authorize the merger, on the grounds that it is detrimental to competition, irrespective of the granting of

derogation. However, given the prima facie assessment of the competitive environment when granting the derogation, it is reasonable to consider that, once the derogation granted, the probability that the merger is eventually rejected is rather reduced.

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11. "How long does a Phase I investigation take? "

- A Phase I investigation may last up to 30 calendar days since the notification became effective, i.e. since all the information required was supplied.

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12. "How long does a Phase II investigation take? "

- A Phase II investigation may last up to 5 months since the notification became effective.

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13."How is the merger investigation structured? Is it done by one authority or more?"

- The investigation is performed by the Competition Council.

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14."How effective is the authority in rendering decisions within the time limits it has?"

- The Competition Council complies with the necessary deadlines.

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15."Are these time limits set by statute are they administrative?

- These time limits are set by the Competition Law and by the Competition Council Regulation regarding the authorization of economic concentrations.

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16.“Can time limits be extended? Under what conditions?”

- The time limits for filing the notification can be extended with maximum 15 days, upon grounded request by the parties made within the initial 30-day term. The time limits set by the Competition Council in the requests for additional information can be extended upon grounded request by the parties (but there are no specific provisions in the applicable regulations). The time limits set by the Competition Law for the Competition Council to issue the decisions cannot be extended.

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17.“Are there any penalties in relation to a merger investigation? ”

- The Competition Council can apply various penalties in relation to a merger:

- fine of up to 1% of the total turnover in the financial year previous to the sanctioning decision for failure to notify an economic concentration;
- fine of up to 1% of the total turnover in the financial year previous to the sanctioning decision for the provision of inaccurate or incomplete information in the notification or in the answers to the information requests from the Competition Council
- fine of up to 10% of the total turnover in the financial year previous to the sanctioning decision for implementing an economic concentration operation prior to the issuance of a clearance decision by the Competition Council or despite the issuance of a prohibition decision
- fine of up to 10% of the total turnover in the financial year previous to the sanctioning decision for failure to perform an obligation or a condition imposed in a decision issued by the Competition Council
- daily fines of up to 5% of the average daily turnover in the financial year previous to the sanctioning decision, in order to determine the undertakings to apply the measures imposed in the Competition Council’s decision (e.g., conditional clearance) or to supply the information requested. The actual amount of the fine depends on the duration and gravity of the infringement, and may also by further adjusted in consideration of aggravating or mitigating circumstances.

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18.“Are ancillary restrictions covered by the decision? ”

- The decisions issued by the Competition Council will also be based upon the analysis of the ancillary restrictions, directly related and necessary for the implementing of the economic concentration. The parties need to identify them and to explain their ancillary nature in the notification submitted to the Competition Council.

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19.“Are mergers involving companies headquartered in other jurisdictions caught? Under what circumstances? ”

- The criteria on the basis of which a merger involving companies headquartered in other jurisdictions falls within the jurisdiction of the Romanian Competition Council is the fulfilment of the relevant notification thresholds as a result of revenues being derived from activity performed in Romania. Irrespective of the jurisdictions in which the companies are headquartered, to the extent each of two of the involved undertakings derives revenues in Romania exceeding Euro 4 million in the year prior to the economic concentration (all the undertakings involved deriving revenues in Romania exceeding Euro 10 million), the economic concentration needs to be notified to the Romanian Competition Council (unless the concentration has a ‘Community dimension’ and, as such, falls under the jurisdictional rules established by the EC Merger Regulation No 139/2004).

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20.“What are the theories of harm? Who has the burden of proof?”

- The Competition Council applies the same theories of harm applied by the European Commission and bears the burden of proof.

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21.“Are Courts involved in the merger investigation?”

- Following the notification, the procedure takes place before the Competition Council both during Phase I and in Phase II investigation The Competition Council can involve third parties in the process (for example, suppliers, clients or competitors), by requesting their point of view on the conditions in which the economic concentration takes place. Courts are involved in the merger process to the extent that, after the issuance of the decision by the Competition Council, the notifying parties / third parties challenge the decision before Bucharest Court of Appeal.

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▪ REMEDIES

1. “What types of remedies are available?”

- To the extent the Competition Council ascertains that an economic concentration operation could be compatible with a normal competitive environment if certain changes were brought to it, it will issue a conditional clearance decision, establishing certain obligations and/ or conditions which would need to be fulfilled for this purpose. Considering that the basic aim of commitments is to ensure competitive market structures, behavioural commitments cannot or are more difficult to be considered acceptable, while structural remedies, such as commitments to sell a subsidiary, are generally preferable, also because no medium or long term control measures are needed. However, it cannot be excluded that behavioural commitments could prevent the creation or consolidation of a dominant position, but this would need to be assessed on a case by case basis. In case of divestiture commitments, the divested activities must consist of a viable business which, if operated by a suitable purchaser, can compete effectively and on a lasting basis with the newly created entity, and the purchaser must be suitable for the intended purpose (independent from the parties, with the necessary financial resources, confirmed abilities and incentive to maintain and develop the divested business as a competitive market force). Furthermore, the acquisition of the business by the proposed purchaser must not be likely to create new competition problems or a risk of delay of the implementation of the commitments. Other remedies include: termination of certain existing exclusive supply and distribution agreements, commitments to ensure access to essential infrastructures or technologies they control (including by way of intellectual property rights), or assignment or license of technologies. The parties could also propose a package of remedies, combining various measures, due to the particularities of the incompatibility situations in certain sectors, such as telecommunication and media.

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2. “Can remedies be offered in Phase I? What are these? ”

- The parties can offer remedies in either of the two phases of the procedure. In Phase I, the parties can present to the Competition Council proposed commitments before the effective date of the notification, or within maximum two weeks as of this date, and they need to explain the manner in which the commitments allow solving the incompatibilities with a normal competitive environment. Taking into account that the Competition Council performs an in-depth analysis of the market only in Phase II, the commitments proposed in Phase I need to be sufficiently precise and detailed so as to allow a full assessment and to clearly exclude any serious doubts regarding the compatibility with a normal competitive environment. Structural remedies for example would qualify to such end. If the assessment confirms that the proposed commitments remove the serious doubts raised by the operation, the Competition Council can clear the economic concentration operation in Phase I. Otherwise, it will inform the parties, which can propose limited changes (clarification, improvements) to the commitments. If the parties have not removed the serious doubts, the Competition Council will decide to initiate an investigation.

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3. "Can remedies be offered in Phase II?"

- The parties can also offer remedies in Phase II, within 30 days from the initiation of the investigation, and they need to explain the manner in which the commitments allow solving the incompatibilities with a normal competitive environment. The parties may request a 15-day extension of the term, provided that they present and justify the existence of exceptional circumstances, and the Competition Council will only approve the extension if it has sufficient time to assess the proposals and consult third parties. The commitments need to solve all incompatibility aspects in the statements of objections which were not removed. If the assessment confirms that the proposed commitments remove the serious doubts raised by the operation, the Competition Council will clear the economic concentration operation within maximum 5 months as of the effective date of the notification. Where the assessment leads to the conclusion that the proposed commitments are not evidently sufficient to solve the situations of incompatibility with a normal competitive environment raised by the concentration, the Competition Council will inform the parties. Where the parties subsequently modify the proposed commitments, the Competition Council may accept these modified commitments only if it can clearly determine - on the basis of its assessment on the information already received within the investigation, including the results of prior consultation of the third parties, and without need for any other market test of same type - that such commitments, once applied, will eliminate the situations of incompatibility with a normal competitive environment.

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4. "How are remedies implemented? Are there monitoring provisions? What happens if a remedy is not fulfilled?"

- Considering that the most typical commitments are the divestiture commitments, and that there is a wide range of non-divestiture commitments, the 'Competition Council Guidelines regarding remedies acceptable in case of conditional clearance of certain economic concentrations' offer detailed guidance on the implementation of the divestiture commitments, many of the respective principles being also applicable to other types of commitments. The divestiture needs to be concluded in a determined time period, agreed between the parties and the Competition Council. Due to the fact that the Competition Council cannot directly control the divestiture, in most of the cases, it will request the designation of a trustee in charge with supervising the implementation of the commitments. The trustee will control the process by proposing and, if needed, imposing all measures deemed necessary to ensure the observance of each commitment, and will prepare regular reports. The trustee will supervise the parties' efforts in finding a potential purchaser and, if the parties do not succeed, the trustee will be given an irrevocable mandate, being empowered to perform the divestiture process in a certain time period, at any price, subject to the prior approval by the Competition Council of the purchaser and of the sale-purchase

agreement. In case the parties involved in the economic concentration operation do not fulfil the obligations undertaken, as mentioned in the conditional clearance decision, the Competition Council can revoke its decision, and the economic concentration operation will be automatically suspended.

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EFFICIENCIES

1. "In which industries are efficiencies arguments usually raised?"

- N/A

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1. "What are the relevant criteria?"

- The criteria used in assessing efficiencies are the same one used by the Commission, a large importance being granted to efficiencies that are passed on to the consumer.

Georgeta Harapcea, Nestor Nestor Diculescu Kingston Petersen (Bucharest), Radu Tufescu, Nestor Nestor Diculescu Kingston Petersen (Bucharest), Antitrust encyclopedia: Romania, January 2010

2. "Are efficiencies taken into account in merger assessment? Have there been cases where efficiencies played an important role?"

- Efficiencies are taken into account, but there has yet to be a case where they are the turning point.

Georgeta Harapcea, Nestor Nestor Diculescu Kingston Petersen (Bucharest), Radu Tufescu, Nestor Nestor Diculescu Kingston Petersen (Bucharest), Antitrust encyclopedia: Romania, January 2010

▪ FAILING FIRM DEFENCE

1. “Are there failing firm defence provisions in the legislation?”

- No, there are no such provisions in the legislation.

Georgeta Harapcea, Nestor Nestor Diculescu Kingston Petersen (Bucharest), Radu Tufescu, Nestor Nestor Diculescu Kingston Petersen (Bucharest), Antitrust encyclopedia: Romania, January 2010

2. “What are the criteria that need to be satisfied for the failing firm defence to apply?”

- N/A

Georgeta Harapcea, Nestor Nestor Diculescu Kingston Petersen (Bucharest), Radu Tufescu, Nestor Nestor Diculescu Kingston Petersen (Bucharest), Antitrust encyclopedia: Romania, January 2010

3. “Has failing firm defence arguments been successfully used in any cases?”

- To our knowledge, such arguments have never been put forward before the Competition Council.

Georgeta Harapcea, Nestor Nestor Diculescu Kingston Petersen (Bucharest), Radu Tufescu, Nestor Nestor Diculescu Kingston Petersen (Bucharest), Antitrust encyclopedia: Romania, January 2010