

MERGER CONTROL

Romania



Merger Control

Consulting editors

Thomas Janssens

Freshfields Bruckhaus Deringer

Quick reference guide enabling side-by-side comparison of local insights into legislation and regulators; scope of legislation; thresholds, triggers and approvals; notification and clearance timetable; substantive assessment; remedies and ancillary restraints; involvement of other parties or authorities; judicial review; enforcement record and reform proposals; and recent trends.

Generated 17 August 2023

The information contained in this report is indicative only. Law Business Research is not responsible for any actions (or lack thereof) taken as a result of relying on or in any way using information contained in this report and in no event shall be liable for any damages resulting from reliance on or use of this information. © Copyright 2006 - 2023 Law Business Research

Table of contents

LEGISLATION AND JURISDICTION

Relevant legislation and regulators

Scope of legislation

Thresholds, triggers and approvals

NOTIFICATION AND CLEARANCE TIMETABLE

Filing formalities

Pre-clearance closing

Public takeovers

Documentation

Investigation phases and timetable

SUBSTANTIVE ASSESSMENT

Substantive test

Theories of harm

Non-competition issues

Economic efficiencies

REMEDIES AND ANCILLARY RESTRAINTS

Regulatory powers

Remedies and conditions

Ancillary restrictions

INVOLVEMENT OF OTHER PARTIES OR AUTHORITIES

Third-party involvement and rights

Publicity and confidentiality

Cross-border regulatory cooperation

JUDICIAL REVIEW

Available avenues

Time frame

ENFORCEMENT PRACTICE AND FUTURE DEVELOPMENTS

Enforcement record

Reform proposals

UPDATE AND TRENDS

Key developments of the past year

Contributors

Romania



**Anca Ioana
Jurcovan**
anca.jurcovan@wolftheiss.com
Wolf Theiss

Wolf Theiss



Maria Ionescu
maria.ionescu@wolftheiss.com
Wolf Theiss

LEGISLATION AND JURISDICTION

Relevant legislation and regulators

What is the relevant legislation and who enforces it?

Merger control, as well as the other main areas of competition law, is governed primarily by the Competition Law 21/1996 (the Competition Law), as republished and amended. The provisions of the Competition Law are further complemented by the provisions of the Regulation on Economic Concentrations, approved by Romanian Competition Council (RCC) Order No. 431/2017, and the provisions of the guidelines on the concepts of concentration, concerned undertaking, full-function joint ventures and calculation of turnover, approved by RCC Order No. 386/2010.

Ancillary restraints are covered by the guidelines regarding ancillary restraints, approved by RCC Order No. 387/2010. Remedies are covered by the guidelines on remedies in the merger sector, approved by RCC Order No. 688/2010, and the relevant market is covered by the guidelines on the definition of the relevant market, approved by RCC Order No. 388/2010.

The authority in charge of enforcing the merger control rules in Romania is the RCC. Furthermore, according to the Romanian foreign direct investment (FDI) screening regime, the approval of the FDI Screening Commission is required for transactions that might impact national security.

Law stated - 11 July 2023

Scope of legislation

What kinds of mergers are caught?

A 'merger' is defined, for the purposes of the Competition Law, as being a transaction that results in a change of control over an undertaking or undertakings, or parts of an undertaking or undertakings, on a lasting basis.

As such, there are two types of mergers:

- a merger between previously independent undertakings or parts of undertakings; and
- the acquisition of control over one or more undertakings, or parts of one or more undertakings, by one or more natural persons already controlling at least one undertaking or by one or more undertakings.

Law stated - 11 July 2023

What types of joint ventures are caught?

The creation of a joint venture may amount to a merger, provided that the joint venture is a full-function joint venture (ie, an undertaking that carries out its activity on a lasting basis and performs all functions of an autonomous economic entity).

Law stated - 11 July 2023

Is there a definition of 'control' and are minority and other interests less than control caught?

'Control' is defined by article 9(6) of the Competition Law as the possibility of exercising decisive influence on an

undertaking. Control may arise on the basis of rights, contracts or any other elements that, either separately or taken together, and taking into account the legal or factual considerations involved, allow a party to exercise a decisive influence over the behaviour of an undertaking, in particular through:

- ownership or rights to use over all or part of the assets of an undertaking; or
- rights or contracts conferring a decisive influence over the structure of an undertaking, the voting process or the decision-making process of the management bodies of an undertaking.

The acquisition of a minority shareholding may amount to a notifiable concentration if – and only if – it is considered to amount to an acquisition of control, in particular through the existence of veto rights concerning certain strategic decisions of the respective undertaking. There are no plans that have been made public to review legislation regarding review transactions that do not involve control acquisition.

Law stated - 11 July 2023

Thresholds, triggers and approvals

What are the jurisdictional thresholds for notification and are there circumstances in which transactions falling below these thresholds may be investigated?

The merger control provisions are applicable to concentrations where the undertakings concerned generated combined worldwide turnover exceeding €10 million in the previous financial year, and each of at least two of the undertakings concerned achieved Romanian turnover exceeding €4 million in the previous financial year. There is no intention that has been publicly announced to set up alternative thresholds based on transaction value.

Transactions falling below the above thresholds may only be scrutinised on national security grounds based on the FDI screening mechanism.

Law stated - 11 July 2023

Is the filing mandatory or voluntary? If mandatory, do any exceptions exist?

The filing is mandatory, and there are no exceptions.

Law stated - 11 July 2023

Do foreign-to-foreign mergers have to be notified and is there a local effects or nexus test?

Foreign-to-foreign transactions are subject to merger control by the RCC if the respective parties meet the turnover thresholds test. The lack of local effects, although not removing the requirement for notification, may lead to the concentration being assessed under the simplified procedure.

Law stated - 11 July 2023

Are there also rules on foreign investment, special sectors or other relevant approvals?

A review on national security grounds will be triggered by the acquisition of control over undertakings that are active in a wide range of sectors that are considered sensitive. A new, more restrictive FDI screening regime was adopted in

2022 that impacts transactions involving non-EU investors:

- The new regime applies to non-EU direct and indirect investors for investments that are more than €2 million in areas that are sensitive from the perspective of national security, which are very broadly defined areas.
- The new regime introduces a standstill obligation for all pending transactions. Non-EU investors are subject to fines of up to 10 per cent of the worldwide turnover for breaching the standstill obligation.
- Non-EU investors shall be bound to submit a stand-alone filing (independent of a separate merger control filing).
- The screening shall be conducted by the FDI Screening Commission, a newly created specialised structure within the RCC.
- The substantive test shall be based on the criteria provided in article 4 of Regulation (EU) 2019/452 on FDIs.
- The maximum review timeline is 135 days after the filing is complete.

The FDI regime was amended on 10 June 2023 to include an express right for the FDI Screening Commission to examine the investments made by EU investors that are above the €2 million de minimis threshold and below the thresholds for notification under the merger control rules. Since 2012, the government had previously had the prerogative to prohibit any transaction that would endanger national security regardless of the investor's origin. By law, investments by EU investors that are subject to local merger control rules may be screened by the FDI Screening Commission upon referral by the RCC.

The Competition Law explicitly specifies that the competence of the European Commission must be observed by the government, which in practice will prevent the government from vetoing investments on a discretionary basis.

Concentrations in certain sectors – such as the financial, media, energy and telecommunications sectors – may be subject to a notification obligation to sector regulators.

Law stated - 11 July 2023

NOTIFICATION AND CLEARANCE TIMETABLE

Filing formalities

What are the deadlines for filing? Are there sanctions for not filing and are they applied in practice?

Economic concentrations that meet the turnover thresholds must be notified to the Romanian Competition Council (RCC). The notification may be submitted following the entry into a binding agreement concerning the transaction (eg, share or asset purchase agreement, but even a letter of intent, memorandum of understanding, etc, outlining the main points of the transaction, such as the parties, the object or the price) or, in the case of an acquisition of control over traded companies, following the announcement of the public bid or the acquisition of a controlling interest.

There is no specific deadline for filing as the Competition Law 21/1996 (the Competition Law) states that it must be made before implementing the transaction. Consequently, there are no sanctions for late filing.

Law stated - 11 July 2023

Which parties are responsible for filing and are filing fees required?

The notification must be filed by the party or parties acquiring control. Should the transaction involve a merger or the creation of a full-function joint venture, both parties acquiring control will file the notification.

An initial filing fee of approximately €1,000 is payable prior to the submission of the notification, and proof of payment

must be submitted to the RCC together with the notification. An additional fee of between €10,000 and €25,000 for Phase I, or between €25,001 and €50,000 for Phase II depending on the turnover of the target, is payable within 30 days of the RCC issuing a clearance decision.

Law stated - 11 July 2023

What are the waiting periods and does implementation of the transaction have to be suspended prior to clearance?

An economic concentration that meets the thresholds cannot be implemented prior to clearance (standstill obligation). The RCC may, in particularly justified cases, upon request of the parties, grant a derogation from the standstill obligation.

Pre-notification

According to the Romanian Regulation on Economic Concentrations (the Merger Regulation), parties are advised to initiate pre-notification contact with the RCC at least two weeks prior to the submission of the notification. Although not mandatory, such informal discussions are useful to clarify certain aspects of the concentration with a view to expediting the process.

Completeness of filing

Within seven days of the filing, the RCC will inform the parties of whether the notification meets the formal requirements.

Effective date

The notification becomes effective on the date of registration at the RCC. Where the notification is incomplete in any material respect, the RCC has 20 days from filing to request the parties to complete the notification. The deadline for submitting information is up to 15 days as of receiving the request. There may be several requests for information before a notification is effective.

The RCC can declare a notification effective either in an express manner – official letter – or tacitly, by not requesting additional information within the 20-day period. In practice, the effective date is always confirmed in writing.

Phase I proceedings

The RCC has 45 days from the effective date to either:

- issue a letter if the concentration notified does not fall within the scope of the Competition Law;
- issue a clearance decision authorising the merger if the transaction raises no competition concerns or if those concerns have been removed through the commitments put forth by the parties; or
- launch a Phase II investigation if the transaction raises competition concerns and those concerns have not been removed through the commitments put forth by the parties.

In accordance with past RCC reports, the average duration of a Phase I merger notification, from filing to clearance, is

approximately two months.

Phase II proceedings

Following the launch of a Phase II investigation, the RCC has five months from the effective date to issue:

- an unconditional authorisation decision;
- a conditional authorisation decision, subject to commitments; or
- a negative decision, prohibiting the merger.

Both the 45-day period and the five-month period are mandatory and cannot be extended. Should the RCC fail to issue a decision before those deadlines, the transaction will be deemed to have been tacitly approved and closing is allowed.

Law stated - 11 July 2023

Pre-clearance closing

What are the possible sanctions involved in closing or integrating the activities of the merging businesses before clearance and are they applied in practice?

As a general rule, breaching the standstill obligation may result in a fine of up to 10 per cent of the total worldwide turnover obtained in the previous financial year or, if the sanctioned company did not generate turnover in the previous year, of the most recent turnover registered by the company. If the offending company is a non-resident entity, the turnover on the basis of which the fines are assessed is replaced with the sum of the following:

- turnover achieved by each of the companies registered in Romania and controlled by the infringing party;
- turnover derived in Romania by each of the non-resident companies controlled by the infringing party; and
- any turnover obtained in Romania by the infringing party and accounted for in its financial statements.

Newly established companies that have yet to register turnover may be sanctioned with fines between approximately €3,000 and €500,000. In addition to the fines, the RCC may order, following the examination of the transaction, any interim measures aimed at restoring and maintaining the conditions of effective competition in the relevant market.

In practice, the RCC has a rich decisional practice of sanctioning companies for failure to comply with the standstill obligation.

Law stated - 11 July 2023

Are sanctions applied in cases involving closing before clearance in foreign-to-foreign mergers?

The sanctions for implementing the merger before receiving clearance from the RCC are also applicable in foreign-to-foreign mergers.

Law stated - 11 July 2023

What solutions might be acceptable to permit closing before clearance in a foreign-to-foreign merger?

Although the Competition Law does not expressly provide for carve-out solutions, there are two potential solutions to permit closing before clearance in a foreign-to-foreign merger.

The RCC may, in particularly justified cases, upon request of the parties, permit certain limited actions relating to the implementation of the notified concentration before the expiry of the applicable waiting period. Whenever such occasional requests arise, the RCC will assess them on the merits and, provided that the requests are justified, prior implementation will be granted.

As such, in 2015, in relation to a merger in the banking sector, the RCC allowed the acquirer to implement the concentration prior to obtaining clearance and to offer the retail customers of the target, which had entered into mortgage agreements based on loans in Swiss francs, certain customised solutions.

Otherwise, the Competition Law prohibits the implementation of the merger, rather than the corporate closing of the merger. Prohibited implementation measures of the buyer include, among other things:

- exercising voting rights in respect of the strategic business decisions of the target;
- changing the scope of the business or the commercial name of the target undertaking;
- causing the market entry or exit of the target;
- restructuring, dissolving or spinning off the target;
- selling assets of the target;
- laying off employees of the target;
- initiating the conclusion or termination of long-term or other important agreements between the target undertaking and third parties; and
- listing the target undertaking on a stock exchange market.

In conclusion, it is conceivable that the acquirer could close the transaction prior to receiving approval from the RCC, provided that it refrains from undertaking any implementation measures until clearance is received. As this measure has not been tested in practice, prior notification of the RCC is advisable.

Law stated - 11 July 2023

Public takeovers

Are there any special merger control rules applicable to public takeover bids?

The merger filing in connection with a public bid must be submitted following the announcement of the public bid. Furthermore, the public takeover bid may take place and the securities may be acquired provided that the acquirer does not exercise its voting rights before the clearance decision or before it receives a special derogation from the RCC.

Law stated - 11 July 2023

Documentation

What is the level of detail required in the preparation of a filing, and are there sanctions for supplying wrong or missing information?

The standard and simplified notification forms are provided as an annex to the Merger Regulation and are similar to the forms applied by the European Commission.

Among other things, the following must be provided:

- information on the parties to the concentration (eg, names, registered seats, excerpts from the commercial register, nature of the business, ownership and control; description of the undertakings' business; and annual financial reports for the preceding business year);
- power of attorney;
- description of the intended concentration;
- certified copies or originals of all documents on the basis of which the concentration takes place;
- definition of the relevant markets;
- market shares held by the undertakings concerned in the relevant markets;
- information on main competitors and their market shares in the relevant markets;
- information regarding the top five suppliers and customers of the undertakings concerned;
- description of the distribution and retail networks in the relevant markets, relevance of research and development;
- economic rationale of the concentration;
- description of the benefits expected to result from the concentration for consumers; and
- (if available) copies of analyses, reports or studies related to the relevant markets.

Supplying inaccurate, incomplete or misleading information in the filing process, regardless of whether it is intentional, may result in a fine ranging from 0.1 to 1 per cent of the total turnover obtained in the previous financial year.

The Competition Law also envisages the possibility of submitting a simplified notification in certain cases that usually do not give rise to competition law concerns, as follows:

- when parties acquire joint control over an undertaking that does not carry out any business in Romania or has only an insignificant business in Romania (ie, has a turnover below the €4 million threshold);
- transactions where there is no horizontal overlap or where parties are active in non-related markets;
- transactions where the horizontal overlap is limited (aggregate market share of less than 20 per cent) and neither party operating on an upstream or downstream market to another party has a market share exceeding 30 per cent; or
- when one of the parties holding joint control over an undertaking acquires sole control over the undertaking concerned.

The RCC may, in specific circumstances, move from a simplified notification to a full-form notification.

Law stated - 11 July 2023

Investigation phases and timetable

What are the typical steps and different phases of the investigation?

As a matter of principle, the vast majority of concentrations are cleared in Phase I.

Law stated - 11 July 2023

What is the statutory timetable for clearance? Can it be speeded up?

Pre-notification

According to the Merger Regulation, parties are advised to initiate pre-notification contact with the RCC at least two weeks prior to the submission of the notification. Although not mandatory, such informal discussions are useful to clarify certain aspects of the concentration with a view to expediting the process.

Completeness of filing

Within seven days of the filing, the RCC will inform the parties of whether the notification meets the formal requirements.

Effective date

The notification becomes effective on the date of registration at the RCC. Where the notification is incomplete in any material respect, the RCC has 20 days from filing to request the parties to complete the notification. The deadline for submitting information is up to 15 days as of receiving the request. There may be several requests for information before a notification is effective.

The RCC can declare a notification effective either in an express manner – official letter – or tacitly, by not requesting additional information within the 20-day period. In practice, the effective date is always confirmed in writing.

Phase I proceedings

The RCC has 45 days from the effective date to either:

- issue a letter if the concentration notified does not fall within the scope of the Competition Law;
- issue a clearance decision authorising the merger if the transaction raises no competition concerns or if those concerns have been removed through the commitments put forth by the parties; or
- launch a Phase II investigation if the transaction raises competition concerns and those concerns have not been removed through the commitments put forth by the parties.

In accordance with past RCC reports, the average duration of a Phase I merger notification, from filing to clearance, is approximately two months.

Phase II proceedings

Following the launch of a Phase II investigation, the RCC has five months from the effective date to issue:

- an unconditional authorisation decision;
- a conditional authorisation decision, subject to commitments; or
- a negative decision, prohibiting the merger.

Both the 45-day period and the five-month period are mandatory and cannot be extended. Should the RCC fail to issue a

decision before those deadlines, the transaction will be deemed to have been tacitly approved and closing is allowed.

Law stated - 11 July 2023

SUBSTANTIVE ASSESSMENT

Substantive test

What is the substantive test for clearance?

The substantive test applied by the Romanian Competition Council (RCC) in merger control proceedings is the same test as that applied by the European Commission (ie, whether a concentration leads to a significant impediment to effective competition on the Romanian market or a substantial part thereof, in particular through the creation or strengthening of a dominant position). The failing firm defence may be invoked in front of the RCC, but we are not aware of any cases where this has been done successfully.

Law stated - 11 July 2023

Is there a special substantive test for joint ventures?

There is no special test for joint ventures; however, if the RCC finds that the effect or object of a full-function joint venture is not the creation of an autonomous economic entity, but the coordination of the competitive behaviour of undertakings that remain independent, such coordination will be assessed in the context of anticompetitive agreements.

Law stated - 11 July 2023

Theories of harm

What are the 'theories of harm' that the authorities will investigate?

The RCC will evaluate all mergers to determine whether they are compatible with a normal competition environment. Within this evaluation, the RCC will take into account:

- the need to protect, maintain and develop effective competition in the relevant market;
- the market position of the parties and their competitors, both actual and potential, as well as their economic and financial power;
- alternatives available to suppliers and users and their access to supply sources or markets;
- any barriers, legal or otherwise, to entry into the market;
- the development of offer and demand for the relevant goods and services;
- the interests of the intermediary customers and consumers; and
- technical and economic progress insofar as it benefits the consumer and is not an impediment to competition.

Law stated - 11 July 2023

Non-competition issues

To what extent are non-competition issues relevant in the review process?

Although the main factor taken into account in the assessment of a merger is the effect on competition of the merger, non-competition-related issues may also be taken into account, for example, when the implementing measures prior to clearance are mainly for the benefit of consumers.

Law stated - 11 July 2023

Economic efficiencies

To what extent does the authority take into account economic efficiencies in the review process?

Although economic efficiencies are not expressly provided for in the Romanian Regulation on Economic Concentrations, it is arguable that one of the theories of harm (technical and economic progress insofar as it benefits the consumer and is not an impediment to competition) refers to efficiencies.

In practice, the RCC uses the approach taken in the European Commission's guidelines when confronted with a case where the aggregate market shares come close to 40 per cent, and it looks at reduction of costs and prices, increase in innovation or improvement of supply when assessing efficiencies.

Law stated - 11 July 2023

REMEDIES AND ANCILLARY RESTRAINTS

Regulatory powers

What powers do the authorities have to prohibit or otherwise interfere with a transaction?

Transactions may also be prohibited or conditionally approved within the context of the mandatory foreign direct investments screening mechanism.

Law stated - 11 July 2023

Remedies and conditions

Is it possible to remedy competition issues, for example by giving divestment undertakings or behavioural remedies?

If, during their analysis, Romanian Competition Council (RCC) representatives identify any competition concerns raised by the transaction, they may bring up the question of commitments. The parties are free to offer both behavioural and structural remedies, with structural remedies being preferred.

According to the applicable regulations, the commitments proposed have to be sufficient to remove the competition concerns. They must also contain sufficient information and data to allow an evaluation of their effectiveness (market test) to be carried out by the RCC. The parties are free to initiate preliminary contact with the RCC before formally transmitting their proposed commitments to better understand the competition concerns raised by the transaction and to discuss the envisaged commitments.

Possible remedies encompass one or more of the following:

- divestments;

- termination or amendment of existing exclusive agreements;
- granting access to necessary infrastructure, networks or key technologies by way of licence agreements or otherwise; and
- behavioural remedies, such as price-reporting obligations and mechanisms designed to prevent customer discrimination.

The RCC, for example, imposed structural remedies in a case concerning the acquisition of a retail chain by a competitor, obliging the acquirer to divest two stores operated in a certain geographical area. In a separate transaction concerning the same market, the RCC imposed behavioural remedies and required the acquirer to refrain from increasing prices charged in a particular store above the prices charged in other stores, which were located in a more competitive geographical market.

Law stated - 11 July 2023

What are the basic conditions and timing issues applicable to a divestment or other remedy?

Remedy proposals may be submitted in both phases of merger control proceedings.

In Phase I, remedies should be submitted before the notification becomes effective or, at the latest, within two weeks of the effective date.

In Phase II, remedies should be submitted within 30 days of the opening of the Phase II proceedings. In exceptional circumstances, the parties may request an extension of up to 15 days to find an acceptable solution.

Should the remedies be accepted, the RCC will issue a conditional clearance decision expressly stating the commitments and the time frame for implementation.

Failure to properly implement the commitments may result in the revocation of the decision, which the RCC may do to restore the situation prior to the implementation of the merger, or the levying of a fine of between 0.5 and 10 per cent of the total turnover.

Law stated - 11 July 2023

What is the track record of the authority in requiring remedies in foreign-to-foreign mergers?

Foreign-to-foreign transactions that do not have effects on the Romanian market but become subject to notification given the parties' turnover should not require remedies.

Law stated - 11 July 2023

Ancillary restrictions

In what circumstances will the clearance decision cover related arrangements (ancillary restrictions)?

As a matter of principle, in accordance with the Romanian Regulation on Economic Concentrations, a clearance decision covers the related ancillary restraints. Having said that, the parties will carry out an individual assessment on what amounts to an ancillary restraint, taking into account the guidelines regarding ancillary restraints, approved by RCC Order No. 387/2010.

In practice, the RCC will usually inform the parties of the existence of any restrictions that, prima facie, do not qualify as ancillary restraints.

Law stated - 11 July 2023

INVOLVEMENT OF OTHER PARTIES OR AUTHORITIES

Third-party involvement and rights

Are customers and competitors involved in the review process and what rights do complainants have?

As a matter of practice, the Romanian Competition Council (RCC) will publish a short press release on its website stating that it is currently analysing or investigating a merger, and anyone interested is free to submit observations. In particular, in cases that raise competition concerns, the RCC may actively request the opinion of competitors, clients, suppliers or other relevant authorities (such as sector regulators) regarding the merger.

Furthermore, should the parties propose commitments and they are accepted by the RCC, such commitments are published on the RCC's website and all interested parties can submit observations within a set time frame.

Competitors or undertakings affected by a merger clearance decision may challenge the decision before the administrative courts.

Law stated - 11 July 2023

Publicity and confidentiality

What publicity is given to the process and how do you protect commercial information, including business secrets, from disclosure?

The RCC and its representatives are under an obligation not to disclose business secrets (ie, information that is defined as a business secret by law or by the undertakings concerned). Business secrets, among other things, encompass any business information that has actual or potential economic and market value, the disclosure of which could seriously harm the interests of undertakings concerned.

To ensure the effective protection of commercial information, it is advisable to mark such information as being confidential in all documents sent to the RCC. The RCC will publish a non-confidential version of the clearance decision on its website.

Other documents published by the RCC (eg, press releases, proposals for commitments) do not contain any business secrets or other confidential information.

Law stated - 11 July 2023

Cross-border regulatory cooperation

Do the authorities cooperate with antitrust authorities in other jurisdictions?

The RCC is a member of the International Competition Network and the European Competition Network (ECN), and can therefore request documents and information from other national authorities regarding merger cases. In addition, the RCC may provide confidential information to other competition authorities in merger cases that are notifiable in more EU member states based on the Waiver Form, contained in an annex to the Romanian Regulation on Economic Concentrations.

The RCC, as a national competition authority of an EU member state, has all the rights and obligations pursuant to the EU Merger Regulation. The RCC has an active contribution and cooperation role within the ECN in the form of the informal and formal exchange of information between national competition authorities, depending on the merger cases at issue.

Law stated - 11 July 2023

JUDICIAL REVIEW

Available avenues

What are the opportunities for appeal or judicial review?

All decisions issued by the Romanian Competition Council (RCC), including those in merger cases, can be challenged in front of the Bucharest Court of Appeals within 30 days of being served. The judgment of the Bucharest Court of Appeal can be further challenged by means of a final appeal before the High Court of Cassation and Justice.

To the best of our knowledge, there have been no recent cases challenging a merger decision of the RCC.

Law stated - 11 July 2023

Time frame

What is the usual time frame for appeal or judicial review?

The actual duration of judicial proceedings can vary significantly depending on the complexity of the case and the procedural steps employed (ie, naming an expert, requesting the intervention of the European Commission as an amicus curiae and requesting that a preliminary ruling procedure in front of the Court of Justice of the European Union be initiated). Usually, the appeal proceedings in front of the Bucharest Court of Appeals last for between three and nine months from the first hearing, while the proceedings before the High Court of Cassation and Justice last for between three and six months from the first hearing; however, because of the high number of cases pending in front of the High Court of Cassation and Justice, the first hearing may take place 12 to 18 months after filing the appeal.

Law stated - 11 July 2023

ENFORCEMENT PRACTICE AND FUTURE DEVELOPMENTS

Enforcement record

What is the recent enforcement record and what are the current enforcement concerns of the authorities?

The Romanian Competition Council (RCC) has taken a rather non-interventionist approach the past and has successfully increased its efforts in reducing the merger control procedure review timelines. The year 2022 has been a record year in terms of the number of merger cases cleared by the RCC (94 mergers).

Law stated - 11 July 2023

Reform proposals

Are there current proposals to change the legislation?

There is no publicly discussed initiative to amend the merger regulation rules.

UPDATE AND TRENDS

Key developments of the past year

What were the key cases, decisions, judgments and policy and legislative developments of the past year?

In 2022, the Romanian Competition Council cleared 94 mergers, a record number from the past 16 years. Among these, only two were cleared with commitments, both in the healthcare sector:

- the acquisition of Muntenia Medical Competences by Medlife SA with the condition of capping the fees for MRI and CT imaging services that Medlife Group would provide in Argeş County for a period of five years, with an annual indexation at the rate of inflation at most; and
- the acquisition by Diagnostic Rapid SA of Onco Card SRL and Onco Card Invest SRL, subject to the maintenance of a certain level of the tariffs charged, as well as quality indicators, for a period of five years at the Brasov County level.

Jurisdictions

	Albania	Wolf Theiss
	Australia	Allens
	Austria	Freshfields Bruckhaus Deringer
	Belgium	Freshfields Bruckhaus Deringer
	Bosnia and Herzegovina	Wolf Theiss
	Brazil	TozziniFreire Advogados
	Bulgaria	Boyanov & Co
	Canada	McMillan LLP
	China	Freshfields Bruckhaus Deringer
	Costa Rica	Zurcher Odio & Raven
	Croatia	Wolf Theiss
	Cyprus	Antoniou McCollum & Co LLC
	Czech Republic	Nedelka Kubáč advokáti
	Denmark	Kromann Reumert
	Ecuador	Flor, Bustamante, Pizarro & Hurtado
	Egypt	Zulficar & Partners
	European Union	Freshfields Bruckhaus Deringer
	Faroe Islands	Kromann Reumert
	Finland	Roschier, Attorneys Ltd
	France	Freshfields Bruckhaus Deringer
	Germany	Freshfields Bruckhaus Deringer
	Ghana	Bentsi-Enchill Letsa & Ankomah
	Greece	Vainanidis Economou & Associates
	Greenland	Kromann Reumert
	Hong Kong	Freshfields Bruckhaus Deringer

	Indonesia	ABNR
	Italy	Freshfields Bruckhaus Deringer
	Japan	Freshfields Bruckhaus Deringer
	Liechtenstein	Sele Frommelt & Partner Attorneys at Law
	Malta	Camilleri Preziosi
	Mexico	Creel García-Cuéllar Aiza y Enriquez SC
	Morocco	UGGC Avocats
	Netherlands	Freshfields Bruckhaus Deringer
	New Zealand	Russell McVeagh
	Nigeria	G Elias
	Norway	Wikborg Rein
	Pakistan	Axis Law Chambers
	Peru	Payet Rey Cauvi Pérez Abogados
	Poland	WKB Wiercinski Kwiecinski Baehr
	Portugal	Gomez-Acebo & Pombo Abogados
	Romania	Wolf Theiss
	Saudi Arabia	Freshfields Bruckhaus Deringer
	Serbia	Wolf Theiss
	Singapore	Drew & Napier LLC
	Slovakia	Wolf Theiss
	Slovenia	Wolf Theiss
	South Korea	Bae, Kim & Lee LLC
	Spain	Freshfields Bruckhaus Deringer
	Sweden	Mannheimer Swartling
	Switzerland	Lenz & Staehelin

	Thailand	Weerawong, Chinnavat & Partners Ltd
	Turkey	ELIG Gürkaynak Attorneys-at-Law
	Ukraine	Asters
	United Arab Emirates	Freshfields Bruckhaus Deringer
	United Kingdom	Freshfields Bruckhaus Deringer
	USA	Davis Polk & Wardwell LLP
	Vietnam	Freshfields Bruckhaus Deringer
	Zambia	Corpus Legal Practitioners