

New Merger Rules Enacted in Romania

The Romanian Competition Council (the “RCC”) revised its merger control rules by amending the *Regulation on economic concentrations* in force since August 2010. The amendments were enforced by Order no. 438/2014 published in the Official Gazette of Romania no. 795 on 31 October 2014 (the “**new rules**”).

The new rules are intended to lower the administrative burden for both the applicants and the RCC, as an increased number of mergers are now expected to follow the route of the simplified procedure.

Procedurally, the new rules emphasise the importance of **pre-notification discussions** by expressly recommending merging parties to engage in prior discussions with the RCC at least two weeks before submitting their notification.

Similar to the previous rules, at least 5 days before the date of the pre-notification discussions (as opposed to the previous 3-day term) the parties must inform the RCC of: the names of the merging parties; the markets where they are active; a summary description of the merger; and the manner in which control is exercised. In the case of the simplified notification procedure, where definition of relevant markets is key to the assessment, the parties must also submit information identifying all possible relevant (product and geographic) markets, including all alternative markets on which the merger may have an impact.

The new rules increase the **thresholds for the application of the simplified notification** procedure which apply to mergers between undertakings or acquisition of sole or joint control over an undertaking. Now, a simplified notification may be submitted to the RCC for such transactions, if the parties are:

1. competitors (horizontal relations) with a combined market share of maximum 20% of the relevant market (instead of 15% under the old rules); or
2. non-competitors in upstream or downstream markets (vertical relations) with individual and combined market shares of maximum **30%** of the relevant market (instead of 25% under the old rules).

Where the parties are in closely related markets, an economic concentration may be excluded from the application of a simplified notification procedure where one or more of the parties hold an individual market share of at least **30%** of any closely related markets where the parties are not in horizontal or vertical relations.

In addition, the filing of the merger control application form is going to be easier, due to higher thresholds (increased by 5 percentage points), fewer parties will be required to indicate the affected markets and the markets which may be significantly impacted by the merger.

To avoid overlooking potential anti-competitive effects of mergers, the new rules now expressly provide for the obligation (and not for the mere option) of the RCC to publish notice of every notified merger falling under the Romanian competition law.

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